

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

Rockwell Labs, Ltd.)

North Kansas City, Missouri)

Respondent)

Docket No. FIFRA-07-2010-0003

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Rockwell Labs, Ltd. (Rockwell) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Rockwell has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Rockwell Labs, Ltd., a pesticide dealer and producer, located at 1512 Taney Street, in North Kansas City, Missouri (the "facility"). The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Minnesota corporation qualified to do business in the state of Missouri.

Section III

Statutory and Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (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 (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient used in producing a pesticide.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

10. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), defines the term “adulterated” as applying to any pesticide which strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.

11. The regulation at 40 C.F.R. § 152.15(a) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states or implies (by labeling or otherwise) that the substance, either by itself or in combination with any other substance can or should be used as a pesticide.

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

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

Section IV

General Factual Allegations

14. On April 26, 2007, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at the Rockwell facility. During the MDA inspection formulation samples of several registered pesticide products owned and produced by Rockwell were collected, including samples of INTICE SWEET ANT GEL, EPA Reg. No. 73079-1, and INTICE ROACH BAIT, EPA Reg. No. 73079-5.

15. The pesticide formulation samples collected by MDA at the April 26, 2007, inspection of Rockwell were labeled and sealed at the time of collection, and subsequently delivered to the University of Iowa Hygenic Laboratory for analysis.

16. On November 14, 2007, a representative for the MDA conducted a second inspection at the Rockwell facility. During the MDA inspection, labels and documentation for the following unregistered products marketed and sold by Rockwell under the "INVADE" brand name: INVADE BIO-FOAM; INVADE BIO DRAIN; INVADE BIO CLEANER; INVADE BIO ZAP, and INVADE MULTI RTU.

Violations

17. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

18. The facts stated in Paragraphs 14 through 17 are realleged and incorporated as if fully stated herein.

19. On or about April 26, 2007, Respondent held for sale at its facility, a quantity of the pesticide INTICE SWEET ANT GEL, EPA Reg. No. 73079-1.

20. On or about April 26, 2007, a representative of the MDA collected a physical sample of the pesticide INTICE SWEET ANT GEL, EPA Reg. No. 73079-1.

21. The pesticide referred to in Paragraphs 19 and 20 was misbranded in that the label on the containers stated, in pertinent part:

“INTICE
SWEET ANT GEL
* * *
ACTIVE INGREDIENT:
Orthoboric Acid.....5%
OTHER INGREDIENTS:.....95%
* * *”

whereas the product did not contain 5% boric acid.

22. The product described in Paragraphs 19-21 was adulterated in that its strength or purity fell below the professed standard of quality under which it was sold.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it held for distribution or sale an adulterated and misbranded pesticide.

24. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$2,600 be assessed against the Respondent.

Count 2

25. The facts stated in Paragraphs 14 through 24 are realleged and incorporated as if fully stated herein.

26. On or about April 26, 2007, Respondent held for sale at its facility, a quantity of the pesticide INTICE ROACH BAIT, EPA Reg. No. 73079-5.

27. On or about April 26, 2007, a representative of the MDA collected a physical sample of the pesticide INTICE ROACH BAIT, EPA Reg. No. 73079-5.

28. The pesticide referred to in Paragraphs 26 and 27 was misbranded in that the label on the containers stated, in pertinent part:

“INTICE
ROACH BAIT

* * *

ACTIVE INGREDIENT:

Orthoboric Acid.....30%

OTHER INGREDIENTS:.....70%

* * *”

whereas the product did not contain 30% boric acid.

29. The product described in Paragraphs 26-28 was adulterated in that its strength or purity fell below the professed standard of quality under which it was sold.

30. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it held for distribution or sale an adulterated and misbranded pesticide.

31. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$2,600 be assessed against the Respondent.

Count 3

32. The facts stated in Paragraphs 14 through 31 are realleged and incorporated as if fully stated herein.

33. On or about November 14, 2007, Respondent held for sale at its facility, quantities of the following products produced and sold by Rockwell under the “INVADE” brand name: INVADE BIO-FOAM, INVADE BIO DRAIN, INVADE BIO CLEANER, INVADE BIO ZAP, and INVADE MULTI RTU.

