



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAY 13 2009**

REPLY TO THE ATTENTION OF:

**LC-8J**

CERTIFIED MAIL

Receipt No 7001 0320 0006 0182 9337

Mr. John W. Kidder  
Vice President  
Spawn Mate, Inc.  
260 Westgate Drive  
Watsonville, California 95076

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0014

Dear Mr. Kidder:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on May 13, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$32,760 is to be paid in the manner described in paragraphs 68 and 69. Please be certain that the number **BD 2750945P012** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 12, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terence Bonace".

Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

cc: Nidhi O'Meara, ORC/C-14J (w/Encl.)  
David Scott, OISC  
Pam Cooper, Region 9, EPA

RECEIVED

MAY 13 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2009-0014</b>
	)	
<b>Spawn Mate, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>New Albany, Indiana</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
_____	)	

**Consent Agreement and Final Order**  
**Commencing and Concluding a Proceeding**

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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. The Respondent is Spawn Mate Inc. (Spawn Mate), a corporation doing business in the State of Indiana.

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 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that 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, 7 U.S.C. § 136a.

11. 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).

12. 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).

13. 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).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.  
40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 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**

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

17. Respondent is a wholesaler, dealer, retailer, or other distributor.

18. Respondent owned or operated a place of business located at 2049 Indiana Avenue, P.O.Box 1144, New Albany, Indiana, during the calendar year 2007.

19. On August 15, 2007, an inspector employed by the Office of Indiana State Chemist and Seed Commissioner and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in New Albany, Indiana.

20. On September 21, 2007, the inspector employed by the Office of Indiana State Chemist and Seed Commissioner and authorized to conduct inspections under FIFRA conducted a follow up inspection at Respondent’s place of business in New Albany, Indiana.

21. During the September 21, 2007, inspection, the inspector collected physical samples, labels, and packing slips for the product ProMycel Titanium with Mertect® 340-F.

22. During the September 21, 2007, inspection, the inspector collected physical samples, labels, and packing slips for the product ProMycel Titanium with Topsin® M 70% WP.

23. Respondent's label for ProMycel Titanium with Mertect ® 340-F collected on September 21, 2007 states "Titanium combines the benefits of delayed release technology with either Topsin ® M 70% WP, where permitted, or Mertect ® 340-F to control mushroom disease."

24. The labeling on the ProMycel Titanium with Mertect ® 340-F package claims, states or implies that the ProMycel Titanium with Mertect ® 340-F product is a pesticide.

25. The product ProMycel Titanium with Mertect ® 340-F is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. The product ProMycel Titanium with Mertect ® 340-F is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

27. The physical sample of ProMycel Titanium with Mertect ® 340-F collected by the inspector on September 21, 2007 was packaged, labeled and ready for distribution or sale.

28. On or about August 11, 2007, Respondent distributed or sold ProMycel Titanium with Mertect ® 340-F to Amycel in San Juan Bautista, California.

29. On or about September 13, 2007, Respondent distributed or sold ProMycel Titanium with Mertect ® 340-F to Amycel in Lincoln University, Pennsylvania.

ProMycel Titanium with Topsin ® M 70% WP.

30. Respondent's label for ProMycel Titanium Topsin ® M 70% WP collected on September 21, 2007 states "Titanium combines the benefits of delayed release technology with either Topsin ® M 70% WP, where permitted, or Mertect ® 340-F to control mushroom disease."

31. The labeling on the ProMycel Titanium with Topsin ® M 70% WP package claims,

states or implies that the ProMycel Titanium with Topsin ® M 70% WP product is a pesticide.

32. The product ProMycel Titanium with Topsin ® M 70% WP is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. The product ProMycel Titanium with Topsin ® M 70% WP is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

34. The physical sample of ProMycel Titanium with Topsin ® M 70% WP collected by the inspector on September 21, 2007 was packaged, labeled and ready for distribution or sale.

35. On or about August 17, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in Lincoln University, Pennsylvania.

36. On or about August 21, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in Lincoln University, Pennsylvania.

37. On or about August 27, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in Lincoln University, Pennsylvania.

38. On or about August 29, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in Lincoln University, Pennsylvania.

39. On or about September 13, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in Lincoln University, Pennsylvania.

**Count 1**

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

41. On September 21, 2007, Respondent distributed or sold ProMycel Titanium with Mertect ® 340-F in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

42. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 2**

43. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

44. On August 11, 2007, Respondent distributed or sold ProMycel Titanium with Mertect ® 340-F to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

45. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 3**

46. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

47. On September 13, 2007, Respondent distributed or sold ProMycel Titanium with Mertect ® 340-F to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

48. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C.

§§ 136a(a) and 136j(a)(1)(A) 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).

**Count 4**

49. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

50. On September 21, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

51. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 5**

52. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

53. On August 17, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

54. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 6**

55. Complainant incorporates by reference the allegations contained in paragraphs 1



through 39 of this Complaint.

56. On August 21, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

57. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 7**

58. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

59. On August 27, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

60. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 8**

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

62. On August 29, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

63. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Count 9**

64. Complainant incorporates by reference the allegations contained in paragraphs 1 through 39 of this Complaint.

65. On September 13, 2007, Respondent distributed or sold ProMycel Titanium with Topsin ® M 70% WP to Amycel in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

66. Respondent's violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) 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).

**Civil Penalty**

67. 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 \$32,760. In determining the penalty 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 violation. Complainant also considered EPA's *Enforcement Response Policy for FIFRA Section 7(c)(ERP)*, dated June 2007.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$32,760 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for a check sent by regular U.S. Postal Service mail:

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

for a check sent by overnight mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document (BD) number.

69. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Mr. Terence R. Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Mrs. Nidhi O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

71. If Respondent does not pay the civil penalty timely, 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.

72. 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**

73. This CAFO resolves only Respondent's liability for federal civil penalties for the violation and facts alleged in the CAFO.

74. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

76. This CAFO is a "final order" for purposes of EPA's ERP for FIFRA.

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

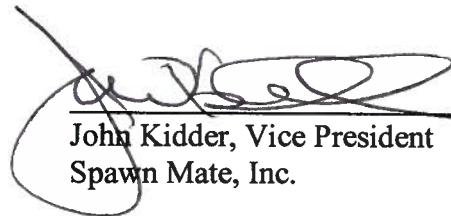
78. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Spawn Mate, Inc., Respondent

4-22-09  
Date

  
John Kidder, Vice President  
Spawn Mate, Inc.

United States Environmental Protection Agency, Complainant

5/8/09  
Date

*for* Willie H. Harris  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:

**Spawn Mate, Inc.**

Docket No. **FIFRA-05-2009-0014**

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.

Date

5/11/09

  
Walter W. Karadur

for  
Bharat Mathur  
Acting Regional Administrator

United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY

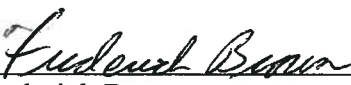
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Chicago Food Corporation., was filed on May 13, 2009, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9337, a copy of the original to the Respondents:

Mr. John W. Kidder  
Vice President  
Spawn Mate, Inc.  
260 Westgate Drive  
Watsonville, California 95076

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi O'Meara, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_  
Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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