



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 5 2019

REPLY TO THE ATTENTION OF

ECP-17J

VIA EMAIL

Mr. Thomas Dimond
Attorney
Ice Miller LLP
200 West Madison Street, Suite 3500
Chicago, Illinois 60606-3417

thomas.dimond@icemiller.com

Re: Consent Agreement and Final Order - In the Matter of: Alexander Chemical Corporation FIFRA-05-2019-0016

Mr. Dimond:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above-referenced matter. This document was filed on June 5, 2019 with our Regional Hearing Clerk.

The civil penalty in the amount of \$78,267 is to be paid in the manner described in paragraphs 59-60. Please be certain that Alexander Chemical Corporation's name and the docket number of this case are written on both the transmittal letter and the check, or in the comments field if you are paying by electronic funds transfer. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation to resolve this matter. Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

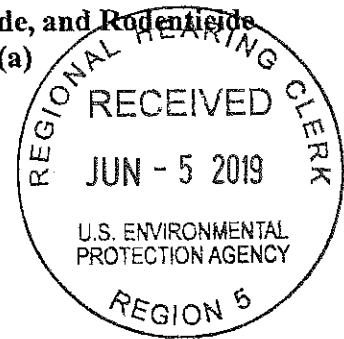
A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

cc: Matthew Russo, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2019-0016
)	
Alexander Chemical Corporation)	Proceeding to Assess a Civil Penalty
Peru, Illinois,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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 the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA). Region 5.
3. Respondent is Alexander Chemical Corporation, a corporation doing business in the State of Illinois.
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 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.”

11. 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.

12. 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.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “(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 . . . which the Administrator [of EPA] declares to be a pest under [Section 25(c)(1) of FIFRA].” See also 40 C.F.R. § 152.5.

14. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as a “person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”

15. 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.”

16. 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.

17. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that “no person in any State may distribute or sell to any person any pesticide that is not registered under [Section 3 of FIFRA].”

18. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), states, in pertinent part, “[e]ach applicant for registration of a pesticide shall file with the Administrator [of EPA] a statement which includes— . . . (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.”

19. 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.

20. 40 C.F.R. § 156.70(a) states that each product label is required to bear hazard and precautionary statements for humans and domestic animals.

21. 40 C.F.R. § 156.70(b) states, in pertinent part, “[w]hen data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect.”

22. 40 C.F.R § 156.10(a)(1)(viii) states that the contents of a label must show clearly and prominently, in pertinent part, the directions for use as prescribed in 40 C.F.R. § 156.10(i).

23. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as “misbranded” if its label “does not contain a warning or caution statement which may be necessary and if complied with, together with any requirement imposed under [Section 3(d) of FIFRA], is adequate to protect health and the environment.”

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

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

26. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states, in pertinent part, that it is unlawful for any person in any state to distribute or sell to any person “any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under [Section 3 of FIFRA].”

27. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased

the amount that can be assessed up to \$19,936 for each offense that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2019 (See 84 Fed. Reg. 2056 (Effective February 6, 2019)).

Factual Allegations and Alleged Violations

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

29. Respondent is a “producer” as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

30. At all times relevant to this CAFO, Alexander Chemical Corporation owned or operated a place of business located at 7593 South First Road, Kingsbury, Indiana 46345 (facility).

31. At all times relevant to this CAFO, Respondent’s facility was an EPA registered establishment where pesticides were produced, identified by EPA Establishment Number 007151-IN-001.

32. On or about September 18, 2017, an inspector employed by the Office of Indiana State Chemist and Seed Commissioner (OISC) and authorized to conduct inspections under FIFRA conducted an inspection at the facility.

33. During the September 18, 2017 inspection, the OISC inspector collected labeling, receiving, production, and distribution records for Sodium Hypochlorite 12.5%, EPA Registration Number (EPA Reg. No.) 7151-20001, and Chlorine, EPA Reg. No. 7151-4.

Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001

34. On or about September 22, 1988, EPA approved the registration for the pesticide product Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001.

35. Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, is a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended for preventing, destroying, repelling, or mitigating certain pests.

36. On or about November 18, 2015, EPA accepted a label amendment for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001.

37. On November 18, 2015, EPA accepted specific hazard and precautionary language on the label for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001.

38. On November 18, 2015, EPA also accepted specific directions for use language on the label for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001.

39. During the September 18, 2017 inspection, the OISC inspector collected labeling, receiving, production, and distribution records for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001.

40. Respondent certified that the label for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, collected during the inspection is representative of the facility’s Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, distributions that occurred during calendar year 2017.

41. The label for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, collected during the inspection was deficient as follows:

- a. The hazard and precautionary statements on the label for Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, failed to contain certain hazard and precautionary language as was accepted by EPA on the registered product label on November 18, 2015.
- b. The directions for use on the label for Sodium Hypochlorite 12.5%, EPA Reg.

No. 7151-20001, failed to contain certain directions for use language as was accepted by EPA on the registered product label on November 18, 2015.

42. Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, at all times relevant to this CAFO, was “misbranded,” as that term is defined in Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), as it did not include all the required hazard and precautionary statements.

43. Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, at all times relevant to this CAFO, was “misbranded,” as that term is defined in Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), as it did not include all the required directions for use.

44. During calendar year 2017, Respondent distributed or sold Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, on at least eight separate occasions.

45. Respondent’s distribution or sale of the misbranded pesticide Sodium Hypochlorite 12.5%, EPA Reg. No. 7151-20001, during calendar year 2017 constitutes eight separate unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

46. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on eight separate occasions subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the eight violations.

Chlorine, EPA Reg. No. 7151-4

47. On or about May 5, 1972, EPA approved the registration for the pesticide product Chlorine, EPA Reg. No. 7151-4.

48. Chlorine, EPA Reg. No. 7151-4, is a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended for preventing, destroying, repelling, or mitigating certain pests.

49. On or about December 28, 2010, EPA accepted a label amendment for Chlorine,

EPA Reg. No. 7151-4.

50. On December 28, 2010, EPA accepted specific directions for use language on the label for Chlorine, EPA Reg. No. 7151-4.

51. During the September 18, 2017 inspection, the OISC inspector collected labeling, receiving, production, and distribution records for Chlorine, EPA Reg. No. 7151-4.

52. Respondent certified that the label for Chlorine, EPA Reg. No. 7151-4, collected during the inspection is representative of the facility's Chlorine, EPA Reg. No. 7151-4, distributions that occurred during calendar year 2017.

53. The label for Chlorine, EPA Reg. No. 7151-4, collected during the inspection was deficient because it contained certain directions for use that were not accepted by EPA on the December 28, 2010 registered product label.

54. Chlorine, EPA Reg. No. 7151-4, at all times relevant to this CAFO, contained claims that differed substantially from those accepted in connection with its registration because the directions for use were different from those accepted by EPA on December 28, 2010.

55. During calendar year 2017, Respondent distributed or sold Chlorine, EPA Reg. No. 7151-4, on at least three separate occasions.

56. Respondent's distribution or sale of the pesticide Chlorine, EPA Reg. No. 7151-4, during calendar year 2017 with claims that differed substantially from those accepted in connection with its registration constitutes three separate unlawful acts pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

57. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), on three separate occasions subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the three violations.

Civil Penalty

58. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), Complainant determined that an appropriate civil penalty to settle this action is \$78,267. 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.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$78,267 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular U.S. Postal Service mail to:

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

If sending the payment by express mail, then send a cashier's or certified checks, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note "Alexander Chemical Corporation" and the docket number of this CAFO.

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

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Matthew Russo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

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

62. 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.

63. 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

64. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: russo.matthew@epa.gov (for Complainant), and thomas.dimond@icemiller.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

66. 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.

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

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

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

70. 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.

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

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

Alexander Chemical Corporation, Respondent

MAY 15, 2019
Date

G.B. Curran
Gerald B. Curran
Vice President and CFO
Alexander Chemical Corporation

United States Environmental Protection Agency, Complainant

5/31/2019
Date

Michael D. Harris
Michael D. Harris
Acting Director
Enforcement and Compliance Assurance
Division

In the Matter of:
Alexander Chemical Corporation
Docket No. FIFRA-05-2019-0016

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.

June 4, 2019
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: Alexander Chemical Corporation**

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, Docket Number: FIFRA-05-2019-0016, which was filed on

June 5, 2019, 2019, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Mr. Thomas Dimond
thomas.dimond@icemiller.com

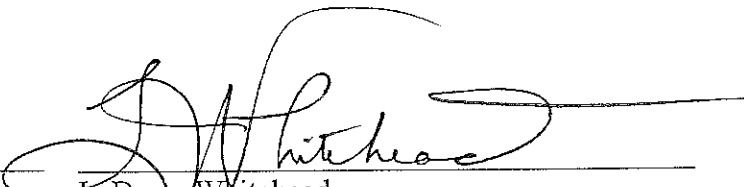
Copy by E-mail to
Attorney for Complainant:

Mr. Matthew Russo
russo.matthew@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann L. Coyle
coyle.ann@epa.gov

Dated:

June 5, 2019

LaDawn Whitehead
Regional Hearing Clerk
United States Environmental Protection Agency
Region 5