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U.S. EPA REGION 5
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2024-0010
)	
Amerikal Products Corporation)	Proceeding to Assess a Civil Penalty
Waukegan, Illinois,)	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 & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Amerikal Products Corporation (Amerikal), a corporation doing business in the State of Illinois, with a place of business located at 2115 Northwestern Avenue, Waukegan, Illinois 60087.

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 to the best of its knowledge, 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 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states 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.

12. 40 C.F.R. Section 152.15(a)(1) states that a substance is considered to be intended for pesticidal purpose, and thus a is required to be registered under FIFRA, if the person who distributes or sell the substance claims, states, or otherwise implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

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

14. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.” Also see 40 C.F.R. § 152.3.

15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. § 152.3.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “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 which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.

17. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19, 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 up to \$24,255 for each offense where penalties are assessed on or after December 27, 2023.

Factual Allegations and Alleged Violations

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

19. At all times relevant to this CAFO, Respondent owned or operated a place of business at 2115 Northwestern Avenue, Waukegan, Illinois 60087 (facility).

20. On or about June 14, 2022, inspectors employed by the U.S. EPA and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s facility.

21. During the inspection, the inspectors collected a bin label for **Genesis® 950 Concentrate**.

22. The bin label identified Amerikal's website as www.genesischemistry.com.
23. During and after the inspection, Amerikal submitted distribution/sales records for **Genesis® 950 Concentrate** from January 1, 2020, through June 14, 2022, to the EPA.
24. On or about June 7, 2022; November 28, 2023; December 3, 2023; December 10, 2024; February 23, 2024; March 25, 2024; and April 15, 2024, Amerikal's website made pesticidal claims regarding **Genesis® 950 Concentrate**.
25. At all times relevant to this CAFO, Amerikal made pesticidal claims regarding **Genesis® 950 Concentrate**, including but not limited to:
- a) Genesis 950 will disinfect and kill viruses;
 - b) Kill bathroom germs;
 - c) Genesis 950 has antibacterial components;
 - d) Genesis 950 will also kill harmful germs and bacteria in the kitchen;
 - e) Antibacterial elements in Genesis 950 that kill bacteria and germs;
 - f) Use Genesis 950 ... will also be killing germs and bacteria around the base of the toilet.
26. **Genesis® 950 Concentrate** is not a registered pesticide as required by Section 3 of FIFRA and its underlying regulations.
27. On or about at least January 17, 2020; January 21, 2020; February 6, 2020; June 23, 2020; August 28, 2020; January 20, 2021; April 28, 2021; July 23, 2021; September 30, 2021; December 27, 2021; May 2, 2021; June 13, 2022; and June 14, 2022, Respondent distributed or sold **Genesis® 950 Concentrate** to various persons on 13 separate occasions.

Counts 1 through 13

28. Complainant incorporates the above paragraphs of this CAFO, as if set forth in this paragraph.

29. Respondent's distribution or sale of the unregistered pesticide, **Genesis® 950 Concentrate** on at least 13 separate occasions, constitutes at least 13 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

30. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least 13 separate occasions subjects 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), for such violations.

Civil Penalty and Other Relief

32. 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 \$138,762. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business and the effect on Respondent's ability to continue in business. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

33. Respondent agrees to pay a civil penalty in the amount of \$138,762 within thirty (30) days after the effective date of this CAFO.

34. Respondent must pay the penalty on-line as follows: go to www.pay.gov, enter "SFO 1.1" in the search box and follow instructions to make payments.

35. Respondent must send a notice of each payment that states Respondents' name and the case docket number to EPA at the following addresses when it pays the penalty:

Juliane Grange
Regional Hearing Clerk
R5hearingclerk@epa.gov

Claudia Niess
niess.claudia@epa.gov and
R5lecab@epa.gov

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

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

37. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

38. 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.

39. 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

40. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Nidhi O’Meara at omeara.nidhi@epa.gov (for Complainant), and Nancy Quattlebaum Burke at nancy.burke@saul.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

41. The Respondent’s full compliance with this CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in the CAFO.

42. 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.

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

44. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

46. 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.

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

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

**In the Matter of:
Amerikal Products Corporation**

Date

R. Thomas Danielson, President
Amerikal Products Corporation

**In the Matter of:
Amerikal Products Corporation**

United States Environmental Protection Agency, Complainant

Date

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Amerikal Products Corporation
Docket No. FIFRA-05-2024-0010**

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