



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

August 15, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Allen Rubel
President
PIC Corporation
1101-1107 W. Elizabeth Avenue
Linden, New Jersey 07036

Re: In the Matter of PIC Corporation
Docket No. FIFRA-02-2011-5106

Dear Mr. Rubel:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Judicial Officer of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that you make arrangement for payment of the civil penalty in accordance the timeframe specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

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

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk
Marcedius Jameson, NJDEP

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 AUG 15 P 12:30
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

PIC Corporation,

Respondent.

Proceeding Under the Federal
Insecticide, Fungicide and
Rodenticide Act, as amended.

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2011-5106

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2011 AUG 15 P 12:59
REGIONAL INVENTORIES
OFFICE

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is PIC Corporation, (hereinafter "PIC" or "Respondent"), a New Jersey corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent maintains and/or operates an "establishment" as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 1101-1107 W. Elizabeth Avenue, Linden, New Jersey 07036.
4. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
5. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
6. Respondent is a "producer" within the meaning of Section 2(w), 7 U.S.C. Section 136(w).
7. Respondent is a "distributor or seller" within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
8. "To distribute or sell" is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), 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."
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be 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, 7 U.S.C. Section 136a.
10. EPA's regulation at 40 C.F.R. Sections 152.15(a) (1) states that a substance is intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the seller or distributor of the substance claims, states or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

11. An EPA regulation at 40 C.F.R. Section 152.3 states that a “pesticidal product” means a pesticide in the particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be sold.

12. Pursuant to EPA regulation 40 C.F.R. Section 152.25(f), a product containing certain active ingredients, including “citronella oil”, “lemongrass oil” and “Geraniol” are considered minimum risk and therefore exempt from the requirements of FIFRA, provided that other conditions of the exemption are met, including that the inert ingredient(s) must be listed in the most current EPA “List 4 A” of Inert Ingredients of Minimal Concern, and the product must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient.

13. A Notice of Pesticide Arrival (NOA) for one shipment of 756 cartons of Pic “Citronella Plus Bands” insect repellent products, Entry No. 071-0187780-6, dated February 24, 2011, identified the PIC “Citronella Plus Bands” product as “Registration Exempt.”

14. PIC Corporation imported this product, along with PIC “Citronella Plus wrist band” insect repellent product, from China for the purposes of selling and distributing the product within the United States.

15. EPA’s examination of the labels for the “Citronella Plus Bands” and “Citronella Plus wrist band” insect repellent products revealed that said products did not meet the requirements of the minimum risk pesticide exemption.

16. The label for the “Citronella Plus wrist band” made the following pesticidal claims: “Helps Repel Mosquitoes, Flies, Gnats, and more!” and “Pest Free Living,” and “Dependable Insect and Rodent Control since 1953.”

17. The label for the “Citronella Plus Bands” made the following pesticidal claims: “Helps Repel Mosquitoes,” “Pest Free Living,” and “Dependable Insect and Rodent Control since 1953.”

18. The labels for the “Citronella Plus wrist band” and “Citronella Plus Bands” insect repellent products listed only one inert ingredient, polyethylene (e.g., plastic) (79% by weight).

19. The inert ingredient statement on the labels for the “Citronella Plus wrist band” and “Citronella Plus Bands” insect repellent products did not list the coloring agents added to the polyethylene.

20. By virtue of the claims on their labels, the PIC Citronella Plus Bands and Citronella Plus wrist band insect repellent products are “pesticides” as defined in Section 2 (u) of FIFRA, 7 U.S.C. Section 136(u).

21. Both the PIC Citronella Plus Bands and Citronella Plus wrist band insect repellent products were required to be registered pursuant to Section 3 of FIFRA.

22. PIC Citronella Plus Bands and Citronella Plus wrist band are not registered pesticides.

23. During March 2011, PIC held for sale or distribution the Citronella Plus Bands and Citronella Plus wrist band pesticide products in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

24. On May 8, 2008, the Nevada Department of Agriculture conducted a marketplace inspection of a 99 Cents Only Store #132 in Las Vegas, Nevada. During the inspection, the inspectors collected two samples of the 5 ounce poly containers of the following pesticide product: Boric Acid Roach Killer (EPA Reg. No. 3095-20201).

