



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV 21 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Chris Voxland
Vice President, Operations
Katadyn North America
2495 Xenium Lane North
Plymouth, Minnesota 55441

chris.v@katadyn.com

Re: Consent Agreement and Final Order In the Matter of Katadyn North America, Inc.
Docket Number **FIFRA-05-2020-0003**

Mr. Voxland:

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 November 21, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$45,760 is to be paid in the manner described in paragraphs 51-52. 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

cc: Tamara Carnovsky, (C-14J)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No.
)	FIFRA-05-2020-0003
Katadyn North America, Inc.)	
Minneapolis, Minnesota)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	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) 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. The Respondent is Katadyn North America, Inc. (Respondent), a corporation doing business in the State of Minnesota.

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. §§ 136-136y.

Statutory and Regulatory Background

4. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. §136j(a)(1)(B), states 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 part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136(a).

5. Under 40 C.F.R. § 168.22(a), EPA interprets Section 12(a)(1)(B) of FIFRA, 7 U.S.C. §136j(a)(1)(B), as extending to advertisements in any advertising medium to which pesticide users or the general public have access.

6. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

7. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

8. The term “pesticide” means, among other things, “any substance or mixture of

substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u). See also 40 C.F.R. § 152.3.”

9. The term “pest” means “(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 the EPA] declares to be a pest under 7 U.S.C. § 136w(c)(1).”

7 U.S.C. § 136(t) See also 40 C.F.R. § 152.5.

10. Under 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.”

11. Under 40 C.F.R. § 152.132(d), distribution is permitted upon notification to the Agency if the label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor’s company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary.

12. The term “registrant” means “a person who has registered any pesticide product pursuant to the provisions of this subchapter,” 7 U.S.C. §§ 136 to 136y. 7 U.S.C. § 136(y).

13. The term “label” means “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” 7 U.S.C. § 136(p)(1).

14. The term “labeling” means “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.” 7 U.S.C. § 136(p)(2).

15. Under 40 C.F.R. § 152.132, a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

16. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$19,936 for each offense that occurred after November 2, 2015 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

18. On or about August 8, 2002, EPA approved the registration for Aseptrol SE Water Purifier Tablets, EPA Reg. No. 70060-22, submitted by or on behalf of Engelhard Corporation, which was later acquired by BASF Corporation located in Florham Park, New Jersey.

19. BASF Corporation is the “registrant” of Aseptrol SE Water Purifier Tablets as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y) (Registrant).

20. Aseptrol SE Water Purifier Tablets was registered under FIFRA and was assigned an EPA Registration Number (EPA Reg. No.) of 70060-22.

21. On or about February 11, 2003, EPA approved the supplemental distribution of Aseptrol SE Water Purifier Tablets by Respondent under the name Micropur MP1, EPA Reg. No. 70060-22-39444 (Distributor Product).

22. Aseptrol SE Water Purifier Tablets and Micropur MP1 are intended for preventing, destroying, repelling, or mitigating bacteria, viruses and cysts in drinking water.

23. Aseptrol SE Water Purifier Tablets and Micropur MP1 are “pesticides” as that term

is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. On or about November 14, 2012, EPA accepted a label notification, submitted by or on behalf of the Registrant, to update the storage and disposal per PR Notice 2007-4 and correct a typographical error.

25. On or about December 14, 2015, EPA accepted a label notification, submitted by or on behalf of Registrant, to add the primary brand name "Aseptrol SE Water Purifier Tablets" to the record.

26. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 4830 Azelia Avenue North, Suite 300, Minneapolis, Minnesota 55429 (facility).

27. At all times relevant to this CAFO, Respondent's facility was an EPA registered establishment, identified by EPA Establishment Number (EPA Est. No.) 72228-MN-1.

28. On or about the February 27, 2018, an inspector employed by the Minnesota Department of Agriculture (MDA) and authorized to conduct inspections under FIFRA, conducted an inspection at the facility.

