

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7** 09 AUG -5 AM 11:25

**901 NORTH 5<sup>th</sup> STREET**  
**KANSAS CITY, KANSAS 66101**  
ENVIRONMENTAL PROTECTION AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

In the Matter of )

Kunkel Enterprises, Inc. )  
d/b/a C K Enterprises, Inc. )  
1204 Southwest Jefferson Street )  
Lee's Summit, Missouri 64063 )

Respondent )

Docket No. FIFRA-07-2009-0018

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7, and Kunkel Enterprises, Inc. d/b/a C K Enterprises, Inc., (C K Enterprises) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that C K Enterprises, has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is C K Enterprises, a pesticide dealer and producer, located at 1204 Southwest Jefferson Street, Lee's Summit, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

## **Section III**

### **Statutory and Regulatory Background**

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for

shipment, ship, deliver for shipment, release for shipment, or receive, and (having so received) deliver or offer to deliver.

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient used in producing a pesticide.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

11. Registrants may distribute or sell their registered product under another person’s name and address instead of, or in addition to, their own, as allowed by regulation at 40 C.F.R. § 152.132. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted upon notification to EPA if specific conditions, stated at 40 C.F.R. § 152.132(a) through (e), are met. As a requirement of supplemental distribution, the label of the distributor product must be the same as that of the registered product, with exceptions stated at 40 C.F.R. § 152.132(d)(1) through (5).

12. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), states the term “adulterated” applies to any pesticide if its strength or purity falls below the professed standard of quality expressed on the labeling under which it is sold.

13. Title 40 C.F.R. § 156.10(g)(5), states that the accuracy of the percentages of active ingredients shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest percentage which may be present.

#### **Section IV**

##### **General Factual Allegations**

14. Harcros Chemicals, Inc., Kansas City, Kansas (Harcros Chemical), is the registrant for the pesticide registered as SODIUM HYPOCHLORITE 12.5%, EPA Registration Number (EPA Reg. No.) 148-1288. Harcros Chemical has submitted to EPA the required notification form and information indicating they have a supplemental distributor agreement with C K Enterprises. Under this agreement, C K Enterprises is authorized by the registrant to supplementally distribute its registered pesticide, using the brand name K-SAN 125, under EPA Reg. No. 148-1288-49614.

15. Mason Chemical Company, Arlington Heights, Illinois, (Mason Chemical) is the registrant for the pesticide registered as MAQUAT MQ615-AS, EPA Registration Number (EPA Reg. No.) 10324-67. Mason Chemical has submitted to EPA the required notification form and information indicating they have a supplemental distributor agreement with C K Enterprises. Under this agreement, C K Enterprises, is authorized by the registrant to supplementally distribute its registered pesticide, using the brand name DICA QUAT FOOD CONTACT SANITIZER, under EPA Reg. No. 10324-67-49614.

16. On or about August 28, 2007, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at the C K Enterprises facility located at 1204 Southwest Jefferson Street, Lee's Summit, Missouri. During the MDA August 28, 2007, inspection it was documented that respondent was producing and distributing the supplemental distributor pesticides referenced in paragraphs 14 and 15. Physical samples (one-pint each) of the pesticides and their respective labels were collected during the inspection from inventory that was packaged, labeled, and released for shipment. Duplicate samples were provided to Respondent. Samples were transferred to the University of Iowa Hygienic Laboratory, (UHL), Iowa City, Iowa, for analysis.

**Violations**

17. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

**Count 1**

18. The facts stated in paragraphs 14 through 16 are realleged and incorporated as if fully stated herein.

19. Documentation collected during the inspection referenced in paragraph 16 revealed that C K Enterprises was producing, distributing, and holding for sale or distribution the pesticide referenced in paragraph 15.

20. The pesticide product, DICA QUAT FOOD CONTACT SANITIZER, EPA Registration No. 10324-67-49614, was misbranded in that the label stated in part:

“ \* \* \* ”

DICA QUAT  
FOOD CONTACT SANITIZER

**ACTIVE INGREDIENTS:**

Octyl Decyl Dimethyl Ammonium Chloride.....	3.0750%
Didecyl Dimethyl Ammonium Chloride.....	1.5375%
Dioctyl Dimethyl Ammonium Chloride.....	1.5375%
Alkyl (C14, 50%, C12, 40%, C16, 10%) Dimethyl benzyl ammonium chloride.....	4.1000%
<b>INERT INGREDIENTS:</b> .....	89.7500%
<b>TOTAL</b> .....	100.0000%

\* \* \* ”

21. For a total of 10.2500% quaternary ammonium chlorides. Whereas, when analyzed, the pesticide product contained less than 10.2500% quaternary ammonium chlorides.

