



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

MAR 15 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Adam Reck
Safety and Compliance Officer
EMSCO, Inc.
22350 Royalton Road
Strongsville, Ohio 44149

areck@emscocorp.com

Re: Consent Agreement and Final Order In the Matter of EMSCO, Inc.
Docket Number **FIFRA-05-2018-0017**

Mr. Reck:

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 March 15, 2018 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,225.00 is to be paid in the manner described in paragraphs 45-46. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

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

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

cc: Robert Peachey (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**EMSCO, Inc.
Strongsville, Ohio,**

Respondent.



) **Docket No. FIFRA-05-2018-0017**
)
) **Proceeding to Assess a Civil Penalty under**
) **Section 14(a) of the Federal Insecticide,**
) **Fungicide, and Rodenticide Act, 7 U.S.C.**
) **§ 136l(a)**
)

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)-(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. §§ 22.13(b) and 22.18(b)(2)-(3).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is EMSCO, Inc. (EMSCO), a corporation incorporated and doing business in the State of Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 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 terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional and factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

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

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define “producer” to mean any person (as defined by FIFRA) who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).

12. 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.

13. 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.

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in pertinent part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

16. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

17. Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), provides that the Administrator may promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides.

18. 40 C.F.R. § 156.140(a)(4) provides that a lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold, is required for nonrefillable containers.

19. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), provides that it is unlawful for any person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a) or 136q.

20. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), provides that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

21. 40 C.F.R. § 169.2 provides that all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA, including pesticides produced pursuant to an experimental use permit and pesticides, devices, and pesticide active ingredients produced for export, shall maintain records showing the product name, EPA Registration Number (EPA Reg. No.), Experimental Permit Number if the pesticide is produced under an Experimental Use Permit, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced.

22. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides that it is unlawful for a person to refuse to prepare, maintain, or submit any records required by or under Section 8 of FIFRA, 7 U.S.C. § 136f.

Factual Allegations and Alleged Violations

23. Respondent is, and was at all times relevant to this CAFO, a corporation, and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

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

25. At all times relevant to this CAFO, Respondent owned or operated a facility located at 22350 Royalton Road, Strongsville, Ohio (EMSCO facility).

26. At all times relevant to this complaint, Respondent's facility was an EPA registered establishment, where pesticides were produced, identified by EPA Establishment Number (EPA Est. No.) 036187-OH-001.

27. On or about October 18, 1987, EPA approved the registration for the pesticide product **Sodium Hypochlorite Solution**, assigned to K.A. Steel Chemicals, Inc., EPA Reg. No. 33981-20001.

28. EPA Reg. No. 33981-20001 is distributed under the distributor product name **Pool Brite Sanitizer**, with an assigned EPA Reg. No. of 33981-20001-36187 (distributor product).

29. **Pool Brite Sanitizer**, with an assigned EPA Reg. No. of 33981-20001-36187, 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.

30. On or about December 9, 2015, December 14, 2015, and June 16, 2016, an inspector employed with the Ohio Department of Agriculture (ODA), who is an authorized representative of the EPA, inspected the EMSCO facility.

December 9, 2015 & December 14, 2015 Inspections

31. During the December 2015 inspections, the inspector collected labeling, production, and receiving records and a 1-gallon container as a physical sample for **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187.

32. The 1-gallon container of **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, that was collected as a physical sample, failed to contain a lot number, or other code to

identify the batch of the pesticide product, which was distributed or sold, as required by 40 C.F.R. § 156.140(a)(4) and Section 19(e) of FIFRA, 7 U.S.C. § 136q(e).

33. The production records collected for **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, failed to contain the EPA Reg. No. assigned to **Pool Brite Sanitizer**, as required by Section 8 of FIFRA, 7 U.S.C. § 136f.

June 16, 2016 Inspection

34. During the June 16, 2016 inspection, the inspector collected labeling, production, and receiving records and a 1-gallon container as a physical sample for **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187.

