



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 02 2014

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Joseph C. Barker, Jr.  
President  
ENCEE Chemical Sales, Inc.  
1120 D Street  
Highway 17 North  
Bridgeton, North Carolina 28519

Re: ENCEE Chemical Sales, Inc.  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2013-3015(b)

Dear Mr. Barker:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Mark Bloeth of the EPA Region 4 staff at (404) 562-9013.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney", with a long horizontal flourish extending to the right.

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
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HEARING CLERK

In the Matter of: )  
)  
ENCEE Chemical Sales, Inc. )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2013-305(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is ENCEE Chemical Sales, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony; the making of any argument; or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. The authority to take action under Section 114(a) of FIFRA, 7 U.S.C. § 136(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the Regional Administrators by the EPA Delegation 5-14, last updated on May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondents.
4. Respondent is ENCEE Chemical Sales, Inc., 1120 D Street, Highway 17 North, Bridgeton, North Carolina 28519.
5. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

## **III. Specific Allegations**

6. On information or belief, on or prior to January 25, 2013, Respondent provided a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to its import broker, Kuehne & Nagel, and directed that the broker file the NOA with the U.S. Customs and Border Protection (USCBP) to account for the Respondent's importation of 29,754 pounds of unregistered Sodium Cyanide into the Port of Wilmington, North Carolina, originating from Germany.

7. The aforementioned NOA that Respondent provided to Kuehne and Nagel was not an original but rather a photocopy of an NOA that had been previously completed, signed and submitted by Respondent to the USCBP in 2009 and signed by an EPA Region 4 official.
8. The aforementioned copy of the 2009 NOA also reflected that the 29,754 pounds of Sodium Cyanide was not intended for pesticidal use and had the following data omissions or errors: no quantity amount (block 9), no valid entry number (block 14), no entry date (block 15), no date signed by importer (block 20), and no date stamp by the EPA in Part II of the form.
9. On information or belief, on or about January 25, 2013, Respondent's broker, Kuehne & Nagel, submitted the copy of the NOA to USCBP to account for the Respondent's purported importation of 29,754 pounds of unregistered Sodium Cyanide into the Port of Wilmington, North Carolina, originating from Germany.
10. On information or belief, on or about February 4, 2013, Respondent provided a second more complete copy of the NOA to Kuehne & Nagel, who in turn submitted it to USCBP now reflecting the following updated data: "270" Drums, Entry Number "101-3273630-7", Entry Date of "1/25/13", date signed by importer as "1/30/13", stamp date of the EPA Region 4 as "SEP 09 20—" (obscured).
11. This second NOA submission represented a modified version of the first copy that Respondent had initially prepared and provided to Kuehne and Nagel, and it, too, was not an original document.
12. The NOAs prepared by the Respondent and filed by its broker with the USCBP for the January 25, 2013, importation of Sodium Cyanide were actually photocopies of a

shipment of 29,754 lbs of Sodium Cyanide previously imported by Respondent on September 14, 2009, and released by the EPA Region 4 to Respondent on September 15, 2009.

13. On information or belief, on or about February 8, 2013, Kuehne & Nagel prepared an original NOA that was who then submitted to EPA Region 4 for 270 Drums of Sodium Cyanide now representing a total of 13,924 kgs (30,633 pounds) for the previous January 25, 2013, shipment and still identified by Entry Number 101-3273630-7. Kuehne & Nagel clarified in block 18 of the NOA that: "This product is not for Pesticidal Use per Importer."
14. Sodium Cyanide is a highly toxic chemical pesticide registered by the EPA only for use as a restricted use pesticide for both predator control and for use as an insecticide.
15. EPA reviewed the labeling of the drums, and confirmed that this shipment of Sodium Cyanide was not intended for pesticidal use, but rather for an industrial use by the Respondent for the further formulation and production of a chelating agent.
16. Sodium Cyanide is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
17. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
18. At the time of the Respondent's importation of the Sodium Cyanide and Kuehne &

Nagel's submission of the two copies of a prior NOA, and submission of an original NOA, Respondent distributed or sold pesticides. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.

19. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations prescribed thereunder.
20. FIFRA Section 17(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides in the United States.
21. FIFRA Section 17(e), 7 U.S.C. 136o(e) requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).
22. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, through the United States Customs Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 1.110 – 12.117.
23. 19 C.F.R. § 12.112(a) requires an importer desiring to import pesticides or devices into the United States to submit to the EPA Administrator a NOA prior to the arrival of the shipment in the United States.
24. Through the NOA, the importer reports vital information to the EPA such as the major active ingredients, quantity, country of origin, carrier, port of entry, and points of contact. This information allows the EPA to make informed decisions, before pesticides arrive in the United States, as to whether such importation will pose unreasonable adverse risks to public health and the environment. The NOA also provides contact information in the

- event of an emergency related to the movement of potentially toxic pesticide materials.
25. The NOA is a report, required by FIFRA, which must be filed with the Administrator, prior to the arrival of each pesticide in the United States.
  26. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.
  27. By submitting photocopies of a prior NOA to a broker, who filed the copies with the USCBP and by failing to file an original, properly completed NOA with EPA prior to the arrival of a shipment of a pesticide into the United States, Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and is therefore subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136(a).
  28. Under Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), it is unlawful according to for any person to knowingly falsify any report filed under FIFRA.
  29. By submitting to the broker, and directing the broker to file with the USCBP photocopies of a previously submitted NOA containing photocopied signatures of Respondent, with the intent and knowledge that those copies would be filed with EPA, Respondent knowingly falsified a report that was filed under FIFRA. Therefore, Respondent violated Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), and is subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
  30. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
  31. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the

effect on Respondent's ability to continue in business, and the gravity of the violation.

32. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **TEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$10,250)** against the Respondent for the above described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

33. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
34. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
35. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
36. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
37. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.
38. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this



CAFO is consistent with the applicable requirements of FIFRA.

Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Mark D. Bloeth  
U.S. EPA Region 4  
Chemical Products and Asbestos Section  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

#### **V. Final Order**

39. Respondent is assessed a civil penalty of **TEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$10,250)** which shall be paid within thirty (30) days of the effective date of this CAFO.
40. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America. The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1818.

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

41. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960;

Mr. Mark Bloeth  
U.S. EPA Region 4  
Chemical Products and Asbestos Section  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

42. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
43. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts.

In addition, a late payment penalty charge shall be applied on any principal amount not paid within ninety (90) days of the due date.

44. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
45. This CAFO shall be binding upon Respondent and its successors and assigns.
46. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

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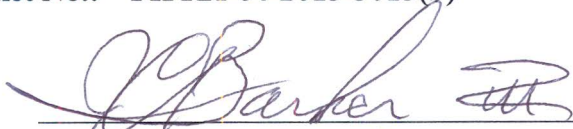
**VI. Effective Date**

47. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

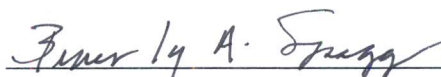
**Respondent: ENCEE Chemical Sales, Inc.**

**Docket No.: FIFRA-04-2013-3015(b)**

By:   
Name: J.C. Barker III  
Title: UPGM

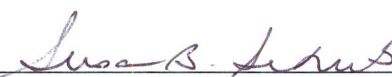
Date: 9-18-13

**Complainant: U.S. Environmental Protection Agency**

By:   
Carol L. Kemker, Acting Director  
Air, Pesticides and Toxics  
Management Division

Date: 12/13/2013

**APPROVED AND SO ORDERED** this 19 day of December 19, 2013.

By:   
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of ENCEE Chemical Sales, Inc., Docket Number: FIFRA-04-2013-3015(b), to the addressees listed below.

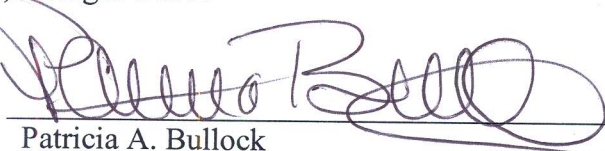
Mr. Joseph C. Barker, Jr. (via Certified Mail, Return Receipt Requested)  
ENCEE Chemical Sales, Inc.  
1120 D Street  
Highway 17 North  
Bridgeton, North Carolina 28519

Mr. Mark D. Bloeth (via EPA's internal mail)  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Ms. Suzanne Rubini (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Mr. Robert Caplan (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By:

  
\_\_\_\_\_  
Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303  
(404) 562-9511

Date:

1-2-14