



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

February 24, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL No. 709 1680 0000 7647 6164
RETURN RECEIPT REQUESTED

Ms. Kim K. Burke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

Agreement and Final Order In the Matter of
Mason Chemical Company Docket No. FIFRA-05-2014-0008

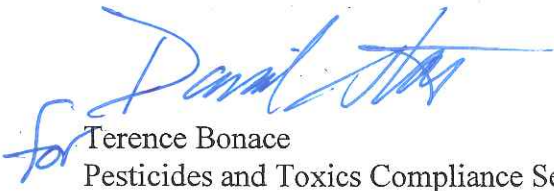
Dear Mr. Jones:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on February 24, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$74,060.00 is to be paid in the manner described in paragraphs 198 and 199. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 26, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Mason Chemical Company,
Arlington Heights, Illinois

Respondent.

Docket No. FIFRA-05-2014-0008

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 Commencing and Concluding the Proceeding

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

3. Respondent is Mason Chemical Company, a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the conditions 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 and legal conclusions 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 in compliance with FIFRA regarding the violations alleged in this CAFO.

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. Pursuant to FIFRA, the term “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

12. 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. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg); and 40 C.F.R. § 152.3.

13. The term “pesticide” means 1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and 2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. Section 2(u) of FIFRA,

7 U.S.C. § 136(u); and 40 C.F.R. § 152.3.

14. The term “pest” means 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA. Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

15. The term “registrant” means a person who has registered any pesticide under the provisions of FIFRA. Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

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

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

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

19. 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 or sale is termed “supplemental distribution” and any product so distributed or sold is referred to as a “distributor product.” 40 C.F.R. §152.132.

20. In supplemental distribution, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA. 40 C.F.R. §152.132.

21. In supplemental distribution, both the registrant and the distributor may be held liable for violations pertaining to the distributor product. 40 C.F.R. §152.132.

22. Supplemental distribution is permitted upon notification to EPA, if certain conditions are met. 40 C.F.R. §152.132.

23. One condition of supplemental distribution is that the label of the distributor product is the same as that of the registered product, except for differences including: 1) the product name of the distributor product may be different (but may not be misleading); 2) the name and address of the distributor may appear instead of that of the registrant; 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number; and 4) specific claims may be deleted, provided that no other changes are necessary. 40 C.F.R. §152.132(d).

24. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

Mason Chemical Company

25. At all times relevant to this CAFO, Respondent was a “person”, as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

26. At all times relevant to this CAFO, Respondent was a person who had registered pesticides under the provisions of FIFRA.

27. At all times relevant to this CAFO, Respondent was a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

28. At all times relevant to this CAFO, Respondent owned or operated a place of business at 721 W. Algonquin Rd., Arlington Heights, Illinois.

29. In or about April and May 2013, EPA issued a series of letters to Respondent, stating EPA's intent to file a series of administrative complaints against Respondent relating to the violations alleged in this CAFO.

30. Respondent has stated to EPA by letter dated May 21, 2013 that on June 2, 2013, Respondent began a confidential audit using third party consultant TSG, of its pesticides' compliance with FIFRA. Respondent has stated to EPA that this self-audit covers FIFRA compliance of Respondent and at certain supplemental distributors for Respondent, Mason Chemical.

The Brenco Corporation

31. At all times relevant to this CAFO, The Brenco Corporation (Brenco) was a corporation doing business in the State of Missouri.

32. At all times relevant to this CAFO, Brenco was a "person", as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

33. At all times relevant to this CAFO, Brenco owned or operated a place of business at 9246 Shortridge, St. Louis, Missouri.

34. On February 2, 2010, an inspector employed by the Missouri Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Brenco's place of business at 9246 Shortridge, St. Louis, Missouri.

35. During the February 2, 2010 inspection, the inspector collected a label and sales invoices for the product Brenco 580 Algaecide, EPA Reg. No. 10324-46-7299.

