



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY - 3 2018

REPLY TO THE ATTENTION OF:

LC-17J

VIA EMAIL

Mr. Abhi Patel
Director of Operations
Cater Chemical Corporation
30 Monaco Drive
Roselle, Illinois 60172

abhi@caterchem.com

Re: Consent Agreement and Final Order - In the Matter of: Cater Chemical Corporation, Roselle, Illinois FIFRA-05-2018-0026

Mr. Patel:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above-referenced case. This document was filed on May 3, 2018, 2018, with our Regional Hearing Clerk.

The civil penalty in the amount of \$4,990 is to be paid in the manner described in paragraphs 35-36 of the CAFO. Please be certain that your company's name and the docket number of this case are written on both the transmittal letter and on the check, or in the comments field if you are paying by electronic funds transfer. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter. Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

cc: Terence Stanuch, C-14J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|-----------------------------|---|---|
| In the Matter of: |) | Docket No. FIFRA-05-2018-0026 |
| |) | |
| Cater Chemicals Corporation |) | Proceeding to Assess a Civil Penalty |
| Roselle, Illinois, |) | Under Section 14(a) of the Federal |
| |) | Insecticide, Fungicide, and Rodenticide |
| Respondent. |) | Act, 7 U.S.C. § 136l(a) |



Consent Agreement and Final Order

Preliminary Statement

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 Cater Chemicals Corporation, a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right 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 right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “produce” as to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repack, label, relabel or otherwise change the container of any pesticide. *See also* 40 C.F.R. § 167.3.

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as a person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. *See also* 40 C.F.R. § 167.3.

12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “any 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 the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1). *See also* 40 C.F.R. § 152.5.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying,

repelling, or mitigating any pest.” *See also* 40 C.F.R. § 152.3.

14. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as any site where a pesticide or pesticidal product is produced, or held, for distribution or sale. *See also* 40 C.F.R. § 167.3.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” 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.

16. Pursuant to its authority under Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), the EPA has promulgated regulations governing the registration of pesticide-producing establishments at 40 C.F.R. Part 167.

17. 40 C.F.R. § 167.20(a) states, any establishment where pesticidal product is produced must be registered with the EPA.

18. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states, no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA.

19. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c) in pertinent part, requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides (and, if applicable, active ingredients used in producing pesticides): which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year.

20. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, “EPA Form 3540-16, *Pesticide Report for Pesticide-Producing and Device-Producing Establishments* (hereinafter

referred to as the “Report”) requires, *inter alia*, identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the “*Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments*” provides additional detail regarding information required on the Form.

21. 40 C.F.R. § 167.85(d) requires an initial pesticide-production report to be submitted no later than 30 days after the registration of an establishment and then filed annually thereafter on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

22. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136(e).

23. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$19,057 for each offense occurring after November 2, 2015.

Factual Allegations and Alleged Violations

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

25. Respondent is a “producer” as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

26. At all times relevant to this CAFO, Respondent owned or operated a facility located at 30 Monaco Drive, Roselle, Illinois (the Facility).

27. At all times relevant to this CAFO, Respondent's Facility was registered as an active EPA Pesticide-Producing Establishment, identified by EPA Establishment Number (EPA Est. No.) 064787-IL-002. This EPA Establishment was registered on April 25, 2016.

28. Respondent failed to submit an initial Report to EPA for its Facility within 30 days after it was registered, as required by 40 C.F.R. § 167.85(d).

29. Respondent submitted an initial Report to EPA for its Facility on December 1, 2017.

30. Respondent also failed to submit an annual Report to EPA for its Facility for calendar year 2016 by March 1, 2017, as required by 40 C.F.R. § 167.85(d).

31. Respondent submitted an annual Report to EPA for its Facility for calendar year 2016 on January 9, 2018.

32. Respondent's failure to submit to EPA an initial Report within 30 days after its Facility was registered, and an annual Report for its Facility for calendar year 2016 by March 1, 2017, constitute violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

33. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), subjects Respondent to this Order assessing a civil penalty pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

34. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and EPA's FIFRA Enforcement Response Policy (December 2009), Complainant determined that an appropriate civil penalty to settle this action is \$4,990. 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, the gravity of the violation, and Respondent's history of a prior FIFRA violation.

35. Within thirty (30) days after the effective date of this CAFO, Respondent agrees to pay a civil penalty of four thousand nine hundred and ninety dollars (\$4,990) for the FIFRA violations alleged herein, by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000;

or, for checks sent by express mail, by sending a certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

36. Respondent must also send a notice of payment that: (1) states Respondent's name and the case docket number; and (2) includes a copy of the cashier's or certified check, to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

38. If Respondent does not pay timely the civil penalty, 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). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

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 fifteen dollar (\$15) handling charge each month that any portion of the penalty is more than thirty (30) days past due. In addition, Respondent must pay a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

General Provisions

40. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y and all of its implementing regulations.

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

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

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

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

45. This CAFO constitutes a final order pursuant to Section 22.31 of the Consolidated Rules, 40 C.F.R. § 22.31.

46. The terms of this CAFO shall apply to and be binding upon Respondent, its officers, directors, servants, employees, agents, successors and assigns.

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

48. Each party agrees to bear its own costs and attorneys' fees in this action.

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

50. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules" (dated March 27, 2015), the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: stanuch.terry@epa.gov (for Complainant) and abhi@caterchem.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

51. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, in accordance with Section 22.18(b)(3) of the Consolidated Rules, 40 C.F.R. § 22.18(b)(3).

-Signature pages follow-

In the Matter of: Cater Chemicals Corporation, Roselle, Illinois

Cater Chemicals Corporation, Respondent

4/10/18

Date



Abhi Patel
Director of Operations
Cater Chemicals Corporation
Roselle, Illinois

In the Matter of: Cater Chemicals Corporation, Roselle, Illinois

United States Environmental Protection Agency, Complainant

4/27/2018
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of: Cater Chemicals Corporation, Roselle, Illinois
Docket No. FIFRA-05-2018-0026

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, United States Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

May 2, 2018
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Cater Chemical Corporation
Docket Number: **FIFRA-05-2018-0026**

CERTIFICATE OF SERVICE

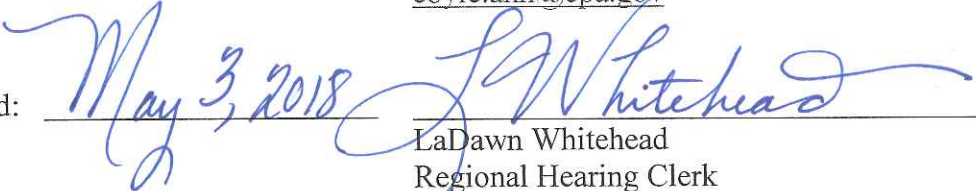
I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2018-0026**, which was filed on _____, in the following manner to the following addressees:

Copy by E-mail to Attorney for Complainant: Mr. Terence Stanuch
stanuch.terry@epa.gov

Copy by E-mail to Respondent: Mr. Abhi Patel
abhi@caterchem.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: May 3, 2018


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5