



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

NOV 21 2019

REPLY TO THE ATTENTION OF

ECP-17J

VIA EMAIL

Ms. Cindy Schroeder  
Arrow Chemical Products, Inc.  
cindy@arrowchemicalproducts.com

Consent Agreement and Final Order

In the Matter of Arrow Chemical Products, Inc., Docket Number

**FIFRA-05-2020-0004**

Ms. Schroeder:

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 November 21, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$30,000 is to be paid in the manner described in paragraph 60. Please be certain that the docket number is included in the comment or description field of the electronic funds transfer. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess  
Pesticides and Toxics Compliance Section

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of: ) Docket No. FIFRA-05-2020-0004  
)  
Arrow Chemical Products, Inc. ) Proceeding to Assess a Civil Penalty  
Detroit, Michigan, ) Under Section 14(a) of the Federal  
Respondent. ) Insecticide, Fungicide, and Rodenticide  
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 Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Arrow Chemical Products, Inc. (Arrow), a corporation doing business in the State of Michigan.

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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

### **Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

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

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

13. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, are adequate to protect health and the environment. See also 40 C.F.R. § 156.10(i).

14. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, is adequate to protect health and the environment. See also 40 C.F.R. Part 156, Subparts D and E.

15. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has

submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

16. 40 C.F.R. § 152.132 also specifies that a 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.

17. 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).

18. 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." 7 U.S.C. § 136(gg).

19. A "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

20. A “pest” is 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

21. “Fungus” is defined, in pertinent part, as “any non-chlorophyll-bearing thallophyte (that is any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria. 7 U.S.C. § 136(k).

22. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states 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 \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$19,936 for each offense occurring after November 2, 2015 and assessed after January 15, 2019. See 84 Fed. Reg. 2056 (February 6, 2019).

### **Factual Allegations and Alleged Violations**

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

24. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 2067 Sainte Anne Street, Detroit, Michigan 48216.

25. On or about April 27 and May 1, 2017, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Arrow’s facility, located in Detroit, Michigan.

### **SCUM REMOVER & BRIGHTENER**

26. During the inspections, the inspector collected a bin label for the product **Scum**

**Remover & Brightener.**

27. The bin label states “REMOVES: Soap Scum • Mold • Mildew • Algae • Moss” and “Scum Remover & Brightener is a fast acting, concentrated formula that cuts through soap scum, dirt, mold and mildew with ease.”

28. Arrow also maintains a website with information about its products at [www.Arrowchemicalproducts.com](http://www.Arrowchemicalproducts.com).

29. On or about April 18, 2017, Arrow’s website displayed a picture of the product with the label on it and described **Scum Remover & Brightener** as: “REMOVES: Soap Scum • Mold • Mildew • Algae • Moss” and “Scum Remover & Brightener is a fast acting, concentrated formula that cuts through soap scum, dirt, mold and mildew with ease.”

30. On or about March 4, 2019, Arrow’s website still displayed a picture of the product with the label on it and describes **Scum Remover & Brightener** as: “REMOVES: Soap Scum • Mold • Mildew • Algae • Moss” and “Scum Remover & Brightener is a fast acting, concentrated formula that cuts through soap scum, dirt, mold and mildew with ease.”

31. **Scum Remover & Brightener** is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended for preventing, destroying, repelling, or mitigating certain pests.

32. **Scum Remover & Brightener** is not a registered pesticide as required by Section 3 of FIFRA and its underlying regulations.

33. During the inspection, the inspector collected 14 shipping records showing that **Scum Remover & Brightener** was distributed or sold to various persons from January 26, 2016 through April 21, 2017.

34. The inspector confirmed that the bin label that she collected for **Scum Remover & Brightener** at the time of inspection was a true and accurate representation of the label that

was on the product for all 14 distributions or shipments from January 26, 2016 through April 21, 2017.

**PINE-O-SAN, EPA Reg. No. 11668-13-5747**

35. On or about September 14, 1988, EPA registered pesticide product, **EL PINOL 60** for Registrant, T&R Chemicals, Inc.

36. EPA assigned **EL PINOL 60**, EPA Registration Number (Reg. No.) 11668-13.

37. On or about July 21, 2003, the EPA accepted an amended label for **EL PINOL 60**, EPA Reg. No. 11668-13.

38. On November 23, 2011, the EPA accepted a notification to the label for **EL PINOL 60**, EPA Reg. No. 11668-13, which included all the changes made to the July 21, 2003 accepted label.

39. On or about August 28, 1998, T&R Chemicals, Inc. and Arrow submitted a Notice of Supplemental Distribution of a Registered Pesticide Product (Notice of Supplemental Distribution) to the EPA for **EL PINOL 60**, EPA Reg. No. 11668-13.

40. The Notice of Supplemental Distribution identified Arrow as a distributor of **EL PINOL 60**, EPA Reg. No. 11668-13.

41. The Notice of Supplemental Distribution identified the distributor product name for **EL PINOL 60** as **Pine-O-San**.

42. **Pine-O-San** was assigned EPA Reg. No. 11668-13-5747.

43. **Pine-O-San**, EPA Reg. No. 11668-13-5747, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

44. The distributor, Arrow, is an agent of the registrant, T&R Chemicals, Inc., for all intents and purposes under 40 C.F.R. § 152.132 with respect to the distributor pesticide product, **Pine-O-San**, EPA Reg. No. 11668-13-5747.

