



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

SEP 13 2016

REPLY TO THE ATTENTION OF
LC-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sue Steinwall, Esq.
Fredrikson & Byron, P.A.,
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

Consent Agreement and Final Order In the Matter of DYK Automotive, LLC,
FNA Twinco-Romax, LLC
Docket Number **FIFRA-05-2016-0014**

Ms. Steinwall:

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 September 13, 2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$42,525 is to be paid in the manner described in paragraphs 117-118. 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 "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

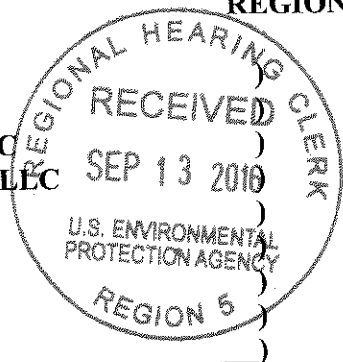
Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

DYK Automotive, LLC
FNA Twinco-Romax, LLC
Medina, Minnesota

Respondent



Docket No. FIFRA-05-2016-0014

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
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. The Respondent is DYK Automotive, LLC, a Delaware limited liability company, formerly known as Twinco-Romax, LLC.

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 or 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 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.

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it 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.

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states 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 requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states that it is unlawful for any person in any state to violate any regulation issued under Section 19 of FIFRA.

14. Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), states that the Administrator shall promulgate regulations for the design of pesticide containers that will promote the safe storage

and disposal of pesticides.

15. The Administrator promulgated such regulations at 40 C.F.R. Part 156, Subpart H. See 71 Fed. Reg. 47420 (August 16, 2006), as amended at 73 Fed. Reg. 64224 (October 29, 2008).

16. 40 C.F.R. § 152.46 describes the changes that are permitted on the label through the notification process. See also Pesticide Registration (PR) Notice 98-10.

17. 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."

18. 40 C.F.R. § 152.132 states, that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) 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, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) 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, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

19. 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.

20. 40 C.F.R. § 156.10 sets forth the labeling requirements for pesticide products.

21. 40 C.F.R. § 156.10(a)(6)(a) states that final printed labeling must be submitted and accepted prior to registration.

22. 40 C.F.R. § 156.10(a)(6)(b)(2)(ii) states that no name, brand, or trademark may appear on the label which has not been approved by the Administrator through registration or supplemental registration as an additional name pursuant to 40 C.F.R. § 152.132.

23. 40 C.F.R. § 156.10(i)(2)(ix) states that the directions for use shall include specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance 40 C.F.R. Part 156, Subpart H.

24. 40 C.F.R. § 156.140 requires that the label of a pesticide product identify if the container is refillable or nonrefillable.

25. 40 C.F.R. § 156.140(a) states in pertinent part, that for nonrefillable containers, the language “nonrefillable container” must be placed on the label or container along with appropriate reuse and recycling/reconditioning statements and the batch code.

26. 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.” 7 U.S.C. § 136(gg).

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

28. A “pest,” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA.

29. A “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

30. 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

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

32. At all times relevant to the CAFO, Respondent owned or operated a place of business located at 3100 W. Mill Road in Milwaukee, Wisconsin, 53209.

33. On or about September 2, 2014, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business located at 3100 W. Mill Road, Milwaukee, Wisconsin.

Ultra Algaecide, EPA Reg. No. 1839-89-73785

34. On or about November 6, 1980, EPA approved the registration for the pesticide product **5% BTC 776 Swimming Pool Algaecide**.

35. EPA assigned EPA Registration Number (EPA Reg. No.) 1839-89 to the pesticide product, **5% BTC 776 Swimming Pool Algaecide**.

36. On or about September 16, 2002, EPA accepted, with comments, a label for **5% BTC 776 Swimming Pool Algaecide**, EPA Reg. No. 1839-89.

37. On or about January 13, 2010, the EPA accepted a notification, which made certain changes to the language on the label for **5% BTC 776 Swimming Pool Algaecide**, EPA Reg. No. 1839-89.

38. On or about April 10, 2001, the registrant submitted a Notice of Supplemental Distribution of a Registered Pesticide Product that listed the distributor product name as **Ultra Algaecide**.

39. The EPA assigned the distributor product **Ultra Algaecide**, EPA Reg. No. 1839-89-73785.

40. Pursuant to 40 C.F.R. Section 152.132(d), the language on the distributor label for the pesticide **Ultra Algaecide**, EPA Reg. No. 1839-89-73785 must be the same as the language of the registered product, **5% BTC 776 Swimming Pool Algaecide**, EPA Reg. No. 1839-89.

