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U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
American Chemical Systems II, LLC)	
3505 West 29th Street, South)	Docket No. FIFRA-07-2013-0036
Wichita, Kansas 67217)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and American Chemical Systems II, LLC (Respondent or American Chemical Systems), have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

Section I

Jurisdiction

1. This 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 Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the 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 American Chemical Systems II, LLC, a pesticide producer located at 3505 W. 29 St. S., Wichita, Kansas 67217. The Respondent is, and was at all times referred to in this CAFO, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and a corporation qualified to do business in the state of Kansas.

Section III

Statutory and Regulatory Background

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

6. A pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular. 7 U.S.C. § 136(q).

7. Section 12(a)(1)(C) of FIFRA states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration as a pesticide. 7 U.S.C. § 136j(a)(1)(C).

8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

9. The term “to distribute or sell” means 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. 7 U.S.C. § 136(gg).

10. Pesticide registrants may distribute or sell a registered product under another person’s name and address instead of (or in addition to) their own. Such distribution and sale is termed “supplemental distribution.” 40 C.F.R. § 152.132. 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.

11. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

12. FIFRA Section 7(a), 7 U.S.C. ' 136e(a) states that no person may produce a pesticide subject to FIFRA unless the establishment in which it is produced is registered with EPA.

13. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it shall be unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 136c, 136e, 136f, 136i, or 136q of Title 136.

Section IV

GENERAL FACTUAL ALLEGATIONS

14. Respondent is, and was at all times, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and a corporation qualified to do business in the state of Kansas.

15. On October 17, 2011, a representative of the Missouri Department of Agriculture (MDA) conducted a neutral scheme producer establishment inspection at American Chemical Systems, located in Springfield, Missouri. That location has since closed.

16. On January 12, 2012, a representative of the Kansas Department of Agriculture (KDA) conducted a for-cause producer establishment inspection at the facility of American Chemical SystemsII , located in Wichita, Kansas.

17. On May 6, 2012, EPA issued an Information Request Letter to Illinois Tool Works, Inc., regarding production and distribution of several supplemental distributor products.

18. The inspections and information requests were conducted to determine the compliance status of American Chemical Systems and any other regulated parties with the requirements of FIFRA.

19. American Chemical Systems II applied for and received authorization to act as a supplemental distributor of “Maquat 705-M” under the distributor product name “Dual Q,” EPA Registration No. 10324-177-71269. Said application and authorization occurred prior to the inspections referenced above and has been cancelled subsequent to the inspections referenced above.

20. American Chemical Systems II applied for and received authorization to act as a supplemental distributor of "Maquat 5.5-M" under the distributor product name "Tornado," EPA Registration No. 10324-80-86408. Said application and authorization occurred after the inspections referenced above.

21. American Chemical Systems II applied for and received authorization to act as a supplemental distributor of "Dry Fog Drop-Um" under the distributor product name "Insect Killer," EPA Registration No. 11694-107-86408. Said application and authorization occurred after the inspections referenced above.

22. American Chemical Systems II applied for and received authorization to act as a supplemental distributor of "Sodium Hypochlorite 10% NAOLC by Weight" under the distributor product name "Sodium Hypochlorite," EPA Registration No. 52374-10-86408. Said application and authorization occurred after the inspections referenced above.

VIOLATIONS

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

Count 1

24. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

25. At the time of inspection referenced in Paragraph 15 above, the American Chemical Systems facility in Springfield had a quantity of one gallon containers with labels bearing "ACS Dual Q" and "EPA Registration No. 10324-177-71269" that was packaged, labeled, and released for shipment.

26. The "ACS Dual Q" quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises.

27. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 2-12

28. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

29. At the time of inspection referenced in Paragraph 15 above, documents showed the American Chemical Systems facility in Springfield on various dates had made eleven (11) separate shipments of quantities of one gallon containers with labels bearing "ACS Dual Q" and "EPA Registration No. 10324-177-71269".

30. The "ACS Dual Q" quantities that were shipped were misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises.

31. Respondent on eleven (11) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 13

32. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

33. At the time of inspection referenced in Paragraph 15 above, the American Chemical Systems facility in Springfield on a particular date had made one shipment of a quantity of 32 ounce containers with labels bearing "ACS Dual Q (RTU)" and "EPA Registration No. 10324-177-71269".

34. The "ACS Dual Q (RTU)" quantity that was shipped was misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, and contained "(RTU)" in the product name.

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 14

36. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

37. At the time of inspection referenced in Paragraph 15 above, the American Chemical Systems facility in Springfield had a bulk tank filled with product intended for repackaging and subsequent distribution or sale, with a label bearing "ACS Sodium Hypochlorite Solution" and "EPA Registration No. 52374-10".

38. The “ACS Sodium Hypochlorite Solution” in the bulk tank was misbranded inasmuch as the label on the bulk tank did not bear an EPA-registered name, bore an incomplete EPA label, and bore an incorrect EPA establishment number.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 15

40. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

41. At the time of inspection referenced in Paragraph 15 above, the American Chemical Systems facility in Springfield had a quantity of one gallon containers with labels bearing “ACS Sodium Hypochlorite” and “EPA Registration No. 9616-8” that was packaged, labeled, and released for shipment.

42. “ACS Sodium Hypochlorite” was not registered at the time of the inspection.

43. The “ACS Sodium Hypochlorite” quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, and bore a false and misleading EPA Registration Number.

44. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

45. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 16-25

46. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

47. At the time of inspection referenced in Paragraph 15 above, documents showed the American Chemical Systems facility in Springfield on various dates had made ten (10) separate shipments of quantities of one gallon containers with labels bearing “ACS Sodium Hypochlorite” and “EPA Registration No. 9616-8”.

48. “ACS Sodium Hypochlorite” was not registered at the time of the inspection.

49. The “ACS Sodium Hypochlorite” quantities that were shipped were misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, and bore a false and misleading EPA Registration Number.

50. Respondent on ten (10) occasions violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

51. Respondent on ten (10) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 26

52. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

53. At the time of inspection referenced in Paragraph 15 above, documents showed the American Chemical Systems facility in Springfield had made one (1) separate shipment of quantities of one gallon containers with labels bearing “ACS Tornado” and “EPA Registration No. 10324-80”.

54. “ACS Tornado” was not registered at the time of the inspection.

55. The “ACS Tornado” quantities that were shipped were misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, and bore a false and misleading EPA Registration Number.

56. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

57. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 27

58. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

59. At the time of inspection referenced in Paragraph 15 above, documents showed the American Chemical Systems facility in Springfield had made one (1) separate shipment of quantities of 14-ounce containers with labels bearing “ACS Insect Killer” and “EPA Registration No. 11694-107-86408”.

60. “ACS Insect Killer” was not registered at the time of the inspection.

61. The “ACS Insect Killer” quantity that was shipped was misbranded inasmuch as the label on the product did not bear an EPA-registered name and bore a false and misleading EPA Registration Number.

62. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

63. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 28

64. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

65. At the time of inspection referenced in Paragraph 16 above, the American Chemical Systems facility in Wichita had a quantity of one gallon containers with labels bearing “ACS Dual Q” and “EPA Registration No. 10324-177-71269” that was packaged, labeled, and released for shipment.

66. The “ACS Dual Q” quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained “(RTU)” in the product name.

67. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 29-51

68. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

69. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita on various dates had made twenty-three (23) separate shipments of quantities of one gallon containers with labels bearing “ACS Dual Q” and “EPA Registration No. 10324-177-71269”.

70. The “ACS Dual Q” quantity that was shipped was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises and did not bear an accurate EPA Establishment Number.

71. Respondent on twenty-three (23) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 52

72. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

73. At the time of inspection referenced in Paragraph 16 above, the American Chemical Systems facility in Wichita had a quantity of 32 ounce containers with labels bearing “ACS Dual Q (RTU)” and “EPA Registration No. 10324-177-71269” that was packaged, labeled, and released for shipment.

74. The “ACS Dual Q (RTU)” quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained “(RTU)” in the product name.

75. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 53-54

76. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

77. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita on two dates had made two (2) separate shipments of quantities of 32 ounce containers with labels bearing “ACS Dual Q (RTU)” and “EPA Registration No. 10324-177-71269”.

78. The “ACS Dual Q (RTU)” quantities that were shipped were misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained “(RTU)” in the product name.

79. Respondent on two (2) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 55

80. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

81. At the time of inspection referenced in Paragraph 16 above, a sample was taken for analysis from a container with a label bearing “ACS Dual Q (RTU)” and “EPA Registration No. 10324-177-71269” that was packaged, labeled, and released for shipment.

82. Analysis of the sample showed the percentage of active ingredients was significantly lower than the percentage required in the statement of composition for the pesticide’s registration.

83. Respondent violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), by distributing or selling a pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration as a pesticide.

Count 56

84. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

85. At the time of inspection referenced in Paragraph 16 above, the American Chemical Systems facility in Wichita had a bulk tank filled with product intended for repackaging and subsequent distribution or sale, with a label bearing “ACS Sodium Hypochlorite Solution” and “EPA Registration No. 52374-10”.

86. The “ACS Sodium Hypochlorite Solution” in the bulk tank was misbranded inasmuch as the label on the bulk tank did not bear an EPA-registered name, bore an incomplete EPA label, and bore an incorrect EPA establishment number.

87. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 57

88. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

89. At the time of inspection referenced in Paragraph 16 above, the American Chemical Systems facility in Wichita had a quantity of one gallon containers with labels bearing “ACS Sodium Hypochlorite” and “EPA Registration No. 9616-8” that was packaged, labeled, and released for shipment.

90. “ACS Sodium Hypochlorite” was not registered at the time of the inspection.

91. The “ACS Sodium Hypochlorite” quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, bore a false and misleading EPA Registration Number, and bore an inaccurate EPA Establishment Number.

92. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

93. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 58-92

94. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

95. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita on various dates had made thirty-five (35) separate shipments of quantities of one gallon containers with labels bearing “ACS Sodium Hypochlorite Solution” and “EPA Registration No. 152374-10”.

96. “ACS Sodium Hypochlorite” was not registered at the time of the inspection.

97. The “ACS Sodium Hypochlorite” quantities that were shipped were misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, bore a false and misleading EPA Registration Number, and bore an inaccurate EPA Establishment Number.

98. Respondent on thirty-five (35) occasions violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

99. Respondent on thirty-five (35) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 93

100. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

101. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita had a quantity of one gallon containers with labels bearing “ACS Tornado” and “EPA Registration No. 10324-80” that was packaged, labeled, and released for shipment.

102. "ACS Tornado" was not registered at the time of the inspection.

103. The "ACS Tornado" quantities packaged, labeled, and released for shipment were misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, bore a false and misleading EPA Registration Number, and bore an inaccurate EPA Establishment Number.

104. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

105. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 94-99

106. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

107. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita on various dates had made six (6) separate shipment of quantities of one gallon containers with labels bearing "ACS Tornado" and "EPA Registration No. 10324-80".

108. "ACS Tornado" was not registered at the time of the inspection.

109. The "ACS Tornado" quantities that were shipped were misbranded inasmuch as the label on the product did not bear an EPA-registered name, bore an incomplete EPA label, and bore a false and misleading EPA Registration Number.

110. Respondent on six (6) occasions violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

111. Respondent on six (6) violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 100

112. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

113. At the time of inspection referenced in Paragraph 16 above, documents showed the American Chemical Systems facility in Wichita had a quantity of 14-ounce containers with labels bearing "ACS Insect Killer" and "EPA Registration No. 11694-107-86408" that was packaged, labeled, and released for shipment.

114. “ACS Insect Killer” was not registered at the time of the inspection.

115. The “ACS Insect Killer” quantity that was shipped was misbranded inasmuch as the label on the product did not bear an EPA-registered name and bore a false and misleading EPA Registration Number.

116. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

117. Respondent on eleven (11) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 101-102

118. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

119. Documents from the Information Request Letter referenced in Paragraph 17 above showed that American Chemical Systems on various dates had made two (2) separate shipment of quantities of 14-ounce containers with labels bearing “ACS Insect Killer” and “EPA Registration No. 11694-107-86408”.

120. “ACS Insect Killer” was not registered at the time of the inspection.

121. The “ACS Insect Killer” quantity that was shipped was misbranded inasmuch as the label on the product did not bear an EPA-registered name and bore a false and misleading EPA Registration Number.

122. Respondent on two (2) occasions violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling a pesticide that is not registered under section 136a of FIFRA.

123. Respondent on two (2) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 103

124. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

125. At the time of inspection referenced in Paragraph 16 above, the inspection showed that American Chemical Systems was producing pesticides at its facility in Wichita and that the facility was not registered as a pesticide-producing establishment.

126. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing pesticides in an unregistered establishment.

Count 104

127. The facts stated in Paragraphs 1 through 22 above are herein incorporated.

128. At the time of inspection referenced in Paragraph 16 above, the inspection showed that American Chemical Systems failed to maintain production batch records at its facility in Wichita as required.

129. Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), by failing to maintain records required by the Act.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.
5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This CAFO is being entered into by the parties in full settlement of and release from all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

7. 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.

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

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

10. Respondent agrees that, in full settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Eleven Thousand Dollars (\$11,000) as set forth in Paragraph 1 of the Final Order.

11. The effect of settlement described in Paragraph 6, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 9, above.

12. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency. 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.

13. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

FINAL ORDER

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

1. Respondent, in full settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a mitigated civil penalty for the violations cited herein, in the amount of Eleven Thousand Dollars (\$11,000) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier's or certified check which shall reference Docket Number FIFRA-07-07-2013-0036, and made payable to "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

3. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

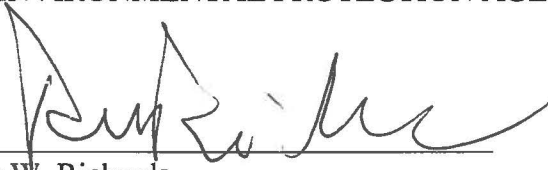
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.


5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY


By 
Robert W. Richards
Assistant Regional Counsel
Office of Regional Counsel

Date 10/18/13

By 
Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date 10/18/13

RESPONDENT:
American Chemical Systems II, LLC
Wichita, Kansas

By 

Title My Partner

Date 9/30/13

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

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date Oct. 22, 2013

IN THE MATTER OF American Chemical Systems II, LLC, Respondent
Docket No. FIFRA-07-2013-0036

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

richards.robert@epa.gov

Copy by First Class Mail to Respondent:

Mr. Bradley C. Wickham
American Chemical Systems II, LLC
3505 W. 29th St. S.
Wichita, KS 67217

Dated: 10/27/13



Kathy Robinson
Hearing Clerk, Region 7