



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

January 11, 2013

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7641 2360

Mr. Gregory J. Bradley
Dow Microbial Control
1650 Joseph Dr.
100 Larkin Center, Office 117
Midland, Michigan 48674

Consent Agreement and Final Order In the Matter of
The Dow Chemical Company Docket No. FIFRA-05-2013-0002

Dear Mr. Bradley:

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 January 11, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$277,500 is to be paid in the manner described in paragraphs 105 thru 107. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by February 8, 2013, (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

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
The Dow Chemical Company)
2030 Dow Center)
Midland, Michigan)
)
Respondent.)
_____)

Docket No. FIFRA-05-2013-0002
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
Commencing and Concluding a Proceeding

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is The Dow Chemical Company (Dow), a corporation doing business in Midland, Michigan.
4. 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.

Jurisdiction and Waiver of Right to Hearing

5. Respondent admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent and neither admits nor denies the factual allegations in this CAFO.

6. Respondent consents to the conditions specified in this CAFO and to the assessment of the civil administrative penalty under paragraph 105 of this CAFO.

7. Respondent waives its rights to request a hearing as provided at 40 C.F.R. § 22.15(c), to contest the allegations in this CAFO, and to appeal the proposed final order contained in this CAFO.

8. Respondent certifies that the pesticidal products that are the subject of this CAFO are currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

9. Pursuant to regulations promulgated under Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA or EPA Form 3540-1), prior to the arrival of the shipment to the United States.

10. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file reports required by FIFRA.

11. 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 a pesticide which is adulterated or misbranded.

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

13. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.

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

15. 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 requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

20. The Administrator of EPA may assess a civil penalty against any registrant 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

21. Respondent is, and was at all times relevant to this CAFO, a Company and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Bioban™ BP-Plus Preservative, EPA Reg. No. 464-675

22. Between March 26, 2012 and May 21, 2012, UPS Custom Brokerage or UPS Supply Chain Solutions (UPS) located at 1201 C Street, NW, Auburn, Washington 98001, was a broker/agent for Respondent.

23. Between March 26, 2012 and May 21, 2012, UPS submitted 18 NOAs to EPA for import shipments of the pesticide “Bioban™ BP-Plus Preservative,” EPA Registration Number (EPA Reg. No.) 464-675, from China under the following entry numbers:

UPS-5536733-1	UPS-5543111-1	UPS-5539642-1
UPS-5536734-9	UPS-5543112-9	UPS-5541246-7
UPS-5536739-8	UPS-5538551-5	UPS-5538548-1
UPS-5536737-2	UPS-5538555-6	UPS-5543110-3
UPS-5543113-7	UPS-5538542-4	UPS-5541244-2
UPS-5543853-8	UPS-5543852-0	UPS-5543854-6

24. Each NOA referenced in paragraph 23, above, identified Dow c/o of North American Warehousing in Bedford, Illinois and/or Dow in Midland, Michigan as the importer of record for the shipments of “Bioban™ BP-Plus Preservative.”

25. The 18 NOAs identified in paragraph 23, above, were submitted to EPA after the shipments arrived in the United States.

26. Respondent, as importer of “BiobanTM BP-Plus Preservative” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

27. “BiobanTM BP-Plus Preservative” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

BiobanTM BP-M Preservative, EPA Reg. No. 464-687

28. On March 22, 2012 and April 23, 2012, UPS located at 1201 C Street, NW, Auburn, Washington 98001 was a broker/agent for Respondent.

29. On March 22, 2012 and April 23, 2012, UPS submitted two NOAs to EPA for import shipments of the pesticide “BiobanTM BP-M Preservative,” EPA Reg. No. 464-687, from China under the entry numbers UPS-5541242-6 and UPS-5537199-4.

30. The NOAs identified Dow c/o of North American Warehousing in Bedford, Illinois and/or Dow in Midland, Michigan as the importer of record for the shipments of “BiobanTM BP-M Preservative.”

31. Respondent, as importer of “BiobanTM BP-M Preservative” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

32. “BiobanTM BP-M Preservative” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. The NOAs identified in paragraph 29, above, were submitted to EPA after the shipments arrived in the United States.

Dowicide™ 1 Antimicrobial, EPA Reg. No. 464-70

34. On August 22, 2012, UPS located at 1201 C Street, NW, Auburn, Washington 98001, was a broker/agent for Respondent.

35. On or about August 22, 2012, UPS submitted two NOAs to EPA for import shipments of the pesticide “Dowicide™ 1 Antimicrobial,” EPA Reg. No. 464-70, from Canada under entry numbers UPS-55600301 and UPS-55599859.

36. The NOAs identified Dow as the importer of record for the shipments of “Dowicide™ 1 Antimicrobial.”

37. Respondent did not submit NOAs for the shipments of “Dowicide™ 1 Antimicrobial,” identified in paragraph 35, above, prior to the arrival of the shipments into the United States.

38. Respondent, as importer of “Dowicide™ 1 Antimicrobial,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

39. “Dowicide™ 1 Antimicrobial” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Rocima Bit Technical, EPA Reg. No. 707-310

40. Between June 10, 2012 and June 17, 2012, OHL GFML located at 5101 S. Broad Street, Philadelphia, Pennsylvania 19112, was a broker/agent for Respondent.

41. Between June 10, 2012 and June 17, 2012, OHL GFML submitted two NOAs to EPA for import shipments of the pesticide “Rocima Bit Technical,” EPA Reg. No. 707-310, from China under entry numbers 113-5894636-3 and 113-5894635-5.

42. The NOAs referenced in paragraph 41, above, identified Rohm and Haas Chemicals LLC located at 100 Independence Mall West, Philadelphia Pennsylvania 19106, as the importer of record for the shipments of “Rocima Bit Technical.” Rohm and Haas Chemicals LLC is a wholly owned subsidiary of the Rohm and Haas Company, which is a wholly owned subsidiary of Dow.

43. The NOAs relating to entry numbers 113-5894636-3 and 113-5894635-5 were submitted to EPA after the shipments arrived in the United States.

44. Respondent, as importer of “Rocima Bit Technical,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

45. “Rocima Bit Technical” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u).

Kathon™ 287T Biocide, EPA Reg. No. 707-224

46. On June 24, 2012, September 4, 2012 and October 12, 2012, OHL GFML located at 5101 S. Broad Street, Philadelphia, Pennsylvania 19112, was a broker/agent for Respondent.

47. On June 24, 2012, September 4, 2012 and October 12, 2012, OHL GFML submitted three NOAs to EPA for import shipments of the pesticide “Kathon™ 287T Biocide,” EPA Reg. No. 707-224, from China under entry numbers 113-5894641-3, 113-5897769-9 and 113-5898688-0

48. The NOAs referenced in paragraph 47, above, identified Rohm and Haas Chemicals LLC located at 100 Independence Mall West, Philadelphia, Pennsylvania 19106, as the importer of record for the shipments of “Kathon™ 287T Biocide.” Rohm and Haas

Chemicals LLC is a wholly owned subsidiary of the Rohm and Haas Company, which is a wholly owned subsidiary of Dow.

49. Respondent, as importer of “Kathon™ 287T Biocide,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

50. The NOA for the shipment under entry number 113-5894641-3 was submitted to EPA after the shipment arrived in the United States.

51. On June 15, 2010, the Office of Pesticide Programs, Antimicrobial Division accepted a label containing the statement, “For use by manufacturers only in formulating microbiocides for use in...pulp and papermills.” This statement was required to be found on labels securely attached to drums of “Kathon™ 287T Biocide” for the shipments referenced in paragraph 47, above.

52. The labels found on drums of “Kathon™ 287T Biocide” in the shipments under entry numbers 113-5894641-3, 113-5897769-9 and 113-5898688-0 contained the statement: “For use by manufacturers only in formulating microbiocides for use in...pulp and papermill *systems*” (emphasis added).

53. The labels found on the drums of “Kathon™ 287T Biocide” in the shipment under entry number 113-5894641-3, did not bear the registration number assigned under section 7 to the establishment in which it was produced.

