



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

APR - 5 2019

REPLY TO THE ATTENTION OF

LC-17J

VIA EMAIL

Mr. Richard J. Lewandowski  
Senior Counsel  
Husch Blackwell LLP  
33 East Main Street, Suite 300  
P.O. Box 1379  
Madison, Wisconsin 53701-1379

Richard.Lewandowski@huschblackwell.com

**Re: Consent Agreement and Final Order - In the Matter of: D.W. Davies & Co., Inc.**

**FIFRA-05-2019-0008**

Mr. Lewandowski:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above-referenced matter. This document was filed on April 5, 2019 with our Regional Hearing Clerk.

The civil penalty in the amount of \$122,605 is to be paid in the manner described in paragraphs 88-89. Please be certain that D.W. Davies & Co, Inc and the docket number of this case are written on both the transmittal letter and the check, or in the comments field if you are paying by electronic funds transfer. Due within 30 calendar days of the filing date is \$40,868.33, \$41,069.87.00 within 90 days of the filing date, and \$41,069.88 within 180 days of the filing date.

Thank you for your cooperation to resolve this matter. Please do not hesitate to contact me if you have any questions regarding this letter.

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:

D.W. Davies & Co., Inc.  
Racine, Wisconsin

Respondent.



Docket No. FIFRA-05-2019-0008

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, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is D.W. Davies & Co., Inc. (D.W. Davies), a corporation doing business in the State of Wisconsin.

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 as of the date of its execution of this CAFO, it has taken appropriate actions to address and correct the alleged FIFRA violation set forth in this CAFO, and to the best of its knowledge, it is in compliance with the requirements of FIFRA, 7 U.S.C. §§ 136 to 136y.

10. Respondent certifies that as of the date of its execution of this CAFO, it will take actions to verify and authenticate EPA Product Registrations and subsequent labeling of those registered products to ensure the production and distributions of such products mirror the EPA Accepted Label on file for each product registration.

11. Respondent certifies that as of the date of its execution of this CAFO, it will not sell any pesticides without obtaining a copy of the EPA stamped or signed approval to sell that pesticide either as the basic registrant or an approved supplemental distributor.

**Statutory and Regulatory Background**

12. 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.”

13. 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.” Also see 40 C.F.R. §152.3.

14. 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.” Also see 40 C.F.R. §152.3.

15. 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. Also see 40 C.F.R. §152.5.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.”

21. 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 the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor’s company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

22. 40 C.F.R. § 152.132 also specifies that a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

23. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), states, in pertinent part, “each applicant for registration of a pesticide shall file with the Administrator a statement which

includes...(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.”

24. Section 19 of FIFRA, 7 U.S.C. § 136q(a)(1), states, in pertinent part, “[t]he Administrator may require under [S]ection [3 or 6 of FIFRA] that... (B) the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of the pesticide, any container of the pesticide, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide.”

25. 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.

26. 40 C.F.R § 156.10(a)(1)(viii) states that the contents of a label must show clearly and prominently, in pertinent part, the directions for use as prescribed in 40 C.F.R. § 156.10(i).

27. The regulation at 40 C.F.R. § 156.10(i)(2)(ix), provides, in pertinent part, that the contents of the directions for use shall include the following under “Directions for Use”: specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with subpart H of 40 C.F.R. Part 156 for Container Labeling. These instructions must be grouped and appear under the heading “Storage and Disposal.”

28. The regulation at 40 C.F.R. § 156.140 provides, in pertinent part, that for nonrefillable containers, the following statements must be placed on the label or container of a pesticide product: a statement identifying the container as a “Nonrefillable container”, one of the prescribed reuse statements, and one of the prescribed recycling or reconditioning statements.

29. 40 C.F.R. § 156.70 states that each product label is required to bear hazard and precautionary statements for humans and domestic animals.

30. 40 C.F.R. § 156.70(b) states, in pertinent part, “When data or other information

show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect.”

31. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if the label does not bear the registration number assigned under section 7 of each establishment in which it was produced.

32. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “misbranded” if the labeling does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if compiled with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment.

33. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as “misbranded” if its label does not contain a warning or caution statement which may be necessary and if compiled with, together with any requirement imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

34. 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.

35. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it is unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

36. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states it is unlawful for any person to violate any regulation issued under Section 3(a) or 19.

37. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides 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 \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and their implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$18,750 for each offense that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$19,057 for each offense that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, to \$19,446 for each offense that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018, and to \$19,936 for each offense that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2019.

#### Allegations

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

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

40. At all times relevant to the CAFO, D.W. Davies owned or operated a place of business located at 3200 Phillips Avenue, Racine, Wisconsin (facility).

41. On or about April 17 and 26, 2018, an inspector employed with Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) conducted an inspection at the D.W. Davies facility.

42. At all times relevant to this CAFO, Respondent's facility was an EPA registered establishment, where pesticides were produced, identified by EPA Establishment Number (EPA Est. No.) 11741-WI-001.

