

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 Nisso America, Inc. incorporated in the State of New York and doing business at 88 Pine Street, 14th Floor, New York, New York 10005.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. 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 animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. 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.

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

9. 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.

10. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

11. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as 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).

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

13. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the registration number assigned under section 7 of FIFRA, 7 U.S.C. § 136e to each establishment in which it was produced.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended.

15. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain any necessary warning or caution statement.

16. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states a pesticide is misbranded if the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, unless an exception applies.

17. Section 2(q)(2)(B) of FIFRA, 7 U.S.C. § 136(q)(2)(B), states a pesticide is misbranded if the labeling does not contain a statement of the use classification under which the product is registered.

18. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not affixed to its container the name and address of the producer, registrant, or person for whom produced; the name, brand or trademark under which the pesticide is sold; the net weight or measure of the content; and an required registration number assigned to the pesticide and any use classification.

19. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

20. 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.

21. Pursuant to 19 C.F.R. § 12.223, promulgated under the authority of Section 17(c) and (e) of FIFRA, 7 U.S.C. § 136o(c) and 136o(e), when pesticides are imported to the United States, the importer must submit to the Administrator of the EPA a Notice of Arrival of

Pesticides and Devices (hereinafter "Notice of Arrival") *prior* to the arrival of the shipment into the United States. The Administrator must then complete the Notice of Arrival, indicating the disposition to be made of the shipment of pesticides on its arrival in the United States. This authority has been redelegated to the EPA Region 7 Director of the Water, Wetlands, and Pesticides Division.

22. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides, in pertinent part, that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required under FIFRA.

Section IV

General Factual Allegations

23. Respondent is and, at all times referred to herein, was a "person" within the meaning of FIFRA.

24. On December 8, 2011, Respondent imported forty-four (44) drums of the pesticide, Tebufenozide Technical, EPA Registration Number (EPA Reg. No.) 8033-110 from Italy into the U.S. Customs and Border Port of Entry in St. Louis, Missouri.

25. On December 27, 2011, an inspector from the Missouri Department of Agriculture (MDA) conducted a for-cause imports inspection of the Tebufenozide Technical, EPA Reg. No. 8033-110 described in the previous paragraph.

26. During the inspection, it was determined that none of the forty-four (44) drums had an EPA-accepted label. The drums were therefore, missing an EPA registration number, an EPA establishment number, directions for use, first aid statement, an ingredient statement, a precautionary statement, a signal word, and a child hazard warning statement.

Violations

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

Count 1

28. The facts stated in paragraphs 23 through 27 are realleged and incorporated as if fully stated herein.

29. On December 13, 2011, Pier International, a brokerage company acting on behalf of Nisso America, Inc., submitted to EPA Region 7, one Notice of Arrival form, entry number N59-0190542-6, indicating that the shipment of Tebufenozide Technical, EPA Reg. No. 8033-110, described in paragraph 24 was imported.

30. The Notice of Arrival form was therefore, submitted to EPA after the forty-four (44) drums of Tebufenozide Technical, EPA Reg. No. 8033-110 had already been released from the United States port of entry into commerce. Each of the forty-four (44) drums held 200 pounds of pesticide.

31. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) by failing to submit to EPA a Notice of Arrival form, a report required by FIFRA, prior to importing Tebufenozide Technical, EPA Reg. No. 8033-110.

32. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

33. The facts stated in paragraphs 23 through 32 are realleged and incorporated as if fully stated herein.

34. On or about December 27, 2011, Respondent was holding for sale, and thus distributing as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), forty-four (44) drums of Tebufenozide Technical, EPA Reg. No. 8033-110.

35. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing an EPA registration number as required by 40 C.F.R. § 156.10(e), and is therefore, misbranded pursuant to Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C).

36. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing an EPA establishment number as required by 40 C.F.R. § 156.10(f), and is therefore, misbranded pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

37. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing directions for use as required by 40 C.F.R. § 156.10(i), and is therefore, misbranded pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

38. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing a first aid statement as required by 40 C.F.R. § 156.68(a) and is therefore, misbranded pursuant to 2(q)(2)(D) of FIFRA, 7 U.S.C. § 136(q)(2)(D).

39. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing an ingredient statement as required by 40 C.F.R. § 156.10(g), and is therefore, misbranded pursuant to Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A).

40. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing a precautionary statement as required by 40 C.F.R. § 156.70 and is therefore, misbranded pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

41. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing a signal word as required by 40 C.F.R. § 156.64 and is therefore, misbranded pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

42. On the date of the distribution of the pesticide product sold as Tebufenozide Technical, EPA Reg. No. 8033-110, the drums were missing a child hazard warning statement as required by 40 C.F.R. § 156.66(a) and is therefore, misbranded pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

43. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is misbranded.

44. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

Section V

CONSENT AGREEMENT

45. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

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

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

48. 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.

49. 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.

50. 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.

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

52. The effect of settlement as described in Paragraph 53 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 51 above.

53. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of six thousand eight hundred and sixty four (\$6,864), as set forth in Paragraph 1 of the Final Order. 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 and/or regulation administered by the EPA.

54. 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.

55. 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 below 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 or stipulated 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 charged 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 six thousand eight hundred and sixty four (\$6,864) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

St. Louis, MO 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New

York as follows:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 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

Demetra O. Salisbury, Attorney

Office of Regional Counsel

U.S. Environmental Protection Agency

Region 7

901 North 5th Street

Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT
NISSO AMERICA, INC.

Date: 6/12/2012

By: 

Kazuhiko Murahashi President & COO
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6-15-12

for Wayne Leeshum
Karen Flournoy
Director
Water, Wetlands, and Pesticides Division

Date: 6/14/12

Demetra O. Salisbury
Demetra O. Salisbury
Office of Regional Counsel

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

Date:

June 19, 2012



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

IN THE MATTER OF Nisso America Inc. , Respondent
Docket No. FIFRA-07-2012-0017

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Demetra Salisbury
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

John Wrubel
Regulatory Affairs Director
Nisso America Inc.
88 Pine Street, 14th Floor
New York, New York 10005

Dated: 6/18/12



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7