



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

JUL 01 2009

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 4649

Mr. Joel Borgardt
Lamplight Farms, Inc.
4900 N. Lilly Rd.
Menomonee Falls, Wisconsin 53051

Consent Agreement and Final Order

FIFRA-05-2009-0018

Dear Mr. Borgardt:

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 July 1, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$90,000 is to be paid in the manner described in paragraphs 198 and 199. Please be certain that the number **BD 2750945P014** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 31, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

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. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a) and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act.

13. 40 C.F.R. § 152.15 states no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant

regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

- (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

14. 40 C.F.R. § 152.25 exempts minimum risk pesticides from the requirements of FIFRA provided that all criteria of 40 C.F.R. § 152.25(f) are met as follows:

- (a) The product only contains active ingredients that are listed under FIFRA,
- (b) The product only contains inert ingredients that are listed under FIFRA,
- (c) Each product bears a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient,
- (d) The product does not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents

carrying specific diseases, including, but not limited to ticks that carry Lyme disease, and

(e) The product does not include any false and misleading labeling statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii).

15. 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.

16. 40 C.F.R. § 156.10(a)(1) states, in pertinent part, that every pesticide product shall bear a label.

17. 40 C.F.R. § 156.10(a)(4) states, in pertinent part, that the label shall appear on or be securely attached to the immediate container of the pesticide product.

18. The term “distribute and sell” is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) 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.”

19. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3, means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

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

21. The Administrator of EPA may assess a civil penalty against any registrant 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. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

22. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

23. At all times relevant to this Complaint, Respondent owned and operated a place of business located at 4900 N. Lilly Road, Menomonee Falls, Wisconsin 53051.

**April 7, 2009 Import Shipment of “Tiki Citronella Garden Candle”
(Finish Good Number 4313)**

24. On or about April 7, 2009, Phoenix International, located 855 IL Route 83, Bensenville, Illinois 60106 was Respondent’s broker or agent.

25. On or about April 7, 2009, Respondent’s broker/agent submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to EPA for the import shipment of 2,700 cases of a product “Tiki Citronella Garden Candle.”

26. The importer of record for this shipment was Lamplight.

27. The entry number for this shipment on the NOA was 279-9526784-9.

28. On or about April 27, 2009, an inspector employed by the EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of this shipment.

29. During the inspection, the inspector observed that the “Tiki Citronella Garden Candle” products bore labels with the following language: “contains CitroMAX CITRONELLA.”

30. The inspector also observed labels at the bottom of the candle which bore the following language: “NET WEIGHT: 12oz (340 g), ACTIVE INGREDIENTS: Oil of Citronella ... 1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil Polyethylene.”

31. The inspector observed that the candles also contained a colored dye that was not

listed as an ingredient on the label.

32. Dyes are not listed as permitted ingredients under the minimum risk exemption at 40 C.F.R. § 152.25(f).

33. Up until July 18, 2006, Lamplight held a FIFRA registration for a pesticide product called "CITROMAX CITRONELLA INSECT REPELLANT" which contained oil of citronella as its active ingredient.

34. On or about April 27, 2009, a number of Lamplight's customers were advertising Lamplights candles as containing "Citromax Citronella" with the capability of repelling bugs on their websites including Ward's Stores, Ace Hardware, Aubuchon Hardware, Lowe's, Buy Hardware Supplies.com, and Camping world.com.

35. "Tiki Citronella Garden Candle," as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

36. "Tiki Citronella Garden Candle," as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

37. On or about April 7, 2009, Respondent was distributing or selling "Tiki Citronella Garden Candle" products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

April 7, 2009 Import of "Tiki Citronella Candle Votive"
(Finish Good Number 5210)

38. On or about April 7, 2009, Alliance International located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191 was Respondent's broker or agent.

39. On or about April 7, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 250 cartons of the product "Tiki Citronella Candle Votive."

40. The importer of record for this shipment was Lamplight.

41. The entry number for this shipment on the NOA was DQ1-0311753-6.

42. On or about April 27, 2009, an inspector employed by the EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of this shipment.

43. During the inspection, the inspector observed that the “Tiki Citronella Candle Votive” products bore labels with the following language: “contains CitroMAX CITRONELLA.”

