



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 16 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Patrick Musser
President
Chem-A-Co., Incorporated
Post Office Box 1099
Monticello, Indiana 47960

pm@chemaco.com

Re: Consent Agreement and Final Order - In the Matter of: Chem-A-Co., Incorporated

FIFRA-05-2019-0020

Mr. Musser:

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 September 16, 2019 with our Regional Hearing Clerk.

The civil penalty in the amount of \$5,000 is to be paid in the manner described in paragraphs 64-65. Please be certain that Chem-A-Co., Incorporated 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. Payment is due within 30 calendar 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

cc: Luis Oviedo, C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)	Docket No, FIFRA-05-2019-0020
)	
Chem-A-Co., Incorporated)	Proceeding to Assess a Civil Penalty
Monticello, Indiana)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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 the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Chem-A-Co., Incorporated, 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 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.”

11. 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.

12. 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.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) 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].” See also 40 C.F.R. § 152.5.

14. 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 device or active ingredient used in producing a pesticide.”

15. 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.”

16. 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.

17. 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].”

18. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), states, in pertinent part, “[e]ach applicant for registration of a pesticide shall file with the Administrator [of EPA] 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.”

19. 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.

20. 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.

21. 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).

22. 40 C.F.R. § 156.10(i)(2) states, in pertinent part, the directions for use shall include the following, under the headings “Directions for Use”... (ix) 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.”

23. 40 C.F.R. § 156.70 states that each product label is required to bear hazard and precautionary statements for humans and domestic animals.

24. 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.”

25. 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.

26. 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.

27. Pursuant to its authority under Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), the EPA has promulgated regulations governing the registration of pesticide-producing establishments at

40 C.F.R. Part 167.

28. 40 C.F.R. § 167.20(a) states, any establishment where pesticidal product is produced must be registered with the EPA.

29. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states, no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA.

30. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), in pertinent part, requires any producer operating a registered pesticide-producing establishment 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.

31. 40 C.F.R. § 167.85(a) and (b) adds, in part, requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

32. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, "EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments (hereafter referred to as "Report")" requires, inter alia, identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the "Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments" provides additional detail regarding information required on the Form.

33. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually

on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

34. 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.

35. 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).

36. 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. 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 up to \$19,936 for each offense that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2019 (See 84 Fed. Reg. 2056 (Effective February 6, 2019)).

Factual Allegations and Alleged Violations

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

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

39. At all times relevant to this CAFO, Chem-A-Co., Incorporated owned or operated a place of business located at 8665 North US 421, Monticello, Indiana 47960 (facility).

40. 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.) 061943-IN-001.

41. On or about August 31, 2017, an inspector employed with the Office of Indiana State Chemist and Seed Commissioner (OISC) conducted an inspection at the Chem-A-Co., Incorporated facility.

42. During the August 31, 2017 inspection, the OISC inspector collected labeling, receiving, production, and distribution records for SCI-62, EPA Registration Number (EPA Reg. No.) 61943-1, and Advanced-BLUE, EPA Reg. No. 61943-1.

SCI-62, EPA Reg. No. 61943-1

43. During the August 31, 2017 inspection, the inspector collected labeling, receiving, production, and distribution records for SCI-62, EPA Reg. No. 61943-1.

44. SCI-62, EPA Reg. No. 61943-1, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it was intended for preventing, destroying, repelling, or mitigating certain pests, namely algae and bacteria control.

45. Respondent certified that the label for SCI-62, EPA Reg. No. 61943-1, collected during the August 31, 2017 inspection, is representative of distributions that were collected by the inspector of that pesticide product that occurred during calendar year 2017.

46. The label for SCI-62, EPA Reg. No. 61943-1, collected during the August 31, 2017 inspection, failed to contain the environmental hazard statement that was accepted on the registered product label that EPA accepted on March 19, 2012. Namely, it failed to include user safety recommendations and a note to physician statement.

47. SCI-62, EPA Reg. No. 61943-1, at all times relevant to this CAFO, was

misbranded, as it did not include the required environment hazard statement.

48. During calendar year 2017, Respondent distributed or sold SCI-62, EPA Reg. No. 61943-1, on at least nine separate occasions.

49. Respondent's distribution or sale of misbranded pesticide, SCI-62, EPA Reg. No. 61943-1, during calendar year 2017, constitutes nine separate unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

50. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on nine separate occasions, subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the nine violations.

Advanced-BLUE, EPA Reg. No. 61943-1

51. During the August 31, 2017 inspection, the inspector collected labeling, receiving, production, and distribution records for Advanced-BLUE, EPA Reg. No. 61943-1.

