

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

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2014 APR 10 PM 12:06

BEFORE THE ADMINISTRATOR

In the Matter of

Chemical Universe, Inc.

Respondent

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Docket No. FIFRA-07-2014-0001

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Chemical Universe, Inc., (Respondent) 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 the 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 Chemical Universe, Inc., a pesticide producer and distributor with a facility located at 1133 Saline Street, North Kansas City, Missouri 64116.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. 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 animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. 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.

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

9. 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.

10. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as 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).

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

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with,

together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment.

15. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the EPA Administrator.

16. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), states that any producer operating a registered pesticide establishment shall submit annual reports of pesticide production, sales, and distribution to the EPA Administrator in accordance with applicable regulations.

17. The regulation at 40 C.F.R. § 167.3 states that pesticide production reports shall include information showing the types of pesticidal products produced at a facility, and that, for pesticides that are not registered with the EPA, such information shall include the chemical formulation of the products.

18. 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.

19. 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.

20. 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.

Section IV

General Factual Allegations

21. 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).

22. The Respondent, at all times relevant herein, operated a pesticide-producing establishment in North Kansas City, Missouri.

Violations

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

Counts 1-9

24. The facts stated in paragraphs 21 through 22 are realleged and incorporated as if fully stated herein.

25. On or about each of February 2, 2012; April 13, 2012; May 14, 2012; June 26, 2012; July 19, 2012; September 1, 2012; February 7, 2013; February 11, 2013; and September 25, 2013; Respondent sold or distributed a quantity of the pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner.

26. On the dates of the sale and/or distribution of the pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

27. As sold or distributed by Respondent, the label for the pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner bore the EPA registration number 1839-175-74375, which is not a valid registration number for the product.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

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

Counts 10-12

30. The facts stated in paragraphs 21 through 22 are realleged and incorporated as if fully stated herein.

31. On or about each of January 11, 2011, February 20, 2012, and February 27, 2013, Respondent filed reports of pesticide production pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

32. In each of the pesticide production reports referenced in the preceding paragraph, Respondent identified the unregistered pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner by the EPA Product Registration Number 1839-175-74357.

33. In each of the pesticide production reports referenced in Paragraph 31 above, Respondent failed to include the chemical formulation for the unregistered pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner, as required by 40 C.F. R. § 167.3.

34. For each of the pesticide production reports filed reporting production of the unregistered pesticide product SANI-BOWL Non-Acid Bowl & Restroom Cleaner under the EPA Product Registration Number 1839-175-74357, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by submitting a production report pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e that contained false or incomplete information.

Section V

Consent Agreement

35. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

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

37. Respondent waives its right to contest any allegations set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

39. 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.

40. 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.

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

42. The effect of settlement as described in the following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

43. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of

this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

44. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA not addressed in this Consent Agreement and Final Order or any other applicable law and/or regulation administered by the EPA.

45. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the 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 mitigated civil penalty of Thirty-Four Thousand Seven Hundred and Forty Dollars (34,740.00) plus interest for ten months of One Hundred Thirty Dollars and Thirty Cents (130.30). The civil penalty will be paid in ten (10) monthly payments of Three Thousand Four Hundred and Eighty-Seven Dollars and Three Cents (\$3,487.03) each. The first payment must be received at the address below on or before 30 days after the effective date of the Final Order. Each of the nine succeeding payments shall be due on or before the following dates:

June 1, 2014
July 1, 2014
August 1, 2014
September 1, 2014
October 1, 2014
November 1, 2014
December 1, 2014
January 1, 2015
February 1, 2015

Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

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

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

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"

If by electronic payment, payment may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete the required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to the contacts listed below

2. 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
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Mark Leshner
Toxics and Pesticides Enforcement Branch, WWPD
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. 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.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT
CHEMICAL UNIVERSE, INC.**

Date: 4-1-14

By:




DAN ACKART
Print Name

PRESIDENT
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4-9-14


Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 4/8/14


Chris R. Dudding
Office of Regional Counsel

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

Date: 4-10-14

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

IN THE MATTER OF Chemical Universe, Inc., Respondent
Docket No. FIFRA-07-2014-0001

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 emailed to Attorney for Complainant:

dudding.chris@epa.gov

Copy by First Class Mail to Respondent:

Dan Ackart
President
Chemical Universe, Inc.
1133 Saline Street
North Kansas City, Missouri 64116

Dated: 4/10/14



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7