34. The products INVADE BIO-FOAM, INVADE BIO DRAIN, INVADE BIO CLEANER, INVADE BIO ZAP, and INVADE MULTI RTU were distributed or sold by Respondent in conjunction with claims that they can or should be used as pesticides.

35. The products INVADE BIO-FOAM, INVADE BIO DRAIN, INVADE BIO CLEANER, INVADE BIO ZAP, and INVADE MULTI RTU, were not registered with the EPA as pesticides.

36. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it distributed or sold or held for distribution or sale pesticides that were not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$2,600 be assessed against the Respondent.

Section V

Consent Agreement and Terms of Settlement

38. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

39. Respondent neither admits nor denies the factual allegations set forth above.

40. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

41. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

42. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

44. Respondent certifies that by signing this CAFO that, once the compliance actions described in Paragraph 49 below are complete, it will be in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

45. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

46. The effect of settlement described in Paragraph 47 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 44 above.

47. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

48. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

49. Additional compliance steps to be completed by no later than January 4, 2010:
- a. Rockwell shall update its INVADE product labels and accompanying literature, including MSDS sheets for the products, both printed materials and those published to the internet, to remove any and all claims, statements, or implications that any of the unregistered INVADE products can or should be used to prevent, destroy, repel or mitigate a pest.
 - b. Rockwell shall revise both its printed and web-published catalogs to remove any and all claims, statements, or implications that any of the unregistered INVADE products can or should be used to prevent, destroy, repel or mitigate a pest.
 - c. Rockwell shall revise both its printed and web-published catalogs to create a clear separation between its pesticide product line and its non-pesticide product line, ensuring that no pesticidal claims are made or implied regarding products in the latter category.
 - d. Rockwell shall attach the following disclaimer statement to each container of the product, INVADE BIO FOAM, prior to sale or distribution: "This product is not a pesticide and is not intended to prevent, destroy, repel, or mitigate any pest." The product, INVADE BIO FOAM, utilizes a booklet-style label which will be phased out by no later than April 1, 2010.
 - e. Rockwell shall send to each customer and/or recipient of its product catalog a letter iterating the non-pesticidal status of its INVADE product line. That letter shall contain, at a minimum, the following language: "Please be advised that Rockwell's InVade range of products are not pesticides and as such are not intended to prevent, destroy, repel or mitigate any pest and should not be

represented as such. Please feel free to contact us if you have any questions or concerns."

50. By no later than January 15, 2010, Rockwell shall supply to the EPA contact listed below a compliance report that shall contain the following:

- a. A true and correct copy of the revised labels, supplemental documentation, and MSDS sheets for each INVADE product listed in Count 3 above;
- b. Copies of the online and printed catalog marketing the INVADE products listed in Count 3 above;
- c. A description of the manner in which the letter to be sent pursuant to Paragraph 49(e) above was disseminated to the recipients, and detailing the number of recipients of the letter; and
- d. The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

Mark Lesher
Water, Wetlands and Pesticides Division
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Seven Thousand Eight Hundred Dollars (\$7,800) within thirty (30) days of the effective date of this Final Order.
2. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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."

A copy of the check or other information confirming payment shall simultaneously be sent to the following:

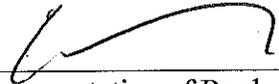
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Chris Dudding
Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.
6. This executed CAFO shall be filed with the Regional Hearing Clerk, EPA, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

RESPONDENT
ROCKWELL LABS, LTD.

Date: 1/6/10



Representative of Rockwell Labs, Ltd.

Cisse W. Spryngins
Printed Name

CEO
Title

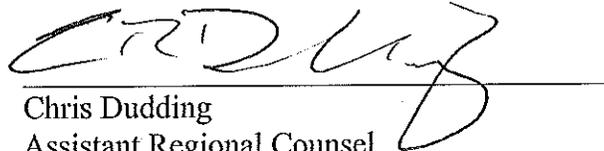
**COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 1/12/10



William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date: 1/12/10



Chris Dudding
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: January 20, 2009 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Rockwell Labs, Ltd., Respondent
Docket No. FIFRA-07-2010-0003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris Dudding
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Cisse Spragins, Ph.D.
Chief Executive Officer
Rockwell Labs, Ltd.
1512 Taney Street
North Kansas City, Missouri 64116

Dated: 1/21/10



Kathy Robinson
Hearing Clerk, Region 7