29. During the February 27, 2018 inspection, the MDA inspector collected labeling, receiving, and distribution records to Canada only for Micropur MP1, EPA Reg. No. 70060-22-39444 in 30-pack containers, also identified as item number 8014018.

30. The product label for the 30-pack containers of Micropur MP1, EPA Reg. No. 70060-22-39444, identified as item number 8014018, collected during the inspection contained, among other things, the statements and chart, below.

a. "Micropur MP1 water purifier tablets are the safe choice for campers, hikers, militaries, emergency organizations and anyone needing to drink water of questionable microbiological quality."

b. "The only tablet proven effective against viruses, bacteria, Giardia and Cryptosporidium in all water conditions. Produces fresh tasting water no unpleasant taste, meets EPA guidelines and requires no mixing."

c. "Allow appropriate time to react, up to 4 hours (see chart), in an area away from sunlight to generate a use solution of 4 ppm chlorine dioxide."

d.

	20°C/	4°C
BACTERIA*	15 MIN	15 MIN
E.Coli, Salmonella		
Virus*	15 MIN	15 MIN
Polio, Hepatitis A, Norwalk Virus		
Cysts*	30 MIN	4 H
Giardia, Cryptosporidium	CLEAR	DIRTY

“*Testing done to USEPA protocol using normal and worst-case water.”

31. The registered product accepted label does not contain the phrase “safe choice” as referenced in 30a, above.

32. The registered product accepted label does not contain claims in paragraphs 30b, or 30d, above.

33. The registered product accepted label does not include “up to 4 hours” as referenced in paragraph 30c and does not contain the less than 4-hour time periods as referenced in paragraph 30d. Instead, the accepted label provides that the “product requires a 4-hour treatment time for effectiveness” and, under directions for use, includes the language “allow to react for 4 hours.”

34. The claims contained on the distributor product label, as referenced in paragraph 30, above, for Micropur MP1, EPA Reg. No. 70060-22-39444, substantially differ from the claims made for the registered product as part of the accepted label in connection with its registration.

35. On nine occasions, during calendar years 2016 and 2017, Respondent distributed or sold Micropur MP1, EPA Reg. No. 70060-22-39444, item number 8014018, with the product label referenced in paragraph 30, above.

36. Respondent's distribution or sale of the registered pesticide, Micropur MP1, EPA Reg. No. 70060-22-39444, item number 8014018, constitutes nine unlawful acts pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

37. On or about July 12, 2019, an EPA representative viewed the product videos for Micropur MP1, 20 and 30-tablet packages, on Respondent's website located at <https://www.katadyn.com/us/us/403-8014996-micropur-mp1-20-usa-only> and <https://www.katadyn.com/us/us/326-8013692-micropur-mp1-30-usa-only>. The videos included, among other things, the verbal statements and chart, below.

a. "Simply add 1 tablet per litre of water and in most conditions wait 30 minutes prior to drinking."

b. "Because Micropur tablets are ultralight and EPA registered to provide the highest safety level available, they are standard gear for backpacking, camping, emergency preparedness, and travel."

c. "The EPA requires that packaging claims for Micropur MP1 communicate how the product performs in the most challenging water conditions."

d. “While Mircopur is effective against bacteria and viruses in 15 minutes in any water condition, it requires 4 hours for *Cryptosporidium* in cold and extremely dirty water.”

e. “Most conditions only require a 30-minute wait time for all microorganisms including *Cryptosporidium*.”

f. “Mircopur MP1 Purification Tablets make it easy to make safe, drinkable water anywhere your adventures take you.”

g.

Microorganisms Killed	Contact Time	
	EPA Water #1 (clear, 20°C/68°F)	EPA Water #2 (dirty, 4°C/38°F)
Bacteria	15 Minutes	15 Minutes
Virus	15 Minutes	15 Minutes
Cysts	30 Minutes	4 Hours

38. The registered product accepted label does not contain the phrase “EPA registered to provide the highest safety level available” as referenced in 37b, above.

