

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

In the Matter of

INDCO Inc.,

Respondent.

Proceeding under the Federal
Insecticide, Fungicide and Rodenticide
Act, as amended.

CONSENT AGREEMENT

AND FINAL ORDER

Docket No. FIFRA-02-2015-5015

REGIONAL HEARING
CLERK

2015 SEP 25 AM 10:19

U.S. Environmental
Protection Agency-Reg 2

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 12(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136j(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this

matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is INDCO Inc. ("INDCO").
2. Respondent's facility is located at 511 Essex Street, Gloucester, New Jersey 08030.
3. Respondent is a "person" as that term is defined in FIFRA § 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Section 2(u) of FIFRA, 7 U.S.C § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
5. Section 2(t) of FIFRA, 7 U.S.C § 136(t), defines the term "pest" to mean any (1) insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism.
6. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines the term "to distribute or sell" to mean 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. Respondent produced and distributed/sold pesticides from its facility described in Paragraph 2.

8. At all times relevant, Respondent's facility has been a registered pesticide producing "establishment," as that term is defined in FIFRA § 2(dd), and has been assigned EPA Est. No. 004875-NJ-001.

9. Buckman Laboratories, Inc. ("Buckman") is the basic registrant of Biosak 604 ("Biosak"),¹ a registered pesticide.

10. Wasak Inc. ("Wasak") is the supplemental registrant of Biosak.²

11. INDCO is the toll manufacturer of Biosak for Wasak.

12. On August 24, 2010, in a letter to EPA, Buckman requested the cancellation of the supplemental registration of Biosak to Wasak.

13. On or about August 27, 2010, EPA cancelled Biosak, EPA Reg. No. 1448-212-66556, a pesticide supplementally registered to Wasak.

14. On August 22, 2013, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, a duly authorized representative of EPA conducted an inspection (the "Inspection") at INDCO.

15. During the Inspection, EPA collected a sample of the Biosak product label, bearing Wasak's cancelled registration number and Indco's Establishment number, and batch sheets for the production of such product. Additionally, EPA requested that INDCO provide sales/distribution records to the EPA.

¹ The Buckman product name for Biosak is "W-15-2 (WSCP 15CT)." The EPA Registration Number for W-15-2 (WSCP 15CT) is EPA Reg. No. 1448-212.

² The EPA Reg. No. for Wasak's Biosak is 1448-212-66556.

16. On August 30, 2013, EPA received 17 sales invoices from INDCO which had been requested by EPA during the Inspection.

17. Subsequent to the Inspection and based on information provided by Indco, EPA found that during 2011, Indco had produced and distributed/sold Biosak with labels bearing both Wasak's cancelled EPA product registration number and Indco's EPA establishment number.

18. Indco produced and distributed/sold the Biosak pesticide product after such product's registration had been cancelled by EPA.

19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C § 136j(a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended.

20. Each of Indco's distributions and/or sales of the cancelled Biosak pesticide described in Paragraphs 15-18 in 2011 is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), which prohibits the distribution/sale of any pesticide whose registration has been cancelled or suspended.

21. On February 11, 2015, Complainant in this proceeding sent a Notice of Opportunity with Respect to Action Under the Federal Insecticide, Fungicide, and Rodenticide Act, inviting the Respondent to enter into a pre-filing discussions to resolve this matter.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and its implementing regulations, including the legal requirements set forth above in EPA's Findings of Fact and Conclusions of Law.
2. Respondent certifies that it is fully aware of the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and of its implementing regulations, and is in full compliance with its obligations thereunder.
3. Respondent certifies that as of the effective date of the Consent Agreement, it will not manufacture, distribute and/or sell Biosak, EPA Reg. No. 48-212-66556, a pesticide whose registration has been cancelled.
4. If in the future EPA believes that any information certified to in paragraphs 2 or 3, above, of this Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit an explanation or other comments. If, after consideration of Respondent's reply, the Complainant determines that the certification(s) was untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$15,000 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq. or any other applicable law.

5. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, the civil penalty in the total amount of **Four Thousand Dollars (\$4,000)**. This payment is due on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.

6. Payment must be received at the address listed in Paragraph 7, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the respective due date specified above.

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

d. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York 10007.

7. If payment is made by cashier's or certified check, the payment shall be made payable to the "Treasurer, United States of America." The check shall be identified with the notation thereon listing the following: *IN THE MATTER OF INDCO INC.* and shall bear thereon the Docket Number FIFRA-02-2015-5105.

The check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:
FRNYUS33
33 Liberty Street
New York, N.Y. 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: "**D 68010727**
Environmental Protection Agency"
- f. Name of Respondent: **INDCO Inc.**
- g. Case Docket Number: **FIFRA- 02-1015-5105**

Such EFT must be received on or before 45 calendar days after the date of signature of the Final Order herein. Whether the payment is made by check or by EFT, INDCO shall promptly thereafter furnish reasonable proof that such payment has been made to:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

And

Karen Maples,
Office of the Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
Room 1631
New York, N.Y. 10007-1866

8. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

9. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits (a) that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations described in the EPA Findings of Fact and Conclusions of Law section above; and (b) admits the facts set out in EPA's Findings of Fact and Conclusions of Law.

10. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal law.

11. This Consent Agreement is voluntarily and knowingly being entered into by the Complainant and the Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law in this Consent Agreement. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

12. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any stipulated penalties in accordance with the terms of this Consent Agreement.

13. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement, on the Findings of Fact and Conclusions of Law herein, on the terms of the Consent Agreement, or on the accompanying Final Order.

14. The Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order ("CA/FO") in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

15. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

16. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

17. This CA/FO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issues related to any federal, state, or local permit. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder. Nothing in this CA/FO shall be construed as a release from any other action under any law and/or regulation administered by EPA.

18. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all terms and conditions set forth in this CA/FO.

19. The provisions of this CA/FO shall be binding both upon Respondent, its officers/officials, agents, authorized representatives and successors or assigns, and upon EPA.

20. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions in this CA/FO.

21. Each party hereto agrees to bear its own costs and fees in this matter.

22. Respondent consents to service upon itself of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

In Matter of INDCO Inc., Docket No. FIFRA-02-2015-5105

RESPONDENT: INDCO Inc.

BY: Frederick C Binter Jr.
(Signature)

NAME: Frederick C Binter Jr
(Please Print)

TITLE: President

DATE: 9-18-2015

COMPLAINANT:

D La Posta

Dore F. LaPosta, Director
Division of Enforcement And Compliance Assistance
U.S. Environmental Protection Agency- Region 2

DATE: 9/21/15

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FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and is issued as an Order pursuant to Section 12 of FIFRA, 7 U.S.C. § 136j and 40 C.F.R. § 22.18.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency- Region 2
290 Broadway, 16th Floor
New York, New York 10007

DATE: Sept 22, 2015

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed
CONSENT AGREEMENT and FINAL ORDER, bearing the below-referenced docket
number, in the following manner to the respective addresses below:

Original and Copy
By Hand Delivery:

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Mr. Frederick C. Binter Jr., President
INDCO Inc.
511 Essex Street
Gloucester, New Jersey 08030

Dated: 9/23, 2015
New York, New York