41. **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

42. The First Aid language on the January 13, 2010 label for **5% BTC 776 Swimming Pool Algaecide**, EPA Reg. No. 1839-89, states:

FIRST AID

Have the product container or label with you when calling poison control center or doctor, or going for treatment.

***If in eyes:** Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice.*

***If on skin or clothing:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call poison control center or doctor for treatment advice.*

***If swallowed:** Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by the poison control center or doctor. Do not give anything by mouth to an unconscious person.*

***If inhaled:** Move person to fresh air. If person is not breathing, call 911 or an ambulance then give artificial respiration, preferably by mouth-to-mouth if possible. Call a poison control center or doctor for further treatment advice.*

(Optional) You may contact xxx/xxx-xxxx for emergency medical treatment information.

43. The Precautionary language on the January 13, 2010 label for **5% BTC 776**

Swimming Pool Algacide, EPA Reg. No. 1839-89, states:

PRECAUTIONARY STATEMENTS HAZARDS TO HUMANS AND DOMESTIC ANIMALS DANGER

KEEP OUT OF REACH OF CHILDREN. Causes irreversible eye damage and skin burns. Harmful if swallowed or absorbed through skin. Harmful if swallowed or absorbed through skin. Do not get in eyes, on skin or on clothing. Wear protective eyewear, clothing and gloves (goggles, face shield, safety glasses and rubber gloves). Wash thoroughly with soap and water after handling and before eating, drinking or using tobacco. Remove contaminated clothing and wash before reuse.

44. The Storage and Disposal language on the January 13, 2010 label for **5% BTC 776**

Swimming Pool Algacide, EPA Reg. No. 1839-89, states:

STORAGE AND DISPOSAL

CONTAINER DISPOSAL- Nonrefillable container.

45. During the September 2, 2014 inspection, the inspector collected a copy of the label for **Ultra Algacide**, EPA Reg. No. 1839-89-73785, which was representative of the actual

labels on the product that were being distributed or sold by Respondent.

46. During the September 2, 2014 inspection, the inspector reviewed a container of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, which was released for shipment.

47. Neither the copy of the label nor the label on the container of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, included all the First Aid language that is on the label that was accepted by the EPA on January 13, 2010 for **5% BTC 776 Swimming Pool Algacide**, EPA Reg. No. 1839-89.

48. Instead, the First Aid language on the labels of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, collected during the September 2, 2014 inspection states:

STATEMENT OF PRACTICAL TREATMENT

In case of contact, immediately flush eyes or skin with plenty of water for at least 15 minutes. For eyes, call a physician. Remove contaminated clothing and wash before reuse.

If swallowed, drink promptly a large quantity of egg whites or gelatin solution, or if these are not available, drink large quantities of water. Avoid alcohol. Call a physician immediately.

49. Neither the copy of the label nor the label on the container of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, included all the Precautionary language that is on the label that was accepted by the EPA on January 13, 2010 for **5% BTC 776 Swimming Pool Algacide**, EPA Reg. No. 1839-89.

50. Instead, the Precautionary language on the labels of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, collected during the September 2, 2014 inspection states:

HAZARDS TO HUMANS AND DOMESTIC ANIMALS

DANGER: KEEP OUT OF REACH OF CHILDREN. Corrosive. Causes severe eye and skin damage. Do not get in eyes, on skin or on clothing. Wear goggles or face shield and rubber gloves when handling. Harmful or fatal if swallowed. Avoid contamination of food. Wash thoroughly with soap and water after handling.

51. Neither the copy of the label nor the label on the container of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, included all the Storage and Disposal language that is required by 40 C.F.R. § 156.140 and that is on the label that was accepted by the EPA on January 13, 2010 for **5% BTC 776 Swimming Pool Algacide**, EPA Reg. No. 1839-89.

52. Neither the copy of the label nor the label on the container of **Ultra Algacide**, EPA Reg. No. 1839-89-73785, included the statement “Nonrefillable container.”

53. On or about September 2, 2014, Respondent was holding **Ultra Algacide**, EPA Reg. No. 1839-89-73785, for distribution or sale at its Milwaukee, Wisconsin location.

54. On or about April 9, 2014, Respondent distributed or sold **Ultra Algacide**, EPA Reg. No. 1839-89-73785, to Mil-Green Pool and Patio, in Niles, Illinois.

55. On or about May 28, 2014, Respondent distributed or sold **Ultra Algacide**, EPA Reg. No. 1839-89-73785, to Farm King Supply, Inc., in Macomb, Illinois.

