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ENVIRONMENTAL PROTECTION AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)
)
Chemical Sanitizing Systems, Ltd.)
847 Hawkeye Drive) Docket No. FIFRA-07-2009-0040
LeMars, Iowa 51031)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Chemical Sanitizing Systems, Ltd. (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 Chemical Sanitizing Systems, Ltd., a supplemental distributor and pesticide manufacturer, located at 847 Hawkeye Drive, LeMars, Iowa 51031. 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 Iowa.

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.

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, at all times relevant, operated a registered pesticide-producing establishment in LeMars, Iowa, under EPA Establishment No. 41628-IA-01.

11. Respondent applied for and received authorization to act as a supplemental distributor for a product registered to Vertex Chemical Corporation.

12. Vertex Chemical Corporation is the registrant for Vertex CSS-5 Bleach, EPA Registration No. 9616-10. Respondent was authorized to act as supplemental distributor of Vertex CSS-5 Bleach under the distributor product name Mark 300, EPA Registration Number

9616-10-41628. The supplemental distributor authorization was cancelled by Vertex Chemical Corporation on June 18, 2008. The active ingredient of Vertex CSS-5 Bleach is Sodium Hypochlorite with a label claim of 5.25 percent concentration.

13. On June 23, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) inspected the Respondent's LeMars, Iowa, facility. The IDALS representative collected copies of labels and 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, a IDALS representative returned to Respondent's 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 accepted for EPA Registration No. 9616-10.

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

21. Respondent violated Section 12(a)(1)(C) of FIFRA by 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).

22. Respondent violated Section 12(a)(1)(E) of FIFRA by 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 accepted for EPA Registration No. 9616-10.

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

28. Respondent violated Section 12(a)(1)(C) of FIFRA by 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. Respondent violated Section 12(a)(1)(E) of FIFRA by 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 accepted for EPA Registration No. 9616-10.

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

35. Respondent violated Section 12(a)(1)(C) of FIFRA by 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. Respondent violated Section 12(a)(1)(E) of FIFRA by 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 accepted for EPA Registration No. 9616-10.

41. Respondent acknowledged that the sample products were packaged, labeled, and released for shipment to Godfather's Pizza, 2515 Hamilton, Sioux City, Iowa, Invoice #370139 for one case containing four 1-gallon containers of Mark 300, on or about June 16, 2006.

42. Respondent violated Section 12(a)(1)(C) of FIFRA by 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. Respondent violated Section 12(a)(1)(E) of FIFRA by 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 accepted 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. Respondent violated Section 12(a)(1)(C) of FIFRA by 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. Respondent violated Section 12(a)(1)(E) of FIFRA by 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 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 conclusion 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 addresses 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 is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Twenty-Six Thousand Dollars (\$26,000.00) 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 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 Twenty-Six Thousand Dollars (\$26,000.00) 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-07-2009-0040, 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

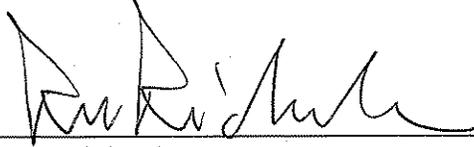
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this 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, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By 
Robert W. Richards
Assistant Regional Counsel

Date 9/28/09

for 
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

Date 9-30-09

RESPONDENT:
Chemical Sanitizing Systems, Ltd.
LeMars, Iowa

By 

Title President

Date 9-25-09

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

By 
Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

Date Sept. 30, 2009

IN THE MATTER OF Chemical Sanitizing Systems, Ltd, Respondent
Docket No. FIFRA-07-2009-0040

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 VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Chemical Sanitizing Systems, Ltd
847 Hawkeye Drive
LeMars, Iowa 51031

Dated: 9/30/09



Kathy Robinson
Hearing Clerk, Region.7