22. The UHL report of analysis found that the pesticide referenced in paragraph 15 contained only 8.2000% of total quaternary ammonium chlorides. The UHL check analysis found that the product only contained 7.53% total quaternary ammonium chlorides. Due to this deficiency, the product would not be fully effective in controlling microorganisms and bacteria.

23. The pesticide product referenced in paragraph 15 was adulterated in that its strength or purity fell below the professed standard or quality expressed on the labeling under which it was sold or being held for sale.

24. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it held for sale or distribution a pesticide which was misbranded and adulterated.

25. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$4,160 be assessed against the Respondent.

**Count 2**

26. The facts stated in paragraphs 14 through 16 are realleged and incorporated as if fully stated herein.

27. Documentation collected during the inspection referenced in paragraph 16 revealed that C K Enterprises was producing, distributing, and holding for sale or distribution the pesticide referenced in paragraph 14.

28. The pesticide product, K-SAN 125, EPA Registration No. 148-1288-49614, referenced in paragraph 14 was misbranded in that the label stated in part:

“ \* \* \* ”

K-SAN 125  
(12.5% Available Chlorine)

**ACTIVE INGREDIENTS:**

Sodium Hypochlorite.....12.5%

**INERT INGREDIENTS:**.....87.5%

**TOTAL**.....100.0%

\* \* \* ”

Whereas, when analyzed, the pesticide product contained less than 12.5% sodium hypochlorite.

29. The UHL report of analysis found that the pesticide referenced in paragraph 14 was found to contain only 6.2% of sodium hypochlorite. The UHL check analysis found that the product only contained 4.93% of sodium hypochlorite. Due to this deficiency the product would not be fully effective in controlling microorganisms and bacteria.

30. The pesticide product referenced in paragraph 14 was adulterated in that its strength or purity fell below the professed standard or quality expressed on the labeling under which it was sold or being held for sale.

31. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in

that it held for sale or distribution a pesticide which is misbranded and adulterated.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$4,160 be assessed against Respondent.

## Section V

### Consent Agreement

33. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

34. Respondent neither admits nor denies the factual allegations set forth above.

35. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

36. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

37. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

39. Respondent certifies that by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

40. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.



41. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

42. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## **Section VI**

### **Final Order**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Eight Thousand Three Hundred and Twenty Dollars (\$8,320) plus interest of Thirty-Seven Dollars and Twenty-Five Cents (\$37.25), for a total payment of Eight Thousand Three Hundred and Fifty-Seven Dollars and Twenty-Five

Cents (\$8,357.25). The total civil penalty of \$8,357.25 shall be paid in three installment payments. The first payment of Two Thousand Seven Hundred and Eighty Five Dollars and Seventy Five Cents (\$2,785.75) is due within thirty (30) days of the effective date of this CAFO. Respondent shall make a second installment payment of \$2,785.75 within 60 days of the effective date of this CAFO. Respondent shall make a third and final installment payment of \$2,785.75 within 90 days of the effective date of this CAFO. These installment payments shall result in the total payment of \$8,320, plus interest, to be paid in full no later than 90 days after the effective date of this CAFO.

2. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

3. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7

901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kristen Nazar, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT**  
**C K ENTERPRISES, INC.**

Date: 7-29-09


  
\_\_\_\_\_  
Representative of C K Enterprises Inc.

Charles Kunkel  
Printed Name


General Manager  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**


Date: 8-4-09

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date: 8/3/2009

  
Kristen Nazar  
Assistant Regional Counsel  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: Aug. 5, 2009   
\_\_\_\_\_  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Kunkel Enterprises, Inc. d/b/a C K Enterprises, Inc., Respondent  
Docket No. FIFR5A-07-2009-0018

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristen Nazar  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Charles Kunkel, General Manager  
Kunkel Enterprises, Inc.  
d/b/a C K Enterprises, Inc.  
1204 Southwest Jefferson Street  
Lee's Summit, Missouri 60463

Dated: 8/5/09



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7