**Germ-B-Gone, identified as EPA Reg. No. 10900-57-11741**

43. During the inspections, the inspector collected labeling, receiving, and shipping records for **Germ-B-Gone**, identified on the label as EPA Registration Number (EPA Reg. No.) 10900-57-11741.

44. **Germ-B-Gone**, identified as EPA Reg. No. 10900-57-11741, 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.

45. At all times relevant to this CAFO, **Germ-B-Gone**, identified as EPA Reg. No. 10900-57-11741, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a) until June 19, 2018.

46. Prior to June 19, 2018 and during calendar years 2017 and 2018, Respondent distributed or sold **Germ-B-Gone**, identified as EPA Reg. No. 10900-57-11741, on at least 4 separate occasions.

**Bug-X 100, identified as EPA Reg. No. 1021-1758-11741**

47. During the inspections, the inspector collected labeling, receiving, production, and shipping records for **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741.

48. **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741, 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.

49. At all times relevant to this CAFO, **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

50. During calendar years 2016, 2017, and 2018, Respondent distributed or sold **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741, on at least 4 separate occasions.

**Envirocide 1000, identified as EPA Reg. No. 1021-1740-11741**

51. During the inspections, the inspector collected labeling, receiving, production, and shipping records for **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741.

52. **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741, 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.

53. At all times relevant to this CAFO, **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

54. During calendar years 2016, 2017, and 2018, Respondent distributed or sold **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741, on at least 4 separate occasions.

**Stable-Khlor, identified as EPA Reg. No. 33906-5-11741**

55. During the inspections, the inspector collected labeling, receiving, and shipping records for **Stable-Khlor**, identified as EPA Reg. No. 33906-5-11741.

56. **Stable-Khlor**, identified as EPA Reg. No. 33906-5-11741, 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.

57. At all times relevant to this CAFO, **Stable-Khlor**, identified as EPA Reg. No. 33906-5-11741, was not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

58. During calendar years 2016, 2017, and 2018, Respondent distributed or sold **Stable-**

**Khlor**, identified as EPA Reg. No. 33906-5-11741, on at least 4 separate occasions.

**Algae-Guard, EPA Reg. No. 1448-212-11741**

59. During the inspections, the inspector collected labeling, receiving, and shipping records for **Algae-Guard**, EPA Reg. No. 1448-212-11741.

60. **Algae-Guard**, EPA Reg. No. 1448-212-11741, 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.

61. The labels for **Algae-Guard**, EPA Reg. No. 1448-212-11741, collected during the inspections, at all times relevant to this CAFO, were misbranded, as they did not include all the required first aid, hazard and precautionary directions for use, and the EPA Establishment Number in which the product was last produced.

62. The labels for **Algae-Guard**, EPA Reg. No. 1448-212-11741, collected during the inspections, at all times relevant to this CAFO, were also misbranded, as they did not include the required storage and disposal statements and that did not identify the container type as refillable or nonrefillable.

63. During calendar years 2016 and 2017, Respondent distributed or sold **Algae-Guard**, EPA Reg. No. 1448-212-11741, on at least 2 separate occasions.

**Counts**

**Counts 1 – 4 for Germ-B-Gone, identified as EPA Reg. No. 10900-57-11741**

64. Complainant incorporates paragraphs 1 – 63 of this CAFO, as if set forth in the following paragraphs.

65. Prior to June 19, 2018 and during calendar years 2017 and 2018, Respondent distributed or sold the unregistered pesticide, **Germ-B-Gone**, identified as EPA Reg. No. 10900-

57-11741.

66. Respondent's distribution or sale of the unregistered pesticides **Germ-B-Gone**, identified as EPA Reg. No. 10900-57-11741, constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

67. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject 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 the violations.

**Counts 5- 8 for Bug-X 100, identified as EPA Reg. No. 1021-1758-11741**

68. Complainant incorporates paragraphs 1 – 63 of this CAFO, as if set forth in the following paragraphs.

69. During calendar years 2016, 2017, and 2018, Respondent distributed or sold the unregistered pesticide, **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741.

70. Respondent's distribution or sale of the unregistered pesticides **Bug-X 100**, identified as EPA Reg. No. 1021-1758-11741, constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

71. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject 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 the violations.

**Counts 9 – 12 for Envirocide 1000, identified as EPA Reg. No. 1021-1740-11741**

72. Complainant incorporates paragraphs 1 – 63 of this CAFO, as if set forth in the following paragraphs.

73. During calendar years 2016, 2017, and 2018, Respondent distributed or sold the unregistered pesticide, **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741.

74. Respondent's distribution or sale of the unregistered pesticides **Envirocide 1000**, identified as EPA Reg. No. 1021-1740-11741, constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

75. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject 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 the violations.

**Counts 13 – 16 for Stable-Khlor, identified as EPA Reg. No. 33906-5-11741**

76. Complainant incorporates paragraphs 1 – 63 of this CAFO, as if set forth in the following paragraphs.

77. During calendar years 2016, 2017, and 2018, Respondent distributed or sold the unregistered pesticide, **Stable-Khlor**, identified as EPA Reg. No. 33906-5-11741.