44. The inspector also observed labels at the bottom of the candle which bore the following language: “NET WEIGHT: 2.2 oz (62 g), ACTIVE INGREDIENTS: Oil of Citronella ... 1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil.”

45. The inspector observed that the candles also contained a colored dye that was not listed as an ingredient on the label.

46. Dyes are not listed as permitted ingredients under the minimum risk exemption at 40 C.F.R. § 152.25(f).

47. “Tiki Citronella Candle Votive,” as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

48. “Tiki Citronella Candle Votive,” as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

49. On or about April 7, 2009, Respondent was distributing or selling “Tiki Citronella Candle Votive” products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

April 9, 2009 Import of “Tiki Citronella Votive Candles”
(Finish Good Number 521140)

50. On or about April 9, 2009, UPS Supply Chain Solutions located at 490 Supreme Drive, Bensenville, IL 60106 was the broker/agent for LG Sourcing Inc. (LG), located at PO Box 1535, North Wilkesboro NC 28659-1535.

51. On or about April 9, 2009, LG’s broker/agent submitted a Notice of Arrival of

Pesticides and Devices (NOA), EPA Form 3540-1, to EPA for the import shipment of 5 cartons of a product “Tiki Citronella Votive Candles.”

52. The importer of record for this shipment was LG.

53. The shipper of record for this shipment was Lamplight.

54. The entry number for this shipment on the NOA was UPS-3568729-5.

55. On or about April 21, 2009, an inspector employed by the EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of this shipment.

56. During the inspection, the inspector observed that the “Tiki Citronella Votive Candles” products bore labels with the following language: “ACTIVE INGREDIENTS: Oil of Citronella ... 1%, INERT INGREDIENTS: Palm Oil...64%, Paraffin Wax...35%.”

57. The inspector observed that the candles also contained a colored dye in them that was not listed as an ingredient on the label.

58. Dyes are not listed as permitted ingredients under the minimum risk exemption at 40 C.F.R. § 152.25(f).

59. “Tiki Citronella Votive Candles,” as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

60. “Tiki Citronella Votive Candles,” as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

61. On or about April 9, 2009, Respondent was distributing or selling “Tiki Citronella Votive Candles” products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

April 23, 2009 Import of “Tiki Citronella Garden Candle”
(Finish Good Number 4313)

62. On or about April 23, 2009, Alliance International located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191 was Respondent’s broker or agent.

63. On or about April 23, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 1,256 cartons of a product "Tiki Citronella Garden Candle."

64. The importer and shipper of record for this shipment was Lamplight.

65. The entry number for this shipment on the NOA was 279-9528192-3

66. The "Tiki Citronella Garden Candle" products bore the following language on the labels:

a. "contains CitroMAX CITRONELLA," and

b. "NET WEIGHT: 12oz (340 g), ACTIVE INGREDIENTS: Oil of Citronella ... 1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil Polyethylene."

67. The candles also contained a colored dye that was not listed as an ingredient on the label.

68. Dyes are not listed as permitted ingredients under the minimum risk exemption at 40 C.F.R. § 152.25(f).

69. "Tiki Citronella Garden Candle," as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

70. "Tiki Citronella Garden Candle," as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

71. On or about April 23, 2009, Respondent was distributing or selling "Tiki Citronella Votive Candles" products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

May 4, 2009 Import of "Tiki" Candles

72. On or about May 4, 2009, Alliance International located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191 was Respondent's broker or agent.

Tiki Citronella Bamboo Bowl
(Finish Good Number 1409036)

73. On or about May 4, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 7 cartons of a product "Tiki Citronella Bamboo Bowl" (finish good #1409036).

74. The importer of record for this shipment was Lamplight.

75. The entry number for this shipment on the NOA was DQ1-03118716

76. The labels provided for "Tiki Citronella Bamboo Bowl" by Respondent bore the following language: "ACTIVE INGREDIENTS: Oil of Citronella ...1%, Geranium Oil ... 3%, INERT INGREDIENTS: Hydrogenated Soybean Oil, Palm Wax."

