



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
March 13, 2015

REPLY TO THE ATTENTION OF:  
LC-8J

**CERTIFIED MAIL: No.7011 1150 0000 2643 8401**  
**RETURN RECEIPT REQUESTED**

Mr. Gregory Theiss  
Carus Group, Inc.  
315 Fifth St.  
Peru, Illinois 61354

Consent Agreement and Final Order In the Matter of  
Alexander Chemical Company, Docket No.

**FIFRA-05-2015-0032**

Mr. Theiss:

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 March 13, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,400 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terry Bonace".

*for* Terry Bonace  
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of:	)	Docket No. FIFRA-05-2015-0032
	)	
Alexander Chemical Company	)	Proceeding to Assess a Civil Penalty
Peru, 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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Alexander Chemical Company (Alexander), a corporation doing business in the State of Illinois.

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**

10. Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C), states that each applicant for registration of a pesticide shall file with the Administrator a statement which includes a complete copy of the labeling of the pesticides, a statement of all claims to be made for it, and any directions for its use.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), defines a pesticide as “misbranded” if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “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, together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as

“misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

14. 40 C.F.R. § 156.10(a)(ii)(A) requires that all required label text be set in 6 point or larger type.

15. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. The product is referred to as a “distributor product.”

16. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if the following conditions, among others, are met:

- (i) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product, and
- (ii) 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.

17. 40 C.F.R. §152.132 also specifies that 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.

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

19. A "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

20. A "registrant," as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), means a person who has registered any product pursuant to the provisions of FIFRA.

21. The term "distribute or sell," as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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."

22. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, 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**

23. Respondent is a "person" and a "registrant" as those terms are defined at Section 2(s) and (y) of FIFRA, 7 U.S.C. § 136(s) and (y), at all times relevant to this CAFO.

24. Respondent owned or operated a place of business located at 315 5<sup>th</sup> Street, Peru, Illinois during calendar year 2013.

25. One Way Products, Inc. (One Way) is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

26. During calendar year 2013, One Way owned or operated a place of business located

at 433 East Ransom Street, Kalamazoo, Michigan.

27. The company number assigned to One Way is 74377.

28. On or about September 22, 1988, Alexander registered its pesticide product, *Sodium Hypochlorite 12.5%* with EPA, which was assigned the EPA Registration Number (EPA Reg. No.) 7157-20001.

29. On or about July 9, 2009, Alexander and One Way submitted a Notice of Supplemental Registration of Distributor to EPA for the pesticide product, *Sodium Hypochlorite 12.5%*, which listed the distributor of *Sodium Hypochlorite 12.5%*, EPA Reg. No. 7151-20001, as One Way.

30. The Notice of Supplemental Registration of Distributor listed the distributor product name as *Sodium Hypochlorite Sanitizer*, with an EPA Reg. No. 7151-20001-74377.

31. Under 40 C.F.R. § 152.132, One Way, is considered an agent of Respondent, for all intents and purposes under FIFRA, with respect to its distributor product *Sodium Hypochlorite Sanitizer*.

32. On January 30, 2013 and June 28, 2013, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at One Way's place of business in Kalamazoo, Michigan.

33. During the January 30, 2013 inspection, the inspector collected photographs, a label, and a shipping record of the pesticide product, *Sodium Hypochlorite Sanitizer*, which One Way was holding for distribution or sale.

34. *Sodium Hypochlorite Sanitizer*, is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. Documentation collected during the January 30, 2013 inspection shows numerous

differences from the registered product label, including: the label of *Sodium Hypochlorite Sanitizer* provided different directions for use and directions for storage and disposal, the label of *Sodium Hypochlorite Sanitizer* did not contain first aid directions for inhalation, and the label of *Sodium Hypochlorite Sanitizer* was set in a font size of less than 6 point.

36. Documentation collected during the January 30, 2013 inspection shows that on or about January 16, 2013, One Way distributed or sold *Sodium Hypochlorite Sanitizer* to Arnies Construction, located in Grand Rapids, Michigan.

37. On January 16, 2013, One Way distributed or sold a pesticide, *Sodium Hypochlorite Sanitizer*, EPA Reg. No. 7151-20001-74337, that was misbranded, as that term is defined by Sections 2(q)(1)(E), (F), and (G) of FIFRA, 7 U.S.C. § 136(c)(1)(E), (F), and (G), to Arnies Construction, located in Grand Rapids, Michigan.

38. On or about January 30, 2013, One Way was holding *Sodium Hypochlorite Sanitizer*, for distribution or sale at its place of business.

39. On January 30, 2013, One Way distributed or sold a pesticide, *Sodium Hypochlorite Sanitizer*, EPA Reg. No. 7151-20001-74337, a pesticide, that was misbranded, as that term is defined by Sections 2(q)(1)(E), (F), and (G) of FIFRA, 7 U.S.C. § 136(c)(1)(E), (F), and (G), by holding its distributor product for distribution or sale at its distribution facility.

40. One Way's distribution or sale of the misbranded pesticide, *Sodium Hypochlorite Sanitizer*, EPA Reg. No. 7151-20001-74337, on January 16, 2013 and on January 30, 2013 constitutes unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

41. One Way's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the assessment of a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

### Civil Penalty

42. 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 \$8,400. 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.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,400 civil penalty for the FIFRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
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 Alexander Chemical Company and the docket number of this CAFO.

44. 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



Terrance Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

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

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

46. 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.

47. 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

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

49. 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.

50. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state and local laws.

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

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

53. 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.

54. Each party agrees to bear its own costs and attorneys' fees, in this action.

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

**Alexander Chemical Company, Respondent**

12/12/2014  
Date

Susan Buchanan  
Susan Buchanan  
Chief Financial Officer  
Alexander Chemical Company

**United States Environmental Protection Agency, Complainant**

3/3/2015  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Alexander Chemical Company**  
**Docket No. FIFRA-05-2015-0032**

**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.

3-5-2015

Date



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Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

In the matter of: Alexander Chemical Company

Docket Number: FIFRA-05-2015-0032

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on March 13, 2015, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

Mr. Gregory Theiss  
Carus Group, Inc.  
315 Fifth St.  
Peru, Illinois 61354


Copy by E-mail to  
Attorney for Complainant:

Jacqueline Clark  
[Clark.jacqueline@epa.gov](mailto:Clark.jacqueline@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

March 13, 2015 

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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8401