52. Advanced-BLUE, EPA Reg. No. 61943-1, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it was intended for preventing, destroying, repelling, or mitigating certain pests, namely algae and bacteria control.

53. Respondent certified that the label for Advanced-BLUE, EPA Reg. No. 61943-1, collected during the August 31, 2017 inspection, is representative of distribution that was collected by the inspector of that pesticide product that occurred during calendar year 2017.

54. The label for Advanced-BLUE, EPA Reg. No. 61943-1, collected during the inspection was deficient as follows:

- a. The hazard and precautionary statements on the label for Advanced-BLUE, EPA Reg. No. 61943-1, failed to contain certain hazard and precautionary language as was accepted on the registered product label that EPA accepted on

March 19, 2012. Namely, it failed to include user safety recommendations and a note to physician statement.

- b. The directions for use on the product label, Advanced-BLUE, EPA Reg. No. 61943-1, failed to contain certain directions for use language, including storage and disposal statements, as was accepted on the registered product label that EPA accepted on March 19, 2012.

55. Advanced-BLUE, EPA Reg. No. 61943-1, at all times relevant to this CAFO, was misbranded, as it did not include all the required hazard and precautionary, directions for use and storage and disposal statements.

56. During calendar year 2017, Respondent distributed or sold Advanced-BLUE, EPA Reg. No. 61943-1, on at least one separate occasion.

57. Respondent's distribution or sale of misbranded pesticide, Advanced-BLUE, EPA Reg. No. 61943-1, during calendar year 2017, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

58. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion, subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the violation.

Annual Pesticide Production Reports

59. Respondent's annual report for EPA Est. No. 061943-IN-001, for calendar year 2017, was submitted to EPA on or about February 21, 2018.

60. Respondent's annual report for EPA Est. No. 061943-IN-001, submitted to EPA on or about February 21, 2018 for calendar year 2017, failed to contain an EPA Registration Number and product code for reported production, as required by 40 C.F.R. § 167.85(c)

61. Respondent's failure to comply with Section 7(c) of FIFRA and 40 C.F.R. § 167.85, are 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 at least one occasion, subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the violation.

Civil Penalty

63. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), Complainant determined that an appropriate civil penalty to settle this action is \$5,000. 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, financial documentation to support Respondent's ability to pay a penalty, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

64. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 civil penalty for the FIFRA violations by sending a cashier's or certified check, 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 payment by express mail, then send 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

The check must note "Chem-A-Co., Incorporated" and the docket number of this CAFO.

To pay on-line, go to 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

65. 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 W. Jackson Blvd.
Chicago, IL 60604

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

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

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

67. If Respondent does not pay timely the civil penalty, 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: oviedo.luis@epa.gov (for Complainant), and pm@chemaco.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 the CAFO.

71. 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.

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 FIFRA Enforcement Response Policy.

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.

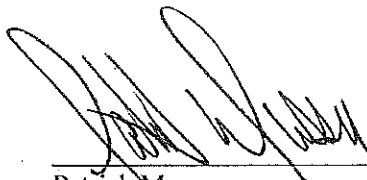
76. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Chem-A-Co., Incorporated, Respondent

8/28/19

Date



Patrick Musser
President
Chem-A-Co., Incorporated

United States Environmental Protection Agency, Complainant

9/18/19

Date



Michael D. Harris
Acting Director
Enforcement and Compliance Assurance
Division

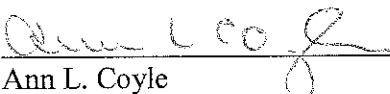
In the Matter of:
Chem-A-Co., Incorporated
Docket No. FIFRA-05-2019-0020

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.

9/13/19

Date



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

**Consent Agreement and Final Order
In the Matter of: Chem-A-Co., Incorporated**

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-05-2019-0020, which was filed on

September 16, 2019, 2019, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Mr. Patrick Musser
President
Chem-A-Co., Incorporated
Post Office Box 1099
Monticello, Indiana 47960
pm@chemaco.com

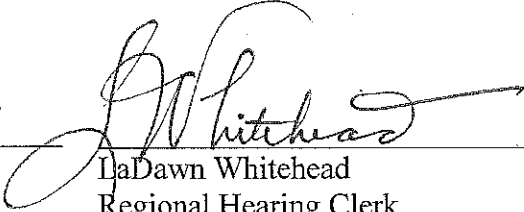
Copy by E-mail to
Attorney for Complainant:

Mr. Luis Oviedo
oviedo.luis@epa.gov

Copy by E-mail to
Regional Judicial Officer:

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

Dated: September 16, 2019



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