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U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:)	Docket No. FIFRA- 09 - 2011 - 0013
)	
Apex Chemical Corporation,)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
Respondent.)	40 C.F.R. §§ 22.13(b) & 22.18(b)
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX and Apex Chemical Corporation ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a), against Respondent for the distribution or sale of a pesticide that was adulterated, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136i(a)(1)(E).

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, EPA Region IX, who has been duly delegated the authority to initiate administrative proceedings under Section 14 of FIFRA and to sign consent agreements settling such proceedings.

3. Respondent is an Arizona corporation with corporate offices located at 10105 East Via Linda, Suite 103 PMB 400 in Scottsdale, Arizona.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides, in part, that a “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

6. Section 2(c) of FIFRA, 7 U.S.C. 136(c), provides that the term “adulterated” applies to any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.

7. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), provides that the term “labeling” means all labels and all other written, printed, or graphic matter accompanying the pesticide at the time; or to which reference is made on the label or in literature accompanying the pesticide.

8. Section 2(a)(1) of FIFRA, 7 U.S.C. 136(a)(1), provides that the term “active ingredient” means an ingredient which will prevent, destroy, repel, or mitigate any pest.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that 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.

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell any pesticide that is adulterated or misbranded.

C. ALLEGED VIOLATION

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

12. At all times relevant to this CAFO, Respondent produced the product, Arizona Formula Chlorinating Liquid, at its facility located in Scottsdale, Arizona (EPA Producing Est. No. 69775-AZ-001).

13. Arizona Formula Chlorinating Liquid is a "pesticide," as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered with EPA pursuant to Section 3 of FIFRA (EPA Reg. No. 69775-1).

14. At all times relevant to this CAFO, the "labeling" of the pesticide, Arizona Formula Chlorinating Liquid, stated that it contained 10% of the "active ingredient," sodium hypochlorite, as those terms are defined by Sections 2(p)(2) and (a)(1) of FIFRA, 7 U.S.C. §§ 136(p)(2) and (a)(1).

15. At all times relevant to this CAFO, Respondent "distributed or sold" the pesticide, Arizona Formula Chlorinating Liquid, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at its facility located in Phoenix, Arizona.

16. On August 10, 2009, an Arizona Department of Agriculture inspector collected a sample of the pesticide, Arizona Formula Chlorinating Liquid, at Respondent's facility located in Phoenix, Arizona.

17. A subsequent laboratory analysis of the sample found that the pesticide, Arizona Formula Chlorinating Liquid, contained 8.06% rather than 10% of the active ingredient, sodium hypochlorite, as stated on the labeling, and was therefore "adulterated," as that term is defined by Section 2(c) of FIFRA, 7 U.S.C. § 136(c).

18. Consequently, Respondent's distribution or sale of the pesticide, Arizona Formula Chlorinating Liquid, on August 10, 2009 constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which makes it unlawful for any person in any State to distribute or sell a pesticide that is adulterated or misbranded.

19. The Enforcement Response Policy for FIFRA dated December 2009 provides for a penalty of \$5,100 for this violation.

D. RESPONDENT'S ADMISSIONS

20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over

Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

21. Respondent agrees to the assessment of a penalty in the amount of **FOUR THOUSAND AND EIGHTY DOLLARS (\$4,080)** as final settlement of the civil claims against Respondent arising under FIFRA, as alleged in Section I.C. of this CAFO.

22. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Overnight Mail:

U.S. Bank

1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

In addition, a copy of each check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number to:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Nancy Yoshikawa
Pesticides Office
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

23. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

24. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 21 by the date specified in Paragraph 22, then Respondent shall pay to EPA a stipulated penalty of \$250 per day for each day that payment is late, in addition to the assessed penalty. Stipulated penalties are due and payable upon EPA's written request. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:

a.. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by the deadline specified in Paragraph 22. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the

Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.12(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

25. In executing this CAFO, Respondent certifies that it is no longer distributing or selling any pesticide that is adulterated.

G. RETENTION OF RIGHTS

26. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violation and facts specifically alleged in Section I.C. of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C. of this CAFO.

27. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

28. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

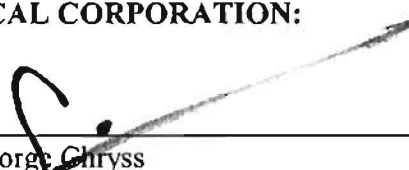
J. BINDING EFFECT

30. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO:

31. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, APEX CHEMICAL CORPORATION:

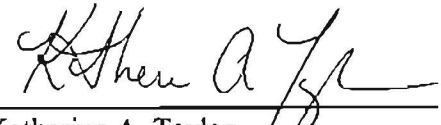
5/11/11
DATE



George Chryss
President
Apex Chemical Corporation

FOR COMPLAINANT, EPA REGION IX:

7/18/11
DATE

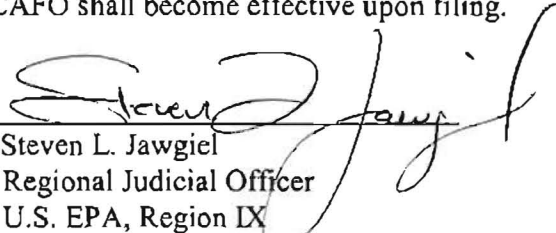


Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent, having entered into the forgoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-247-13) be entered,
and that Respondent shall pay a civil administrative penalty in the amount of FOUR
THOUSAND AND EIGHTY DOLLARS (\$4,080) in accordance with the terms and conditions
set forth in the Consent Agreement. This CAFO shall become effective upon filing.

07/20/11
DATE



Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-09-2011- 0013 has been filed with the Region 9 Hearing Clerk and that a copy was sent, certified mail to:

Mr. George Chryst
President
Apex Chemical Corporation
10105 E. Via Linda, Ste 103, PMB 400
Scottsdale, AZ 85258

7/21/11

DATE



Bryan Goodwin
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7010 2780 0000 8388 5692

Date: JUL 23 2011

Mr. George Chryss, President
Apex Chemical Corporation
10105 E. Via Linda, Ste 103, PMB 400
Scottsdale, AZ 85258

Re: Consent Agreement and Final Order
Docket No.: FIFRA-09-2011- 0013

Dear Mr. Chryss:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Apex Chemical Corporation. The terms of the CAFO require the payment of \$4,080 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Nancy Yoshikawa at 415-972-3535.

Sincerely,

A handwritten signature in cursive script, appearing to read "Katherine A. Taylor".

Katherine A. Taylor, Associate Director of Agriculture
Communities and Ecosystems Division

cc: Jack Peterson, Arizona Department of Agriculture