Counts 1-11
Illegal Distribution and Sale of Misbranded Brenco 580 Algaecide

36. Complainant realleges and incorporates herein by reference paragraphs 1-35.

37. During calendar year 2009, MC1412-16%-W was a registered pesticide, EPA Reg. No. 10324-46.

38. During calendar year 2009, MC1412-16%-W was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

39. At all times relevant to this CAFO, Respondent was the registrant of MC1412-16%-W.

40. On or about February 24, 2003 and May 18, 2005, EPA accepted amended labeling for MC1412-16%-W in connection with its registration.

41. During calendar year 2009, a Notice of Supplemental Distribution of a Registered Pesticide Product dated August 12, 1994 allowed Brenco to distribute MC1412-16%-W under the brand name, Brenco 580 Algaecide, EPA Reg. No. 10324-46-7299.

42. On the following 11 occasions in 2009, Brenco distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Brenco 580 Algaecide:

- a. Invoice dated March 6, 2009 (Shipper's No. 12211)
- b. Invoice dated March 27, 2009 (Shipper's No. 12219)
- c. Invoice dated March 30, 2009 (Shipper's No. 12222)
- d. Invoice dated March 30, 2009 (Shipper's No. 12224)
- e. Invoice dated March 30, 2009 (Shipper's No. 12225)
- f. Invoice dated March 31, 2009 (Shipper's No. 12230)

- g. Invoice dated April 9, 2009 (Shipper's No. 12232)
- h. Invoice dated June 11, 2009 (Shipper's No. 12243)
- i. Invoice dated September 15, 2009 (Shipper's No. 12277)
- j. Invoice dated September 15, 2009 (Shipper's No. 12278)
- k. Invoice dated November 3, 2009 (Shipper's No. 12299)

43. On the 11 occasions in 2009, Brenco distributed or sold Brenco 580 Algaecide with labeling that did not include all of the warning or caution statements required by the February 24, 2003 and May 18, 2005 labeling that EPA accepted for MC1412-16%-W.

44. On the 11 occasions in 2009, Brenco distributed or sold Brenco 580 Algaecide with labeling that did not bear the following prohibition:

Use of the product in either public/municipal or single or multiple family private/residential potable/drinking water systems is strictly prohibited. Use of the product in any cooling water system that discharges effluent within ¼ mile of either a public/municipal or single or multiple family private/residential potable/drinking water intake in [sic] strictly prohibited.

45. On the 11 occasions in 2009, Brenco distributed or sold to persons Brenco 580 Algaecide with a label that did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

46. On the 11 occasions in 2009, Brenco distributed or sold to persons Brenco 580 Algaecide with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

47. Each of the 11 distributions or sales set forth in this count group above, was an

unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

48. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for each of the 11 unlawful acts set forth in this count group, above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

EXL Laboratories, LLC

49. At all times relevant to this CAFO, EXL Laboratories, LLC (EXL) was a limited liability company doing business in the State of Minnesota.

50. At all times relevant to this CAFO, EXL was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

51. At all times relevant to this CAFO, EXL owned or operated a place of business at or about 1001 Glenwood Avenue, Minneapolis, Minnesota.

52. On or about March 12, 2009, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at EXL’s place of business at 1001 Glenwood Avenue, Minneapolis, Minnesota.

53. During the March 12, 2009 inspection, the inspector photographed or otherwise collected labeling and a sales invoice for the product Al-San 5, EPA Reg. No. 10324-117-3276.

Count 12
Illegal Distribution and Sale of Misbranded Al-San 5

54. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 49-53.

55. During calendar year 2009, Maquat 710-M was a registered pesticide, EPA Reg. No. 10324-117.

56. During calendar year 2009, Maquat 710-M was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

57. At all times relevant to this CAFO, Respondent was the registrant of Maquat 710-M.

58. On or about November 14, 2006, October 10, 2007 and January 15, 2008, EPA accepted amended labeling for Maquat 710-M in connection with its registration.

59. During calendar year 2009, a Notice of Supplemental Distribution of a Registered Pesticide Product dated May 22, 2007 allowed EXL to distribute Maquat 710-M under the brand name, Al-San 5, EPA Reg. No. 10324-117-3276.

