



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

FEB - 3 2020

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Robert D. Mowrey
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street Northeast, Suite 900
Atlanta, Georgia 30309
bmowrey@kmcllaw.com

Re: Consent Agreement and Final Order In the Matter of AMVAC Chemical Corporation, Docket Number **FIFRA-05-2020-0016**

Mr. Mowrey:

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 February 3, 2020 with the Regional Hearing Clerk.

The civil penalty in the amount of \$272,700 is to be paid in the manner described in paragraphs 50-51. Please be certain that the docket number is written on both the transmittal letter and entered 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 blue ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

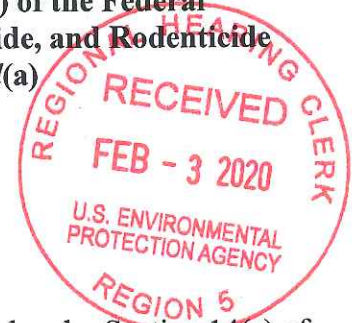
AMVAC Chemical Corporation)
Newport Beach, California,)

Respondent.)
_____)

Docket No. FIFRA-05-2020-0016

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
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 and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is AMVAC Chemical Corporation (AMVAC), and all of its divisions, offices, branches and subsidiaries, collectively, which is a State of California corporation.

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 all other allegations including 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 to the best of its knowledge it is in compliance with FIFRA, 7 U.S.C. §§ 136 - 136y.

Statutory and Regulatory Background

10. Section 3(c)(1)(D) of FIFRA, 7 U.S.C. § 136a(c)(1)(D), provides that each applicant for registration of a pesticide shall file with the Administrator of EPA a statement which includes the complete formula of the pesticide.

11. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statements required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

12. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under Sections 5, 6, 7, 8, 11, or 19 of FIFRA.

13. A “person” is any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. 7 U.S.C. § 136(s).

14. 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

15. 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).

16. The term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” 7 U.S.C. § 136(w).

17. The term “registrant” means “a person who has registered any pesticide pursuant to the provisions of this subchapter.” 7 U.S.C. § 136(y).

18. A “state” is a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa. 7 U.S.C. § 136(aa).

19. 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).

20. The term “active ingredient” is defined in 40 C.F.R. § 158.300 to mean any substance (or group of structurally similar substances, if specified by the Agency) that will prevent, destroy, repel or mitigate any pest.

21. The term “inert ingredient” is defined in 40 C.F.R. § 158.300 to mean any substance (or group of structurally similar substances if designated by the Agency), other than the active ingredient, which is intentionally included in a pesticide product.

22. As part of a FIFRA Section 3 registration, 40 C.F.R. § 158.320 requires information on the composition of the pesticide product including (a) the identity of the active ingredient, nominal concentration, and upper and lower certified limits of the active ingredient in

the product; (b) the identity of each inert ingredient in the product, the nominal concentration, the upper and lower certified limits, and the purpose of the ingredient in the formulation.

23. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, through November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

EPA's Factual Allegations and Alleged Violations

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

25. Respondent is a "registrant" as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

26. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 12650C Highway 43N, Axis, Alabama, during the calendar year 2015 (facility).

27. At all times relevant to this CAFO, Respondent's facility was an EPA registered establishment, identified as EPA Establishment Number (EPA Est. No.) 5481-AL-1, where pesticides were produced.

28. On December 15, 2015, inspectors employed by EPA and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's Axis, Alabama facility.

29. During the December 15, 2015 inspection, the inspector collected photographs, labels, and other documentation, for the products Thimet 20-G ("US Thimet 20-G") and Thimet 15-G ("Canadian Thimet 15-G").

30. During the December 15, 2015 inspection, the inspector also made a written request for additional documents (the “Information Request”).

31. On January 11, 2016, Respondent provided information to EPA in response to the December 15, 2015 Information Request identified in Paragraph 30, above.

32. From March 30-31 and April 4-5, 2016 (2016 inspection), inspectors employed by EPA and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s Axis, Alabama facility.

33. During the 2016 inspection, the inspector collected physical samples, photographs, statements, labels, and distribution records, among other documentation, for the products US Thimet 20-G and Canadian Thimet 15-G.

34. The registered pesticide US Thimet 20-G is a “pesticide” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and is intended for preventing, destroying, repelling, or mitigating pests.

35. The unregistered pesticide Canadian Thimet 15-G is a “pesticide” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and is intended for preventing, destroying, repelling, or mitigating pests.

36. At Respondent’s request, EPA registered US Thimet 20-G as a pesticide under Section 3(c)(5) of FIFRA, 7 U.S.C. § 136a(c)(5) and assigned it EPA Registration Number 5481-530.

37. When registering US Thimet 20-G, Respondent filed statements that include the complete formula of US Thimet 20-G.

38. At all times relevant to this CAFO, the registered pesticide US Thimet 20-G has had one basic and multiple alternate confidential statements of formula (CSFs) accepted by EPA.

39. The CSFs accepted by EPA in connection with the registration for US Thimet

20-G do not include Canadian Thimet 15-G as an active or inert ingredient in the approved formulation process for US Thimet 20-G.

Alleged Violations of Section 12(a)(1)(C) of FIFRA

40. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this CAFO.

41. In Respondent's January 11, 2016 response to EPA's December 15, 2015 Information Request, Respondent indicated that it produced US Thimet 20-G using Canadian Thimet 15-G in the formulation of US Thimet 20-G.

42. During the 2016 inspection, EPA collected distribution records from Respondent identifying that on at least 24 separate occasions in 2015, Respondent distributed and/or sold, in the United States, the US Thimet 20-G that it produced using Canadian Thimet 15-G in the formulation of US Thimet 20-G.

43. The composition of the US Thimet 20-G that Respondent distributed and/or sold in 2015, as described in Paragraph 41, above, differed at the time of its distribution or sale from its composition as described in the statements required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

44. Respondent's distribution or sale on at least 24 separate occasions in 2015 of US Thimet 20-G, the composition of which differed at the time of its distribution or sale from its composition as described in the statements required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a, constituted 24 unlawful acts pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Alleged Violations of Section 12(a)(2)(B)(i) of FIFRA

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this CAFO.

46. In Respondent's January 11, 2016 response to EPA's December 15, 2015 Information Request, it indicated that it produced US Thimet 20-G using Canadian Thimet 15-G in the formulation of US Thimet 20-G and provided two separate production records for such production.

47. Production records for US Thimet 20-G failed to identify the EPA Product Registration Number.

48. Respondent's failure to maintain production records for US Thimet 20-G constitutes two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Civil Penalty

49. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$272,700. In determining this 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, and the gravity of the alleged violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

50. Within 30 days after the effective date of this CAFO, Respondent agrees to and shall pay a \$272,700 civil penalty for the alleged 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 "AMVAC Chemical Corporation," and the docket number of this CAFO.

51. 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

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

Jacqueline Clark (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Matthew Dawson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

53. 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.

54. 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

55. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: clark.jacqueline@epa.gov (for Complainant), and bmowrey@kmellaw.com (for Respondent).

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

57. 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.

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

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

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

61. 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.

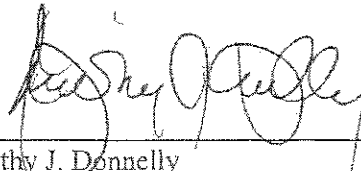
62. Each party agrees to bear its own costs and attorney's fees, in this action.

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

In the Matter of:
AMVAC Chemical Corporation

AMVAC Chemical Corporation, Respondent

January 27, 2020
Date



Timothy J. Donnelly
CAO, General Counsel & Secretary
AMVAC Chemical Corporation

**In the Matter of:
AMVAC Chemical Corporation**

United States Environmental Protection Agency, Complainant

1-29-20
Date

Sara Breneman

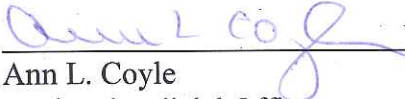
for Michael D. Harris, Director
Enforcement & Compliance Assurance Division

In the Matter of:
AMVAC Chemical Corporation
Docket No. FIFRA-05-2020-0016

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.

1/29/2020
Date



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

Consent Agreement and Final Order
In the Matter of: AMVAC Chemical Corporation
Docket Number: **FIFRA-05-2020-0016**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2020-0016, which was filed on February 3, 2020, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Jacqueline Clark
clark.jacqueline@epa.gov

Matthew Dawson
dawson.matthew@epa.gov

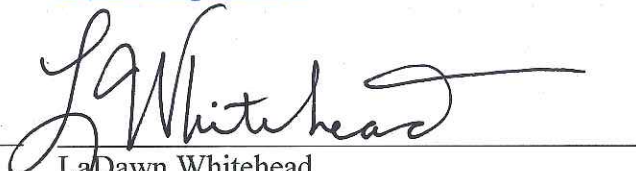
Copy by E-mail to
Attorney for Respondent:

Mr. Robert D. Mowrey
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street Northeast, Suite 900
Atlanta, Georgia 30309
bmowrey@kmcllaw.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: February 3, 2020



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