39. The registered product accepted label does not contain the phrase “EPA requires that packaging claims for Micropur MP1 communicate how the product performs in the most challenging water conditions” as referenced in 37c, above.

40. The registered product accepted label does not contain the phrase “safe, drinkable water anywhere your adventures take you” as referenced in 37f, above.

41. The registered product accepted label does not include “most conditions wait 30 minutes prior to drinking,” “effective against bacteria and viruses in 15 minutes in any water condition,” and “most conditions only require a 30-minute wait time for all microorganisms including *Cryptosporidium*” as referenced in paragraphs 37a, d and e or the less than 4 hour

contact times referenced in the chart, above. Instead, as referenced in paragraph 33, above, the accepted label provides that the “product requires a 4-hour treatment time for effectiveness” and, under directions for use, includes the language “allow to react for 4 hours.”

42. The claims contained on the distributor product online videos, as referenced in paragraph 37, above, for Micropur MP1, EPA Reg. No. 70060-22-39444, substantially differ from the claims made for the registered product as part of the accepted label in connection with its registration.

43. The online videos are accessible to the general public.

44. The online videos advertising the 20 and 30-tablet packages of Micropur MP1 and the store finder function on Respondent’s website constitutes an offer for sale of these products.

45. Respondent’s online offer for sale of the 20 and 30-tablet packages of Micropur MP1 is to “distribute or sell” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

46. On at least one occasion on or about July 12, 2019, to the present, Respondent offered for sale 20-tablet packages of Micropur MP1, EPA Reg. No. 70060-22-39444, on its website with the product claims referenced in paragraph 37, above.

47. Respondent’s distribution or sale of the registered pesticide, Micropur MP1, EPA Reg. No. 70060-22-39444, in 20-tablet packages, constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

48. On at least one occasion on or about July 12, 2019, to the present, Respondent offered for sale Micropur MP1, EPA Reg. No. 70060-22-39444, 30-tablet packages, with the product claims referenced in paragraph 37, above.

49. Respondent’s distribution or sale of the registered pesticide, Micropur MP1, EPA

Reg. No. 70060-22-39444, in 30-tablet packages, constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

Civil Penalty

50. 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 \$45,760. 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.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$45,760 civil penalty for the FIFRA violations by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Katadyn North America, Inc. and the docket number of this CAFO.

52. 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 West Jackson Boulevard
Chicago, Illinois 60604

Abigail Wesley (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

54. 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.

55. 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

56. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carnovsky.tamara@epa.gov (for Complainant), and Chris.V@katadyn.com (for Respondent).

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

58. 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.

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

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

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


62. 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.

63. Each party agrees to bear its own costs and attorney fees in this action.

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


Katadyn North America, Inc., Respondent

11/4/2019
Date


Shawn Hostetter
President

United States Environmental Protection Agency, Complainant

11/13/2019
Date


Michael D. Harris
Director
Enforcement and Compliance Assurance Division

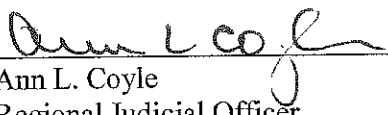
In the Matter of:
Katadyn North America, Inc.
Docket No. FIFRA-05-2020-0003

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.

11/20/19

Date



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

Consent Agreement and Final Order
In the Matter of: Katadyn North America, Inc.
Docket Number: FIFRA-05-2020-0003

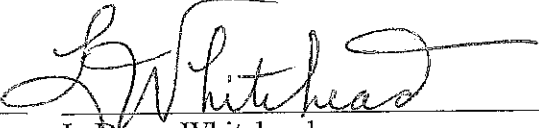
CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2020-0003, which was filed on November 21, 2019, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Tamara Carnovsky
carnovsky.tamara@epa.gov

Copy by E-mail to
Attorney for Respondent: Mr. Chris Voxland
chris.v@katadyn.com

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

Dated: November 21, 2019 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5