25. Boric Acid Roach Killer is an EPA registered pesticide product that is manufactured by PIC Corporation.

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

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

28. EPA’s regulations at 40 C.F.R. Sections 156.10(a)(1)&(2) describe labeling requirements for pesticide products and state that all words, statements or other information must be clearly legible to a person with normal vision, and must be not be obscured.

29. During the May 8, 2008 marketplace inspection of the 99 Cents Only Store #132, the labels on the samples of the Boric Acid Roach Killer product on display were inverted, unreadable, misaligned (ie., misprinted with overlapping lettering), and/or inside out.

30. The words, statements or other information on the labels of the Boric Acid Roach Killer pesticide product were not clearly legible to a person with normal vision, and the label’s

directions and information was obscured. Therefore, the Boric Acid Roach Killer pesticide product was misbranded within the meaning of Section 12(a)(1)(E) of FIFRA,

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed that:

1. Respondent shall hereinafter maintain compliance with the statutory and regulatory provisions of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.
2. Respondent’s signatory has provided EPA with a copy of the revised labels of the Citronella Plus Bands and Citronella Plus wrist band pesticide products that identifies the name and percentage (by weight) of each active ingredient (Geraniol, Lemongrass oil and Citronella oil) and the name of each inert ingredient (Polyethylene, Iron Oxide, Ultramarine Blue, and Zinc Oxide), because listing of these active and inert ingredients is a required condition of exemption for minimum risk pesticides under FIFRA, 40 CFR Section 152.25(f)(3)(i).
3. Pursuant to 40 C.F.R. Section 152.25(f)(1), products containing certain active ingredients, including Geraniol, Lemongrass oil and Citronella oil, are exempt from the requirements of FIFRA, provided that other conditions of the exemption are met.
4. The inert ingredients in the Citronella Plus Bands and Citronella Plus wrist band products, as indicated in paragraph 2 above, are on EPA’s List 4A of “Inert Ingredients of Minimal Concern.”
5. Respondent’s signatory certifies on behalf of the Respondent that, as of the date of its execution of this Consent Agreement, Respondent has rewritten all labels, internet website advertisements and other promotional material for the Citronella Plus Bands and Citronella Plus wrist band insect repellent products to be consistent with the terms and conditions of the minimum risk pesticide exemption under FIFRA, 40 C.F.R. Section 152.25(f).
6. Respondent and Complainant agree that future aesthetic or language changes or any textual, graphic or other modifications and other promotional material for the Citronella Plus Bands and Citronella Plus wrist band insect repellent products may be made so long as the future

changes are consistent with the terms and conditions of the minimum risk pesticide exemption under FIFRA, 40 C.F.R. Section 152.25(f).

7. Respondent's signatory certifies on behalf of the Respondent that, as of the date of its execution of this Consent Agreement, Respondent has relabeled all existing stock and new production of the Boric Acid Roach Killer (EPA Reg. No. 3095-20201) pesticide product, so that the statements, words and/or information on the label are clearly legible to a person with normal vision, and the label's directions and information are not obscured.

8. The effect of settlement described in paragraph 18, below, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraphs 5 and 7 above, of this Consent Agreement.

9. If in the future EPA believes that any information certified to, pursuant to paragraphs 5 and 7, above, in the Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA or correct any alleged untrue or inaccurate certification. If, after consideration of Respondent's reply, EPA determines that the certification(s) is untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$7,500 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq., or any other applicable law.

10. Additionally, Respondent's signatory certifies on behalf of the Respondent, that Respondent is no longer distributing or selling Boric Acid Roach Killer with illegible labeling.

11. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 136l(a), to commence a civil administrative proceeding for the allegations in the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies specific factual allegations or conclusions of law contained in this CA/FO.

12. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) in settlement of this case. If payment is by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America."

