

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.

Statutory and Regulatory Background

10. 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 that is misbranded.

11. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is misbranded if, among other things “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.”

12. 40 C.F.R. § 156.10(a)(5)(v) specifies that a pesticide declared subject to FIFRA is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims, including any statement directly or indirectly implying that the pesticide is recommended or endorsed by any agency of the Federal Government.

13. 40 C.F.R. § 152.132 specifies that a registrant may distribute or sell their registered product under another person’s name and address. Such distribution and sale is termed “supplemental distribution” and the product is termed a “distributor product.”

14. 40 C.F.R. § 152.132 specifies that the distributor is considered an agent of the registrant for all intents and purposes and may be held liable for violations pertaining to the distributor product.

15. 40 C.F.R. § 152.132(d) requires the label of the distributor product to, with specific exceptions, be the same as that of the registered product.

16. 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 subject to FIFRA.

17. 40 C.F.R. § 169.2(c) specifies that all producers of pesticides, devices, or active ingredients used in producing pesticides shall maintain records pertaining to the producer's receipt of all pesticides, devices, and active ingredients used in producing pesticides.

18. 40 C.F.R. § 169.2(c)(4) requires that such records of receipt include, among other things, the date on which the pesticide, device, or active ingredient was received.

19. The term "person" is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

20. 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).

21. The term "pest" is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as, in pertinent part, any form of virus, bacteria, or other micro-organism. See also 40 C.F.R. § 152.5(d).

22. 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).

23. A "label" is the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. 7 U.S.C. 136(p)(1).

24. The term “labeling” means all labels and all 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. 7 U.S.C. § 136(p)(2).

25. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$21,805 for each offense occurring after November 2, 2015 and assessed after January 12, 2022, pursuant to Section 14(a)(1), 7 U.S.C. § 136/(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

27. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 37890 Commerce Drive, Sterling Heights, Michigan, 48312 (the Facility).

28. On or about March 6, 2019, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at the Facility (the Inspection).

Solution QA Ultra, EPA Reg. No. 1839-86-6243

29. **Solution QA Ultra**, EPA Registration Number (EPA Reg. No.) 1839-86-6243, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

30. During the Inspection, the inspector collected shipping records, receiving records for active ingredients, a bin label and an affidavit for the pesticide product **Solution QA Ultra**, EPA Reg. No. 1839-86-6243.

31. **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, is a distributor product registered with EPA on July 14, 2004, and, as such, is required to bear the accepted label of the original registrant’s registered product, BTC 2125M 10% Solution, EPA Reg. No. 1839-86.

32. The bin label collected during the inspection for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243 was a true and accurate representation of the label affixed to pesticide product released for shipment on or about February 20, 2019, February 19, 2019, February 15, 2019, and February 14, 2019.

33. The bin label for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, collected during the inspection included a Quick Response (QR) code which when scanned, leads to Respondent's webpage for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243.

34. On June 1, 2021, EPA scanned the QR code on the bin label for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, which led EPA to the corresponding webpage.

35. The webpage for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243 included a graphic representation which was false or misleading and did not match the graphics listed on the EPA-accepted label for BTC 2125M 10% Solution, EPA Reg. No. 1839-86.

36. Respondent distributed or sold **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, to customers on five occasions on or about February 14, 2019, February 15, 2019, February 19, 2019, and February 20, 2019.

37. Receiving documents for the active ingredient in **Solutions QA Ultra**, EPA Reg. No. 1839-86-6243, shipped on four occasions on or about September 15, 2017, November 7, 2017, May 3, 2018, and October 5, 2018, failed to include the date received.

Super 8, EPA Reg. No. 6243-7

38. **Super 8**, EPA Reg. No. 6243-7, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

39. During the Inspection, the inspector collected shipping records, receiving records, a bin label, and an affidavit for the pesticide product **Super 8**, EPA Reg. No. 6243-7.

40. The bin label collected during the inspection was a true and accurate representation of the product and the associated labels that were released for shipment on or about February 20, 2019, February 19, 2019, February 15, 2019, and February 14, 2019.

41. The bin label for **Super 8**, EPA Reg. No. 6243-7, collected during the inspection included a QR code which, when scanned, leads to Respondent's webpage for **Super 8**, EPA Reg. No. 6243-7.

42. On June 1, 2021, EPA scanned the QR code on the bin label for **Super 8**, EPA Reg. No. 6243-7, which led EPA to the corresponding webpage.

