



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

JUN 20 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5065

Peter Bromley, President
c/o David L. Olson
United Phosphorus, Inc.
630 Freedom Business Center, Suite 402
King of Prussia, PA 19406

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0034

Dear Mr. Bromley:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on June 20, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500 is to be paid in the manner prescribed in paragraphs 29 and 30. Please be certain that the number **BD** 2750745P034 and the docket number are written on both the transmittal letter and on the check. Payment is due by July 20, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph Lukascyk
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2007-0034
)	
United Phosphorus, Inc.)	Proceeding to Assess a Civil Penalty
Trenton, New Jersey,)	Under Section 14(a) of the Federal
Respondent.)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

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 Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.

3. Respondent is United Phosphorus, Inc., a corporation doing business in the State of New Jersey located at 423 Riverview Plaza, Trenton New Jersey, 08611.

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 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 U.S. 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. Sections 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 states, in pertinent part, that “an importer desiring to import pesticides into the United States shall submit

to the Administrator a Notice of Arrival of Pesticides or Devices prior to the arrival of the shipment to the United States.”

13. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

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

15. 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.”

Factual Allegations and Alleged Violations

16. 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).

17. Robert F. Barnes Jr. d/b/a/ Robert F. Barnes CHB (RFB), located at 15700 Export Plaza, Suite V, Houston, Texas 77032, is a broker/agent for Respondent.

18. On or about March 6, 2007, Respondent’s broker/agent, RFB, submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to U.S. EPA for the import shipment of a product, “Metri DF,” EPA Reg. No. 70506-103.

19. United Phosphorous Inc, was listed as the importer of the March 6, 2007 shipment.

20. On March 7, 2007, the U.S. EPA detained the import shipment of “Metri DF” that was imported on March 6, 2007, for inspection.

21. On March 14, 2007, Respondent's broker/agent, RFB, submitted a new and corrected NOA, to U.S. EPA for the March 6, 2007, import shipment.

22. The new, corrected NOA identified the product that was being imported on March 6, 2007, as "UPI Metribuzin 75DF Herbicide," EPA Reg. No. 70506-67 instead of "Metri DF," EPA Reg. No. 70506-103.

23. The product "UPI Metribuzin 75DF Herbicide" is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

24. On March 20, 2007, an investigator employed by the U.S. EPA and duly authorized to conduct inspection under FIFRA, conducted an inspection of the import shipment imported by Respondent on March 6, 2007 at Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois 60143, in order to determine compliance with Section 17 of FIFRA, 7 U.S.C. § 136o.

25. During this inspection, the inspector confirmed that the March 6, 2007 import shipment imported by Respondent was "UPI Metribuzin 75D Herbicide," EPA Reg. No. 70506-67 rather than "Metri DF," EPA Reg. No. 70506-103, as presented in Respondent's original NOA of March 6, 2007.

26. On March 6, 2007, Respondent failed to file a NOA for "UPI Metribuzin 75D Herbicide," EPA Reg. No. 70506-67 prior to the arrival of the shipment of "UPI Metribuzin 75D Herbicide," EPA Reg. No. 70506-67 to the United States, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 and in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

27. 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).

Civil Penalty

28. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$6500.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

29. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,500 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, Region 5
P.O. Box 371531
Pittsburgh, PA 15251 - 7531

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

30. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, 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

Joseph Lukascyk (DT-8J)
Pesticides and Toxics Enforcement 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

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

32. If Respondent does not pay the civil penalty timely, U.S. 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.

33. 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

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

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

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

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

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


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

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

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

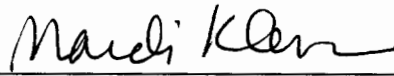
United Phosphorous, Inc., Respondent

5/23/07
Date

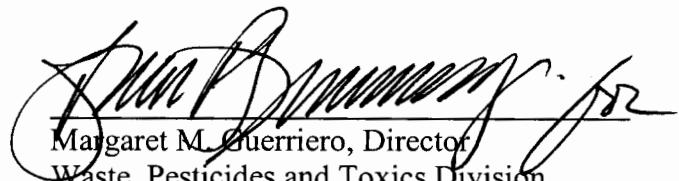

Peter Bromley
President, CEO

United States Environmental Protection Agency, Complainant

6-1-07
Date


Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

6/12/07
Date


Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

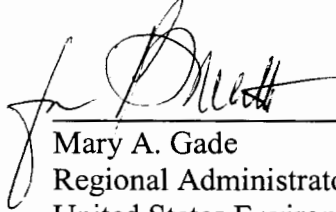
FIFRA-05-2007-0034

In the Matter of:
United Phosphorus
Docket No. FIFRA-05-2007-0034

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.

6-19-07
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5


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 United Phosphorus, Inc., was filed on June 20, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5065, a copy of the original to the Respondents:

Peter Bromley, President
c/o David L. Olson
United Phosphorus, Inc.
630 Freedom Business Center, Suite 402
King of Prussia, PA 19406

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0034**