



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 8, 2021

VIA EMAIL ONLY

Mr. Patrick Joyce
Attorney for United Laboratories, Inc.
Seyfarth Shaw LLP
233 S. Wacker Drive, Suite 8000
Chicago, Illinois 60606

PJoyce@seyfarth.com

Consent Agreement and Final Order
In the Matter of United Laboratories, Inc.
Docket Number **FIFRA-05-2021-0025**

Mr. Joyce:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on September 8, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$148,562 is to be paid in the manner described in paragraph 45 of the CAFO. The payment is due 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: 2021.08.31
07:50:27 -05'00'

Claudia Niess
Enforcement Officer
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2021-0025
)	
United Laboratories, Inc.)	Proceeding to Assess a Civil Penalty
Saint Charles, Illinois,)	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, U.S. Environmental Protection Agency, Region 5.

3. The Respondent is United Laboratories, Inc. (United), 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 this CAFO's terms.

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, to the best of its knowledge, that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. 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.

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

12. 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."

13. 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." Also see 40 C.F.R. § 152.3.

14. 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." Also see 40 C.F.R. § 152.3.

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" as "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 the EPA] declares to be a pest" under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

17. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term "registrant" as a person who has registered any pesticide pursuant to the provisions of FIFRA.

18. 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 \$20,288 for each offense occurring after November 2, 2015 and assessed after January 13, 2020.

See 85 Fed. Reg. 1751 (January 13, 2020).

General Allegations

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

20. At all times relevant to this Complaint, Respondent owned or operated a place of business located at 320 37th Avenue, Saint Charles, Illinois 60174.

21. At all times relevant to this Complaint, Respondent maintained a website at www.unitedlabsinc.com.

22. On or about June 8, 2017, an inspector employed by EPA and authorized to conduct inspections under FIFRA examined Respondent's website at www.unitedlabsinc.com.

23. On or about June 8, 2017, the EPA inspector documented the following statements or claims for United 397 Shower X-Tra Power on Respondent's website:

- a. "Removes mold, mildew and other stains from showers, washrooms, kitchens, toilets, laundries, pools, steam rooms, locker rooms, basements and boiler rooms."
- b. "Show mold and mildew the X-it."
- c. "X-citing – It's the safest, most-effective product ever created to remove mold, mildew and slime from tile, grout and other hard surfaces."
- d. "X-traordinarily effective – Revolutionary fizzing formula dissolves mold, mildew and slime to brighten and whiten surfaces without bleach or harsh scrubbing."

24. On or about June 8, 2017, the EPA inspector documented the following statements or claims for United 225 Red-W Water Condensate Gel Tabs on Respondent's website:

- a. "Are your condensate pans overflowing, smelling or built up with bio-film? Wash those problems away with... United Red-W Water Condensate Gel Tabs"

- b. “Eliminates added maintenance:
 - Controls odors;
 - Protects pans and drain tubes from bio-film build-up;”
- c. “The tabs lock into place and the slow-release action guarantees to continuously prevent bio-film from forming in pans.”

25. On or about June 8, 2017, inspectors employed by EPA and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business at 320 37th Avenue, Saint Charles, Illinois 60174.

26. On or about June 8, 2017, the EPA inspectors observed and documented Respondent’s holding for distribution or sale United 397 Shower X-Tra Power at its place of business.

27. On or about June 8, 2017, the EPA inspectors observed and documented Respondent’s holding for distribution or sale United 225 Red-W Water Condensate Gel Tabs at its place of business.

28. On or about June 8, 2017, the EPA inspectors collected photographs, labels, and records of distribution or sale of United 397 Shower X-Tra Power and United 225 Red-W Water Condensate Gel Tabs.

29. The label of United 397 Shower X-Tra Power, observed by EPA and collected and documented in photographs on or about June 8, 2017, contained the following claims or statements:

- a. “United 397 Shower X-Tra Power is the safest, most effective product ever created to remove mold, mildew and slime from tile, grout and other hard surfaces.”

- b. “Revolutionary fizzing formula penetrates and dissolves mold, mildew and slime to brighten and whiten surfaces without bleach and hard scrubbing.”
- c. “Listen to the product fizz and watch it foam as it goes to work on mold, mildew, and slime.”

30. United 397 Shower X-Tra Power is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it is intended for preventing, destroying, repelling, or mitigating certain pests, as a result of United claiming, stating or implying (by labeling or otherwise) that it can or should be used as a pesticide.

31. The label of United 225 Red-W Water Condensate Gel Tabs, observed by EPA and collected and documented in photographs on June 8, 2017, contained the following claims or statements:

- a. “The continuous, slow-release action cleans and prevents bio-film from forming in drain pans, while eliminating foul misty odors.”
- b. “www.unitedlabsinc.com”

32. United 225 Red-W Water Condensate Gel Tabs is a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because it is intended for preventing, destroying, repelling, or mitigating certain pests, as a result of United claiming, stating or implying (by labeling or otherwise) that it can or should be used as a pesticide.

