

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 SEP 30 PM 4:49

Docket No. **FIFRA_08-2013-0007**

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
DyChem International LLC) COMBINED COMPLAINT AND
560 North 500 West, Suite 100) CONSENT AGREEMENT
Salt Lake City, UT 84116,)
Respondent.)

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, DyChem International LLC, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for selling and/or distributing unregistered pesticides; selling and/or distributing adulterated or misbranded pesticides; and failing to file an annual pesticide report in violation of sections 12(a)(1)(A), 12(a)(1)(E), and 12(a)(2)(L) of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136j(a)(1)(A), (a)(1)(E), and (a)(2)(L).
2. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of EPA has delegated this authority under FIFRA to EPA Region 8 by EPA Delegation 5-14.
3. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who EPA alleges has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement, including all allegations alleged in sections B and C below.

B. GENERAL ALLEGATIONS

1. Respondent, a Utah limited liability corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Respondent's establishment is located at 560 North 500 West, Suite 200, Salt Lake City, UT 84116. The primary business of Respondent is the sale and distribution of cleaners and detergents that it purchases from CP.
3. Respondent is a "distributor/seller" as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
4. Respondent sells and distributes the products, Lion X (EPA Reg. No.1839-86), Complete Detergent/Disinfectant (EPA Reg. No.1839-101), Chlorosan (EPA Reg. No.9768-7), Chlorosan Special, and Elbow Grease, all of which are pesticides.
5. A "pesticide" as defined by FIFRA section 2(u), 7 U.S.C. § 136(u) and 40 C.F.R. section 152.3, means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest"
6. On or about July 7, 2009, July16, 2009, and September 7, 2011, authorized representatives of the EPA conducted producer inspections at CP and reviewed both CP's records of sales to Respondent and Respondent's records of sales to retailers and other users.
7. These General Allegations are a part of each of the violations listed below.

C. SPECIFIC VIOLATIONS

Misbranding-Lion X and Complete Detergent/Disinfectant

1. From January 26, 2009 through June 24, 2009, Respondent distributed or sold Lion X on at least fourteen occasions and Complete Detergent/Disinfectant on at least four occasions to other distributors.
2. Section 2(q)(2)(C)(i) of FIFRA, 7 U.S.C. § 136 (q)(2)(C)(i), defines a pesticide as "misbranded" if its label does not have the name and address of the producer, registrant, or person for whom produced.
3. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136 (q)(1)(D), defines a pesticide as "misbranded" if its label does not have the registration number assigned under section 136e to each establishment in which it was produced.

4. Section 156.10(c) of 40 C.F.R. requires the name of the person for whom the pesticide was produced to appear on the label with qualifying language such as "Distributed by" or "Sold by" to alert the public that the name on the label was not that of the producer.
5. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j (a)(1)(E), it is unlawful for any person to distribute or to sell a pesticide that is adulterated or misbranded.
6. The eighteen sales of Lion X and Complete Detergent/Disinfectant included labels that used an inactivated establishment number (EPA Est. No. 12147-UT-001) and/or failed to place the qualifying language, "Sold by," on the label, and/or used Respondent's establishment number (EPA Est. No. 35667-UT-001) when CP was the producer.
7. Respondent's sales of Lion X and Complete Detergent/Disinfectant from January 26, 2009, through June 24, 2009, constitute eighteen violations of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Sale of Unregistered Pesticide-Chlorosan Special

8. Respondent sold and distributed the product Chlorosan Special to its customers on at least four occasions from March 24, 2009, through May 28, 2009.
9. Chlorosan Special is an unregistered pesticide product.
10. Respondent failed to register the Chlorosan Special in accordance with section 3 of FIFRA, 7 U.S.C. § 136a.
13. Section 152.15 of 40 C.F.R. prohibits the distribution and sale of any pesticide product that is not registered in accordance with FIFRA.
14. Under section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), it is unlawful for any person to distribute or to sell a pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. §136a.
15. Respondent's sales of Chlorosan Special from March through May 2009, constitute four violations of section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A).

Sale of Unregistered Pesticide-Elbow Grease

16. On May 14, 2009 and May 28, 2009, Respondent sold and distributed the product, "Elbow Grease."

17. At the time when the Elbow Grease was sold and/or distributed, Respondent claimed that it cleaned mildew.
18. Mildew is a "pest" as that term is defined by 40 C.F.R. section 152.5 and section 2(t) of FIFRA, 7 U.S.C. § 136(t).
19. In May 2009, Elbow Grease was not registered as a pesticide in accordance with section 3 of FIFRA, 7 U.S.C. § 136a.
20. Section 152.15 of 40 C.F.R. prohibits the distribution and sale of any pesticide product that is not registered in accordance with FIFRA.
21. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or to sell to any person any unregistered pesticide.
22. Respondent's two sales of Elbow Grease on May 14, 2009 and May 28, 2009, constitute two violations of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

D. PAYMENT OF CIVIL PENALTY

1. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
2. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
3. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **eighty thousand dollars (\$80,000)** against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.
4. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a final order (Final Order) in this matter and agrees to pay the civil penalty of eighty thousand dollars (\$80,000) within thirty days of the effective date of the Final Order as follows:
 - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is

considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Automated Clearinghouse (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
800-234-5681

On-line Debit and Credit Card payment: There is now an On-Line Payment Option available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

c. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Dennis Jaramillo (8ENF-UFO)	and	Tina Artemis (8RC)
Technical Enforcement Program		Regional Hearing Clerk
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

d. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).

e. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.

5. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

E. **TERMS AND CONDITIONS**

1. This Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
2. Nothing in this Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
3. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
4. Each party shall bear its own costs and attorneys fees in connection with this matter.
5. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. section 22.15. By signing and returning of this Agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
6. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full resolution of the United States' claim for civil penalties for the violations alleged herein.
7. By signing this Agreement, Respondent herein certifies that within twenty days of receipt of the Final Order, Respondent shall submit its pesticide labels for review and approval to:

U.S. Environmental Protection Agency
Office of Pesticide Programs (OPP)
Division Mail Code
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

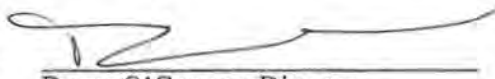
with copies to Dennis Jaramillo (8ENF-UFO) at the address listed in Subparagraph D.4.c., *supra*.

8. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
9. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

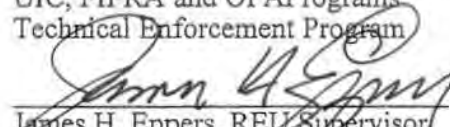
**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,**

Complainant.

Date: 9/30/13

By: 
Darcy O'Connor, Director
UIC, FIFRA and OPAPrograms
Technical Enforcement Program

Date: 9/30/2013

By: 
James H. Eppers, REL Supervisor
Legal Enforcement Program

**DYCHEM INTERNATIONAL LLC,
Respondent.**

Date: 9/30/2013

By: 
Name, Title: CEO

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER GRANTING A PDF SIGNATURE FILING OF THE CONSENT AGREEMENT AND FINAL ORDER** in the matter of **DYCHEM INTERNATIONAL, LLC.; DOCKET NO.: FIFRA-08-2013-0007**, was filed with the Regional Hearing Clerk on September 30, 2013.

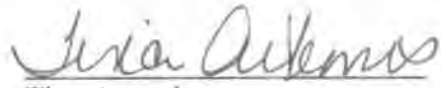
Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 30, 2013, to:

DyChem International, LLC.
560 North 500 West, Suite 100
Salt Lake City, UT 84116

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 30, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk