

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

In the matter of:) Docket No. FIFRA-09-2008- 00 1 5
)
) CONSENT AGREEMENT
Sierra Chemical Company) and
)
) FINAL ORDER PURSUANT TO
Respondent.) SECTIONS 22.13 AND 22.18
)
_____)

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division (formerly the Cross Media Division), United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Sierra Chemical Company (hereafter "Sierra Chemical" or "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.* (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. Sierra Chemical Company is a Nevada corporation. Sierra Chemical Company operates an establishment located at 2301 Larkin Circle, Sparks Nevada 89431. Sierra Chemical Company is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 5-14,

dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Associate Director for Agriculture of the Cross Media Division (now renamed the Communities and Ecosystems Division). The Associate Director for Agriculture of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

4. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded. Section 2(gg), of FIFRA, 7 U.S.C. § 136(gg), states that “to distribute or sell” 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.

5. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is 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.

6. Every pesticide product label is to show the product registration number as prescribed in paragraph (e) of section 156.10. 40 C.F.R. § 156.10(a)(iv). All words, statements, graphic representations, designs or other information required on the labeling must be clearly legible to a person with normal vision. 40 C.F.R. § 156.10(a)(2).

7. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

C. COMPLAINANT'S ALLEGATIONS

8. Sierra Pure Chlor is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and a registered pesticide with the active ingredient of 12.5% sodium hypochlorite and EPA registration number 8996-20001.

9. Sierra Chemical Company sold or distributed Sierra Pure Chlor, as the term "to distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), on five occasions: On or about July 18, 2005, from the Sparks, Nevada facility; on or about March 30, 2006, to Pool Scene Novato; on or about June 1, 2006, to City of San Ramon; on or about June 15, 2006, to City of San Ramon; and on or about June 19, 2006, to Nathan's Pool Supply.

10. The Sierra Pure Chlor bottles at issue in this case (which are embossed with the label information) displays two different EPA registration numbers, one which correctly identifies the pesticide product (EPA Reg. No. 8996-2001) and one which incorrectly identifies the pesticide product (EPA Reg. No. 72738-2001). The presence of the incorrect EPA registration number negates and distracts from the display of the correct EPA registration number and creates confusion. The Sierra Pure Chlor label at issue in this case does not properly identify the EPA registration number.

11. Respondent violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), by distributing or selling Sierra Pure Chlor with a label that did not clearly identify the one EPA pesticide registration number for the product.

12. The Sierra Pure Chlor label states "Mix only with water according to label directions."

13. On May 8, 2006, Respondent's employee mixed Sierra Pure Chlor with muriatic acid

during the delivery of Sierra Pure Chlor to the Northeast Community Pool in Reno, Nevada. Respondent's mixing of muriatic acid left in Respondent's delivery system with Sierra Pure Chlor created chlorine gas that was strong enough to cause irritation and health effects among a number of swimmers and resulted in the evacuation of the pool area. Respondent's delivery of Sierra Pure Chlor via a delivery mechanism that contained muriatic acid was inconsistent with label directions in that Sierra Pure Chlor is to be mixed only with water.

14. Respondent violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by mixing Sierra Pure Chlor with muriatic acid in a manner inconsistent with the labeling of Sierra Pure Chlor.

D. RESPONDENT'S ADMISSIONS

15. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

16. Respondent consents to the assessment of a penalty in the amount of **TWENTY NINE THOUSAND ONE HUNDRED DOLLARS (\$29,100)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO.

17. Respondent shall pay the assessed penalty no later than thirty (30) days from the

effective date of this CAFO.

18. The civil penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and sent by certified mail, return receipt requested, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check should note the case title and docket number, and a transmittal letter, indicating Respondent's name, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Julie Jordan
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

19. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that payment is late. Upon Complainant's written demand, payable shall immediately become due and payable.

20. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District

debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13. Subparts C and H

a. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)

40 C.F.R. 13.1015

assigns.

24. Except as set forth in Paragraph 20 above, each party shall bear its own costs, fees, and disbursements in this action.

25. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

26. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

27. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

28. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

SIERRA CHEMICAL COMPANY:

Date: July 7 2008 By: Stanley K. Kinder

Name: STANLEY K. KINDER

Title: Pres.

CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2008-0015 was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7000 1670 0009 3120 9274), return receipt requested, addressed to the following address:

Mr. Stanley K. Kinder
President
Sierra Chemical Co.
2302 Larkin Circle
Sparks, Nevada 89431-6587

Date: 9/9/2008

By: Danielle E. Carr

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143