



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

NOV - 4 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Thomas W. Dimond
Ice Miller LP
200 W Madison Street, Suite 3500
Chicago, IL 60606-3417
Thomas.Dimond@icemiller.com

Consent Agreement and Final Order
In the Matter of Cynamic Chemical Company, Inc., Docket Number FIFRA-05-2020-0002

Mr. Dimond:

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 4, 2019 with the Regional Hearing Clerk.

The civil penalty in the amount of \$100,000 is to be paid in the manner described in paragraph 65. Please be certain that the docket number is written on both the transmittal letter and on the check. 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 "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

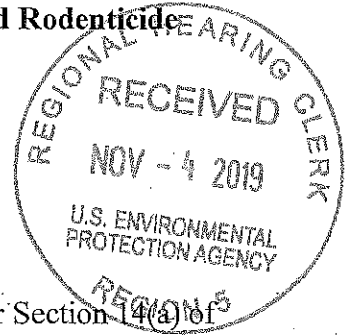
Cynamic Chemical Company, Inc.
Batavia, Illinois,

Respondent.

) Docket No. FIFRA-05-2020-0002
)

) Proceeding to Assess a Civil Penalty
) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. § 136I(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. § 136I(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 Cynamic Chemical Company, Inc. (Cynamic), a corporation doing business in the State of Illinois.

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 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA. See also 40 C.F.R. § 167.20.

12. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), in pertinent part, states that any producer operating a registered pesticide-producing establishment is required to inform EPA of the types and amounts of pesticides (and, if applicable, active ingredients used in producing pesticides) which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year. See also 40 C.F.R. § 167.85.

13. 40 C.F.R. § 167.85(d) states that a producer operating an establishment must submit an annual report containing the information required in 40 C.F.R. § 167.85(b), on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

14. 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, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the EPA.

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

16. 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).

17. 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).

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

19. A “pest” means 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).

20. A “producer” means a person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide. 7 U.S.C. § 136(w).

21. An “establishment” means any place where a pesticide, device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale. 7 U.S.C. § 136(dd).

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

25. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 1472 Louis Bork Drive, Batavia, Illinois 60510 (facility).

26. At all times relevant to this CAFO, Respondent’s facility was an EPA registered establishment, identified as EPA Establishment Number (EPA Est. No.) 91509-IL-1, where pesticides were produced.

27. On or about April 6, 2018, an inspector employed with the Illinois Department of Agriculture (IDA) conducted an inspection at Respondent’s facility.

28. On or about October 3, 2018, EPA requested follow up information from the Respondent.

29. On or about December 2018, Respondent submitted a written response to EPA’s request for follow up information.

Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer
EPA Reg. No. 10324-117-83577

30. In the response to EPA's October 3, 2018 request for follow up information, Respondent submitted, among other things, labeling and shipping records for **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Registration Number (EPA Reg. No.) 10324-117-83577.

31. On or about May 2016, the Registrant for EPA Reg. No. 10324-117 submitted a Notice of Supplemental Distribution of a Registered Pesticide Product for **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577.

32. On or about November 9, 2016, EPA canceled the supplemental distributor product, **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577.

33. **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577, 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.

34. At all times relevant to this CAFO, **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a) because the registration was canceled.

35. On or about January 4, 2017 through September 12, 2018, Respondent distributed or sold **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577, on at least 12 separate occasions to various persons.

CP Yellow
EPA Reg. No. 10324-113-40987

36. In the response to EPA's October 3, 2018 request for follow up information,

Respondent submitted, among other things, labeling and shipping records for **CP Yellow**, EPA Reg. No. 10324-113-40987.

37. On or about May 2013, the Registrant for EPA Reg. No. 10324-113 submitted a Notice of Supplemental Distribution of a Registered Pesticide Product for **CP Yellow**, EPA Reg. No. 10324-113-40987.

38. On or about August 16, 2016, EPA canceled the supplemental distributor product, **CP Yellow**, EPA Reg. No. 10324-113-40987.

39. **CP Yellow**, EPA Reg. No. 10324-113-40987, 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.

40. At all times relevant to this CAFO, **CP Yellow**, EPA Reg. No. 10324-113-40987, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

41. On or about January 24, 2017 through July 31, 2018, Respondent distributed or sold **CP Yellow**, EPA Reg. No. 10324-113-40987, on at least 6 separate occasions to various persons.

**Pro San Chlorine Sanitizing Solution
Identified by EPA Reg. No. 37982-20004-88960**

42. In the response to EPA’s October 3, 2018 request for follow up information, Respondent submitted, among other things, labeling and shipping records for **Pro San Chlorine Sanitizing Solution**, identified by EPA Reg. No. 37982-20004-88960.