54. “Kathon™ 287T Biocide” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u).

55. On June 24, 2012, September 4, 2012 and October 12, 2012 Respondent “distributed or sold” the pesticide product “Kathon™ 287T Biocide” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Kathon™ 886 F Biocide, EPA Reg. No. 707-130

56. Between June 19, 2012 and September 13, 2012, OHL GFML located at 5101 S. Broad Street, Philadelphia, Pennsylvania 19112, was a broker/agent for Respondent.

57. Between June 19, 2012 and September 13, 2012, OHL GFML submitted four NOAs for import shipments of the pesticide “Kathon™ 886 F Biocide,” EPA Reg. No. 707-130, from the United Kingdom under entry numbers 113-5895714-4, 113-5896142-0, 113-5896143-8, and 113-5894639-7.

58. The NOAs referenced in paragraph 57, above, identified Rohm and Haas Chemicals LLC located at 100 Independence Mall West, Philadelphia, Pennsylvania 19112, as the importer of record for the shipments of “Kathon™ 886 F Biocide.” Rohm and Haas Chemicals LLC is a wholly owned subsidiary of the Rohm and Haas Company, which is a wholly owned subsidiary of Dow.

59. Respondent, as importer of “Kathon™ 886 F Biocide” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

60. The NOAs referenced in paragraph 57, above, were submitted to EPA after the shipments arrived in the United States.

61. “Kathon™ 886 F Biocide” is a “registered pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u).

Amical™ 48, EPA Reg. No. 464-670

62. On or about August 30, 2012, UPS located at 1201 C Street, NW, Auburn, Washington 98001, was a broker/agent for Respondent.

63. On or about August 30, 2012, UPS submitted a NOA to EPA for an import shipment of the pesticide “Amical™ 48,” EPA Reg. No. 464-670, from Japan under entry number UPS-5558825-8.

64. The NOA identified Dow located at 2020 Dow Center, Midland, Michigan 48674, as the importer of record for the shipment of “Amical™ 48.”

65. Respondent, as importer of “Amical™ 48,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

66. The NOA identified in paragraph 63, above, was submitted to EPA after the shipment arrived in the United States.

67. “Amical™ 48” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

68. On September 23, 2010, the Office of Pesticide Programs, Antimicrobial Division, accepted a label for “Amical™ 48” with comments.

69. The label affixed to the quantity of “Amical™ 48” imported in the shipment referenced in paragraph 63, above, did not incorporate all comments and changes made by EPA in the September 23, 2010 accepted label.

70. On or about August 30, 2012, Respondent “distributed or sold” the pesticide product “Amical™ 48,” as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

OBPA, EPA Reg. No 2829-120

71. Between October 5, 2012 and October 20, 2012, OHL GFML, located at 5101 S. Broad Street, Philadelphia, Pennsylvania 19112 was a broker/agent for Respondent.

72. On October 5, 2012 and October 20, 2012, OHL GFML submitted two NOAs to EPA for import shipment of the pesticide "OBPA," EPA Reg. No. 2829-120 from China under entry numbers 113-5898722-7 and 113-5898700-3.

73. The NOAs referenced in paragraph 72, above, identified Rohm and Haas Chemicals LLC, 100 Independence Mall West, Philadelphia, Pennsylvania 19106 as the importer of record for the shipment of "OBPA." Rohm and Haas Chemical LLC is a wholly owned subsidiary of the Rohm and Haas Company, which is a wholly owned subsidiary of The Dow Chemical Company.

74. Respondent, as importer of "OBPA" and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

75. "OBPA" is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

76. The NOA for entry number 113-5898722-7 identified in paragraph 72, above, was submitted to EPA after the shipment arrived in the United States.