77. Palm Wax is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).

78. "Tiki Citronella Bamboo Bowl," as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

79. "Tiki Citronella Bamboo Bowl," as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

80. The inspector also noted that each candle did not bear a label on it as required by FIFRA and 40 C.F.R. § 156.10(a).

81. On or about May 4, 2009, Respondent was distributing or selling "Tiki Citronella Bamboo Bowl" products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Candle Bucket (4 Oz.)
(Finish Good Number 2429)

82. On or about May 4, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 2,001 cartons of a product "Tiki Citronella Candle Bucket" (4 oz) (finish

good #2429).

83. The importer of record for this shipment was Lamplight.

84. The entry number for this shipment on the NOA was DQ1-03118716

85. The labels on the “Tiki Citronella Candle Bucket” (4 oz) products bore the following language:

- a. “ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil,” and
- b. “Contains CitroMAX Citronella.”

86. The invoice submitted with the NOA stated that the “Tiki Citronella Candle Bucket” (4 oz) contains “YELLOW WAX (1% CITRONELLA, 34% PARAFFINE, 65% PALM OIL).

87. “Yellow Wax” is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).

88. “Tiki Citronella Candle Bucket” (4 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

89. “Tiki Citronella Candle Bucket” (4 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

90. On or about May 4, 2009, Respondent was distributing or selling “Tiki Citronella Candle Bucket” (4 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Candle Bucket (24 Oz.)
(Finish Good Number 1408202)

91. On or about May 4, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 4,405 cartons of a product “Tiki Citronella Candle Bucket” (24 oz) (finish good #1408202).

92. The importer of record for this shipment was Lamplight.
93. The entry number for this shipment on the NOA was DQ1-03118716
94. The labels on the “Tiki Citronella Candle Bucket” (24 oz) products bore the following language:
- a. “ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil,” and
 - b. “Contains CitroMAX Citronella.”
95. The invoice submitted with the NOA stated that the “Tiki Citronella Candle Bucket” (24 oz) contains “YELLOW WAX (1% CITRONELLA, 99 PARAFFINE).
96. “Yellow Wax” is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).
97. “Tiki Citronella Candle Bucket” (24 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.
98. “Tiki Citronella Candle Bucket” (24 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
99. On or about May 4, 2009, Respondent was distributing or selling “Tiki Citronella candle Bucket” (24 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Candle Bucket (16 Oz.)
(Finish Good Number 1408203)

100. On or about May 4, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 500 cartons of a product “Tiki Citronella Candle Bucket” (16 oz) (finish good #1408203).

101. The importer and shipper of record for this shipment was Lamplight.

102. The entry number for this shipment on the NOA was DQ1-03118716

103. The labels on the “Tiki Citronella Candle Bucket” (16 oz) products bore the following language:

a. “ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax,” and

b. “Contains CitroMAX.”

104. The invoice submitted with the NOA stated that the “Tiki Citronella Candle Bucket” (16 oz) contains “YELLOW WAX (1% CITRONELLA, 15% PARAFFINE, 84% PALM OIL).

105. Yellow Wax is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).

106. “Tiki Citronella Candle Bucket” (16 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

107. “Tiki Citronella Candle Bucket” (16 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

108. On or about May 4, 2009, Respondent was distributing or selling “Tiki Citronella Candle Bucket” (16 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Candle Bucket (20 Oz.)
(Finish Good Number 1409402)

109. On or about May 4, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 11 cartons of a product “Tiki Citronella Candle Bucket” (20 oz) (finish good #1409042).

110. The importer of record for this shipment was Lamplight.

111. The entry number for this shipment on the NOA was DQ1-03118716

112. The labels on the “Tiki Citronella Candle Bucket” (20 oz) products included the following language: “ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax, Palm Wax.”

113. The invoice submitted with the NOA stated that the “Tiki Citronella Candle Bucket” (24 oz) contains “YELLOW WAX (1% CITRONELLA, 15% PARAFFINE, 84% Palm Oil)”.

114. Palm Wax is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).

115. Yellow Wax is not listed as a permitted ingredient under the minimum risk exemption at 40 C.F.R. § 152.25(f).

116. “Tiki Citronella Candle Bucket” (24 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

117. “Tiki Citronella Candle Bucket” (24 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

118. The inspector also noted that each candle did not bear a label on it as required by FIFRA and 40 C.F.R. § 156.10(a).

