

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ENVIRONMENTAL APPEALS BOARD
WASHINGTON, D.C.**

IN THE MATTER OF:)
)
)

AMVAC Chemical Corporation)

Respondent.)
)
)

Docket No. FIFRA-HQ-2015-5007

ENVIR. APPEALS BOARD

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CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency ("EPA") and Respondent, AMVAC Chemical Corporation ("AMVAC"), agree to this action and consent to the entry of this Consent Agreement and Final Order ("CAFO") before taking testimony and without any adjudication of any issues of law or fact herein.

I. NATURE OF ACTION

1. This is a civil administrative action commenced under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or the "Act"), as amended, 7 U.S.C. § 136l(a) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. part 22. This action imposes civil penalties pursuant to section 14(a) of FIFRA.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken and without any admission of violation, or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

3. Kenneth C. Schefski, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative actions brought pursuant to section 14(a) of FIFRA.

4. Respondent is a corporation doing business in Newport Beach, California, with revenues in excess of \$10,000,000 in calendar year 2013.

III. PRELIMINARY STATEMENT

5. Respondent stipulates that Complainant has jurisdiction over the subject matter of this Consent Agreement.
6. Respondent waives any defenses it might have as to venue and jurisdiction.
7. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order, and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
8. Respondent neither admits nor denies the allegations and determinations set forth in Section V of this Consent Agreement.

IV. STATUTORY AND REGULATORY BACKGROUND

9. It shall be unlawful for any person to refuse to maintain or submit any records required by or under FIFRA. 7 U.S.C. §§ 136f and 136j(a)(2)(B).
10. The Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records ... as the Administrator determines to be necessary for the effective enforcement of this Act....” 7 U.S.C. § 136f(a).
11. 40 C.F.R. § 169.2(k) requires that producers of pesticide products retain records containing research data relating to registered pesticides, including all underlying raw data, as long as the registration is valid and the producer is in business.
12. The Administrator is authorized to assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA. The maximum statutory civil penalty is \$6,500 for each offense that occurred after March 15, 2004 through January 12, 2009, and \$7,500 for each offense occurring after January 12, 2009. 7 U.S.C. § 136l(a)(1).
13. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).
14. The term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient, used in producing a pesticide.” 7 U.S.C. § 136(w).

15. The term “sponsor” means “(1) A person who initiates and supports, by provision of financial or other resources, a study; (2) A person who submits a study to the EPA in support of an application for a research or marketing permit; or (3) A testing facility, if it both initiates and actually conducts the study.” 40 C.F.R. § 160.3.
16. The term “study” means “any experiment at one or more test sites, in which a test substance is studied in a test system under laboratory conditions or in the environment to determine or help predict its effects, metabolism, product performance (efficacy studies only as required by 40 C.F.R. §§ 158.400 or 161.640 as applicable), environmental and chemical fate, persistence and residue, or other characteristics in humans, other living organisms, or media.” 40 C.F.R. § 160.3.
17. The term “registrant” means “a person who has registered any pesticide pursuant to the provisions of [FIFRA].” 7 U.S.C. § 136(y).
18. The term “pesticide” means, in part: “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u).

V. EPA ALLEGATIONS AND DETERMINATIONS

19. Respondent is a “person” as that term is defined by FIFRA. 7 U.S.C. § 136(s).
20. Respondent is a “registrant” as that term is defined by FIFRA. 7 U.S.C. § 136(y).
21. Respondent is a “sponsor” as that term is defined by 40 C.F.R. § 160.3, of the following studies: EPA MRID No. 463614-01C, EPA MRID No. 470088-01C, EPA MRID No. 465754-01C, and EPA MRID No.468873-01C.
22. Respondent is the registrant of the following pesticide: Dicrotophos Technical, EPA Reg. No. 5481-447.
23. Dicrotophos Technical, EPA Reg. No. 5481-447 is intended to destroy, repel, or mitigate pests.
24. Therefore, Dicrotophos Technical, EPA Reg. No. 5481-447, is a “pesticide” as defined by FIFRA, 7 U.S.C. § 136(u).
25. On or about June 16, 2005, Respondent submitted the study EPA MRID No. 46573402 (conducted by Respondent), to EPA in support of the registration of Dicrotophos Technical, EPA Reg. No. 5481-447.
26. On or about June 30, 2005, Respondent submitted the study EPA MRID No. 46581901 (conducted by Respondent), to EPA in support of the registration of Dicrotophos Technical, EPA Reg. No. 5481-447.