77. On May 10, 2011, the Office of Prevention, Pesticides and Toxics Substances, Antimicrobials Division accepted with comments a label containing the following statements which were then required to be found on labels securely attached to 100 pound drums of "OBPA:"

- a. (Total Arsenic as Elemental As-29%)
- b. (Water Soluble Arsenic as Elemental As-Less Than 0.01%)

- c. In case of Emergency Call Rohm and Haas Company 215-592-3000
- d. Do not contaminate water, fold or feed by storage, disposal or cleaning of equipment.
- e. Do not apply this product in a way that will contact workers or other persons.
- f. Nonrefillable container. Do not reuse or refill this container.
- g. Then offer for recycling if available, or ... by burning.

78. The labels affixed to the quantity of “OBPA” imported in the shipments referenced in paragraphs 72, above, did not incorporate all comments and changes made by EPA in the May 10, 2011 accepted label.

79. On October 5, 2012 and October 20, 2012, Respondent “distributed or sold” the pesticide product “OBPA,” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Alleged Violations

80. Complainant incorporates by reference the allegations contained in paragraphs 21-79 of this CAFO.

Counts 1 through 18 **Bioban™ BP-Plus Preservative, EPA Reg. No. 464-675**

81. Between March 26, 2012 and May 21, 2012, Respondent failed to timely submit 18 NOAs to EPA prior to the arrival of the shipments of “Bioban™ BP-Plus Preservative” from China under the entry numbers identified in paragraph 23, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

82. Respondent’s failure to submit timely NOAs to EPA for the 18 shipments identified in paragraph 81, above, constitutes 18 unlawful acts under Section 12(a)(2)(N) of

FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Counts 19 and 20
Bioban™ BP-M Preservative, EPA Reg. No. 464-687

83. On March 22, 2012 and April 23, 2012, Respondent failed to timely submit two NOAs to EPA prior to the arrival of the shipments of “Bioban™ BP-M Preservative” from China under the entry numbers identified in paragraph 29, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

84. Respondent’s failure to submit timely NOAs to EPA for the two shipments identified in paragraph 83, above, constitutes two unlawful acts under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Counts 21 and 22
Dowicide™ 1 Antimicrobial, EPA Reg. No. 464-70

85. On August 22, 2012, Respondent failed to submit two NOAs to EPA prior to the arrival of the shipments of “Dowicide™ 1 Antimicrobial” from Canada under the entry numbers identified in paragraph 35, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

86. Respondent’s failure to submit NOAs to EPA for the two shipments identified in paragraph 85, above, constitutes two unlawful acts under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Counts 23 and 24
Rocima Bit Technical, EPA Reg. No. 707-310

87. Between June 10, 2012 and June 17, 2012, Respondent failed to submit two NOAs to EPA prior to the arrival of the shipments of “Rocima Bit Technical” from China under the entry numbers identified in paragraph 41, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 1360(c).

88. Respondent’s failure to submit NOAs to EPA for the two shipments identified in paragraph 87, above, constitutes two unlawful acts under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Count 25
Kathon™ 287T Biocide, EPA Reg. No. 707-224

89. On or about June 24, 2012, Respondent failed to submit a NOA to EPA prior to the arrival of the shipment of “Kathon™ 287T Biocide” from China under the entry number identified in paragraph 47, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 1360(c).

90. Respondent’s failure to submit a NOA to EPA for the shipment identified in paragraph 89, above, constitutes an unlawful act under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Counts 26 through 28
Kathon™ 287T Biocide, EPA Reg. No. 707-224

91. Between June 24, 2012 and October 12, 2012, Respondent Distributed or sold the three shipments of the misbranded pesticide product “Kathon™ 287T Biocide,” identified in paragraph 47, above, with a label bearing statement, design or graphic representation relative thereto or to its ingredients that was false or misleading in any particular.

92. On or about June 24, 2012, Respondent distributed or sold a shipment of the misbranded pesticide product “Kathon™ 287T Biocide,” identified in paragraph 53, above, with a label that did not bear the registration number assigned under Section 7 for the establishment in which it was produced.