43. The webpage for **Super 8**, EPA Reg. No. 6243-7, included a graphic representation which was false or misleading and did not match the EPA-accepted label.

44. Respondent distributed or sold **Super 8**, EPA Reg. No. 6243-7, to customers on five occasions on or about February 14, 2019, February 15, 2019, February 19, 2019, and February 20, 2019.

Sanitizing Solution CL, EPA Reg. No. 6243-2

45. **Sanitizing Solution CL**, EPA Reg. No. 6243-2, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

46. During the Inspection, the inspector collected shipping records, receiving records, a bin label, and an affidavit for the pesticide product **Sanitizing Solution CL**, EPA Reg. No. 6243-2.

47. Receiving documents for the active ingredients in **Sanitizing Solution CL**, EPA Reg. No. 6243-2, shipped during calendar years 2018 and 2019, failed to include the date received.

Counts 1-5

Distribution of Misbranded Pesticide Solution QA Ultra, EPA Reg. No. 1839-86-6243

48. Complainant incorporates Paragraphs 1 through 37 of this CAFO as though set forth in this paragraph.

49. Between February 14, 2019 and February 20, 2019, Respondent distributed or sold **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, which was misbranded, as that term is defined in Paragraphs 11 and 12, on five separate occasions.

50. Respondent's distribution or sale of **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, constitutes five separate unlawful acts, pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

51. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 6

Failure to Maintain Records for Solution QA Ultra , EPA Reg. No. 1839-86-6243

52. Complainant incorporates Paragraphs 1 through 37 of this CAFO as though set forth in this paragraph.

53. In 2017 and 2018, Respondent failed to maintain receiving records for active ingredients used to produce **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, by failing to include the date received, as required by 40 C.F.R. § 169.2.

54. Respondent's failure to maintain receiving records for **Solution QA Ultra**, EPA Reg. No. 1839-86-6243, constitutes one unlawful act, pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

55. Respondent's violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 7-11

Distribution of Misbranded Pesticide Super 8, EPA Reg. No. 6243-7

56. Complainant incorporates Paragraphs 1 through 28 and 38 through 44 of this CAFO as though set forth in this paragraph.

57. Between February 14, 2019 and February 20, 2019, Respondent distributed or sold **Super 8**, EPA Reg. No. 6243-7, which was misbranded as that term is defined in Paragraphs 11 and 12, on five separate occasions.

58. Respondent's distribution or sale of **Super 8**, EPA Reg. No. 6243-7, constitutes five separate unlawful acts, pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

59. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 12

Failure to Maintain Records for Sanitizing Solution CL, EPA Reg. No. 6243-2

60. Complainant incorporates Paragraphs 1 through 28 and 45 through 47 of this CAFO as though set forth in this paragraph.

61. In 2018 and 2019, Respondent failed to maintain receiving records for active ingredients used to produce **Sanitizing Solution CL**, EPA Reg. No. 6243-2, by failing to include the date received, as required by 40 C.F.R. § 169.2.

62. Respondent failure to maintain receiving records for **Sanitizing Solution CL**, EPA Reg. No. 6243-2, constitutes one unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

63. Respondent's violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty and Other Relief

64. 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 **\$46,240**. 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.

65. Within 30 days after the effective date of this CAFO, Respondent shall pay a \$46,240 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note "Auto-Chlor System, LLC" and the docket number of this CAFO.

66. Respondent shall 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:

Juliane Grange
Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5

77 West Jackson Boulevard
Chicago, Illinois 60604
R5hearingclerk@epa.gov

Anna Nguyen (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Nguyen.anna@epa.gov

Sophie Grueterich (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Grueterich.sophie@epa.gov

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

68. 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.

69. Pursuant to 31 C.F.R. § 901.9, Respondent shall 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 shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent shall pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

70. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Grueterich.sophie@epa.gov (for Complainant), and

cschaller@bakerdonelson.com and acullinan@bakerdonelson.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

72. 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.

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

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

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

76. 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.

77. Each party agrees to bear its own costs and attorneys fees, in this action.

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

Auto-Chlor System, LLC, Respondent

11/21/22
Date



Nick Eddy
Safety & Fleet Operations Manager
Auto-Chlor System, LLC

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.12.13
16:14:09 -06'00'

Michael D. Harris, Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Auto-Chlor System, LLC
Docket No. FIFRA-05-2023-0002

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.12.16
14:51:41 -06'00'

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