27. On or about September 09, 2008, a duly authorized representative of the EPA conducted an inspection of Respondent's laboratory facility located at 4100 E. Washington Blvd., Los Angeles, California, 90023. The inspection was conducted to determine the facility's compliance with the FIFRA Good Laboratory Practice Standards regulations at 40 C.F.R. Part 160 and the Books and Records of Pesticide Production and Distribution regulations at 40 C.F.R. part 169.
28. The inspection conducted on or about September 09, 2008, of Respondent's laboratory facility located at 4100 E. Washington Blvd., Los Angeles, California, 90023, revealed that no raw data was available from the laboratory facility, the registrant, or the producer of Dicrotophos Technical, EPA Reg. No. 5481-447, to support the conclusions of the final reports for the studies listed in Paragraphs 25 and 26 above.
29. Therefore, Respondent's conduct described in Paragraph 28 above reveals that each failure to maintain records as required under FIFRA, 7 U.S.C. § 136f is a separate violation under FIFRA, 7 U.S.C. § 136j(a)(2)(B), as detailed in the chart below.

Count	Study	Violation
1	MRID No. 463614-01C	7 U.S.C. § 136j(a)(2)(B)
2	MRID No. 465754-01C	7 U.S.C. § 136j(a)(2)(B)

30. On or about December 23, 2005, Respondent submitted the studies EPA MRID No. 46716201 and EPA MRID No. 46716202 (both conducted by Respondent) to EPA in support of the registration of Dicrotophos Technical, EPA Reg. No. 5481-447.
31. In its application for a research or marketing permit, Respondent submitted to EPA signed compliance statements that the studies listed in Paragraph 30 above were conducted in compliance with the FIFRA Good Laboratory Practice Standards ("GLPS") at 40 C.F.R. § 160.
32. The inspection conducted on or about September 09, 2008, of Respondent's laboratory facility located at 4100 E. Washington Blvd., Los Angeles, California, 90023, revealed that Respondent failed to meet the personnel requirements at 40 C.F.R. § 160.29 and quality assurance unit requirements at 40 C.F.R. § 160.35 as specified in the signed compliance statements submitted to EPA with the studies listed in Paragraph 30.
33. Therefore, Respondent's conduct described in Paragraph 32 above reveals that each failure to meet the personnel requirements at 40 C.F.R. § 160.29 and quality assurance unit requirements at 40 C.F.R. § 160.35 resulted in Respondent providing false compliance statements to EPA; each a separate violation of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), as detailed in the chart below.

Count	Study	Violation
3	MRID No. 46716201	7 U.S.C. § 136j(a)(2)(Q)
4	MRID No. 46716202	7 U.S.C. § 136j(a)(2)(Q)

34. FIFRA, 7 U.S.C. § 136o(e), provides that the Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section entitled Importation of Pesticides and Devices.
35. 19 C.F.R § 12.110 specifies that, except as otherwise provided, the terms used in §§ 12.110 through 12.117 shall have the meanings set forth for those terms in FIFRA, as amended (7 U.S.C. § 136 *et seq.*), hereinafter referred to as “the Act”. The term Administrator shall mean the Administrator of the Environmental Protection Agency.
36. 19 C.F.R. § 12.112(a) specifies that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1 or “Notice of Arrival”), prior to the arrival of the shipment in the United States. Through the Notice of Arrival, the importer reports vital information to EPA such as the major active ingredients, quantity, port of entry, and points of contact. This information allows EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse effects on public health and the environment. The Notice of Arrival also provides contact information in the event of an emergency related to the movement of potentially toxic materials. Therefore, the Notice of Arrival is a report, required by FIFRA, which must be filed with the Administrator, prior to the arrival of a pesticide shipment in the United States.
37. In a letter dated November 30, 2011, Respondent disclosed to Complainant that Respondent had shipped pesticides into the United States, on two (2) separate occasions between May 12, 2011, and November 07, 2011. Respondent further disclosed that Respondent failed to submit to the Administrator Notices of Arrival prior to the arrival of the two (2) separate pesticide shipments in the United States.
38. FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act.
39. Therefore, the conduct described Paragraph 37 above, Respondent’s failure to submit to the Administrator Notices of Arrival prior to the arrival of the two (2) separate pesticide shipments into the United States, constitutes two (2) separate violations of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

Count	Notice of Arrival Entry #	Violation
5	E4J-0005310-4	7 U.S.C. § 136j(a)(2)(N)
6	E4J-0005308-8	7 U.S.C. § 136j(a)(2)(N)

VI. TERMS OF SETTLEMENT

40. Respondent consents to issuance of this Consent Agreement and to its terms, and consents, for the purposes of settlement, to the payment of the civil penalty set forth in Section VII.

