

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2023-0008
)	
Higrocorp, Inc.)	Proceeding to Assess a Civil Penalty
Kingston, Ontario)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
in care of its U.S. Agent,)	Act, 7 U.S.C. § 136l(a)
)	
Spring Regulatory Sciences)	
Spring, Texas)	
)	
Respondent.)	
)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Higrocorp, Inc. (Higrocorp), a corporation doing business in Ontario, Canada in care of its U.S. Agent, Spring Regulatory Sciences, a consulting firm with a place of business located in Spring, Texas.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the

issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y, and the regulations promulgated thereunder.

Statutory and Regulatory Background

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

11. Section 2(c)(1) of FIFRA, 7 U.S.C. § 136(c)(1), defines a pesticide as “adulterated” if “its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.”

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its label, or labeling accompanying it, bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

13. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as

“misbranded” if its label, or labeling accompanying it, does not contain directions for use necessary to make the product effective and to adequately protect health and the environment.

14. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.” *See also* 40 C.F.R. § 152.3.

16. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” *See also* 40 C.F.R. § 152.3.

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator [of the EPA] declares to be a pest under Section 25(c)(1) of FIFRA.” *See also* 40 C.F.R. § 152.5.

18. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines a “registrant” as “a person who has registered any pesticide pursuant to the provisions of FIFRA, 7 U.S.C. § 136(y).”

19. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

20. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or

to which reference is made on the label or in literature accompanying the pesticide or device.”

21. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1) states that in order for a product to be registered as a pesticide with EPA, the person applying for such registration must submit a statement in connection with the registration of the product as a pesticide under FIFRA that includes, among other things:

- (a) the name and address of the applicant and of any other person whose name will appear on the labeling;
- (b) the name of the pesticide;
- (c) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use; and
- (d) the complete formula of the pesticide.

22. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.”

23. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met:

- (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product.
- (b) The distributor product is produced, packaged and labeled in a registered

establishment operated by the same producer who produces, packages, and labels the registered product.

(c) The distributor product is not repackaged (remains in the producer's unopened containers).

(d) The label of the distributor product is the same as that of the registered product, except that (1) the product name of the distributor product may be different, (2) the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) specific claims may be deleted, provided that no other changes are necessary.

(e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

24. 40 C.F.R § 156.10(a)(1) states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R Part 156, including that the label must show clearly and prominently, the producing establishment number and an ingredient statement.

25. 40 C.F.R § 156.10(a)(4)(i) states that if the immediate container is enclosed within a wrapper or outside container through which the label cannot be clearly read, the label must also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.

26. 40 C.F.R § 156.10(e) states, in pertinent part, that the registration number assigned

to the pesticide product at the time of registration shall appear on the label, preceded by the phrase “EPA Registration No.,” or the phrase “EPA Reg. No.”.

27. 40 C.F.R § 156.10(f) states, in pertinent part, that the producing establishment registration number preceded by the phrase “EPA Est.,” of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container.

28. 40 C.F.R § 156.10(i)(1)(ii) states, in pertinent part, that the directions for use may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that: (A) If required by the Agency, such printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag; (B) The label bears a reference to the directions for use in accompanying leaflets or circulars, such as “See directions in the enclosed circular;” and (C) The Administrator determines that it is not necessary for such directions to appear on the label.

29. 40 C.F.R § 158.350 states, in pertinent part, that the person applying for registration must propose certified limits for the ingredients in the product, and that certified limits become legally binding limits upon approval of the application.

30. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015, and assessed on or after January 12, 2022, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

31. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C.

§ 136(s).

32. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

33. At all times relevant to this CAFO, Hicrocorp owned or operated a place of business located at 661 Justus Drive, Kingston, Ontario K7M 4H5.

34. At all times relevant to this CAFO, Midas Products LLC (Midas) owned or operated a place of business located at 21449 Bridge Street, Southfield, Michigan 48033 (Facility).

35. Midas is a supplemental distributor for Hicrocorp. On or about January 28, 2020, EPA approved a Supplemental Distribution of a Registered Pesticide Product Form (EPA Form 8570-5) for the supplemental distribution of EZ-Root Gel, EPA Reg. No. 82752-1, registered to Hicrocorp Inc., for Midas. The supplemental distributor product was registered by EPA as “Midas Products Rooting Compound” and assigned EPA Reg. No. 82752-1-95777.

36. On or about May 4, 2021, two inspectors employed with the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection at the Midas Facility (Inspection).

