



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

November 12, 2021

VIA EMAIL ONLY

Mr. Jahlpaul Narpaul
Innovative Chemical Company, Inc.
7769 95th Street South,
Cottage Grove, Minnesota 55016-3946

pnarpaul@iccmn.com

Consent Agreement and Final Order
In the Matter of Innovative Chemical Company, Inc.
Docket Number **FIFRA-05-2022-0003**

Mr. Narpaul:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on November 12, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,215 is to be paid in the manner described in paragraphs 70-71 of the CAFO. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,
CLAUDIA
NIESS

Digitally signed by
CLAUDIA NIESS
Date: 2021.11.09 06:58:16
-06'00'

Claudia Niess
Enforcement Officer
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2022-0003
)	
Innovative Chemical Corporation, Inc.)	Proceeding to Assess a Civil Penalty
Cottage Grove, Minnesota)	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 & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Innovative Chemical Company, Inc. (Innovative), 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 and alleged violations 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 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.

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

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, in pertinent part, it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

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

14. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i) states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under section 5, 7, 8, 11 or 19 of FIFRA.

15. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the EPA establishment assigned to the establishment in

which the pesticide was produced. See also 40 C.F.R. § 156.10(a)(1)(v) and (f).

16. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, are adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(viii).

17. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any other requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(vii).

18. Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), states a pesticide is misbranded if its label does not bear the EPA registration number assigned to the pesticide. See also 40 C.F.R. § 156.10(a)(1)(iv) and (e).

19. 40 C.F.R. § 169.2 states, in pertinent part, that all producers of pesticides shall maintain records showing the product name and EPA Registration Number of all pesticides produced.

20. 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).

21. 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).

22. A “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).

23. A “pest” means 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 which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

24. A “producer” means a person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w).

25. An “establishment” means any place where a pesticide, device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd).

26. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states 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 \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. 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 \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 83818 (December 23, 2020).

Factual Allegations and Alleged Violations

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

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

29. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 7769 95th Street South, Cottage Grove, Minnesota 55016-3946 (facility).

30. At all times relevant to this CAFO, Respondent's facility was an EPA registered establishment, identified as EPA Establishment Number (EPA Est. No.) 71841-MN-1, where pesticides were produced.

31. On or about April 4, 2019, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's facility.

Protege Quantum Q, EPA Reg. No. 1839-166-71841

32. On or about April 2, 1993, EPA conditionally registered **BTC 885 NDC-128**, EPA Reg. No. 1839-166.

33. On or about December 3, 2012, the EPA accepted an updated label for **BTC 885 NDC-128**, EPA Reg. No. 1839-166.

34. On or about September 19, 1998, Respondent and the registrant submitted a Notice of Supplemental Distribution of a Registered Pesticide Product (Notice of Supplemental Distribution) to the EPA for **BTC 885 NDC-128**, EPA Reg. No. 1839-166.

35. The Notice of Supplemental Distribution identified Respondent as the distributor of **BTC 885 NDC-128**, EPA Reg. No. 1839-166.

36. The Notice of Supplemental Distribution identified the distributor product name for **BTC 885 NDC-128**, EPA Reg. No. 1839-166, as **Protégé Quantum Q**.

37. **Protégé Quantum Q** is assigned EPA Reg. No. 1839-166-71841.

38. **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

39. During the 2019 inspection, the inspector collected shipping records, bin labels and affidavits regarding **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841.

40. The bin labels collected during the inspection were true and accurate representations of the pesticide and the associated labels that were released for shipment on or about January 17, 2019 and February 14, 2019.

41. The bin labels for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, did not bear the EPA establishment number of the establishment in which the pesticide was produced.

42. The bin labels for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, did not bear the EPA registration number assigned to the pesticide.

43. The bin labels for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, collected during the inspection did not match the label language on the accepted label, dated December 3, 2012, including but not limited to the precautionary statements and the directions for use.

44. On or about January 17, 2019, Respondent distributed or sold **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, to one of its customers.

45. On or about February 14, 2019, Respondent distributed or sold **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, to one of its customers.

Recordkeeping

46. During the 2019 inspection, the inspector collected production records for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841.

47. The March 29, 2018 production record for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, failed to include the required EPA Registration Number of the pesticide.