56. On or about June 23, 2014, Respondent distributed or sold **Ultra Algacide**, EPA Reg. No. 1839-89-73785, to Theisens Retail, in Dubuque, Iowa.

Ultra Shock, EPA Reg. No. 67649-20001-73785

57. On or about August 11, 1994, EPA approved the registration for the pesticide product **HYPO 150**.

58. EPA assigned EPA Reg. No. 67649-20001 to the pesticide product, **HYPO 150**.

59. On or about December 29, 2003, EPA accepted, with comments, a label for **HYPO 150**, EPA Reg. No. 67649-20001.

60. On or about December 18, 2014, the registrant submitted a Notice of Supplemental Distribution of a Registered Pesticide Product that listed the distributor product name as **Ultra Shock**.

61. The EPA assigned the distributor product **Ultra Shock**, EPA Reg. No. 67649-20001-73785.

62. **Ultra Shock** was the only additional brand name identified to the EPA by the registrant and Respondent for the supplemental distribution of **HYPO 150**, EPA Reg. No. 67649-20001.

63. Pursuant to 40 C.F.R. Section 152.132(d), the language on the distributor label for the pesticide **Ultra Shock**, EPA Reg. No. 67649-20001-73785, must be the same as the language of the registered product, **HYPO 150**, EPA Reg. No. 67649-20001.

64. **Ultra Shock**, EPA Reg. No. 67649-20001-73785, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

65. The Ingredient Statement on the December 29, 2003 label for **HYPO 150**, EPA Reg. No. 67649-20001, states:

| | |
|---|---------------|
| <i>ACTIVE INGREDIENT (NOMINAL CONCENTRATION):</i> | |
| <i>SODIUM HYPOCHLORITE</i> | <i>12.5%</i> |
| <i>INERT INGREDIENTS</i> | <i>87.5%</i> |
| <i>TOTAL</i> | <i>100.0%</i> |

66. The First Aid language on the December 29, 2003 label for **HYPO 150**, EPA Reg. No. 67649-20001, states:

FIRST AID

- | | |
|---------------------|---|
| <i>If in eyes</i> | <ul style="list-style-type: none">• <i>Hold eye open and rinse slowly and gently with water for 15 - 20 Minutes.</i>• <i>Remove contact lenses, if present, after the first 5 minutes, then continue rinsing the eye.</i>• <i>Call a poison control center or doctor for treatment advice.</i> |
| <i>If swallowed</i> | <ul style="list-style-type: none">• <i>Call a poison control center or doctor immediately for treatment Advice.</i>• <i>Have person sip a glass of water if able to swallow.</i>• <i>Do not induce vomiting unless told to do so by the poison control center or doctor.</i>• <i>Do not give anything by mouth to an unconscious person.</i> |

- If inhaled*
- Move person to fresh air.
 - If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible.
 - Call a poison control center or doctor for treatment advice.
- If on skin or clothing*
- Take off contaminated clothing.
 - Rinse skin with plenty of water for 15 - 20 minutes.
 - Call a poison control center or doctor for treatment advice.

Have the product container or label with you when calling a poison control or doctor or going for treatment.

NOTE TO PHYSICIAN: *Probable mucosal damage may contraindicate the use of gastric lavage.*

67. The Environmental Hazards language under the Precautionary Statements on the December 29, 2003 label for **HYPO 150**, EPA Reg. No. 67649-20001, states:

PRECAUTIONARY STATEMENTS

ENVIRONMENTAL HAZARDS: This pesticide is toxic to fish and aquatic organisms. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA.

68. The Storage and Disposal language on the December 29, 2003 label for **HYPO 150**, EPA Reg. No. 67649-20001, states:

STORAGE AND DISPOSAL

Store this product in a cool dry area, away from direct sunlight and heat to avoid deterioration. In case of spill flood areas with large quantities of water. Do not contaminate food or feed by storage, disposal or cleaning of equipment. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility. Product or rinsates that cannot be used should be diluted with water before disposal in a sanitary sewer.

Container disposal:

Domestic use: Do not reuse empty container. Rinse thoroughly, securely wrap original container in several layers of newspaper and discard in trash.

Metal containers: Triple rinse. Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other procedures approved by the state and local authorities.

Plastic containers: Triple rinse. Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or incineration or if allowed by state and local authorities, by burning. If burned, stay out of smoke.

Glass containers: Triple rinse. Then dispose of in a sanitary landfill or by other procedures approved by the state and local authorities.

Bulk Containers: Thoroughly wash with water before reuse.

