



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 5, 2020

VIA EMAIL

Thomas W. Dimond
Ice Miller LLP
200 W. Madison Street, Ste. 3500
Chicago, Illinois 60606-3417

Thomas.Dimond@icemiller.com

Consent Agreement and Final Order In the Matter of Alexander Chemical Corporation
Docket Number **FIFRA-05-2020-0041**

Mr. Dimond:

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 with the Regional Hearing Clerk.

The civil penalty in the amount of \$17,142 is to be paid in the manner described in paragraph 51. Please be certain that the docket number is included in the comment or description field of the electronic funds transfer. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,
**CLAUDIA
NIESS**

Digitally signed by CLAUDIA
NIESS
Date: 2020.07.07 09:57:40
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Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

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

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, are adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(viii).

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that 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 other requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(vii).

13. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the

distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

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

15. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).

16. 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).

17. 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).

18. 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

19. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. 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 to \$20,228 for each offense occurring after November 2, 2015 and assessed after January 13, 2020. See 85 Fed. Reg. 1751 (January 13, 2020).

General Allegations

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

21. Respondent is a “registrant” as defined at Section 2(z) of FIFRA, 7 U.S.C. § 136(z).

22. At all times relevant to this Complaint, Respondent owned or operated a place of business located at 7593 S First Road, Kingsbury Industrial Park, Kingsbury, Indiana 46345.

23. At all times relevant to the Complaint, ICS Corporation of America (ICS) owned and operated a place of business located at 4675 Talon Court, SE, Kentwood, Michigan 49512.

24. EPA assigned company number 63249 to ICS.

25. On or about February 27, 2018 and May 21, 2018, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted an inspection at ICS, located in Kentwood, Michigan.

ICS 230, EPA Reg. No. 7151-20001-63249

26. On or about September 22, 1988, EPA registered Alexander's pesticide product, **Sodium Hypochlorite 12.5%**.

27. EPA assigned **Sodium Hypochlorite 12.5%**, EPA Registration Number (Reg. No.) 7151-20001.

28. On or about August 19, 2013, the EPA accepted a label for **Sodium Hypochlorite 12.5%**, EPA Reg. No. 7151-20001.

29. On or about November 18, 2015, the EPA accepted another label for **Sodium Hypochlorite 12.5%**, EPA Reg. No. 7151-20001.

30. On or about January 28, 1994, Alexander and ICS submitted a Notice of Supplemental Distribution of a Registered Pesticide Product (Notice of Supplemental Distribution) to the EPA for **Sodium Hypochlorite 12.5%**.

31. The Notice of Supplemental Distribution identified ICS as the distributor of **Sodium Hypochlorite 12.5%**.

32. The Notice of Supplemental Distribution identified the distributor product name for **Sodium Hypochlorite 12.5%** as **ICS-230**.

33. **ICS-230** is assigned EPA Reg. No. 7151-20001-63249.

34. **ICS-230**, EPA Reg. No. 7151-20001-63249, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

35. The distributor, ICS, is an agent of the registrant, Alexander, for all intents and purposes under 40 C.F.R. § 152.132 with respect to the distributor pesticide product, **ICS-230**, EPA Reg. No. 7151-20001-63249.

36. During the 2018 inspections, the inspector collected shipping records, a bin label and an affidavit for the pesticide product **ICS-230**, EPA Reg. No. 7151-20001-63249.

37. The bin label collected during the inspection was a true and accurate representation of the product and the associated labels that were released for shipment on or about November 11, 2016 and December 7, 2017.

38. The bin label for **ICS-230**, EPA Reg. No. 7151-20001-63249, collected during the inspection did not match the label language on the accepted labels, dated August 19, 2013 and November 18, 2015 in its First Aid, Precautionary Statements, Directions for Use and Storage and Disposal language.

39. On or about November 11, 2016, ICS distributed or sold **ICS-230**, EPA Reg. No. 7151-20001-63249, to one of its customers.

40. On or about December 7, 2017, ICS distributed or sold **ICS-230**, EPA Reg. No. 7151-20001-63249, to one of its customers.

Count 1

41. The preceding paragraphs are incorporated by reference.

42. On or about November 11, 2016, ICS distributed or sold **ICS-230**, EPA Reg. No. 7151-20001-63249, to one of its customers, that was misbranded as that term is defined at Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G), because the label on the container did not contain language required under the First Aid, Precautionary Statements, Directions for Use and Storage and Disposal sections of the label. See also 40 C.F.R. § 156.10(a)(1)(vi) and (viii).

43. ICS's distribution or sale of **ICS-230**, EPA Reg. No. 7151-20001-63249, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

44. ICS's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects the registrant, Alexander, 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

45. The preceding paragraphs are incorporated by reference.

46. On or about December 7, 2017, ICS distributed or sold **ICS-230**, EPA Reg. No. 7151-20001-63249, to one of its customers, that was misbranded as that term is defined at Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G), because the label on the container did not contain language required under the First Aid, Precautionary Statements, Directions for Use and Storage and Disposal sections of the label. See also 40 C.F.R. § 156.10(a)(1)(vi) and (viii).

47. ICS's distribution or sale of **ICS-230**, EPA Reg. No. 7151-20001-63249, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

48. ICS's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects the registrant, Alexander, 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 and Other Relief

49. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

50. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide,

Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$17,142.

51. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,142 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the “Treasurer, United States of America,” and sent to:

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 “Alexander Chemical Corporation,” and the docket number of this CAFO. 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:

By mail: Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

By e-mail: Claudia Niess, Enforcement Officer
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov

Nidhi K. O’Meara, Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
omeara.nidhi@epa.gov

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

53. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

54. 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

55. 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 for their respective attorneys: omeara.nidhi@epa.gov (for Complainant), and Thomas.Dimond@icemiller.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

57. 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.

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

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

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

61. 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.

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

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

In the Matter of:
Alexander Chemical Corporation
Docket No. FIFRA-05-2020-0041

Alexander Chemical Corporation, Respondent

6/24/20

Date

Robert Davidson

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Davidson
Date: 2020.06.24 11:36:06 -05'00'

Robert G. Davidson President
Alexander Chemical Corporation

In the Matter of:
Alexander Chemical Corporation
Docket No. FIFRA-05-2020-0041

United States Environmental Protection Agency, Complainant

MICHAEL
HARRIS



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MICHAEL HARRIS
Date: 2020.07.10
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Date

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

In the Matter of:
Alexander Chemical Corporation
Docket No. FIFRA-05-2020-0041

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN
COYLE**

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COYLE
Date: 2020.08.05
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Date

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

Consent Agreement and Final Order
In the matter of: Alexander Chemical Corporation
Docket Number: **FIFRA-05-2020-0041**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2020-0041**, which was filed on **August 5, 2020**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Attorney for Respondent:

Mr. Thomas Dimond
Thomas.Dimond@icemiller.com

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Dated: **August 5, 2020**

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5