93. Respondent’s distribution or sale of the misbranded pesticide product referenced in paragraphs 91 and 92, above, constitute three unlawful acts under Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 29 through 32
Kathon™ 886F Biocide, EPA Reg. No. 707-130

94. Between June 19, 2012 and September 13, 2012, Respondent failed to submit four NOAs to EPA prior to the arrival of the shipments of “Kathon™ 886 F Biocide” from the United Kingdom under the entry numbers identified in paragraph 57, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

95. Respondent’s failure to submit NOAs to EPA for the four shipments identified in paragraph 94, above, constitutes four unlawful acts under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 33
Amical™ 48, EPA Reg. No. 464-670

96. On or about August 30, 2012, Respondent failed to submit a NOA to EPA prior to the arrival of the shipment of “Amical™ 48” from Japan under the entry number identified in paragraph 63, above, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

97. Respondent's failure to submit a NOA to EPA for the shipment identified in paragraph 96, above, constitutes an unlawful act under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Count 34
Amical™ 48, EPA Reg. No. 464-670

98. On or about August 30, 2012, Respondent distributed or sold the shipment of the misbranded pesticide product Amical™ 48, identified in paragraph 63, above, with a label bearing a statement, design or graphic representation relative thereto or to its ingredients that was false or misleading in any particular.

99. Respondent's distribution or sale of the misbranded pesticide product referenced in paragraph 98, above, constitutes an unlawful act under Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 35
OBPA, EPA Reg. No. 2829-120

100. On or about October 5, 2012, Respondent failed to submit a NOA to EPA prior to the arrival of the shipment of "OBPA" from China under entry number 113 5898722-7, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

101. Respondent's failure to submit a NOA to EPA for the shipment identified in paragraph 100, above, constitutes an unlawful act under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Count 36 and 37
OBPA, EPA Reg. No. 2829-120

102. On October 5, 2012 and October 20, 2012, Respondent distributed or sold the misbranded pesticide “OBPA,” EPA Reg. No. 2829-120 under entry numbers 113-5898722-7 and 113-5898700-3 with a label bearing a statement, design or graphic representation relative thereto or to its ingredients that was false or misleading; that did not contain a warning or caution statement which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136(d), was adequate to protect health and the environment; and that did not contain the applicable container labeling statements as required by 40 C.F.R. § 156.140.

103. Respondent’s distribution or sale of the misbranded pesticide products referenced in paragraph 102, above, constitutes two unlawful acts under Section 12(a)(1)(E), 7 U.S.C. §136j(a)(1)(E) and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7.U.S.C. § 136l(a).

Civil Penalty

104. 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 \$277,500. 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 *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009.

105. Within 30 days of the effective date of this CAFO, Respondent must pay a \$277,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

106. The check must note "In the Matter of The Dow Chemical Company" and the docket number of this CAFO.

107. A transmittal letter stating Respondent's name, complete address, the case title, and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Susan Perdomo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

109. If Respondent does not pay the civil penalty timely, 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).

110. 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.

111. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(E) and 12(a)(2)(N) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO. This paragraph 111 supersedes paragraph 51 of the CAFO in Docket No. FIFRA-05-2012-0025 and paragraph 33 of the CAFO in Docket No. FIFRA-05-2012-0027.

General Provisions

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

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

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

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

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

117. 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.

118. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:
The Dow Chemical Company**

The Dow Chemical Company, Respondent

03 December 2018

Date

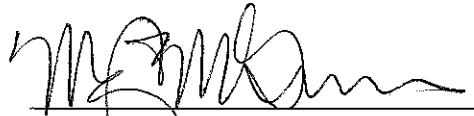


Greg Bradley, Associate Director
Global Regulatory Sciences and Product
Sustainability
The Dow Chemical Company

**In the Matter of:
The Dow Chemical Company**

United States Environmental Protection Agency, Complainant

January 8, 2013
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
The Dow Chemical Company
Docket No. FIFRA-05-2013-0002**

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.

1-9-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
JAN 11 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving The Dow Chemical Company, was filed on January 11, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7641 2360, a copy of the original to the Respondent:

Mr. Gregory J. Bradley
Dow Microbial Control
1650 Joseph Dr.
100 Larkin Center, Office 117
Midland, Michigan 48674

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0002

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JAN 11 2013
REGIONAL HEARING CLERK
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