119. On or about May 4, 2009, Respondent was distributing or selling “Tiki Citronella candle Bucket” (20 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

May 18, 2009 Import of “Tiki” Candles

120. On or about May 18, 2009, Alliance International located at 1555 Mittel Boulevard,

Suite M, Wood Dale, Illinois 60191 was Respondent's broker or agent.

Tiki Citronella Candle Bucket (28 Oz.)
(Finish Good Number 219240)

121. On or about May 18, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 42 cartons of a product "Tiki Citronella Candle Bucket" (28 oz) (finish good #219240).

122. The importer of record for this shipment was Lamplight.

123. The entry number for this shipment on the NOA was DQ1-0311933-4.

124. The labels on the "Tiki Citronella Candle Bucket" (28 oz) products included the following language:

- a. "ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Palm Oil...95%, Paraffin Wax...4%," and
- b. "Contains CitroMAX Citronella"

125. "Tiki Citronella Candle Bucket" (28 oz) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

126. "Tiki Citronella Candle Bucket" (28 oz) is not registered as a pesticide as required by section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

127. On or about May 18, 2009, Respondent was distributing or selling "Tiki Citronella Candle Bucket" (28 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Votive
(Finish Good Number 521140)

128. On or about May 18, 2009, Respondent's broker/agent submitted a NOA to EPA for the import shipment of 14 cartons of a product "Tiki Citronella Votive" (finish good #521140).

129. The importer of record for this shipment was Lamplight.

130. The entry number for this shipment on the NOA was DQ1-0311933-4.

131. The “Tiki Citronella Votive ” products bore the following language on the labels:
“Active Ingredient Oil of Citronella ... 1%, Inert Ingredients: Palm Oil...64%, Paraffin
Wax...35%.”

132. The candles also contained a colored dye that was not listed as an ingredient on the label.

133. Dyes are not listed as permitted ingredients under the minimum risk exemption at 40 C.F.R. § 152.25(f).

134. “Tiki Citronella Votive,” as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

135. “Tiki Citronella Votive,” as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

136. On or about May 18, 2009, Respondent was distributing or selling “Tiki Citronella Candle Votive” products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

May 20, 2009 Import of “Tiki” Candles

137. On or about May 20, 2009, Alliance International, located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191 was Respondent’s broker or agent.

Tiki Citronella Candle Bucket - Americana (16 Oz.)
(Finish Good Number 1408203)

138. On or about May 20, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 2,680 cartons of a product “Tiki Citronella Candle Bucket - Americana”

(16 oz) (finish good #1408203).

139. The importer of record for this shipment was Lamplight.

140. The entry number for this shipment on the NOA was DQ1-0311953-2.

141. The labels on the “Tiki Citronella Candle Bucket - Americana” (16 oz) products included the following language:

- a. “NET WEIGHT: 16 oz (454 g) ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENT: Paraffin Wax,” and
- b. “Contains CitroMAX Citronella.”

142. “Tiki Citronella Candle Bucket - American” (16 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

143. “Tiki Citronella Candle Bucket - Americana” (16 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

144. On or about May 20, 2009, Respondent was distributing or selling “Tiki Citronella Candle Bucket - Americana” (16 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

May 28, 2009 Import of “Tiki” Candles

145. On or about May 28, 2009, Alliance International, located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191 was Respondent’s broker or agent.

Tiki Citronella Candle - Malibu (10 Oz.)
(Finish Good Number 3377)

146. On or about May 28, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 1,500 cartons of a product “Tiki Citronella Candle - Malibu” (10 oz) (finish good #3377).

147. The importer of record for this shipment was Lamplight.

148. The entry number for this shipment on the NOA was DQ1-0311993-8.

149. The labels on the “Tiki Citronella Candle - Malibu” (10 oz) products bore the following language:

a. “NET WEIGHT: 10 oz (284g) ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil,” and

b. “Contains CitroMAX Citronella.”

150. “Tiki Citronella Candle - Malibu” (10 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

151. “Tiki Citronella Candle - Malibu” (10 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

152. On or about May 28, 2009, Respondent was distributing or selling “Tiki Citronella Candle - Malibu” (10 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Tiki Citronella Candle Pots (5 Oz.)
(Finish Good Number 3359)

153. On or about May 28, 2009, Respondent’s broker/agent submitted a NOA to EPA for the import shipment of 1,750 cartons of a product “Tiki Citronella Candle Pots” (5 oz) (finish good #3359).

