

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 27 PH 3:16
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
 AGENCY-REGION VII
 REGIONAL HEARING CLERK

IN THE MATTER OF)	
)	
Vertex Chemical Corporation, Inc.)	
)	Docket No. FIFRA-07-2010-0034
)	
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Vertex Chemical Corporation, 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).

Section I

Jurisdiction

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.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the 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 Vertex Chemical Corporation, Inc., (Vertex) a pesticide registrant, located at 11685 Manchester Road, St. Louis, Missouri, 63131. 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 Missouri.

Section III

Statutory and Regulatory Background

5. Section 12(a)(1)(C) of FIFRA states that it shall be unlawful for any person in any state to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C). Pesticide registration requirements are set forth in Section 3 of FIFRA. 7 U.S.C. § 136a.

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

7. Pesticide registrants may distribute or sell a registered product under another person's name and address instead of (or in addition to) their own. Such distribution and sale is termed "supplemental distribution." 40 C.F.R. § 152.132. The 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. Supplemental distribution is permitted upon notification to EPA if specific conditions, stated at 40 C.F.R. § 152.132(a) through (e), are met. As a requirement of supplemental distribution, the label of the distributor product must be the same as that of the registered product, with exceptions stated at 40 C.F.R. § 152.132(d)(1) through (5).

8. The term "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. 7 U.S.C. § 136(gg).

9. 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. 7 U.S.C. § 136(q).

Section IV

General Factual Allegations

10. Respondent is registered with EPA as a pesticide producer and was assigned Company Number 09616 on November 20, 1974.

11. Respondent is the registrant for Vertex CSS-5 Bleach, EPA Registration No. 9616-10. The active ingredient of Vertex CSS-5 Bleach is Sodium Hypochlorite with a label claim of 5.25 percent concentration.

12. EPA's records indicate that on May 2, 1991, EPA was informed of Respondent's intent to supplementally distribute the product, through Chemical Sanitizing Systems, Ltd. (Chemical Sanitizing Systems), using the product name Mark 300, EPA Registration Number 9616-10-41628.

13. On June 23, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) inspected Chemical Sanitizing Systems, LeMars, Iowa, facility. The IDALS representative collected copies of labels of products produced by the facility, documentary shipping records, and records of sales of products. The representative collected samples of Mark 300.

14. On May 1, 2007, an IDALS representative returned to Chemical Sanitizing Systems, facility to collect a voluntary statement and supplemental distributor agreements.

VIOLATIONS

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

Count 1

16. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

17. Analytical results of samples collected during the June 23, 2006, inspection determined the composition of Mark 300. The sample contained the active ingredient, Sodium Hypochlorite, within the range listed on the label.

18. Documentation collected at the June 23, 2006, inspection showed that the composition of the Mark 300 differed from the composition described in the Confidential

Statement of Formula (CSF) for EPA Registration No. 9616-10 in that the active ingredient used in the Mark 300 was acquired from a source that was not listed in the CSF when it was registered with EPA.

19. Further documentation collected at the June 23, 2006, inspection showed that Mark 300 was misbranded because the label contained a false ingredient statement, first aid statements, and a signal word that were not included in the label submitted for EPA Registration No. 9616-10.

20. Chemical Sanitizing Systems acknowledged that the sample products were packaged, labeled, and released for shipment to PJ's, 7402 F Street, Omaha, Nebraska, as documented by Invoice #370008 for one 1-gallon container of Mark 300, on or about June 9, 2006.

21. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(C) of FIFRA through Chemical Sanitizing Systems' distribution or sale of a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

22. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(E) of FIFRA by Chemical Sanitizing Systems' holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Count 2

23. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

24. Analytical results of samples collected during the June 23, 2006, inspection determined the composition of Mark 300. The sample contained the active ingredient, Sodium Hypochlorite, within the range listed on the label.

