



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 9, 2013

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL: No.7009 1680 0000 7668 1728
RETURN RECEIPT REQUESTED

Mr. Greg Hemmingsen
The CISCO Companies
602 N. Shortridge Rd.
Indianapolis, Indiana 46219

Consent Agreement and Final Order In the Matter of
The CISCO Companies. Docket No. FIFRA-05-2013-0020

Mr. Hemmingsen:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on September 9, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,200 is to be paid in the manner described in paragraph 34 through 36. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by October 9, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
The Cisco Companies)
Indianapolis, Indiana,)
)
)
Respondent.)

Docket No. FIFRA-05-2013-0020
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)



Consent Agreement and Final Order
Commencing and Concluding a Proceeding

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is The Cisco Companies, a corporation doing business in Indianapolis, Indiana.
4. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its rights to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its rights to appeal this CAFO

8. Respondent certifies that the pesticidal products that are the subject of this CAFO are currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 1136j(a)(1)(A) states that it is unlawful for any person in any state to distribute or sell to an person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

10. The term “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.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

11. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest. Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

12. A “pest” is an insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

13. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sell the substance claims, states

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.
40 C.F.R. §152.15(a)(1).

14. The Administrator of EPA may assess a civil penalty against any retailer or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

General Allegations

15. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. §136(s).

16. Respondent is a distributor.

17. Respondent owned or operated a place of business located at 602 North Shortridge Road, Indianapolis, Indiana, during the calendar year 2012.

18. On September 25, 2012, an inspector employed by Michigan Department of Agriculture and Rural Development, and authorized to conduct inspections under FIFRA, conducted an inspection at Battle Creek Farm Bureau Co-op, 295 Hamblin Avenue, Battle Creek, Michigan.

19. During the September 25, 2012 inspection, the inspector collected physical sample of Pond₂O Blue Pond Dye with Suspend Technology, advertising literature for Pond₂O Blue Pond Dye with Suspend Technology and Pond₂O Copper Sulphate and an invoice showing the shipment of Pond₂O Blue Pond Dye with Suspended Technology and Pond₂O Copper Sulfate Granular Algae Control by Respondent to Battle Creek Farm Bureau Co-op.

20. Respondent’s advertising literature for Pond₂O Blue Pond Dye collected on September 25, 2012 states: “Prevention and suppression of weeds and algae in shallow bodies of water” and “...stays in suspension inhibiting new aquatic growth.”

21. Respondent's web site at www.ciscoseeds.com states, "The Pond₂O line includes beautiful, natural looking blue and black colorants with suspend technology to suppress weed growth with dyes that stay in suspension..."

22. Respondent's advertising literature for Pond₂O Copper Sulphate Granular Algae Control collected on September 25, 2012 states: "Treatment for killing floating, submerged and planktonic algae in ponds/lakes."

23. Pond₂O Blue Pond Dye is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. Pond₂O Copper Sulphate Granular Algae Control is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Alleged Violations

Count 1

25. Complainant incorporates by reference the allegations contained in paragraphs 9 through 24 of this CAFO.

26. Respondent distributed or sold Pond₂O Blue Pond Dye to Battle Creek Farm Bureau Co-op on or about August 30, 2012.

27. Pond₂O Blue Pond Dye was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, during calendar year 2012.

28. Respondent's distribution or sale of the unregistered pesticide Pond₂O Blue Pond Dye constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 2

29. Complainant incorporates by reference allegations contained in paragraphs 9 through 24 of this CAFO.

30. Respondent distributed or sold Pond₂O Copper Sulphate Granular Algae Control on or about August 30, 2012.

31. Pond₂O Copper Sulphate Granular Algae Control was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, during calendar year 2012.

32. Respondent's distribution or sale of the unregistered pesticide Pond₂O Copper Sulphate Granular Algae Control constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$7,200. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009, specifically the factors addressing Respondent's significantly reduced culpability and good faith effort to comply with FIFRA expeditiously after EPA disclosed the violation to Respondent, as well as the cooperation demonstrated during settlement negotiations.

34. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,200 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

35. The check must note "In the Matter of The Cisco Companies" and the docket number of this CAFO.

36. A transmittal letter stating Respondent's name, complete address, the case title and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Perdomo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

38. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

41. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

42. This CAFO does not affect Respondent's responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

43. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

44. The terms of this CAFO bind Respondent, its successors, and assigns.

45. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

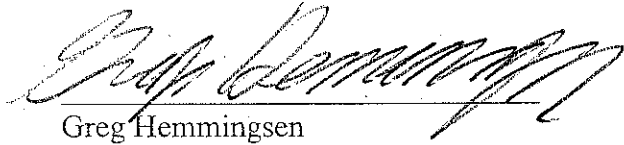
46. Each party agrees to bear its own costs and attorney fees in this action.

47. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
The Cisco Companies

The Cisco Companies, Respondent

8-09-13
Date

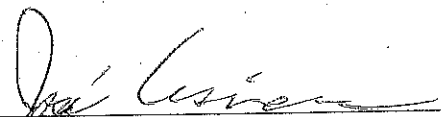


Greg Hemmingsen
~~Chief Executive Officer~~
Chairman

In the Matter of:
The Cisco Companies

United States Environmental Protection Agency, Complainant

8/30/13
Date


for Margaret M. Guerriero
Director
Land and Chemicals Division

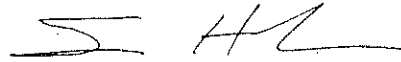
In the Matter of:
The Cisco Companies
Docket No. FIFRA-05-2013-0020

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-4-13

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



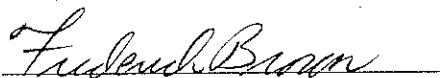
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving The Cisco Companies, was filed on September 9, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7668 1728, a copy of the original to the Respondents:

Mr. Greg Hemmingsen
The CISCO Companies
602 N. Shortridge Rd.
Indianapolis, Indiana 46219

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0020