78. Respondent's distribution or sale of the unregistered pesticides **Stable-Khlor**, identified as EPA Reg. No. 33906-5-11741, constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

79. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject 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 the violations.

**Counts 17 – 20 for Algae-Guard, EPA Reg. No. 1448-212-11741**

80. During calendar years 2016 and 2017, Respondent distributed or sold the misbranded pesticide **Algae-Guard**, EPA Reg. No. 1448-212-11741.

81. Respondent's distribution or sale of the misbranded pesticide, **Algae-Guard**, EPA Reg. No. 1448-212-11741, constitutes unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

82. Respondent's violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), subject 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 violations.

83. During calendar years 2016 and 2017, Respondent distributed or sold the pesticide **Algae-Guard**, EPA Reg. No. 1448-212-11741, with a label that did not contain the required storage and disposal statements and that did not identify the container type as refillable or nonrefillable.

84. Respondent's distribution or sale of pesticide, **Algae-Guard**, EPA Reg. No. 1448-212-11741, with a label that did not contain the required storage and disposal statements and that did not identify the container type as refillable or nonrefillable, constitutes unlawful acts pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

85. Respondent's violations of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. §136j(a)(2)(S), subject 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 violations.

#### **Civil Penalty and Other Relief**

86. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(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.

87. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), specifically including the Respondent's size of business, ability to continue in business, and gravity of the violation, and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December

2009, Complainant has determined the appropriate penalty to settle this action is \$122,605.

88. Respondent must pay a \$122,605 civil penalty in three installments with interest as follows: \$40,868.33 within 30 days of the effective date of this CAFO; \$41,069.87 within 90 days of the effective date of this CAFO; and \$41,069.88 within 180 days of the effective date of this CAFO:

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment #1	Within 30 days of effective date of CAFO	\$40,868.33	\$40,868.33	\$0
Payment #2	Within 90 days of effective date of CAFO	\$41,069.87	\$40,868.33	\$201.54
Payment #3	Within 180 days of effective date of CAFO	\$41,069.88	\$40,868.34	\$201.54

Respondent must pay the installments by sending cashier's or certified checks, payable to

"Treasurer, United States of America," by regular U.S. Postal Service mail to:

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

If sending the payments by express mail, then by sending a cashier's or certified checks, payable

to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

In the comment or description field include "D.W. Davies & Co., Inc." and the docket number of this CAFO.

To pay on-line, go to [www.pay.gov](http://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

89. Respondent must send a notice of each installment 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 W. Jackson Blvd.  
Chicago, IL 60604

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

Robert H. Smith (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

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

91. If Respondent does not pay any installment payment as set forth in paragraph 88, above, the entire balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may refer the delinquency to the Attorney General to recover any unpaid penalty with interest 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.

92. 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 six percent per year penalty on any principal amount 90 days past due.

### General Provisions

93. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and Richard.Lewandowski@huschblackwell.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.

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

95. 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.

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

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

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

99. 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.

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

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

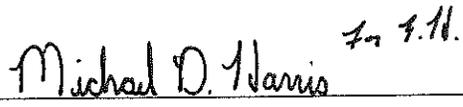
**In the Matter of:**  
**D.W. Davies & Co., Inc.**  
**Docket No. FIFRA-05-2019-0008**

3-18-19  
Date

  
\_\_\_\_\_  
Daniel Davies  
President  
D.W. Davies & Co., Inc.

**United States Environmental Protection Agency, Complainant**

3/29/2019  
Date

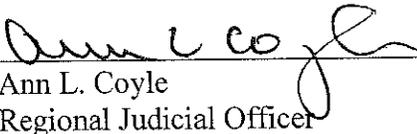
  
\_\_\_\_\_  
Tinka G. Hyde  
Director  
Land and Chemicals Division

In the Matter of:  
D.W. Davies & Co., Inc.  
Docket No. FIFRA-05-2019-0008

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.

4/5/19  
Date

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

**Consent Agreement and Final Order  
In the Matter of: D.W. Davies & Co., Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, Docket Number: FIFRA-05-2019-0008, which was filed on April 5, 2019, in the following manner to the following addressees:

Copy by E-mail to  
Respondent:

Mr. Richard Lewandowski  
Richard.Lewandowski@huschblackwell.com

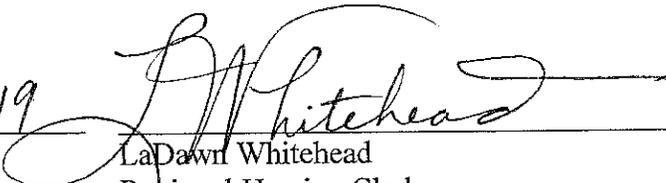
Copy by E-mail to  
Attorney for Complainant:

Mr. Robert H. Smith  
smith.roberth@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ms. Ann L. Coyle  
coyle.ann@epa.gov

Dated: April 5, 2019

  
\_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 5