43. **Pro San Chlorine Sanitizing Solution**, identified by EPA Reg. No. 37982-20004-88960, 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.

44. At all times relevant to this CAFO, **Pro San Chlorine Sanitizing Solution**,

identified by EPA Reg. No. 37982-20004-88960, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

45. On or about January 4, 2017 through October 4, 2018, Respondent distributed or sold **Pro San Chlorine Sanitizing Solution**, identified by EPA Reg. No. 37982-20004-88960, on at least 238 separate occasions to various persons.

Annual Pesticide Production Reports

46. Respondent's pesticide producing establishment, EPA Est. No. 91509-IL-1, was a registered establishment with EPA for reporting years 2015 and 2016.

47. Respondent's annual reports for EPA Est. No. 91509-IL-1, for calendar years 2015 and 2016, were not submitted to EPA on or before March 1, 2016 and March 1, 2017, respectively.

Counts 1 – 12 **Energy Mizer Quat Sanitizer** **EPA Reg. No. 10324-117-83577**

48. The preceding paragraphs are incorporated by reference.

49. From on or about January 4, 2017 through September 12, 2018, Respondent distributed or sold the canceled pesticide, **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577, to various persons on 12 separate occasions.

50. Respondent's distribution or sale of the canceled pesticide, **Energy Mizer Quat Sanitizer 440 Food Contact Sanitizer**, EPA Reg. No. 10324-117-83577, on 12 separate occasions, constitutes 12 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

51. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on 12 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 12 violations.

Counts 13 – 18
CP Yellow
EPA Reg. No. 10324-113-40987

52. The preceding paragraphs are incorporated by reference.

53. From on or about January 24, 2017 through July 31, 2018, Respondent distributed or sold the canceled pesticide, **CP Yellow**, EPA Reg. No. 10324-113-40987, to various persons on 6 separate occasions.

54. Respondent's distribution or sale of the canceled pesticide, **CP Yellow**, EPA Reg. No. 10324-113-40987, on 6 separate occasions, constitutes 6 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

55. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A) on 6 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 6 violations.

Counts 19 – 256
Pro San Chlorine Sanitizing Solution
Identified by EPA Reg. No. 37982-20004-88960

56. The preceding paragraphs are incorporated by reference.

57. From on or about January 4, 2017 through October 4, 2018, Respondent distributed or sold the unregistered pesticide, **Pro San Chlorine Sanitizing Solution**, identified by EPA Reg. No. 37982-20004-88960, to various persons on 238 separate occasions.

58. Respondent's distribution or sale of the unregistered pesticide, **Pro San Chlorine Sanitizing Solution**, identified by EPA Reg. No. 37982-20004-88960, on 238 separate

occasions, constitutes 238 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

59. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A) on 238 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 238 violations.

Count 257 – 258
Annual Pesticide Production Report

60. The preceding paragraphs are incorporated by reference.

61. Respondent's failure to submit its annual pesticide production report for calendar year 2015 on or before March 1, 2016 and for calendar year 2016 on or before March 1, 2017 constitutes 2 separate unlawful acts pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

62. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) on 2 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 2 violations.

Civil Penalty and Other Relief

63. 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.

64. 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 \$100,000.

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$100,000 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 "Cynamic Chemical Company, 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

Abigail Wesley (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

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

67. 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.

68. 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

69. 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 for their respective attorneys: omeara.nidhi@epa.gov (for Complainant), and thomas.dimond@icemiller.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

71. 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.

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

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

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

75. 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.

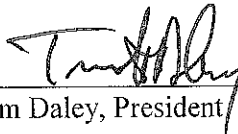
76. Each party agrees to bear its own costs and attorney’s fees, in this action.

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

In the Matter of:
Cynamic Chemical Company, Inc.,

Cynamic Chemical Company, Inc., Respondent

10-14-19
Date



Tim Daley, President

In the Matter of:
Cynamic Chemical Company, Inc.

United States Environmental Protection Agency, Complainant

10/29/19
Date

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

In the Matter of:
Cynamic Chemical Company, Inc.
Docket No. FIFRA-05-2020-0002

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.

11/2/19
Date

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

Consent Agreement and Final Order
In the Matter of: Cynamic Chemical Company, Inc.
Docket Number: FIFRA-05-2020-0002

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2020-0002, which was filed on November 4, 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
Attorney for Respondent:

Mr. Thomas Dimond
Thomas.dimond@icemiller.com

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.am@epa.gov

Dated: November 4, 2019

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