25. Documentation collected at the June 23, 2006, inspection showed that the composition of the Mark 300 differed from the composition described in the Confidential Statement of Formula (CSF) for EPA Registration No. 9616-10 in that the active ingredient used in the Mark 300 was acquired from a source that was not listed in the CSF when it was registered with EPA.

26. Further documentation collected at the June 23, 2006, inspection showed that Mark 300 was misbranded because the label contained a false ingredient statement, first aid statements, and a signal word that were not included in the label submitted for EPA Registration No. 9616-10.

27. Chemical Sanitizing Systems acknowledged that the sample products were packaged, labeled, and released for shipment to Archies' Waeside, P.O. Box 725, LeMars, Iowa, as documented by Invoice #370084 for one 5-gallon container of Mark 300, on or about June 16, 2006.

28. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(C) of FIFRA through Chemical Sanitizing Systems' distributing or selling a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

29. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(E) of FIFRA by Chemical Sanitizing Systems' holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Count 3

30. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

31. Analytical results of samples collected during the June 23, 2006, inspection determined the composition of Mark 300. The sample contained the active ingredient, Sodium Hypochlorite, within the range listed on the label.

32. Documentation collected at the June 23, 2006, inspection showed that the composition of the Mark 300 differed from the composition described in the Confidential Statement of Formula (CSF) for EPA Registration No. 9616-10 in that the active ingredient used in the Mark 300 was acquired from a source that was not listed in the CSF when it was registered with EPA.

33. Further documentation collected at the June 23, 2006, inspection showed that Mark 300 was misbranded because the label contained a false ingredient statement, first aid statements, and a signal word that were not included in the label submitted for EPA Registration No. 9616-10.

34. Chemical Sanitizing Systems acknowledged that the sample products were packaged, labeled, and released for shipment to The Family Diner LL, 1305 Eric Avenue, Spirit Lake, Iowa, as documented by Invoice #370031 for one 5-gallon container of Mark 300, on or about June 12, 2006.

35. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(C) of FIFRA through Chemical Sanitizing Systems' distributing or selling a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

36. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(E) of FIFRA by Chemical Sanitizing Systems' holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Count 4

37. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

38. Analytical results of samples collected during the June 23, 2006, inspection determined the composition of Mark 300. The sample contained the active ingredient, Sodium Hypochlorite, within the range listed on the label.

39. Documentation collected at the June 23, 2006, inspection showed that the composition of the Mark 300 differed from the composition described in the Confidential Statement of Formula (CSF) for EPA Registration No. 9616-10 in that the active ingredient used in the Mark 300 was acquired from a source that was not listed in the CSF when it was registered with EPA.

40. Further documentation collected at the June 23, 2006, inspection showed that Mark 300 was misbranded because the label contained a false ingredient statement, first aid statements, and a signal word that were not included in the label submitted for EPA Registration No. 9616-10.

41. Chemical Sanitizing Systems acknowledged that the sample products were packaged, labeled, and released for shipment to Godfather's Pizza, 2515 Hamilton, Sioux City, Iowa, as

documented by Invoice #370139 for one case containing four 1-gallon containers of Mark 300, on or about June 16, 2006.

42. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(C) of FIFRA through Chemical Sanitizing Systems' distributing or selling a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

43. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(E) of FIFRA by Chemical Sanitizing Systems' holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Count 5

44. Complainant hereby incorporates the allegations contained in paragraphs 1 through 15, above, as fully set forth herein.

45. Analytical results of samples collected during the June 23, 2006, inspection determined the composition of Mark 300. The sample contained the active ingredient, Sodium Hypochlorite, within the range listed on the label.

46. Documentation collected at the June 23, 2006, inspection showed that the composition of the Mark 300 differed from the composition described in the Confidential Statement of Formula (CSF) for EPA Registration No. 9616-10 in that the active ingredient used in the Mark 300 was acquired from a source that was not listed in the CSF when it was registered with EPA.

47. Further documentation collected at the June 23, 2006, inspection showed that Mark 300 was misbranded because the label contained a false ingredient statement, first aid statements, and a signal word that were not included in the label submitted for EPA Registration No. 9616-10.

48. At the time of the inspection, it was documented that Chemical Sanitizing Systems was offering for sale the following products that were packaged, labeled, and released for shipment: 127 one-gallon containers of Mark 300 and 147 five-gallon containers of Mark 300.

49. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section

12(a)(1)(C) of FIFRA through Chemical Sanitizing Systems' distributing or selling a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration. 7 U.S.C. § 136j(a)(1)(C).

50. In accordance with the requirements stated at 40 C.F.R. § 152.132, through the actions of supplemental distributor, Chemical Sanitizing Systems, Respondent violated Section 12(a)(1)(E) of FIFRA by Chemical Sanitizing Systems' holding for sale or distribution a misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.
3. Respondent neither admits nor denies the factual allegations set forth above.
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 portion of this CAFO.
5. 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 incurred as a result of this action.
6. This CAFO addresses all civil and administrative claims for the FIFRA violations identified above, existing through the effective date of this CAFO. Complainant reserves the right to take enforcement action with respect to any other violations of FIFRA or other applicable law.
7. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.
8. The effect of settlement described in paragraph 9 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 7, above, of this CAFO.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty in the amount of Five Thousand, Two Hundred Dollars (\$5,200) as set forth in paragraph 1 of the Final Order.

10. Supplemental Environmental Project: In response to the violations of FIFRA in this CAFO and in settlement of this matter, although not required by FIFRA or any other federal, state, or local law, Respondent agrees to implement a Supplemental Environmental Project (SEP), as described in paragraphs 11 and 12, below, which the parties agree is intended to secure significant environmental or public health protection and improvement.

11. Within one hundred and twenty (120) days of the effective date of this CAFO, Respondent shall complete the SEP described in Attachment A to this Order.

12. The total expenditure for the SEP shall be not less than Twenty Thousand Dollars (\$20,000). All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

13. Within ninety (90) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- a) a detailed description of the SEP as implemented;
- b) a description of any operating problems encountered and the solutions thereto;
- c) a description of the specific environmental and/or public health benefits resulting from implementation of the SEP;
- d) itemized costs, documented by copies of purchase orders, receipts, or canceled checks; and
- e) certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

14. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled

drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

15. The SEP Completion Report shall include the following statement of Respondent, through an officer, signed and certifying under penalty of law the following:

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, based on inquiry of those individuals immediately responsible for obtaining the information, I believe 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.

16. The SEP Completion Report shall be submitted to the following:

Royan Teter (WWPD/TOPE/PEST)
U.S. Environmental Protection Agency, Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

17. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 22, below.

18. No portion of Respondent's expenditures on the SEP required under this CAFO shall be claimed by Respondent as a deduction for state or local income tax purposes. Additionally, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

19. Respondent agrees that in any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by EPA for violations of FIFRA.

20. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant, or an injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

21. After receipt of the SEP Completion Report described in paragraph 13, above, EPA will notify Respondent, in writing, regarding: (a) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (b) indicate that EPA concludes that the project has been completed satisfactorily; or (c) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 22 herein.

22. Stipulated Penalties:

a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in paragraphs 11 and 12, above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraphs 11 and 12, above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i) Except as provided in subparagraph 22.a.(ii), for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of Fifteen Thousand, Six Hundred Dollars (\$15,600).

ii) If the SEP is not completed in accordance with paragraphs 11 and 12, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

iii) If the SEP is completed in accordance with paragraphs 11 and 12, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference of the amount spent and Fourteen Thousand, Four Hundred Dollars (\$14,400).

iv) If the SEP is completed in accordance with paragraphs 11 and 12, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

v) For failure to submit the SEP Completion Report required by paragraph 13, above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date of the Completion Report stated in paragraph 13, above, until the report is submitted.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for paragraph 22.a.(v), above, shall begin to accrue on the day after performance is due, and shall continue through the final day of the completion of the activity.

d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 1 of the Final Order.

23. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

24. This CAFO shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters herein comply with the terms of this CAFO.

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

26. **Late Payment Provision:** Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 9019(b). A charge will be assessed to cover the debt collection, including processing and handling costs and attorney's fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will be accrued from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

27. 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.

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 check, a civil penalty for the violations cited herein, in the amount of Five Thousand, Two Hundred Dollars (\$5,200) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier's or certified check which shall reference Docket Number FIFRA-07-2010-0034, and made payable to "United States Treasury" and remitted to:

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

3. A copy of the check shall simultaneously be sent to the following:

Robert W. Richards
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

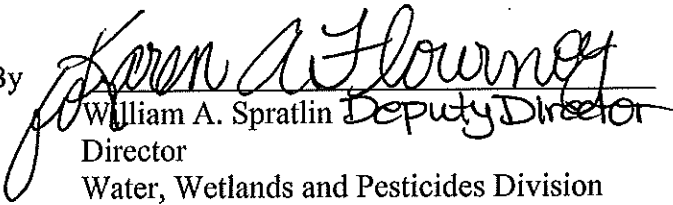
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

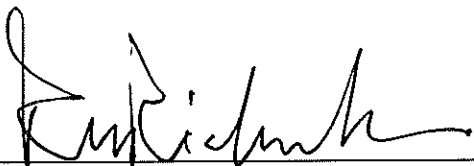
5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

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

Date 8/26/10

By 
Robert W. Richards
Assistant Regional Counsel

Date 8/26/10


RESPONDENT:
Vertex Chemical Corporation, Inc.
St. Louis, Missouri

By 

Title President, CEO

Date August 18, 2010

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

By 
Robert L. Patrick
Regional Judicial Officer

Date August 27, 2010

Attachment A- Statement of Work for SEP

Vertex Chemical Corporation, Inc., (“Respondent” or “Vertex”), shall conduct a comprehensive internal compliance audit of its supplemental distributor files, documents and processes. The estimated cost of the compliance audit is \$20,000.

The services of a third party auditor and a law firm will be used to review current processes and procedures and suggest areas of improvement based on best industry practices and legal requirements. Vertex employees and internal resources will also be used, but those services and resources cannot be used to count toward the estimated cost of the audit. The completed audit report shall be provided to EPA. Violations discovered in the compliance audit shall be promptly corrected. The audit is not eligible for consideration as a Self-Audit under the EPA Self-Audit policy. The audit will be performed in compliance with EPA’s Audit Policy and SEP Policy.

The audit shall include the following:

1. Complete legal review of labeling contracts, and recommendations to upgrade the contracts for improved explanation of compliance requirements.

2. Review of Vertex’s supplemental distributor files (currently 30) to verify that all required documents for Vertex’s FIFRA compliance are in place.

3. Review of Vertex’s processes, practices and procedures pertaining to supplemental distributors, including, but not limited to:
 - (a) the process for identifying supplemental distributor candidates;
 - (b) the process for communicating regulatory obligations to supplemental distributors, including regulatory updates;
 - (c) the procedures Vertex puts into place to ensure compliance by supplemental distributors (including scheduled visits/inspection procedures by Vertex of supplemental distributors);
 - (d) other practices utilized to ensure supplement distributor compliance; and
 - (e) identification of areas for improvement for items 3(a)-(d) and specific recommendations to achieve identified best industry practices and legal requirements; and
 - (f) prompt implementation of the recommendations in item 3(e).

4. Notification letters to all supplemental distributors regarding the importance of FIFRA compliance and the need to conform to all terms and conditions outlined in supplemental distributor agreements. Respondent shall provide copies of all such letters to EPA in the SEP Completion Report.

IN THE MATTER OF Vertex Chemical Corporation, Inc., Respondent
Docket No. FIFRA-07-2010-0034

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:

Robert W. Richards
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

David P. Ross, Attorney
Crowell Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2500

Dated: 8/27/10


Kathy Robinson
Hearing Clerk, Region 7