33. From March 2017 through May 2017, Respondent distributed or sold United 397 Shower X-Tra Power to third-party customers on at least 28 occasions, as reflected in shipping records identifying shipments of United 397 Shower X-Tra Power on the following dates:

- a. March 6, 2017, to two customers;
- b. March 10, 2017, to one customer;

- c. March 15, 2017, to one customer;
- d. March 16, 2017, to one customer;
- e. March 17, 2017, to one customer;
- f. March 21, 2017, to one customer;
- g. March 23, 2017, to one customer;
- h. March 27, 2017, to one customer;
- i. March 30, 2017, to one customer;
- j. April 3, 2017, to one customer;
- k. April 7, 2017, to one customer;
- l. April 17, 2017, to one customer;
- m. April 19, 2017, to one customer;
- n. April 20, 2017, to one customer;
- o. April 25, 2017, to three customers;
- p. May 3, 2017, to one customer;
- q. May 8, 2017, to one customer;
- r. May 9, 2017, to three customers;
- s. May 11, 2017, to one customer;
- t. May 16, 2017, to one customer;
- u. May 22, 2017, to one customer; and
- v. May 31, 2017, to two customers.

34. From March 2017 through June 1, 2017, Respondent distributed or sold United 225 Red-W Water Condensate Gel Tabs to third-party customers on at least 21 occasions, as reflected in shipping records identifying shipments of United 225 Red-W Water Condensate Gel

Tabs on the following dates:

- a. March 2, 2017, to one customer;
- b. March 3, 2017, to one customer;
- c. March 8, 2017, to one customer;
- d. March 13, 2017, to one customer;
- e. March 15, 2017, to two customers;
- f. March 16, 2017, to one customer;
- g. March 27, 2017, to one customer;
- h. March 31, 2017, to one customer;
- i. April 4, 2017, to two customers;
- j. April 5, 2017, to one customer;
- k. April 7, 2017, to one customer;
- l. April 17, 2017, to one customer;
- m. April 27, 2017, to one customer;
- n. May 4, 2017, to two customers;
- o. May 19, 2017, to one customer;
- p. May 23, 2017, to one customer;
- q. May 30, 2017, to one customer; and
- r. June 1, 2017, to one customer.

Counts 1 through 28

35. Complainant realleges the preceding paragraphs of this Complaint, as if fully set forth herein.

36. From on or about March 2017 through May 2017, Respondent distributed or sold

United 397 Shower X-Tra Power on at least 28 occasions.

37. United 397 Shower X-Tra Power was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, during the period March 2017 through May 2017.

38. Respondent's distribution or sale of United 397 Shower X-Tra Power on 28 occasions constitutes 28 unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 29 through 49

39. Complainant realleges the preceding paragraphs of this Complaint, as if fully set forth herein.

40. From on or about March 2017 through June 1, 2017, Respondent distributed or sold United 225 Water Condensate Gel Tabs on at least 21 separate occasions.

41. United 225 Red-W Water Condensate Gel Tabs was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, during the period March 2017 through June 1, 2017.

42. Respondent's distribution or sale of United 225 Red-W Water Condensate Gel Tabs on 22 occasions constitutes 21 unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty and Other Relief

43. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(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.

44. 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 \$148,562.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a \$148,562 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
AccountNo.68010727
SWIFT address FRNYUS33
3 3 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 "United Laboratories, Inc." 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:

Regional Hearing Clerk (E-191)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
whitehead.ladawn@epa.gov

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
niess.claudia@epa.gov

Tom M. Williams (C-14)
Office of Regional Counsel

U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604
williams.tom@epa.gov

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

47. 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.

48. 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

49. 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: williams.tom@epa.gov (for Complainant), and PJoyce@seyfarth.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

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

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

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

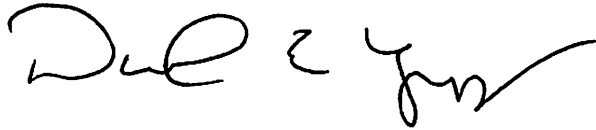
55. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

**In the Matter of:
United Laboratories, Inc.**

United Laboratories, Inc., Respondent

A handwritten signature in black ink, appearing to read "Daniel E. Young". The signature is written in a cursive style with a long, sweeping tail on the final letter.

August 26, 2021

Daniel E. Young, CEO

Date

Name and title of signatory
United Laboratories, Inc.

**In the Matter of:
United Laboratories, Inc.**

United States Environmental Protection Agency, Complainant:

9/7/21

Date

Harris, Michael Digitally signed by Harris, Michael
Date: 2021.09.07 12:25:39 -05'00'

Michael D. Harris, Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

In the Matter of: United Laboratories, Inc.
Docket No. FIFRA-05-2021-0025

Final Order

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

IT IS SO ORDERED.

Date

ANN COYLE

Digitally signed by ANN COYLE
Date: 2021.09.08 15:15:34
-05'00'

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

Consent Agreement and Final Order
In the Matter of: United Laboratories, Inc.
Docket No. FIFRA-05-2021-0025

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number FIFRA-05-2021-0025, which was filed on September 8, 2021, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Mr. Tom M. Williams
williams.tom@epa.gov

Copy by E-mail to
Attorney for Respondent: Mr. Patrick Joyce
PJoyce@sefath.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: _____
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 5