60. On at least one occasion in 2009, EXL distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Al-San 5.

61. On at least one occasion in 2009, EXL distributed or sold Al-San 5 with a label that did not include all of the warning or caution statements required by the October 10, 2007 and January 15, 2008 labeling that EPA accepted for Maquat 710-M.

62. On at least one occasion in 2009, EXL distributed or sold AL-San 5 with a label that did not bear the physical or chemical hazard statements, "Do not use or store near heat or open flame."

63. The November 14, 2006, October 10, 2007 and January 15, 2008 labeling that EPA accepted for Maquat 710-M bore a list of organisms against which the product was effective in sanitizing food contact surfaces.

64. In 2009, FIFRA required any quantities of Maquat 710-M distributor products distributed or sold with labeling bearing instructions for use in sanitizing food contact surfaces to also bear the list of organisms against which the product was effective in sanitizing food contact

surfaces, referenced in paragraph 63, above.

65. On at least one occasion in 2009, EXL distributed or sold AI-San 5 with labeling that did not bear the list of organisms against which the product was effective in sanitizing food contact surfaces, referenced in paragraph 63, above.

66. On at least one occasion in 2009, EXL distributed or sold AI-San 5 with the following directions for use not found on the November 14, 2006, October 10, 2007 and January 15, 2008 labeling that EPA accepted for Maquat 710-M:

DIRECTIONS FOR FOOD PROCESSING EQUIPMENT, UTENSILS AND FOOD CONTACT ARTICLES REGULATED BY 21CFR [sic] sec 178.1010:B(22) [sic] C(17) . . . Sanitize articles using a solution of 0.25 to 0.50 ounces of this product per gallon of water (200 – 400 ppm active)

67. On at least one occasion in 2009, EXL distributed or sold to persons AI-San 5 with a label that did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

68. On at least one occasion in 2009, EXL distributed or sold to persons AI-San 5 with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

69. The distribution or sale set forth in this count was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

70. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for the unlawful act set forth in this count, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Hydrite Chemical Company

71. At all times relevant to this CAFO, Hydrite Chemical Company (Hydrite Chemical) was a corporation doing business in the State of Iowa.

72. At all times relevant to this CAFO, Hydrite Chemical was a "person", as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

73. At all times relevant to this CAFO, Hydrite Chemical owned or operated a place of business at or about 2815 WCF & N Drive, Waterloo, Iowa.

74. On September 28, 2009, an inspector employed by the Iowa Department of Agriculture and Land Stewardship and authorized to conduct inspections under FIFRA conducted an inspection at Hydrite Chemical's place of business at 2815 WCF & N Drive, Waterloo, Iowa.

75. During the September 28, 2009 inspection, the inspector collected a physical sample, label, and sales invoice for the product Guardian No. 467, EPA Reg. No. 10324-63-2686.

76. During the September 28, 2009 inspection, Hydrite Chemical was holding Guardian No. 467 for distribution or sale.

Counts 13 and 14

Illegal Distribution and Sale of Misbranded Guardian No. 467

77. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 71-76.

78. At all times relevant to this CAFO, Respondent was the registrant of Maquat 10.

79. On or about December 21, 2006, July 20, 2007, and August 8, 2008, EPA accepted labeling for Maquat 10 in connection with its registration.

80. During calendar year 2009, a Notice of Supplemental Distribution of a Registered

Pesticide Product dated September 12, 2001 allowed Hydrite Chemical to distribute Maquat 10 under the brand name, Guardian No. 467, EPA Reg. No. 10324-63-2686.

81. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Guardian No. 467.

82. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold Guardian No. 467 with labeling that did not include all of the warning or caution statements required by the December 21, 2006, July 20, 2007, and August 8, 2008 labeling that EPA accepted for Maquat 10.

83. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold Guardian No. 467 with labeling that did not bear the physical or chemical hazard statements, "Do not use or store near heat or open flame. Do not mix with deoxidizers, anionic soaps and detergents."

84. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold Guardian No. 467 with labeling that did not bear a section discussing physical or chemical hazards.

85. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold Guardian No. 467 with labeling that did not bear the following environmental hazard statement:

This pesticide is toxic to fish. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollution Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product into sewer systems without previously notifying the local sewage treatment plant authority. For guidance, contact your State Water Board or

Regional Office of the EPA.

86. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold Guardian No. 467 with labeling that did not bear a section discussing environmental hazards.

87. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold to persons Guardian No. 467 with a label that did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

88. On at least two occasions in 2009 after January 12, 2009, Hydrite Chemical distributed or sold to persons Guardian No. 467 with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

89. Each of the two distributions or sales set forth in this count group, was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

90. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for each of the two unlawful acts set forth in this count group, above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Sanitation Strategies, LLC
Torch Surface Technologies, LLC

91. At all times relevant to this CAFO, Sanitation Strategies, LLC (Sanitation Strategies) was a limited liability corporation doing business in the State of Michigan.

92. At all times relevant to this CAFO, Torch Surface Technologies, LLC (Torch Surface) was a limited liability corporation doing business in the State of Michigan.

93. At all times relevant to this CAFO, Sanitation Strategies was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

94. At all times relevant to this CAFO, Sanitation Strategies owned or operated a place of business at or about 1798 Holloway Drive, Holt, Michigan.

95. At all times relevant to this CAFO, Torch Surface was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

96. At all times relevant to this CAFO, Torch Surface owned or operated a place of business at or about 10781 Plaza Drive, Whitmore Lake, Michigan.

97. At all times relevant to this CAFO, Torch Surface manufactured pesticides for Sanitation Strategies and then shipped those pesticides to Sanitation Strategies’ customers.

98. In shipping pesticides to Sanitation Strategies’ customers, Torch Surface worked under direction from Sanitation Strategies and used information provided by Sanitation Strategies.

99. On June 6, 2012, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Torch Surface’s place of business at 10781 Plaza Drive, Whitmore Lake, Michigan.

100. During the June 6, 2012 inspection, the inspector collected labeling and sales invoices for the product Labsan MVM Disinfectant, EPA Reg. No. 10324-140-79732.

Counts 15 and 16

Illegal Distribution and Sale of Misbranded Labsan MVM Disinfectant

101. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 91-100.

102. During calendar years 2011 and 2012, Maquat MQ2525M-CPV was a registered pesticide, EPA Reg. No. 10324-140.

103. During calendar years 2011 and 2012, Maquat MQ2525M-CPV was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

104. At all times relevant to this CAFO, Respondent was the registrant of Maquat MQ2525M-CPV.

105. On or about January 15, 2009 and October 29, 2009, EPA accepted amended labeling for Maquat MQ2525M-CPV in connection with its registration.

106. During calendar years 2011 and 2012, a Notice of Supplemental Distribution of a Registered Pesticide Product dated January 25, 2006 allowed Sanitation Strategies to distribute Maquat MQ2525M-CPV under the brand name, Labsan MVM Disinfectant, EPA Reg. No. 10324-140-79732.

107. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Labsan MVM Disinfectant.

108. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not include all of the warning or caution statements required by the January 15, 2009 and October 29, 2009 amended labeling that EPA accepted for Maquat MQ2525M-CPV.

109. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear a complete section notifying users of physical or chemical hazards.

110. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear the physical or

chemical hazard statements, “Do not use or store near heat or open flame.”

111. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear a complete section notifying users of environmental hazards.

112. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear the sentence, “This pesticide is toxic to fish and aquatic invertebrates.”

113. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear a complete section notifying users of hazards to humans and domestic animals.

114. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not bear the sentence, “Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet.”

115. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with directions for use in food-processing and tobacco premises that did not begin with the statement, “Before using this product, food products and packaging materials must be removed from area or carefully protected.”

116. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with directions for use on food service establishment food contact surfaces that did not begin with the statement, “Before using this product, food products and packaging materials must be removed from area or carefully protected.”

117. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold Labsan MVM Disinfectant with a label that did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

118. On at least two occasions in 2011 and 2012, Sanitation Strategies and Torch Surface distributed or sold to persons Labsan MVM Disinfectant with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

119. Each distribution or sale set forth in this count group above, was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

120. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for each of the unlawful acts set forth in this count group, above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Warsaw Chemical Company, Inc.

121. At all times relevant to this CAFO, Warsaw Chemical Company, Inc. (Warsaw Chemical) was a corporation doing business in the State of Indiana.

122. At all times relevant to this CAFO, Warsaw Chemical was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

123. At all times relevant to this CAFO, Warsaw Chemical owned or operated a place of business at or about 390 Argonne Road, Warsaw, Indiana.

124. On December 21, 2011, an inspector employed by the Office of the Indiana State Chemist and authorized to conduct inspections under FIFRA conducted an inspection at Warsaw

Chemical Company, 390 Argonne Road, Warsaw, Indiana.

125. During the December 21, 2011 inspection, the inspector collected a physical sample of the product Subtle 4 Non-Acid Bowl Cleaner, EPA Reg. No. 10324-85-2230 that was packaged, labeled and released for shipment.

Count 17

Illegal Distribution and Sale of Misbranded Subtle 4 Non-Acid Bowl Cleaner

126. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 121-125.

127. During calendar year 2011, Maquat 86-M was a registered pesticide, EPA Reg. No. 10324-85.

128. During calendar year 2011, Maquat 86-M was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

129. At all times relevant to this CAFO, Respondent was the registrant of Maquat 86-M.

130. During calendar year 2011, a Notice of Supplemental Distribution of a Registered Pesticide Product dated January 30, 2010 allowed Warsaw Chemical Company to distribute Maquat 86-M under the brand name, Subtle 4 Non-Acid Bowl Cleaner, EPA Reg. No. 10324-85-2230.

131. During calendar year 2011, Warsaw Chemical's labeling for Subtle 4 Non-Acid Bowl Cleaner stated that the product consisted of .086% quaternary ammonium compounds.

132. .086% quaternary ammonium compounds is the equivalent of .0035% quaternary nitrogen.

133. The physical sample of Subtle 4 Non-Acid Bowl Cleaner collected during the December 21, 2011 inspection consisted of .0084% quaternary nitrogen.

134. On at least one occasion in 2011, Warsaw Chemical distributed, sold, offered for

sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Subtle 4 Non-Acid Bowl Cleaner.

135. On at least one occasion in 2011, Warsaw Chemical distributed or sold Subtle 4 Non-Acid Bowl Cleaner with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

136. The distribution or sale set forth in this count above was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

137. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for the unlawful act set forth in this count above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Envirocare Corporation

138. At all times relevant to this CAFO, Envirocare Corporation (Envirocare) was a corporation doing business in the States of Michigan and Massachusetts.

139. At all times relevant to this CAFO, Envirocare was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

140. At all times relevant to this CAFO, Envirocare owned or operated a place of business at or about 10 Upton Drive, Wilmington, Massachusetts.

141. On February 14, 2012, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at Grainger Industrial Supply, 2915 Boardwalk, Ann Arbor, Michigan.

142. During the February 14, 2012 inspection, the MDARD inspector collected a

2 (X) 1-23-14

physical sample of the product Moldex Concentrate, EPA Reg. No. 10324-157-8~~7~~480, that was packaged, labeled and released for shipment.

143. On September 26, 2012, an inspector employed by the Massachusetts Department of Agricultural Resources (MDAR) and authorized to conduct inspections under FIFRA conducted an inspection at Envirocare's place of business at or about 10 Upton Drive, Wilmington, Massachusetts.

144. During the September 26, 2012 inspection, the MDAR inspector collected physical samples of the product Moldex, The Mold Inhibitor, EPA Reg. No. 10324-85-82480, that was packaged, labeled and released for shipment.

145. On January 15, 2013, an inspector employed by MDAR and authorized to conduct inspections under FIFRA conducted an inspection at Envirocare's place of business at or about 10 Upton Drive, Wilmington, Massachusetts.

146. During the January 15, 2013 inspection, the MDAR inspector collected physical samples of Moldex, The Mold Inhibitor, that was packaged, labeled and released for shipment.

Count 18

Illegal Distribution and Sale of Misbranded Moldex Concentrate

147. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 138-146.

148. During calendar year 2012, Maquat 32-NHQ was a registered pesticide, EPA Reg. No. 10324-157.

149. During calendar year 2012, Maquat 32-NHQ was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

150. At all times relevant to this CAFO, Respondent was the registrant of Maquat 32-NHQ.

151. On or about September 13, 2010 and December 14, 2011, EPA accepted amended labeling for Maquat 32-NHQ in connection with its registration.

152. During calendar year 2012, a Notice of Supplemental Distribution of a Registered Pesticide Product dated November 19, 2007 allowed Envirocare to distribute Maquat 32-NHQ under the brand name Moldex Concentrate, EPA Reg. No. 10324-157-82480.

153. On at least one occasion in 2012, Envirocare distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Moldex Concentrate.

154. On at least one occasion in 2012, Envirocare distributed or sold Moldex Concentrate with a label that did not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.

155. The distribution or sale set forth in this count group above, was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

156. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for the unlawful act set forth in this count above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 19
Illegal Distribution and Sale of Moldex Concentrate With Differing Claims

157. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 138-156.

158. On at least one occasion in 2012, Envirocare distributed or sold Moldex Concentrate with labeling bearing the following claims:

Bleach Does Not Kill Mold*
Bleach does not kill the roots of mold
The chemical properties of bleach prevents [sic] it from effectively penetrating porous surfaces

such as wood, sheet rock, grout and concrete.

Bleach damages other materials

Bleach is a known oxidant that causes deterioration of a wide variety of surfaces and contributes to color fading.

Bleach emits harmful gasses

Chlorine bleach releases gasses that are known to be harmful to animal and plant life. One of the known causes [sic] in humans is pulmonary embolism.

*Study recently performed by NORMI

(National Organization of Remediators and Mold Inspectors)

159. None of the claims in paragraph 158, above, were made for Maquat 32-NHQ as a part of the statement required in connection with Maquat 32-NHQ's registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

160. On at least one occasion in 2012, Envirocare distributed or sold to persons Moldex Concentrate with claims made for it as a part of its distribution or sale that substantially differed from any claims made for Maquat 32-NHQ as a part of the statement required in connection with Maquat 32-NHQ's registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

161. The distribution or sale set forth in this count group above, was an unlawful act under Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

162. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for the unlawful act set forth in this count above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 20 and 21

Illegal Distribution and Sale of Misbranded Moldex, The Mold Inhibitor

163. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 138-146.

164. During calendar years 2012 and 2013, Maquat 86-M was a registered pesticide, EPA Reg. No. 10324-85.

165. During calendar years 2012 and 2013, Maquat 86-M was a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

166. At all times relevant to this CAFO, Respondent was the registrant of Maquat 86-M.

167. On or about February 18, 2010 and October 21, 2010, EPA accepted amended labeling for Maquat 86-M in connection with its registration.

168. During calendar years 2012 and 2013, a Notice of Supplemental Distribution of a Registered Pesticide Product dated August 22, 2005 allowed Envirocare to distribute Maquat 86-M under the brand name Moldex, The Mold Inhibitor, EPA Reg. No. 10324-85-82480.

169. During calendar years 2012 and 2013, Envirocare's labeling for Moldex, The Mold Inhibitor stated that the product consisted of .086% quaternary ammonium compounds.

170. During calendar years 2012 and 2013, Envirocare's labeling for Moldex, The Mold Inhibitor stated that the product consisted of the equivalent of .0087% chlorine.

171. The physical samples of Moldex, The Mold Inhibitor collected during the September 26, 2012 inspection consisted of .0261% and .0264% chlorine.

172. The physical samples of Moldex, The Mold Inhibitor collected during the January 15, 2013 inspection consisted of .0257% and .0263% chlorine.

173. On at least two occasions in 2012 and 2013, Envirocare distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Moldex, The Mold Inhibitor.

174. On at least two occasions in 2012 and 2013, Enviorcare distributed or sold to persons Moldex, The Mold Inhibitor with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading . Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

175. The distributions or sales set forth in this count group above, were unlawful acts

under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

176. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for each of the unlawful acts set forth in this count group, above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Hydro Chem Laboratories, Inc.

