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U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of)

Mason Chemical Company)
721 West Algonquin Road)
Arlington Heights, Illinois 60005)

Respondent)

Docket No. FIFRA-07-2013-0033

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Mason Chemical Company (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 Mason Chemical Company, a pesticide registrant located at 721 West Algonquin Road, Arlington Heights, Illinois 60005. 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 Illinois.

Section III

Statutory and Regulatory Background

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

6. 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).

7. 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 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 as a pesticide. 7 U.S.C. § 136j(a)(1)(C).

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. 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.

Section IV

GENERAL FACTUAL ALLEGATIONS

10. Respondent is, and was at all times, 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 Illinois.
11. Respondent is the registrant for “Maquat 705-M”, EPA Registration No. 10324-177.
12. American Chemical Systems, Inc. applied for and received authorization to act as a supplemental distributor for Respondent of “Maquat 705-M” under the distributor product name “Dual Q”, EPA Registration No. 10324-177-71269.
13. On October 17, 2011, a representative of the Missouri Department of Agriculture (MDA) conducted a neutral scheme producer establishment inspection at American Chemical Systems II, Inc. located in Springfield, Missouri. That location has since closed.
14. On January 12, 2012, a representative of the Kansas Department of Agriculture (KDA) conducted a for-cause producer establishment inspection at the facility of American Chemical Systems II, Inc. located in Wichita, Kansas.
15. The inspections were conducted to determine the compliance status of American Chemical Systems II, Inc. and any other regulated parties with the requirements of FIFRA.

VIOLATIONS

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

Count 1

17. The facts stated in Paragraphs 10 through 16 above are herein incorporated.
18. At the time of inspection referenced in paragraph 13 above, the American Chemical Systems II, Inc. facility in Springfield had a quantity of one gallon containers with labels bearing “ACS Dual Q” and “EPA Registration No. 10324-177-71269” that was packaged, labeled, and released for shipment.
19. The “ACS Dual Q” quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises.

20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 2-12

21. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

22. At the time of inspection referenced in paragraph 13 above, documents showed the American Chemical Systems II, Inc. facility in Springfield on various dates had made eleven (11) separate shipments of quantities of one gallon containers with labels bearing "ACS Dual Q" and "EPA Registration No. 10324-177-71269".

23. The "ACS Dual Q" quantities that were shipped were misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises.

24. Respondent on eleven (11) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 13

25. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

26. At the time of inspection referenced in paragraph 13 above, the American Chemical Systems II, Inc. facility in Springfield on a particular date had made one shipment of a quantity of 32 ounce containers with labels bearing "ACS Dual Q (RTU)" and "EPA Registration No. 10324-177-71269".

27. The "ACS Dual Q (RTU)" quantity that was shipped was misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, and contained "(RTU)" in the product name.

28. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 14

29. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

30. At the time of inspection referenced in paragraph 14 above, the American Chemical Systems II, Inc. facility in Wichita had a quantity of one gallon containers with labels bearing "ACS Dual Q" and "EPA Registration No. 10324-177-71269" that was packaged, labeled, and released for shipment.

31. The "ACS Dual Q" quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained "(RTU)" in the product name.

32. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 15

33. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

34. At the time of inspection referenced in paragraph 14 above, the American Chemical Systems II, Inc. facility in Wichita had a quantity of 32 ounce containers with labels bearing "ACS Dual Q (RTU)" and "EPA Registration No. 10324-177-71269" that was packaged, labeled, and released for shipment.

35. The "ACS Dual Q (RTU)" quantity that was packaged, labeled, and released for shipment was misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained "(RTU)" in the product name.

36. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 16-38

37. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

38. At the time of inspection referenced in paragraph 14 above, documents showed the American Chemical Systems II, Inc. facility in Wichita on various dates had made twenty-three (23) separate shipments of quantities of one gallon containers with labels bearing "ACS Dual Q" and "EPA Registration No. 10324-177-71269".

39. The "ACS Dual Q" quantity that was shipped was misbranded inasmuch as the label on the product containers included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises and did not bear an accurate EPA Establishment Number.

40. Respondent on twenty-three (23) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Counts 39-40

41. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

42. At the time of inspection referenced in paragraph 14 above, documents showed the American Chemical Systems II, Inc. facility in Wichita on two dates had made two (2) separate shipments of quantities of 32 ounce containers with labels bearing "ACS Dual Q (RTU)" and "EPA Registration No. 10324-177-71269".

43. The "ACS Dual Q (RTU)" quantities that were shipped were misbranded inasmuch as the label on the product containers did not contain an accurate active ingredient statement, did not include an accurate description for application rates and times for effective disinfection, included a statement regarding use in federally inspected meat and poultry processing plants without including any directions for use for food processing premises, did not bear an accurate EPA Establishment Number, and contained "(RTU)" in the product name.

44. Respondent on two (2) occasions violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

Count 41

45. The facts stated in Paragraphs 10 through 16 above are herein incorporated.

46. At the time of inspection referenced in paragraph 14 above, a sample was taken for analysis from a container with a label bearing "ACS Dual Q (RTU)" and "EPA Registration No. 10324-177-71269" that was packaged, labeled, and released for shipment.

47. Analysis of the sample showed the percentage of active ingredients was significantly lower than the percentage required in the statement of composition for the pesticide's registration.

48. Respondent violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), by distributing or selling a 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 as a pesticide.

Section V

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties 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 Consent Agreement and 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 and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.
7. 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.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it has addressed the violations at American Chemical Systems II, Inc. set forth in Counts 1-41 above by suspending the supplemental registration of American Chemical Systems II, Inc. product "Dual Q" (EPA Registration No. 10324-177-71269).

10. Respondent agrees that, in full settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Eighty-Five Thousand Six Hundred and Forty Dollars (\$85,640) as set forth in paragraph 1 of the Final Order.

11. The effect of settlement described in paragraph 6, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9, above.

12. 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.

13. 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 full 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 Eighty-Five Thousand Six Hundred and Forty Dollars (\$85,640) 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-07-07-2013-0033, 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
11201 Renner Boulevard
Lenexa, Kansas 66219; and

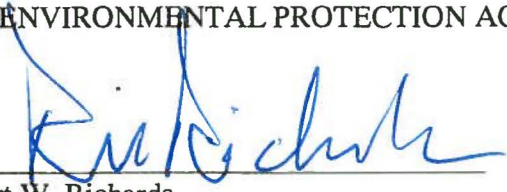
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

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 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

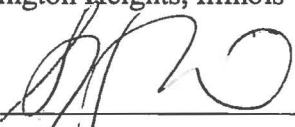
By 
Robert W. Richards
Assistant Regional Counsel
Office of Regional Counsel

Date 9/24/13

By 
Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date 9/26/13

RESPONDENT:
Mason Chemical Company
Arlington Heights, Illinois

By  _____

Title VP TECHNOLOGY & BUSINESS SERVICES

Date 9/17/13

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

By Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date 9/26/13

IN THE MATTER OF Mason Chemical Company, Respondent
Docket No. FIFRA-07-2013-0033

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

richards.robert@epa.gov

Copy by First Class Mail to Respondent:

Kim K. Burke/Partner
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Dated: 9/27/13

A handwritten signature in blue ink that reads "Kathy Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

Kathy Robinson
Hearing Clerk, Region 7