The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of PIC Corporation, Docket No. FIFRA-02-2011-5106.

The check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFER

If Respondent chooses to pay by electronic fund transfer (“EFT”), Respondent shall provide the following information to the remitter bank (Federal Reserve Bank of New York):

- A) Amount of Payment (\$22,500.00)
- B) SWIFT address = FRNYUS33
33 Liberty Street
New York, N.Y. 10045
- C) Account Code for Federal Reserve Bank of New York
(receiving payment) = 68010727
- D) Federal Reserve Bank of New York ABA routing number = 021030004
- E) Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”
- F) Name of Respondent (PIC Corporation)
- G) Case Docket Number (FIFRA-02- 2011 - 5106)

Respondent shall also send a proof of the payment to:

Bruce Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866; and

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

The check must be received at the above address, or the EFT must be received by the Federal Reserve Bank of New York, on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.

b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

c. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.

d. If Respondent fails to pay the civil penalty within thirty (30) days of its due date, Respondent shall also be liable to the United States for an additional stipulated penalty of Seven Thousand Dollars (\$7,000) for such failure unless, on or before the due date, Respondent has submitted to EPA a writing that demonstrates to EPA's satisfaction good cause for such failure, as provided in paragraph 14 of this Consent Agreement.

e. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

13. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 12. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 *et seq.* or any other applicable law. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

14. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate any stipulated penalty demanded by EPA, Complainant will notify Respondent in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of receipt.

15. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

16. Respondent explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

17. The civil penalty and any applicable stipulated penalties provided herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. Section 152(f), and are not deductible expenditures for purposes of federal, state or local law.

18. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of the Respondent's representations in this proceeding) the civil and administrative claims alleged in this CA/FO.

19. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

20. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this CA/FO or on any of the allegations herein asserted, including the EPA's Findings of Fact and Conclusions of Law herein.

21. Respondent waives its right to appeal the CA/FO.

22. The Respondent agrees not to contest the validity or any substantive requirement of this CA/FO in any action brought by the United States, including EPA, to enforce: a) this CA/FO; or b) a judgment relating to this CA/FO.

23. The provisions of this CA/FO shall be binding upon Respondent, its officials, agents, authorized representatives, successors or assigns.

24. This CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

25. Each undersigned signatory to this CA/FO certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all the terms and conditions set forth in this CA/FO.

26. Respondent waives any right pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

27. Complainant and Respondent agree to bear their own costs and fees in this matter.

28. Respondent consents to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

29. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

In the Matter of PIC Corporation, FIFRA-02-2011 – 5106

RESPONDENT: PIC Corporation

BY: Allen Rubel
(Signature)

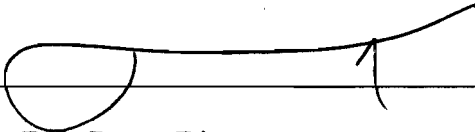
NAME: Allen Rubel

TITLE: President

DATE: 8/2/11

In the Matter of PIC Corporation, FIFRA-02-2011 - 5106

COMPLAINANT:



A handwritten signature in black ink, consisting of a large loop on the left and a long horizontal stroke extending to the right, ending in a small upward tick. The signature is written over a horizontal line.

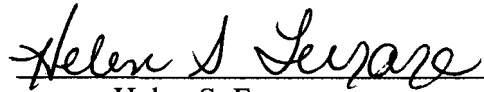
Dore F. LaPosta, Director
Division of Enforcement
and Compliance Assistance
U.S. Environmental Protection
Agency - Region 2

DATE: AUGUST 5, 2011

In the Matter of PIC Corporation, FIFRA-02-2011 - 5106

FINAL ORDER

of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007

DATE: August 15, 2011

In the Matter of PIC Corporation, FIFRA-02-2011-5106

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy
By Hand Delivery:

Office of the Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Eric Rubel,
Chief Operating Officer
PIC Corporation
1101-1107 W. Elizabeth Avenue
Linden, New Jersey 07036

Dated: Aug 15, 2011
New York, New York