154. The importer of record for this shipment was Lamplight.

155. The entry number for this shipment on the NOA was DQ1-0311993-8.

156. The labels on the “Tiki Citronella Candle Pots” (5 oz) products bore the following language:

- a. “NET WEIGHT: 5 oz (141 grams) Each ACTIVE INGREDIENTS: Oil of Citronella ...1%, INERT INGREDIENTS: Paraffin Wax, Palm Oil,” and
- b. “Contains CitroMAX Citronella.”

157. “Tiki Citronella Candle Pots” (5 oz), as described above, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

158. “Tiki Citronella Candle Pots” (5 oz), as described above, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

159. On or about May 28, 2009, Respondent was distributing or selling “Tiki Citronella Candle Pots” (5 oz) products as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

160. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

161. Respondent distributed or sold “Tiki Citronella Garden Candle” (finish good # 4313) on or about April 7, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

162. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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

163. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

164. Respondent distributed or sold “Tiki Citronella Candle Votive” (finish good #5210) on or about April 7, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

165. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 3

166. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

167. Respondent distributed or sold “Tiki Citronella Garden Candle” (finish good # 4313) on or about April 23, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

168. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 4

169. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

170. Respondent distributed or sold “Tiki Citronella Candle Buckets” (4 oz) (finish good #2429) on or about May 4, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

171. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 5

172. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

173. Respondent distributed or sold “Tiki Citronella Candle Buckets” (24 oz) (finish good # 1408202) on or about May 4, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

174. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 6

175. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

176. Respondent distributed or sold “Tiki Citronella Candle Buckets” (16 oz) (finish good # 1408203) on or about May 4, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

177. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 7

178. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

179. Respondent distributed or sold “Tiki Citronella Candle Buckets” (20 oz) (finish

good # 1409042) on or about May 4, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

180. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 8

181. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

182. Respondent distributed or sold "Tiki Citronella Candle Bucket" (28 oz) (finish good # 219240) on or about May 20, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

183. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 9

184. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

185. Respondent distributed or sold "Tiki Citronella Votive" (finish good # 521140) on or about May 20, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

186. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 10

187. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

188. Respondent distributed or sold “Tiki Citronella Candle Bucket - Americana” (finish good # 1408203) on or about May 20, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

189. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 11

190. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

191. Respondent distributed or sold “Tiki Citronella Candle - Malibu” (finish good # 3377) on or about May 28, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

192. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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 12

193. Complainant incorporates by reference the allegations contained in paragraphs 1 through 159 of this Complaint.

194. Respondent distributed or sold “Tiki Citronella Candle Pots” (finish good # 3359) on or about May 28, 2009 in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

195. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent 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

196. 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.

197. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$90,000. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990.

198. Within 30 days of the effective date of this CAFO, Respondent must pay a \$90,000 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:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

199. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 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 violations and facts alleged in the CAFO.

204. This CAFO does not affect the right of the 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 fees in this action.

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

211. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, Chicago, Illinois.

In the Matter of:

Lamplight Farms, Inc.
Docket No. FIFRA-05-2009-0018

RESPONDENT
Lamplight Farms, Inc.

6/19/09
Date

Joel Borgardt
Joel Borgardt, President and COO
Lamplight Farms, Inc.

COMPLAINANT
Region 5
United States Environmental Protection Agency

6/25/09
Date

Ally M. Guerriero
for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Lamplight Farms, Inc.
Docket No. FIFRA-05-2009-0018

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.

6/21/09
Date

Walter W. VanLuff
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
JUL 01 2009

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

OFFICE OF REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
1200 N. 17TH AVENUE
DENVER, CO 80202

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 Lamplight Farms, Inc., was filed on July 1, 2009, 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. 7001 0320 0006 0189 4649, a copy of the original to the Respondents:

Mr. Joel Borgardt
Lamplight Farms, Inc.
4900 N. Lilly Rd.
Menomonee Falls, Wisconsin 53051

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, 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

FIFRA-05-2009-0018

Docket No. _____

RECEIVED
JUL 01 2009
REGIONAL HEARING CLERK
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PROTECTION AGENCY