



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

July 11, 2022

VIA EMAIL ONLY

Ms. Terilyn Dumas
Deputy General Counsel
Diversey, Inc.
1300 Altura Road, Suite 125
Fort Mill, South Carolina 29708

terilyn.dumas@diversey.com

Consent Agreement and Final Order
In the Matter of Diversey, Inc.
Docket Number: FIFRA-05-2022-0016

Ms. Dumas:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on July 11, 2022 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,360 is to be paid in the manner described in paragraphs 32 – 37. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

**ANGELA
BOUCHE**

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ANGELA BOUCHE
Date: 2022.06.29
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Angela Bouche
Pesticides and Toxics Compliance Section

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 at 40 C.F.R. § 156.10 and.

Statutory and Regulatory Background

10. FIFRA Section 12(a)(1)(E), 7 U.S.C. § 136j, states that “[I]t shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.”

11. According to FIFRA Section 2(q)(1)(e), 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if, among other things, “any word, statement, or other information required by or under authority of [FIFRA] to appear on the label or labeling is not prominently placed thereon...”

12. 40 C.F.R. § 156.10(i)(2)(ix) states that the contents of a label must provide “specific directions concerning the storage, residue removal and disposal of the pesticide and its container.”

13. 40 C.F.R. § 152.130(a) states that “a registrant may distribute or sell a registered product with the composition, packaging and labeling currently approved by the Agency.”

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

15. According to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “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.”

16. According to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.”

17. 40 C.F.R. § 152.3 defines “pesticide product” as “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”

18. 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, 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

19. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 11929 Vernon Street, Eau Claire, Wisconsin, EPA Establishment Number 875-WI-1 (the Establishment).

21. On or about March 11, 2021, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and authorized to conduct inspections under FIFRA, conducted an inspection at the Establishment (the Inspection).

22. As part of the Inspection, among other things, the inspector took statements and photographs, and collected various records including purchase orders, invoices, and bills of lading for Dibac, EPA Registration Number (EPA Reg. No.) 875-47, which was produced at the Establishment at the time of the Inspection.

23. Dibac, EPA Reg. No. 875-47 is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. EPA accepted the master label for Dibac, EPA Reg. No. 875-47, on August 27, 1970. EPA accepted label amendments modifying the directions for use on May 10, 1979, September 24, 1993, June 2, 2004, August 3, 2005, May 15, 2006, and February 19, 2010. The label amendment accepted on February 19, 2010, added detailed information about container storage and disposal to conform with 40 C.F.R. § 156.159 and the requirements referenced therein.

25. On or about February 19, 2021, Respondent sold or distributed thirty-six 55-gallon drums of the pesticide product Dibac, EPA Reg. No. 875-47 to Diversey, Inc. in Sturtevant, Wisconsin, identified as shipment number 19446079.

26. On or about February 23, 2021, Respondent sold or distributed thirty-two 55-gallon drums of the pesticide product Dibac, EPA Reg. No. 875-47 to Diversey, Inc. in Sturtevant, Wisconsin, identified as shipment number 19447119.

27. The bin labels included in the shipments described in paragraphs 25 and 26, above, erroneously included container disposal instructions for small nonrefillable containers, rather than those for the 55-gallon drums shipped, as required under the February 19, 2010, label amendment. The language for small nonrefillable containers read: “Nonrefillable container. Clean container promptly after emptying. Triple rinse as follows: Empty the remaining contents

into application equipment or a mix tank. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. Offer for recycling, if available.”

Counts I-II

28. Complainant incorporates paragraphs 1 through 27 of this CAFO as though set forth in this paragraph.

29. On or about February 19, 2021, and February 23, 2021, Respondent distributed or sold Dibac, EPA Reg. No. 875-47, which was misbranded, as that term is defined in paragraphs 11 through 13.

30. Respondent’s distributions or sales of Dibac, EPA Reg. No. 875-47, constitute at least two unlawful acts, pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

31. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

Civil Penalty

32. 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 **\$15,360**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of 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.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$15,360** civil penalty for the FIFRA violations by electronic funds transfer, payable to

“Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

In the comment area of the electronic funds transfer, state Diversey, Inc. and the docket number of this CAFO.

34. 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

Sophie Grueterich (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
grueterich.sophie@epa.gov

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
R5lecab@epa.gov

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

36. If Respondent does not pay timely the civil penalty, 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.

37. 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

38. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grueterich.sophie@epa.gov (for Complainant), and terilyn.dumas@diverse.com (for Respondent).

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

40. 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.

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

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

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

44. 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.

45. Each party agrees to bear its own costs and attorneys fees, in this action.

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

**In the Matter of:
Diversey, Inc.**

Diversey, Inc., Respondent

June 29, 2020

Date

Terilyn Dumas

Digitally signed by Terilyn Dumas
DN: cn=Terilyn Dumas, o=Terilyn Dumas c=US United
States, ou=US United States o=Diversey, Inc.,
email=Terilyn.Dumas@diversey.com
Reason: I agree to the terms defined by the placement
of my signature in this document
Location:
Date: 2022.06.29 15:25:04-00

Terilyn Dumas
Regional General Counsel
Diversey, Inc.

**In the Matter of:
Diversey, Inc.**

United States Environmental Protection Agency, Complainant

Date

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.07.06
11:30:07 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Diversey, Inc.
Docket No. FIFRA-05-2022-0016

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.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.07.07
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Diversey, Inc.
Docket Number: **FIFRA-05-2022-0016**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2022-0016**, which was filed on **July 11, 2022**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Sophie Grueterich
grueterich.sophie@epa.gov

Copy by E-mail to
Respondent: Ms. Terilyn Dumas
Deputy General Counsel
Diversey, Inc.
1300 Altura Road, Suite 125
Fort Mill, South Carolina 29708
terilyn.dumas@diverse.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: _____
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5