Protégé Quaternary Sanitizer

48. During the 2019 inspection, the inspector collected shipping records, a bin label, and affidavits for the product, **Protégé Quaternary Sanitizer**.

49. **Protégé Quaternary Sanitizer** is a pesticide (based on the claim that it is a sanitizer), as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

50. **Protégé Quaternary Sanitizer** is not registered as a pesticide, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

51. The bin label collected during the inspection was a true and accurate representations of the product and the associated labels that were released for shipment on or about February 14, 2019.

52. On or about February 14, 2019, Respondent distributed or sold **Protégé Quaternary Sanitizer**, to one of its customers.

Count 1

53. The preceding paragraphs are incorporated by reference.

54. On or about January 17, 2019, respondent distributed or sold **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, to one of its customers, that was misbranded as that term is defined at Sections 2(q)(1)(D), (F), (G), and 2(q)(2)(C)(iv), 7 U.S.C. §§ 2(q)(1)(D), (F), (G), and 2(q)(2)(C)(iv), because the label on the container did not include the EPA Establishment number, the EPA Registration Number and did not contain language required under the Precautionary Statements and Directions for Use.

55. Respondent's distribution or sale of **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

56. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects the Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 2

57. The preceding paragraphs are incorporated by reference.

58. On or about February 14, 2019, respondent distributed or sold **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, to one of its customers, that was misbranded as that term is defined at Sections 2(q)(1)(D), (F), (G), and 2(q)(2)(C)(iv), 7 U.S.C. §§ 2(q)(1)(D), (F), (G), and 2(q)(2)(C)(iv), because the label on the container did not include the EPA Establishment number, the EPA Registration Number and did not contain language required under the Precautionary Statements and Directions for Use.

59. Respondent's distribution or sale of **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

60. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects the Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 3

61. The preceding paragraphs are incorporated by reference.

62. On or about March 29, 2018, Respondent's failure to include the EPA registration number for **Protégé Quantum Q**, EPA Reg. No. 1839-166-71841, in its production records for the pesticide constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

63. Respondent's violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subjects the Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Count 4

64. The preceding paragraphs are incorporated by reference.

65. On or about February 14, 2019, respondent distributed or sold an unregistered pesticide, **Protégé Quaternary Sanitizer**, to one of its customers.

66. Respondent's distribution or sale of an unregistered pesticide, **Protégé Quaternary Sanitizer**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

67. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects the Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty and Other Relief

68. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

69. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$28,215.

70. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,215 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004

Account No. 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"

In the comment or description field of the electronic funds transfer, state "Innovative Chemical Company, Inc." and the docket number of this CAFO.

71. 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
whitehead.ladawn@epa.gov

Claudia Niess
niess.claudia@epa.gov

Nidhi K. O'Meara
omeara.nidhi@epa.gov

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

73. If Respondent does not pay the civil penalty in a timely manner, 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.

74. 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

75. 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 for their respective representatives: Ms. Nidhi O'Meara at omeara.nidhi@epa.gov (attorney for Complainant), and Mr. Jahlpaul Narpaul at pnarpaul@iccmn.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

77. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

81. 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.

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

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

**In the Matter of:
Innovative Chemical Company, Inc.**

Respondent,

11/02/2021

Date



Jahl Paul Narpaul, President
Innovative Chemical Company, Inc.

**In the Matter of:
Innovative Chemical Company, Inc.**

United States Environmental Protection Agency, Complainant

11/8/21

Date

**Harris,
Michael**

Digitally signed by Harris,
Michael
Date: 2021.11.08 12:27:05
-06'00'

Michael D. Harris, Director
Enforcement & Compliance Assurance Division

In the Matter of:
Innovative Chemical Company, Inc.
Docket No. FIFRA-05-2022-0003

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.

ANN COYLE

Digitally signed by ANN COYLE
Date: 2021.11.10 11:52:23
-06'00'

Date

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

Consent Agreement and Final Order
In the Matter of: Innovative Chemical Company, Inc.
Docket Number: FIFRA-05-2022-0003

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2022-0003, which was filed on November 12, 2021, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Attorney for Respondent: Mr. Jahlpaul Narpaul
pnarpaul@iccmn.com

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

Dated: _____

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