

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 Colcide, Inc., a pesticide registrant located at 2697 N. Ocean Blvd, Apt. F703, Boca Raton, Florida, 33431. 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 Maryland.

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 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).

6. 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).

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.

Section IV

GENERAL FACTUAL ALLEGATIONS

8. Respondent is, and was at all times, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and at the time of the alleged violations below, a corporation qualified to do business in the state of Maryland.

9. On October 21, 2010, a representative of the Kansas Department of Agriculture conducted a routine producer establishment inspection at the Illinois Tool Works, Inc., d/b/a ITW Dymon facility in Olathe, Kansas.

10. The inspection was conducted to determine the compliance status of Respondent, Illinois Tool Works, Inc., d/b/a ITW Dymon, and any other regulated parties with the requirements of FIFRA.

VIOLATIONS

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

Count 1

12. The facts stated in Paragraphs 1 through 11 above are herein incorporated.

13. At the time of inspection referenced in Paragraph 9 above, a sample was taken from Lot #C46201 in the inventory at the Illinois Tool Works, Inc., d/b/a ITW Dymon facility in Olathe, Kansas, on October 21, 2010, for analysis from a container with a label bearing "Medaphene Scrubs Disinfectant Deodorizing Wipes" and "EPA Registration No. 55195-4-11694" that was packaged, labeled, and released for shipment.

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

15. Colcide, Inc., is the registrant for "Medaphene Scrubs Disinfectant Deodorizing Wipes", EPA Registration No. 55195-4-11694. Illinois Tool Works, Inc., d/b/a ITW Dymon is authorized to act as a supplemental distributor of "Medaphene Scrubs Disinfectant Deodorizing Wipes."

16. 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.

Counts 2-5

17. The facts stated in Paragraphs 1 through 16, above, are herein incorporated.

18. At the time of inspection referenced in Paragraph 9 above, documents showed the Illinois Tool Works, Inc., d/b/a ITW Dymon facility in Olathe, Kansas, had made four (4) separate shipments; on September 29, 2010; October 1, 2010 (two shipments); and October 8, 2010; of containers from Lot #C46201 in the ITW Dymon facility inventory with labels bearing “Medaphene Scrubs Disinfectant Deodorizing Illinois Tool Works, Inc., d/b/a ITW Dymon Wipes” and “EPA Registration No. 55195-4-11694”.

19. 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 CAFO 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 CAFO.
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 CAFO without the necessity of a formal hearing and to bear their respective costs and attorney’s fees.
6. This CAFO 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 CAFO 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 CAFO and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this CAFO that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

10. 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.

11. 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 CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

12. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. 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. § 136*l*, 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 mitigated civil penalty for the violations cited herein, in the amount of Three Thousand Dollars (\$3,000) 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-07-07-2014-0018, 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 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 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 9/19/14

By Karen Flourney
Karen Flourney
Director
Water, Wetlands and Pesticides Division

Date 9/22/14

RESPONDENT:
COLCIDE, INC.

By Howard Martinus

Title President

Date 9/9/14

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

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

Date 9-24-14

IN THE MATTER OF Colcide, Inc., Respondent
Docket No. FIFRA-07-2014-0018

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:

Kathryn A. Larkins
Shook, Hardy & Bacon LLP
2555 Grand Blvd.
Kansas City, Missouri 64108-2493

Dated: 9/24/14



Kathy Robinson
Hearing Clerk, Region 7