41. Respondent's compliance with the terms of this CAFO shall fully settle all civil claims or civil causes of action alleged in Section V.
42. Compliance with this CAFO shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of FIFRA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
43. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to, resolve any criminal liability of Respondent.

VII. CIVIL PENALTY

44. Complainant has calculated a penalty pursuant to the statutory penalty factors listed in section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(3), the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (December 2009) and the Enforcement Response Policy for FIFRA Good Laboratory Practice Regulations (September 1991), Appendix G of the FIFRA ERP.
45. Based upon the information in Complainant's inspection of September 09, 2008, and Respondent's November 30, 2011, letter to EPA, referenced in Section V, and in accordance with the penalty adjustments allowed under the FIFRA ERP, Complainant has derived a penalty of \$34,320.
46. The penalty agreed upon by the Parties for settlement purposes is \$34,320.
47. Not more than sixty (60) calendar days following execution of the Final Order by the Environmental Appeals Board, Respondent shall either:
 - a) Dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of \$34,320 and bearing the notation, "AMVAC Chemical Corporation, Civil Penalty Docket No. FIFRA HQ-2015-5007" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. FIFRA-HQ-2015-5007
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

or

- b) Make an electronic payment by wire transfer in the amount of \$34,320 with the notation, "AMVAC Chemical Corporation, Civil Penalty Docket No. FIFRA HQ-2015-5007," by using the following instructions:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency."

48. To ensure a record of compliance with this Consent Agreement, Respondent shall forward a copy of the check or wire transfer to EPA to the attention of:

Brian Dyer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 2249A)
Washington, DC 20460-0001

and

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 1900C)
Washington, DC 20460-0001

49. If Respondent fails to pay the civil penalty of \$34,320 within sixty (60) calendar days of the execution of the Final Order, then Respondent shall pay an additional stipulated penalty of \$5,000 per calendar day, plus interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, as in effect on the date of execution of the Final Order, unless Complainant in writing excuses or mitigates the stipulated penalty. Complainant may excuse or mitigate the stipulated penalty if Complainant determines in its sole discretion, that failure to comply occurred despite Respondent's exercise of good faith and due diligence. If additional stipulated penalties are due, Complainant will dispatch to Respondent a demand letter via certified mail, return receipt requested, which specifies the total amount due and owed by Respondent, including any interest allowed by law. Within fourteen (14) calendar days following Respondent's receipt of such demand letter, Respondent shall pay the stipulated penalty in the manner specified in this Section.
50. Failure to remit the civil penalty, or any stipulated penalty plus interest provided herein, may result in this matter being forwarded to the United States Department of Justice to recover such amount by action in federal court under section 14(a)(5) of FIFRA. 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

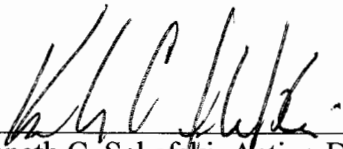
51. This civil penalty is not deductible for federal tax purposes.

VIII. OTHER MATTERS

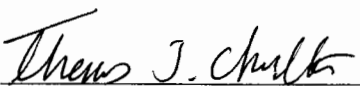
52. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and with other federal, state, tribal, and local laws and regulations.
53. This CAFO shall bind both Parties. This includes each Party's officers, directors, employees, successors, and assigns. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized to represent and bind the Party whom he or she claims to represent.
54. This CAFO shall bind the Parties in full effect upon execution of the Final Order by EPA's Environmental Appeals Board.
55. Respondent's obligations under this CAFO shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section VII of the Consent Agreement in accordance with the Final Order.
56. Each Party agrees to bear its own costs and attorney fees in this matter.

WE AGREE TO THIS:

FOR COMPLAINANT:


Kenneth C. Schefski, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

2/6/2015
Date:

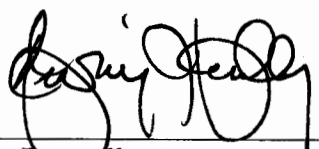

Thomas Charlton, Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

1/29/15
Date:

FOR RESPONDENT:


Cindy Baker-Smith, Senior Vice President
AMVAC Chemical Corporation

Jan 15, 2015
Date:


Tim Donnelly, Attorney
AMVAC Chemical Corporation

1.15.2015
Date: