

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. §§ 136-136y, and the regulations promulgated thereunder.

Statutory and Regulatory Background

10. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states in part that it is unlawful for any person to refuse to maintain any records required by Section 8 of FIFRA.

11. 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 adulterated or misbranded.

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

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its label, or labeling accompanying it, bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “misbranded” if its label, or labeling accompanying it, does not contain directions for use necessary to make the product effective and to adequately protect health and the environment.

15. 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.

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as 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. *See also* 40 C.F.R. § 152.3.

17. 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.

18. 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. *See also* 40 C.F.R. § 152.5.

19. 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 active ingredient used in producing a pesticide.

20. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

21. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

22. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product."

23. 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 (1) the product name of the distributor product may be different, (2) the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) specific claims may be deleted, provided that no other

changes are necessary.

(e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

24. 40 C.F.R. § 156.10(a)(1) states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R Part 156.

25. 40 C.F.R. § 156.10(a)(1)(v) states that the contents of a label must show clearly and prominently, the producing establishment number.

26. 40 C.F.R. § 156.10(a)(4)(i) states that if the immediate container is enclosed within a wrapper of outside container through which the label cannot be clearly read, the label must also be securely attached to such outside wrapper or container, if it is a part of the package as customarily distributed or sold.

27. 40 C.F.R. § 156.10(e) states, in pertinent part, that the registration number assigned to the pesticide product at the time of registration shall appear on the label, preceded by the phrase “EPA Registration No.,” or the phrase “EPA Reg. No.”

28. 40 C.F.R. § 156.10(f) states, in pertinent part, that the producing establishment registration number preceded by the phrase “EPA Est.,” of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container.

29. 40 C.F.R. § 156.10(i)(1)(ii) states, in pertinent part, that the directions for use may appear on any portion of the label provided that they are conspicuous enough to be easily read by the user of the pesticide product. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that: (A) if required by the Agency, such printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag; (B) the label bears a reference to the directions for use in accompanying leaflets

or circulars, such as “See directions in the enclosed circular;” and (C) the Administrator determines that it is not necessary for such directions to appear on the label.

30. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states no person shall produce a pesticide subject to FIFRA or an active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA. *See also* 40 C.F.R. § 167.20.

31. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), states that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

32. 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 \$21,805 for each offense that occurred after November 2, 2015, and assessed on or after January 12, 2022, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

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

35. At all times relevant to this CAFO, Midas owned or operated a place of business located at 21449 Bridge Street, Southfield, Michigan 48033 (Facility).

36. On or about May 4, 2021, two inspectors employed with the Michigan Department

of Agriculture and Rural Development (MDARD) conducted an inspection at the Midas Facility (Inspection).

Misbranding

37. During the Inspection, the inspectors collected photographs of labels and labeling for “Midas Products Rooting Compound”, EPA Reg No. 82752-1.

38. On or about January 28, 2020, EPA approved a Supplemental Distribution of a Registered Pesticide Product Form (EPA Form 8570-5) for the supplemental distribution of “EZ-Root Gel”, EPA Reg. No. 82752-1, registered to Higrocorp Inc., for Midas Products. The supplemental distributor product was registered as “Midas Products Rooting Compound” and assigned EPA Reg. No. 82752-1-95777.

39. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring between February 13, 2021 and February 28, 2021, did not contain the correct EPA Reg. No. as required by 40 C.F.R. § 156.10(e).

40. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring between February 13, 2021 and February 28, 2021, did not contain a valid EPA Est. No., as required by 40 C.F.R. § 156.10(f).

41. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring between February 13, 2021 and February 28, 2021, did not contain directions for use necessary to make the product effective and to adequately protect health and the environment, as required by 40 C.F.R. § 156.10(i).

42. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring between February 13, 2021 and February 28, 2021, did not bear an ingredient statement on the immediate container which is presented or

displayed under customary conditions of purchase, as required by 40 C.F.R. § 156.10(a)(4)(i).

43. The label affixed to containers of “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, for distributions occurring between February 13, 2021 and February 28, 2021, did not contain the name and address of the producer, registrant, or person for whom produced, as required by 40 C.F.R. § 156.10(a)(1)(ii).

44. Between February 13, 2021 and February 28, 2021, Respondent distributed or sold “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, on at least 28 separate occasions.

Failure to Maintain Records

45. During the Inspection, the inspectors collected receiving and distribution records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777.

46. The receiving records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, that were collected during the Inspection, did not include the name of the delivering carrier and the date the shipment was received by the Respondent’s Facility as required by 40 C.F.R. § 169.2(c)(3) and (c)(4).

47. The distribution records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, that were collected during the Inspection, did not include the name of the originating carrier as required by 40 C.F.R. § 169.2(d)(2).

48. On or about May 4, 2021, Respondent failed to maintain complete receiving and distribution records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, on at least 1 occasion.

Production in an Unregistered Establishment

49. Respondent’s Facility is an “establishment” as defined at Section 2(dd) of FIFRA, 7

U.S.C. § 136(dd) and 40 C.F.R. § 167.3.

50. At all times relevant to this CAFO, Respondent's Facility was not registered with EPA as required under Section 7 of FIFRA, 7 U.S.C. § 136e.

51. Respondent "produced" "Midas Products Rooting Compound", EPA Reg. No. 82752-1-95777 at its Facility, during at least calendar year 2021, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Counts 1-28 (Misbranding)

52. Complainant incorporates paragraphs 1-44 of this CAFO, as if set forth in this paragraph.

53. For distributions occurring between February 13, 2021 and February 28, 2021, the label affixed to containers of "Midas Products Rooting Compound", EPA Reg. No. 82752-1-95777, was misbranded as it failed to contain: 1) the correct EPA Reg. No. as required by 40 C.F.R. 156.10(e); 2) a valid EPA Est. No., as required by 40 C.F.R. 156.10(f); 3) directions for use necessary to make the product effective and to adequately protect health and the environment, as required by 40 C.F.R. 156.10(i)(1)(ii)(B); 4) an ingredient statement on the immediate container which is presented or displayed under customary conditions of purchase, as required by 40 C.F.R. § 156.10(a)(4)(i); and 5) the name and address of the producer, registrant, or person for whom produced, as required by 40 C.F.R. § 156.10(a)(1)(ii).

54. Respondent's distribution or sale of the misbranded pesticide "Midas Products Rooting Compound", EPA Reg. No. 82752-1-95777, on at least 28 separate occasions, constitutes 28 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and its implementing regulations at 40 C.F.R. § 156.10, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 29 (Failure to Maintain Records)

55. Complainant incorporates paragraphs 1-36, and 45-48 of this CAFO, as if set forth in this paragraph.

56. On or about May 4, 2021, Respondent failed to maintain complete receiving and distribution records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, as required by 40 C.F.R. § 169.2(c)(3) and (c)(4).

57. Respondent’s failure to maintain complete receiving and distribution records for “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777 including the name of the delivering carrier and the date the shipment was received by the Respondent’s Facility on the receiving records, and the name of the originating carrier on the distribution records, as required by 40 C.F.R. § 169.2(c)(3), 40 C.F.R. § 169.2(c)(4), and 40 C.F.R. § 169.2(d)(2), constitutes one unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and its implementing regulations at 40 C.F.R. § 169.2, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 30 (Unregistered Establishment)

58. Complainant incorporates paragraphs 1-36, and 49-51 of this CAFO, as if set forth in this paragraph.

59. During calendar year 2020, Respondent “produced” “Midas Products Rooting Compound”, EPA Reg. No. 82752-1-95777, at its Facility, which was not registered under Section 7 of FIFRA, 7 U.S.C. § 136e.

60. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a) by producing pesticides at an unregistered establishment.

61. Respondent's production of pesticide products in an unregistered establishment constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and its implementing regulations at 40 C.F.R. § 167.20, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

62. 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 **\$3,974**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

63. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$3,974** civil penalty for the alleged FIFRA violations on-line at www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Emma Gloekler (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
gloekler.emma@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5

king.cynthia@epa.gov

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

66. 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.

67. 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

68. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and solomon@midashydro.com (for Respondent).

69. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

70. 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.

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

72. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

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

74. 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.

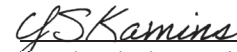
75. Each party agrees to bear its own costs and attorney’s fees, in this action.

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

Midas Products LLC, Respondent

02/26/2023

Date



Yechezkal Kamins
Manager

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS

Digitally signed by
MICHAEL HARRIS
Date: 2023.03.03
11:38:31 -06'00'

Michael D. Harris

Director

Enforcement and Compliance Assurance Division

In the Matter of: Midas Products LLC
Docket No.: FIFRA-05-2023-0007

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2023.03.03
15:35:27 -06'00'

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