

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
)

Harcros Chemicals, Inc.)
5200 Speaker Road)
Kansas City, Kansas 66110)

Respondent)
)

Docket No. FIFRA-07-2009-0013

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Harcros Chemicals, Inc. have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Harcros Chemicals, Inc. has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Harcros Chemicals, Inc., a pesticide producer, located at 5200 Speaker Road, Kansas City, Kansas 66110. The Respondent is and was at all times relevant to this action a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Kansas.

Section III

Statutory and Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (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 (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

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

11. Registrants may distribute or sell their registered product under another person’s name and address instead of, or in addition to, their own, as allowed by regulation at 40 C.F.R. § 152.132. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The 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. Supplemental distribution is permitted upon notification to EPA if specific conditions, stated at 40 C.F.R. § 152.132(a) through (e), are met. As a requirement of supplemental distribution, the label of the distributor product must be the same as that of the registered product, with exceptions stated at 40 C.F.R. § 151.132(d)(1) through (5).

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states 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.

13. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), states the term “adulterated” applies to any pesticide if its strength or purity falls below the professed standard of quality expressed on the labeling under which it is sold.

14. Title 40 C.F.R. § 156.10(g)(5), states that the accuracy of the percentages of active ingredients shall be as precise as possible reflecting good manufacturing practice. If there may be unavoidable variation between manufacturing batches, the value stated for each active ingredient shall be the lowest percentage which may be present.

Section IV

General Factual Allegations

15. Harcros Chemicals, Inc., Kansas City, Kansas, is the registrant for the pesticide registered as SODIUM HYPOCHLORITE 12.5%, EPA Registration Number (EPA Reg. No.) 148-1288. Harcros Chemicals, Inc. has submitted to EPA the required notification form and information indicating they have a supplemental distributor agreement with Kunkel Enterprises, Inc., d/b/a C K Enterprises, Inc., Lee’s Summit, Missouri. Under this agreement, C K Enterprises, Inc. is authorized by the registrant to supplementally distribute its registered pesticide, using the brand name K-SAN 125, under EPA Reg. No. 148-1288-49614.

16. On or about August 28, 2007, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at C K Enterprises, Inc. facility located at 1204 SW Jefferson Street, Lee’s Summit, Missouri. During the MDA August 28, 2007, inspection, it was documented that C K Enterprises, Inc. was producing and distributing the supplemental distributor pesticide referenced in paragraph 15. A physical sample (one-pint) of the pesticide and its label was collected during the inspection from inventory that that was packaged, labeled,

and released for shipment. A duplicate sample was provided to C K Enterprises, Inc. The sample was transferred to the University of Iowa Hygienic Laboratory, (UHL), Iowa City, Iowa, for analysis.

Violations

17. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

18. The facts stated in paragraphs 15 and 16 are realleged and incorporated as if fully stated herein.

19. Documentation collected during the inspection referenced in paragraph 16 revealed that the Respondent through C K Enterprises, Inc. was producing, distributing, and holding for sale or distribution the pesticide referenced in paragraphs 15 and 16.

20. The pesticide product, K-SAN 125, EPA Registration No. 148-1288-49614, referenced in paragraphs 15 and 16 was misbranded in that the label stated in part:

“ * * *
K-SAN 125
(12.5% Available Chlorine)

ACTIVE INGREDIENTS:

| | |
|---------------------------------|--------|
| Sodium Hypochlorite..... | 12.5% |
| INERT INGREDIENTS: | 87.5% |
| TOTAL | 100.0% |

* * * ”

Whereas, when analyzed, the pesticide product contained less than 12.5% sodium hypochlorite.

21. The UHL report of analysis found that the pesticide referenced in paragraphs 15 and 16 was found to contain only 6.2% of sodium hypochlorite. The UHL check analysis found

that the product only contained 4.93% of sodium hypochlorite. Due to this deficiency the product would not be fully effective in controlling microorganisms and bacteria.

22. The pesticide product referenced in paragraphs 15 and 16 was adulterated in that its strength or purity fell below the professed standard or quality expressed on the labeling under which it was sold or being held for sale.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it held for sale or distribution, through its distributor, C K Enterprises, Inc., a pesticide which is misbranded and adulterated.

24. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 15 through 23, it is proposed that a civil penalty of \$3,120 be assessed against Respondent.

Section V

Consent Agreement

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

29. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

30. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

31. Respondent certifies that by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

33. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

34. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$3,120 within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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."

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101;

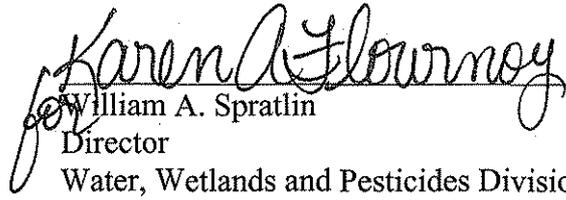
and

Kristen Nazar, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4-8-09


for William A. Spratlin
Director
Water, Wetlands and Pesticides Division

Date: 4-8-09


Kristen Nazar
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Apr. 13, 2009 

ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF *Harcros Chemicals, Inc.*, Respondent
Docket No. FIFRA-07-2009-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Philip Daniel, District Manager
Harcros Chemicals Inc.
5200 Speaker Road
Kansas City, Kansas 66106

Dated: 4/13/09


Kathy Robinson
Hearing Clerk, Region 7