177. At all times relevant to this CAFO, Hydro Chem Laboratories, Inc. (Hydro Chem) was a corporation doing business in the State of Michigan.

178. At all times relevant to this CAFO, Hydro Chem was a “person,” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

179. At all times relevant to this CAFO, Hydro Chem owned or operated a place of business at or about 22859 Heslip Drive, Novi, Michigan.

180. On March 28, 2013, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at Hydro Chem’s place of business at or about 22859 Heslip Drive, Novi, Michigan.

181. During the March 28, 2013 inspection, the inspector collected a label, photographs and a shipping record of the product CMB-2301, EPA Reg. No. 10324-15-46028.

Counts 22 through 24
Illegal Distribution and Sale of Misbranded CMB-2301

182. Complainant realleges and incorporates herein by reference paragraphs 1-30 and 177-181.

183. During calendar years 2011 and 2012, Maquat TC76-10% was a registered pesticide, EPA Reg. No. 10324-15.

184. During calendar years 2011 and 2012, Maquat TC76-10% was a pesticide, as

defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

185. At all times relevant to this CAFO, Respondent Mason Chemical was the registrant of Maquat TC76-10%.

186. On or about August 6, 2010 and December 14, 2011, EPA accepted labeling for Maquat TC76-10% in connection with its registration.

187. During calendar years 2011 and 2012, a Notice of Supplemental Distribution of a Registered Pesticide Product dated on or about April 19, 1993 allowed Hydro Chem to distribute Maquat TC76-10% under the brand name, CMB-2301, EPA Reg. No. 10324-15-46028.

188. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons CMB-2301.

189. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold CMB-2301 with a label that did not bear the following statements under the heading, "PHYSICAL OR CHEMICAL HAZARDS": "Do not use or store near heat or open flame or in car."

190. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold CMB-2301 with a label that did not bear the following statement under the headings, "PRECAUTIONARY STATEMENTS" and "HAZARDS TO HUMANS AND DOMESTIC ANIMALS": "Keep out of Reach of Children."

191. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold CMB-2301 with a label that did not bear the statement and heading, "PELIGRO".

192. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold CMB-2301 with a label that did not bear the statements, "PELIGRO: SI NO PUEDE LEER EN INGLES, PREGUNTE A SU SUPERVISOR SOBRE LAS INSTRUCCIONES DE USO APROPIADAS ANTES DE TRABAJAR CON ESTE PRODUCTO."

193. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold to persons CMB-2301 with a label that did not contain warning or caution statements which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), were adequate to protect health and the environment. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

194. On at least one occasion in 2011 and two occasions in 2012, Hydro Chem distributed or sold to persons CMB-2301 with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

195. The distributions or sales set forth in this count group above, were unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

196. Respondent is subject to the assessment of a civil penalty of up to \$7,500 for each of the unlawful acts set forth in this count group, above, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

197. 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 \$74,060. 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 *FIFRA Enforcement Response Policy*, dated December 2009.

198. Within 30 days after the effective date of this CAFO, Respondent must pay a \$74,060 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check must note the case title and the docket number of this CAFO. Alternatively, Respondent may pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

[for electronic funds transfer]

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Mason Chemical Company and the docket number of this CAFO.

199. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

201. 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.

202. 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

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

204. 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.

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

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

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

208. 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.

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

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

Mason Chemical Company, Respondent

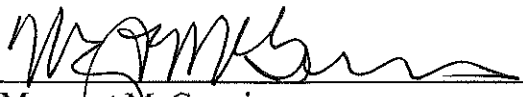
1/23/2014
Date



Susan K. Leslie
Secretary
Mason Chemical Company

United States Environmental Protection Agency, Complainant

2/10/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Mason Chemical Company
Docket No. FIFRA-05-2014-0008

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.

2/18/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5



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 Mason Chemical Company, was filed on February 24, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7647 6164, a copy of the original to the Respondents:

Ms. Kim K. Burke
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Kris Vezner, Regional Judicial Officer, ORC/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

Docket No. FIFRA-05-2014-0008

