



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAY 05 2009**

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No 7001 0320 0006 0182 9504

Mr. Kenneth Ditekowsky  
5940 W. Touhy Avenue  
Suite 230  
Niles, Illinois 60714

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0013

Dear Mr. Ditekowsky:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on May 5, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,000 is to be paid in the manner described in paragraphs 37 and 38. Please be certain that the number BD 2750945P011 and the docket number are written on both the transmittal letter and on the check. Payment is due by June 3, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terence Bonace".

Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Deborah Garber, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

RECEIVED  
MAY 05 2009

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
)  
Chicago Food Corporation ) Proceeding to Assess a Civil Penalty  
Chicago, Illinois, ) Under Section 14(a) of the Federal  
) Insecticide, Fungicide, and  
Respondent. ) Rodenticide Act, 7 U.S.C. § 136l(a)  
)  
) Docket No. FIFRA-05-2009-0013

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**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, by lawful delegation, the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is Chicago Food Corporation, a corporation organized under the laws of the State of Illinois, with a place of business located at 3333 North Kimball Avenue, Chicago, Illinois 60618.

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 to 136y.

### **Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

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

13. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

14. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. §152.5(c)”as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life...”

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide or the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purposes, 40 C.F.R. § 152.15(a)(1) and (2).

17. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004, and a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

18. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

#### **Factual Allegations and Alleged Violations**

19. Respondent owned or operated a place of business located at 3333 North Kimball Avenue, Chicago, Illinois, during calendar year 2007.

**Mite Killer**

20. On January 29, 2007, an inspector with the Illinois Department of Public Health, authorized to conduct inspections under FIFRA, conducted a marketplace inspection at Respondent's place of business.

21. During the January 29, 2007 inspection, the inspector collected a sample of the product, Mite Killer, being offered for sale by Respondent.

22. The name of the product, "Mite Killer" on the label states that the product kills mites.

23. Mite Killer is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. Respondent is a "distributor" of the Mite Killer pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

25. Mite Killer is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

26. On January 29, 2007, Respondent distributed or sold an unregistered pesticide, Mite Killer, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

27. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

**Queen Sense Naphthalene**

28. On January 29, 2007, an inspector with the Illinois Department of Public Health, authorized to conduct inspections under FIFRA, conducted a marketplace inspection at Respondent's place of business.

29. During the January 29, 2007 inspection, the inspector collected a sample of the product, Queen Sense Naphthalene.

30. The label of Queen Sense Naphthalene states that the product contains naphthalene and “Naphthalene Camphor has high germicidal complete removal of insects by fregrant (sic).”

31. Queen Sense Naphthalene is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

32. Respondent is a “distributor” of the Queen Sense Naphthalene pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

33. Queen Sense Naphthalene is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

34. On January 29, 2007, Respondent distributed or sold an unregistered pesticide, Queen Sense Naphthalene, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

35. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

#### **Civil Penalty**

36. 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 six-thousand dollars (\$6,000). 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 Enforcement Response Policy

for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$6,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note the case title, "In the Matter of Chicago Food Corporation," the docket number of this CAFO and the billing document number.

38. A transmittal letter stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Terence Bonace LC-8J  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Deborah Garber C-14J  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

40. 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. 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**

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

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

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

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

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


47. 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.



48. Each party agrees to bear its own costs and attorney's fees, in this action.
49. This CAFO constitutes the entire agreement between the parties.


**For Chicago Food Corporation, Respondent**

Date: 4-9-2009

  
\_\_\_\_\_  
Samuel S. Park  
Vice President  
Chicago Food Corporation

**For United States Environmental Protection Agency, Complainant**

Date: 4/28/09

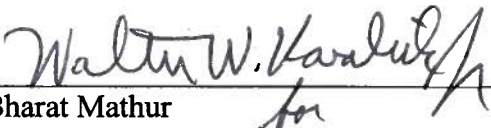
  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of: Chicago Food Corporation  
Docket No. FIFRA-05-2009-0013

**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: 4/30/09

  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency

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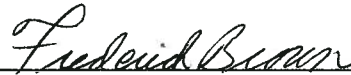
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Chicago Food Corporation., was filed on May 5, 2009, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9504, a copy of the original to the Respondents:

Mr. Kenneth Ditkowsky  
5940 W. Touhy Avenue  
Suite 230  
Niles, Illinois 60714

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Deborah Garber, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2009-0013**

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