Adulteration

37. During the Inspection, the inspectors collected a physical sample of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777. The physical sample of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777 that was collected had a label that was affixed to the container and was representative of how Midas received the pesticide product from Hicrocorp.

38. The confidential statement of formula (CSF) required and accepted by EPA in connection with the FIFRA registration of “EZ-Root Gel” described the composition of the pesticide as including the active ingredient Indole-3-Butyric Acid, CAS No. 133-32-4.

39. The physical sample of “Midas Products Rooting Compound” (EPA Reg. No. 82752-1-95777) was submitted to the MDARD Geagley Laboratory and forwarded to the Office of the Indiana State Chemist lab for a formulation analysis of the product to determine the concentration of Indole-3-Butyric Acid. The sample result showed that concentration of Indole-3-Butyric Acid was 0.209% which is below the listed percent of 0.35%.

40. On or about February 8, 2021, Respondent distributed or sold the distributor product “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, to Midas.

Misbranding

41. During the Inspection, the inspectors collected a physical sample of “Midas Products Rooting Compound” (EPA Reg. No. 82752-1-95777), including the product label provided by Higrocorp.

42. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring during calendar year 2021, did not contain the correct EPA Reg. No. as required by 40 C.F.R. 156.10(e).

43. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring on or about February 2, 2021, did not contain a valid EPA Est. No., as required by 40 C.F.R. § 156.10(f).

44. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring on or about February 2, 2021, did not contain directions for use necessary to make the product effective and to adequately protect health and the environment, as required by 40 C.F.R. § 156.10(i).

45. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring on or about February 2, 2021, did not bear an

ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase, as required by 40 C.F.R. § 156.10(a)(4)(i).

46. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring or about February 2, 2021, did not contain the name and address of the producer, registrant, or person for whom produced, as required by 40 C.F.R. § 156.10(a)(1)(ii).

47. On or about February 2, 2021, Respondent distributed or sold the distributor product “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, to Midas.

Count 1 (Adulteration)

48. Complainant incorporates paragraphs 1-40 of this CAFO, as if set forth in this paragraph.

49. The percentage of active ingredient Indole-3-Butyric Acid, CAS No. 133-32-4 in the physical sample of “Midas Products Rooting Compound” (EPA Reg. No. 82752-1-95777) was formulated outside of the certified limit described in the CSF of EPA Reg. No. 82752-1 and as required by 40 C.F.R § 158.350.

50. Respondent’s distribution or sale of the adulterated distributor product, “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, on or about February 2, 2021, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) and its implementing regulation at 40 C.F.R § 158.350, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2 (Misbranding)

51. Complainant incorporates paragraphs 1-36 and 41-47 of this CAFO, as if set forth in this paragraph.

52. The label affixed to the container of the distributor product “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, that was distributed or sold on or about February 2, 2021, was misbranded as it failed to contain: 1) the correct EPA Reg. No. as required by 40 C.F.R. 156.10(e); 2) a valid EPA Est. No., as required by 40 C.F.R. 156.10(f); 3) directions for use necessary to make the product effective and to adequately protect health and the environment, as required by 40 C.F.R. 156.10(i)(1)(ii)(B); 4) did not bear an ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase, as required by 40 C.F.R. § 156.10(a)(1)(vi) and 40 C.F.R. § 156.10(a)(4)(i); and 5) did not contain the name and address of the producer, registrant, or person for whom produced, as required by 40 C.F.R. § 156.10(a)(1)(ii).

53. Respondent’s distribution or sale of the misbranded pesticide “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, on or about February 2, 2021, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and its implementing regulations at 40 C.F.R. §§ 156.10, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

54. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is **\$7,700**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

55. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

56. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Emma Gloekler (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
gloekler.emma@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
king.cynthia@epa.gov

57. This civil penalty is not deductible for federal tax purposes.

58. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

59. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

60. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and Jeremy@springregulatory.com (for Respondent).

61. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

62. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

63. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

64. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

65. The terms of this CAFO bind Respondent, its successors, and assigns.

66. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

67. Each party agrees to bear its own costs and attorney's fees, in this action.

68. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Higrocorp, Inc., in care of its U.S. Agent Spring Regulatory Sciences, Respondent**

28 February 2023

Date

G. Kanellos

George Kanellos
Chief Chemist and QC Manager

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2023.03.08
10:45:06 -06'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Higrocorp, Inc., in care of its U.S. Agent Spring Regulatory Sciences
Docket No.: FIFRA-05-2023-0008

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2023.03.08
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5