

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

07 NOV 28 AM 10:27

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

) Docket No. FIFRA-07-2007-0025

I.T.W. Rocol North America)

218 East Industrial Street)

DeWitt, Iowa)

) Respondent)

CONSENT AGREEMENT

AND

FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII ("EPA" or "Complainant"), and I.T.W. Rocol North America, Inc. (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) 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), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This 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. § 136l.

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

Parties

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

4. The Respondent is Illinois Tool Works, Inc. d/b/a I.T.W. Rocol North America, Inc., a pesticide distributor, whose corporate offices are located at 3600 West Lake Avenue, Glenview, Illinois 60025-5811. The Respondent is and was at all times referred to in this CAFO, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to

do business in the state of Connecticut and Iowa.

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:
6. 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.
7. Pursuant to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, the term “produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.
8. 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 which is adulterated or misbranded.
9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states 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 way.
10. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
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, together with any requirements imposed under Section 3(d) of this Act, are adequate to protect health and the environment.
12. Arch Chemicals is the registrant of TRIADINE® 20 INDUSTRIAL MICROBIOSTAT (hereinafter “Triadine”), EPA Registration No. 1258-1205. At the time of the inspection, the last EPA approved label for Triadine was dated March 22, 2004.

13. On or about September 27, 2005, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted inspections at Respondent's manufacturing plant located at 218 East Industrial Street, DeWitt, Iowa. It was documented during the inspection that Respondent repackaged and held for sale or distribution 19 16-fluid ounce containers (Batch Code No. 05G21R) of Triadine.

Count 1

14. Complainant hereby incorporates the allegations contained in paragraphs 5 through 14 above, as if fully set forth herein.

15. Documentation collected during the inspections referenced in paragraph 14 revealed that Respondent was holding for sale or distribution 19 16-fluid ounce containers of Triadine.

16. The 19 16-fluid ounce containers of Triadine were misbranded in the following ways:

- a. The labels state the percent composition of active ingredients as follows: sodium 2-pyridinethiol-1-oxide was listed as 3.76%; and hexahydro-1,3,5-tris (2-hydroxyethyl)-s triazine was listed as 74.00%. The labels stated that the percent composition of inert ingredients is 22.24%. The EPA accepted label states the percent composition as follows: sodium 2-pyridinethiol-1-oxide should be listed as 3.69%; hexahydro-1,3,5-tris (2-hydroxyethyl)-s triazine should be listed as 71.4% and the inert ingredients should be listed as 24.91%. The difference in composition between the labels collected during the inspection and the EPA accepted label means that this product is misbranded according to 7 U.S.C. § 136(q)(1)(A) and is therefore, in violation of 12(a)(1)(E) of FIFRA.
- b. NOTE TO PHYSICIAN: This section of the label states "Probable mucosal damage may contraindicate the use of gastric lavage. Use of 0.15 molar cysteine solution drops to eyes may be beneficial. Be alert for possible development of pulmonary edema and/or circulatory shock and if necessary, treat with oxygen, mechanically assisted breathing and appropriate pharmaceuticals to sustain circulation. Convulsions, if persistent, may be controlled by careful intravenous use of short-acting barbiturates". This additional medical advice statement is not listed on the EPA accepted label dated March 22, 2004. Consistent with § 3 of FIFRA, additional label language should only be added by amendment by the registrant to EPA Office of Pesticide Programs, Registration Division.
- c. In the Directions For Use section of the label under the heading of "TO INHIBIT THE GROWTH OF BACTERIA AND FUNGI IN METALWORKING, CUTTING, COOLING AND LUBRICATING FLUID CONCENTRATES," the label is missing the text and table for calculation of various dilutions that is present on the EPA accepted

label. The absence of this required information indicates that this product is misbranded according to 7 U.S.C. § 136(q)(1)(F) and is therefore, in violation of 12(a)(1)(E) of FIFRA.

17. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury

pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

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, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified checks, a civil penalty for the violations cited herein, in the amount of \$4,160, on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077,
St. Louis, Missouri 63197-9000.**

3. The payment shall reference Docket Number, FIFRA 07-2007-0025 and **In the Matter of I.T.W. Rocol North America, Inc.** Copies of the check shall be forwarded to:

In the Matter of I.T.W. Rocol North America, Inc.

Docket No. FIFRA-07-2007-0025

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Demetra O. Salisbury
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order 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 Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

In the Matter of I.T.W. Rocol North America, Inc.

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COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: William A. Spratlin
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 11/21/07

By: Demetra O. Salisbury
Demetra O. Salisbury
Attorney
Office of Regional Counsel

Date: November 16, 2007

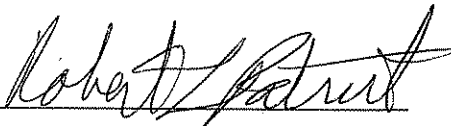
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RESPONDENT:

I.T.W. Rocol North America , Inc.

By: David K. Soley
Title: GENERAL MANAGER
Date: 11/09/07

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



A handwritten signature in cursive script, reading "Robert L. Patrick", is written over a horizontal line.

ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

November 28, 2007
Date

IN THE MATTER OF I.T.W. Rocol North America, Respondent
Docket No. FIFRA-07-2007-0025

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:

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

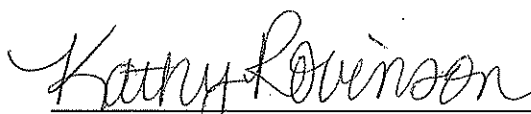
Copy by Certified Mail Return Receipt to:

Ken Brown, CHMM
Environmental Engineer
Illinois Tool Works, Inc.
3600 West Lake Avenue
Glenview, Illinois 60025-5811

and

Robin Lunn
Mayer, Brown, Rowe & Maw LLP
71 South Wacker Drive
Chicago, Illinois 60606

Dated: 11/28/07



Kathy Robinson
Hearing Clerk, Region 7