69. During the September 2, 2014 inspection, the inspector collected a copy of the label for **Ultra Shock**, EPA Reg. No. 67649-20001-73785, which was representative of the actual labels on the product that were being distributed or sold by Respondent.

70. During the September 2, 2014 inspection, the inspector reviewed a container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, that was released for shipment.

71. Neither the copy of the label nor the label on the container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, matched the Ingredient Statement that is on the label that was accepted by EPA on December 29, 2003 for **HYPO 150**, EPA Reg. No. 67649-20001.

72. Instead, the Ingredient Statement on the labels of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, collected during the September 2, 2014 inspection state:

| | |
|--------------------------|-------|
| Active Ingredient | |
| Available Chlorine | 15% |
| Sodium Hypochlorite..... | 12.5% |
| Inert Ingredients..... | 87.5% |

73. Neither the copy of the label nor the label on the container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, matched the order in which the First Aid language appears on the label that was accepted by the EPA on December 29, 2003 for **HYPO 150**, EPA Reg. No. 67649-20001.

74. Additionally, neither the copy of the label nor the label on the container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, included all the First Aid language that is on the

label that was accepted by EPA on December 29, 2003 for **HYPO 150**, EPA Reg. No. 67649-20001.

75. Instead, the First Aid language on the labels of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, collected during the September 2, 2014 inspection states:

***FIRST AID:** IF ON SKIN OR CLOTHING, Take off contaminated clothing. Rinse skin with plenty of water for 15-20 minutes. Call a physician immediately. IF CONTACT WITH EYES OCCURS, hold eye open and rinse gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing the eye. Call a physician or poison control center immediately. IF SWALLOWED, Drink large amounts of water. DO NOT induce vomiting. Do not give anything by mouth to an unconscious person. Call a physician or poison control center immediately.*

76. Neither the copy of the label nor the label on the container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, included all the Environmental Hazards language under the Precautionary Statements that is on the label that was accepted by EPA on December 29, 2003 for **HYPO 150**, EPA Reg. No. 67649-20001.

77. Instead, the Environmental Hazards language under the Precautionary Statements on the labels of **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, collected during the September 2, 2014 inspection states:

PRECAUTIONARY STATEMENTS

***ENVIRONMENTAL HAZARDS:** This pesticide is toxic to fish and aquatic organisms. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. For guidance contact your State Water Board or Regional Office of the EPA.*

78. Neither the copy of the label nor the label on the container of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, included all the Storage and Disposal language that is required by 40 C.F.R. § 156.140 and that was accepted by EPA on December 29, 2003 for **HYPO 150**, EPA Reg. No. 67649-20001.

79. Instead, the Storage and Disposal language on the labels of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, collected during the September 2, 2014 inspection states:

STORAGE AND DISPOSAL

Store this product in a cool dry area, away from direct sunlight and heat to avoid deterioration. In case of spill flood areas with large quantities of water. Do not contaminate food or feed by storage, disposal or cleaning of equipment. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility. Product or rinsates that cannot be used should be diluted with water before disposal in a sanitary sewer. Rinse empty container and return to manufacturer.

80. The labels of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, collected during the September 2, 2014 inspection failed to identify if the container was fillable or nonrefillable.

81. The labels of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, collected during the September 2, 2014 identified the pesticide product name as **Clear Xtreme Pool Shock**.

82. **Clear Xtreme Pool Shock** is not an alternate brand name that has been approved by EPA for **HYPO 150**, EPA Reg. No. 67649-20001.

83. On or about September 2, 2014, Respondent was holding **Ultra Shock**, EPA Reg. No. 67649-20001-73785, for distribution or sale at its Milwaukee, Wisconsin location.

84. On or about June 7, 2014, Respondent distributed or sold **Ultra Shock**, EPA Reg. No. 67649-20001-73785, to Woodman's Food Market in Kenosha, Wisconsin.

85. On or about August 15, 2014, Respondent distributed or sold **Ultra Shock**, EPA Reg. No. 67649-20001-73785, to Pick 'N Save in Oak Creek, Wisconsin.

Note: italics were added to all label language quotes.

Counts 1-4 for Ultra Algaecide, EPA Reg. No. 1839-89-73785

Count 1

86. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

87. On or about September 2, 2014, Respondent held **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, for distribution or sale at its Milwaukee, Wisconsin location that was misbranded.

88. Respondent's distribution or sale of **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40.

89. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Count 2

90. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

91. On or about April 9, 2014, Respondent distributed or sold **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, to Mil-Green Pool and Patio in Niles, Illinois, that was misbranded.