45. On August 3, 2016, the EPA cancelled the registration of **EL PINOL 60**, EPA Reg. No. 11668-13, along with all its supplemental distributor products, including **Pine-O-San**, EPA Reg. No. 11668-13-5747, for nonpayment of the 2016 registration maintenance fees for the pesticide. See 81 Fed. Reg. 68013 (October 3, 2016).

46. During the April/May 2016 inspection, the inspector collected a bin label for **Pine-O-San**, EPA Reg. No. 11668-13-5747.

47. The bin label for **Pine-O-San**, EPA Reg. No. 11668-13-5747, did not include the language that was on the label accepted by the EPA on July 7, 2003 as follows:

a. In the “Precautionary Statements” section, the signal word “Warning” did not appear immediately before the statement “Causes substantial, but temporary eye injury.”

b. In the “Environmental Hazards” section, the language “This pesticide is toxic to fish” did not appear on the label.

c. In the “Storage and Disposal” section, the language “Do not contaminate water, food, or feed by storage or disposal” did not appear directly following the heading “STORAGE AND DISPOSAL.”

d. In the “First Aid Statement,” “IF SWALLOWED” section, the language “unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person” did not appear after “Do not induce vomiting.”

e. In the “First Aid Statement,” “IF ON SKIN OR CLOTHING” section, the language “Rinse skin immediately” was replaced by “Wash skin immediately.”

f. In the “First Aid Statement” section, the language “Have the product container or label with you when calling a poison control center or doctor, or going for treatment” did not appear on the label.

g. Any references to “disinfection” was required to be deleted from the label but



the label includes the claim “DISINFECTANT” under the name of the product and “DISINFECTION FOR CLEANING AND DEODORIZING” under the “Directions for Use” section.

h. In the “Directions for Use” section, the sentence “Remove solution by mop or sponge and let stand for 10 minutes” should not appear on the label.

48. During the inspection, the inspector collected 13 shipping records showing that **Pine-O-San**, EPA Reg. No. 11668-13-5747, was distributed or sold to various persons from April 26, 2016 through April 20, 2017.

49. The inspector confirmed that the bin label that she collected for **Pine-O-San**, EPA Reg. No. 11668-13-5747, at the time of inspection was a true and accurate representation of the label that was on the product for all 13 distributions or shipments from April 26, 2016 through April 20, 2017.

#### Counts 1 through 14

50. The preceding paragraphs are incorporated by reference.

51. From January 26, 2016 through April 21, 2017, Respondent distributed or sold the unregistered pesticide, **Scum Remover & Brightener**, to various persons on 14 separate occasions.

52. Respondent’s distribution or sale of the unregistered pesticide, **Scum Remover & Brightener**, on 14 separate occasions, constitutes 14 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

53. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on 14 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each of the 14 violations.

**Counts 15-27**

54. The preceding paragraphs are incorporated by reference.

55. From April 26, 2016 through April 20, 2017, Respondent distributed or sold **Pine-O-San**, EPA Reg. No. 11668-13-5747, to various persons on 13 separate occasions that was misbranded.

56. Respondent's distribution or sale of the misbranded pesticide, **Pine-O-San**, EPA Reg. No. 11668-13-5747, on 13 separate occasions, constitutes 13 separate unlawful acts pursuant to Section 12(a)(1)(E), 7 U.S.C. §136j(a)(1)(E).

57. Respondent's violation of Section 12(a)(1)(E), 7 U.S.C. §136j(a)(1)(E), on 13 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each of the 13 violations.

**Civil Penalty and Other Relief**

58. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

59. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009 and Respondent's ability to continue in business, Complainant has determined the appropriate penalty to settle this action is \$30,000.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$30,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Arrow Chemical Products, Inc.," and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

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

Claudia Niess (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

62. If Respondent does not pay the civil penalty in a timely manner, 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

63. 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**

64. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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: [omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov) (for Complainant), and [cindy@arrowchemicalproducts.com](mailto:cindy@arrowchemicalproducts.com) (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

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

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

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

70. 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.

71. Each party agrees to bear its own costs and attorney's fees, in this action.
72. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:  
Arrow Chemical Products, Inc.,**

**Arrow Chemical Products, Inc., Respondent**

10-25-19  
Date

*Cindy Schroeder*  
Cindy Schroeder, President

**In the Matter of:  
Arrow Chemical Products, Inc.**

**United States Environmental Protection Agency, Complainant**

11/13/2019  
Date

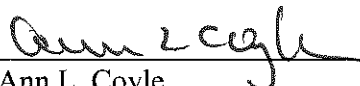
Michael D. Harris  
Michael D. Harris, Director  
Enforcement & Compliance Assurance Division

**In the Matter of:**  
**Arrow Chemical Products, Inc.**  
**Docket No.**  
FIFRA-05-2020-0004

**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.

11/20/19  
Date

  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5



Consent Agreement and Final Order  
In the Matter of: Arrow Chemical Products, Inc.  
Docket Number: **FIFRA-05-2020-0004**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2020-0004, which was filed on November 21, 2019, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant: Ms. Nidhi K. O'Meara  
omeara.nidhi@epa.gov

Copy by E-mail to  
Respondent: Ms. Cindy Schroeder  
cindy@arrowchemicalproducts.com

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

Dated: November 21, 2019

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