



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 14 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jon McPhail
Attorney at Law
Jon McPhail and Associates, LLC
P.O. Box 783
Alpharetta, Georgia 30009

Re: ReAct Chemicals, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3005(b)

Dear Mr. McPhail:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your client's compliance status in the future, please contact Mr. Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Georgia Department of Agriculture

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2013 MAY 14 AM 7:08
HEARING CLERK

In the Matter of:)
)
ReAct Chemicals, Inc.)
)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2013-3005(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is ReAct Chemicals, Inc.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign

consent agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. Respondent is ReAct Chemicals, Inc., a corporation, located at 2000 Sullivan Road, Suite F, College Park, Georgia 30337.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about September 22, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 2000 Sullivan Road, Suite F, College Park, Georgia.
8. During the aforementioned inspection, "M-1 Paint Additive" was identified as being sold and/or distributed by the Respondent.

9. During a September 22, 2010, inspection conducted by an authorized representative of the EPA at Aqua EZ, located at 6100 Wheaton Drive in Atlanta, Georgia, a bulk M-1 Paint Additive container shipped by Respondent was observed to be affixed with a label which bore the pesticidal claims “M-1 Advanced Mildewcide,” and, “Inhibits, Mildew, Mold, Algae, On Dry Film.”
10. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance (or mixture of substances) intended for a pesticide purpose, *i.e.*, use for the preventing, destroying, repelling, or mitigating any pest.
11. Pursuant to 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose if, *inter alia*, 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.
12. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 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).
13. The label on the bulk M-1 Paint Additive product container states and/or implies that M-1 Paint Additive is intended for a pesticidal purpose. Therefore, pursuant to Section 2(u) of FIFRA and 40 C.F.R. § 152.15, the M-1 Paint Additive product is a pesticide.
14. Respondent “distributes or sells” pesticides. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.

15. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
16. At the time of the inspection, M-1 Paint Additive was not registered as a pesticide with the EPA.
17. The inspector documented at least one sale and/or distribution of said pesticide to Aqua EZ located in Atlanta, Georgia on or about September 13, 2010.
18. 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 sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
19. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
20. During the aforementioned inspection of Respondent's facility, evidence was obtained documenting that the M-1 Paint Additive product sold or distributed by Respondent on or about September 13, 2010, to Aqua EZ was misbranded. According to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto which is false or misleading in any particular.
21. At the time of the sale and or distribution, the M-1 Paint Additive was misbranded in that its labeling included the name and image of another pesticide. Specifically, the label for the M-1 Paint Additive product bore the name of, and a picture depicting, the then canceled pesticide "M-1 Advanced Mildewcide," and included the EPA Registration Number 1529-41-21346, which had been canceled. As such, the labeling for the M-1

Paint Additive bore false and misleading information, and thus, this product was misbranded.

22. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.
23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. 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.
25. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
26. 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 **SEVEN THOUSAND SEVEN HUNDRED FORTY DOLLARS** (\$7,740) 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.

IV. Consent Agreement

27. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
28. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
29. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to

pay the civil penalty as set forth in this CAFO.

30. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
31. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
32. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

33. Respondent is assessed a civil penalty of **SEVEN THOUSAND SEVEN HUNDRED FORTY DOLLARS** (\$7,740). Four payments will be made to complete payment of the entire civil penalty including interest. The first payment shall be made by May 31, 2013. The subsequent three payments shall be due in 120-day intervals thereafter. Including civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **SEVEN THOUSAND SEVEN HUNDRED EIGHTY NINE DOLLARS** and **FOUR CENTS** (\$7,789.04). Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	May 31, 2013	\$1,947.26
2	September 30, 2013	\$1,947.26

3	January 31, 2014	\$1,947.26
4	May 31, 2014	\$1,947.26

34. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. Mail to the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

35. At the time of each payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960;

Phillip Beard
 Pesticides Section
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
 Office of Environmental Accountability
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960.

36. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become

immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

37. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
38. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **SEVEN THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$7,740)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principle balance remaining, together with interest accrued up to the date of such full payment.
39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, the EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the

date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

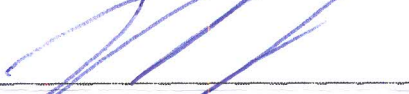
40. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
41. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
42. This CAFO shall be binding upon the Respondent, its successors and assigns. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

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43. The effective date of this CAFO shall be the date on which the CAFO is filed with the
Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: ReAct Chemicals, Inc.
Docket No.: FIFRA 04-2013-3005(b)

By:  (Signature) Date: 4/22/2013

Name: Robin Litw (Typed or Printed)


Title: PRESIDENT (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 5/7/13

Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 13 day of May 2013.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

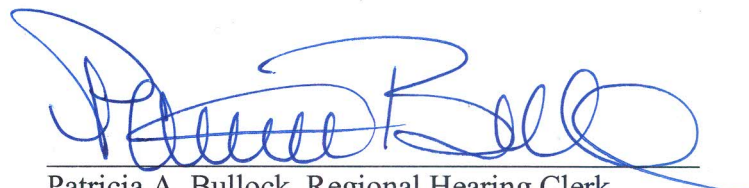
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of ReAct Chemicals, Inc., Docket Number: FIFRA-04-2013-3005(b), to the addressees listed below:

Mr. Jon McPhail (via Certified Mail, Return Receipt Requested)
Attorney at Law
Jon McPhail and Associates, LLC
P.O. Box 783
Alpharetta, Georgia 30009

Phillip Beard (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 5-14-13


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511