92. Respondent's distribution or sale of **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40:

93. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Count 3

94. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

95. On or about May 28, 2014, Respondent distributed or sold **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, to Farm King Supply, Inc., in Macomb, Illinois, that was misbranded.

96. Respondent's distribution or sale of **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40.

97. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Count 4

98. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

99. On or about June 23, 2014, Respondent distributed or sold **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, to Theisen Retail in Dubuque, Iowa, that was misbranded.

100. Respondent's distribution or sale of **Ultra Algaecide**, EPA Reg. No. 1839-89-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40.

101. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Counts 5-7 for *Ultra Shock*, EPA Reg. No. 67649-20001-73785

Count 5

102. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

103. On or about September 2, 2014, Respondent held **Ultra Shock**, EPA Reg. No. 67649-20001-73785, for distribution or sale at its Milwaukee, Wisconsin location that was misbranded.

104. Respondent's distribution or sale of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40.

105. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Count 6

106. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

107. On or about July 7, 2014, Respondent distributed or sold **Ultra Shock**, EPA Reg. No. 67649-20001-73785, to Woodman's Food Market in Kenosha, Wisconsin, that was misbranded.

108. Respondent's distribution or sale of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40.

109. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Count 7

110. Complainant incorporates paragraphs 1 through 85 of this CAFO, as if set forth in this paragraph.

111. On or about August 15, 2014, Respondent distributed or sold **Ultra Shock**, EPA Reg. No. 67649-20001-73785, to Pick 'N Save in Oak Creek, Wisconsin, that was misbranded.

112. Respondent's distribution or sale of **Ultra Shock**, EPA Reg. No. 67649-20001-73785, constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S) and 40 C.F.R. §§ 152.132 and 156.40.

113. Respondent's violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and (a)(2)(S), and 40 C.F.R. §§ 152.132 and 156.40 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).

Civil Penalty and Other Relief

115. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(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.

116. 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 \$42,525.

117. Within 30 days after the effective date of this CAFO, Respondent must pay a \$42,525 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, include "DYK Automotive, LLC" and the docket number of this CAFO.

118. 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 Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

120. 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.

121. 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

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

123. 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.

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

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

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

127. 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.

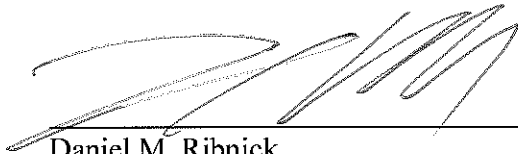
128. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:
DYK Automotive, LLC**

DYK Automotive, LLC, Respondent

AUGUST 19, 2016
Date

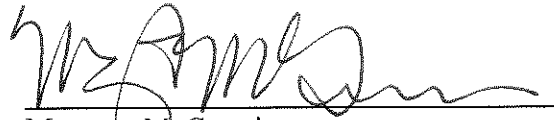


Daniel M. Ribnick
Chief Executive Officer

**In the Matter of:
DYK Automotive, LLC**

United States Environmental Protection Agency, Complainant

9/8/2016
Date



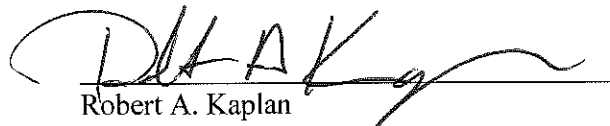
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
DYK Automotive, LLC
Docket No. FIFRA-05-2016-0014

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.

9/9/16
Date


Robert A. Kaplan
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: DYK Automotive LLC, FNA Twinco-Romax LLC
Docket Number: **FIFRA-05-2016-0014**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2016-0014**, which was filed on September 13, 2016 in the following manner to the following addressees:

Copy by Certified Mail to
Attorney for Respondent:

Ms. Sue Steinwall, Esq.
Fredrikson & Byron, P.A.,
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

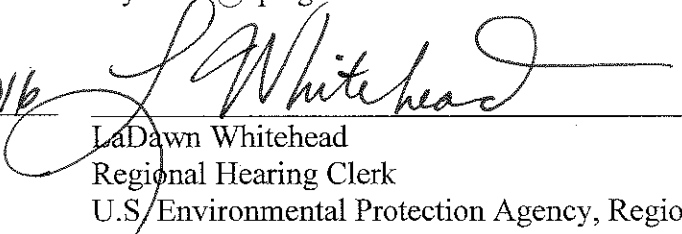
Copy by E-mail to
Attorney for Complainant:

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

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: September 13, 2016



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

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 6844