35. The 1-gallon container of **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, that was collected, failed to contain a lot number, or other code to identify the batch of the pesticide product, which was distributed or sold, as required by 40 C.F.R. § 156.140(a)(4) and Section 19(e) of FIFRA, 7 U.S.C. § 136q(e).

Counts 1 and 2

36. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 35 of this CAFO.

37. Respondent's failure to identify a lot number, or other code to identify the batch of the pesticide product **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, which was distributed or sold on at least one occasion during calendar year 2015, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

38. Respondent's failure to identify a lot number, or other code to identify the batch of the pesticide product **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, which was

distributed or sold on at least one occasion during calendar year 2016, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

39. Respondent's 2015 and 2016 violations of 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subject Respondent to a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 3

40. Complainant incorporates by reference the allegations contained in Paragraphs 1 through 35 of this CAFO.

41. Respondent's failure to identify an EPA Reg. No. on production records during calendar year 2015 for **Pool Brite Sanitizer**, EPA Reg. No. 33981-20001-36187, constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i), 7 U.S.C. § 136j(a)(2)(B)(i).

42. Respondent's violation of 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subjects Respondent to a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

43. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. 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 to \$19,446 for each offense occurring after November 2, 2015, and assessed on or after January 15, 2018. *See* 83 Fed. Reg. 1,190 (Jan. 10, 2018).

44. 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 \$15,225. In determining the

penalty, 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 U.S. EPA's FIFRA Enforcement Response Policy (Dec. 2009).

45. Within 30 days after the effective date of this CAFO, Respondent must pay the \$15,225 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

46. Once Respondent has submitted the check referenced in the previous paragraph, Respondent must send a notice of payment that states Respondent's name and the case docket number to U.S. EPA at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Abigail Wesley (LC-17J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Robert M. Peachey (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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

48. If Respondent does not timely pay the civil penalty, Complainant may request that the United States Department of Justice bring a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1367(a)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

49. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. In addition to the assessed penalty and interest, Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due, and Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

50. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: peachey.robert@epa.gov (for Complainant) and areck@emscocorp.com (for Respondent). *See* 40 C.F.R. §§ 22.5-6.

51. Full payment of the penalty as described in paragraphs 45 and 46 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

52. Full payment of the penalty as described in paragraphs 45 and 46 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

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

54. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

55. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's FIFRA Enforcement Response Policy.

56. The terms of this CAFO bind Respondent and Respondent's officers, directors, agents, servants, employees, and successors and assigns.

57. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

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

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

60. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk.

In the Matter of:
EMSCO, Inc.
Docket No. FIFRA-05-2018-0017

EMSCO, Inc., Respondent

Mark Stoyanoff President

Mark Stoyanoff
President
EMSCO, Inc.

2-12-18

Date

United States Environmental Protection Agency, Complainant

Michael D. Harris

~~Margaret M. Guerriero~~ Michael D. Harris
Division Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5
Chicago, Illinois

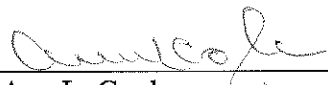
3/12/2018

Date

In the Matter of:
EMSCO, Inc.
Docket No. FIFRA-05-2018-0017

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.

By:  Date: March 13, 2018
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: EMSCO, Inc.
Docket Number: **FIFRA-05-2018-0017**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2018-0017**, which was filed on

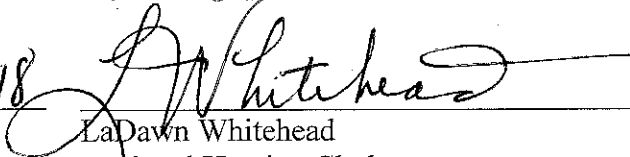
March 15, 2018, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Robert M. Peachey
peachey.robert@epa.gov

Copy by E-mail
to Respondent: Mr. Adam Reck
areck@emscocorp.com

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

Dated:

March 15, 2018 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5