



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

JUN 20 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 7936

Mr. Stanley Oslosky
Weatherford International, Inc.
100 Leetsdale Industrial Drive, Suite A
Leetsdale, Pennsylvania 15056

Consent Agreement and Final Order In The Matter of Clearwater International LLC
d/b/a Weatherford International, Inc. Docket No. FIFRA-05-2012-0015

Dear Mr. Stanley:

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 June 20, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 41 thru 43. Please be certain that the number **BD 2751245P014** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 19, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Clearwater International LLC d/b/a)
Weatherford International, Inc.)
Leetsdale, Pennsylvania)

Respondent.)
_____)

Docket No. FIFRA-05-2012-0015

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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JUN 20 2012

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Clearwater International LLC d/b/a Weatherford International, Inc. (Weatherford), a corporation doing business in Leetsdale, Pennsylvania.
4. 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.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its rights 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 rights to appeal this CAFO.

8. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

9. The importation of pesticides into the United States is governed by Section 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 the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

10. 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.

11. 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 (EPA Form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

14. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. 40 C.F.R. § 156.140, which became effective on August 16, 2011, states, in pertinent part, that for products other than plant-incorporated protectants, the following statements, as

applicable, must be placed on the label or container:

(a) *Nonrefillable container.* For non-refillable containers, the statements in paragraphs (a)(1) through (a)(4) of 40 C.F.R. § 156.140 are required.

(a)(1) *Statement identifying a nonrefillable container.* The following phrase is required: "Nonrefillable container."

(a)(2) *Reuse statement.* One of the following statements is required.

(a)(2)(i) "Do not use or refill this container."

(a)(2)(ii) "Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state."

(a)(2)(iii) The following statement may be used if a product is "ready to use" and its directions for use allow a different product (that is similar, but concentrated formulation) to be poured into the container and diluted by the end user: "Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container."

(a)(3) *Recycling or reconditioning statement.* One of the following statements is required:

(a)(3)(i) "Offer for recycling if available."

(a)(3)(ii) "Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To

find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site].”

(a)(3)(iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(a)(3)(iv) An alternative recycling statement that has been reviewed and approved by EPA.

(a)(3)(v) “Offer for reconditioning if appropriate.”

(a)(4) *Batch Code*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

(b) *Refillable container*. For refillable containers, one of the following statements is required.

(b)(1) “Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.

(b)(2) “Refillable Container. Refill this container with [*common chemical name*] only. Do not reuse this container for any other purpose.”

20. 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 Violation

21. Respondent is, and was at all times relevant to this Complaint, a Limited Liability Company and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C.

§ 136(s).

22. On or about March 8, 2012, Hellman Worldwide Logistics (Hellman), located at 1200 Minters Chapel Road, Suite 300, Grapevine, Texas 76051 was a broker/agent for Respondent.

23. On or about March 8, 2012, Hellman submitted two Notices of Arrivals to EPA for import shipments of the pesticide "DBNPA Technical," EPA Registration Number (EPA Reg. No.) 59106-5 from China under entry numbers MC2-63091670 and MC2-63092876.

24. Each Notice of Arrival identified Weatherford as the importer of record for the shipments of "DBNPA Technical."

25. Respondent, as importer of "DBNPA Technical," and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

26. "DBNPA Technical" is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. On or about April 15, 2009, the EPA, Office of Prevention, Pesticides and Toxic Substances (OPPTS), Antimicrobials Division, accepted with comments the amended label for "DBNPA Technical," under EPA Reg. No. 59106-5. OPPTS's comments included requiring Respondent to correct the Precautionary Statements and reorder the First Aid Statement to reflect the most toxic to least toxic route of exposure as stated in PR Notice 2001-1.

28. On or about November 2, 2011, EPA, Office of Chemical Safety and Pollution Prevention (OSCPP), Antimicrobials Division, accepted the Notification submitted under the provision of PR Notice 98-10, FIFRA Section 3(c)(9) to correct the label as per PR Notice 2007-4.

29. Labels affixed to bags of "DBNPA Technical" that entered into the United States on or about March 12, 2012 were false or misleading as they substantially and materially differed from the EPA accepted label dated November 2, 2011.

30. The EPA accepted label dated November 2, 2011, required the product label to include the following language:

"Danger Corrosive. Causes irreversible eye damage. May be fatal if swallowed or inhaled. Harmful if absorbed through skin. Do not get in eyes, or on clothing. Do not breathe dust. Avoid contact with skin. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals. Wear dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C), or a NIOSH approved respirator with any N-, R-, P or HE filter. Wear goggles or face shield and protective clothing. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove and wash contaminated clothing before reuse."

31. Labels affixed to the bags of "DBNPA Technical" contained the following language:

"Caution Corrosive. Causes irreversible eye damage. May be fatal if swallowed. Causes skin irritation. Harmful if absorbed through skin. Do not get in eyes, on skin, or on clothing. Chemical worker's goggles must be worn when handling. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse. Avoid breathing dust. Use with adequate ventilation."

32. The EPA accepted label dated November 2, 2011, required the product label to identify the Ingredient Statement as follows:

"Active Ingredient:	
2-2-Dibromo-3-nitrilopropionamide.....	98%
Inert Ingredients:.....	2%
Total	100%"

33. Labels affixed to the bags of "DBNPA Technical" identified the Ingredient Statement as:

"Active Ingredient:	
2-2-Dibromo-3-nitrilopropionamide.....	99.40%
Inert Ingredients:.....	0.60%
Total	100%"

34. Additionally, labels affixed to the bags of “DBNPA Technical” did not contain applicable container labeling statements as required by 40 C.F.R. § 156.140.

35. On or about March 12, 2012, Respondent “distributed or sold” the pesticide product “DBNPA Technical,” as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Counts 1 and 2

36. Complainant incorporates by reference the allegations contained in paragraphs 1 through 35 of this Complaint.

37. On or about March 12, 2012, Respondent distributed or sold the misbranded pesticide “DBNPA Technical,” EPA Reg. No. 59106-5 under entry numbers MC2-63091670 and MC2-63092876 with a label bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading; that did not contain a warning or caution statement which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), was adequate to protect health and the environment; and that did not contain the applicable container labeling statements as required by 40 C.F.R. § 156.140, which constitute unlawful acts in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

38. 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(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

39. 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.

40. 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 \$15,000. 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 December 2009.

41. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violation. 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

42. The check must note "In the Matter of Clearwater International LLC d/b/a Weatherford International, Inc.," the docket number of this CAFO and the billing document (BD) number.

43. 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 transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Mary McAuliffe (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

45. 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.

46. 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.

47. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

48. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

General Provisions

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

50. 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.

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

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

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

54. 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.

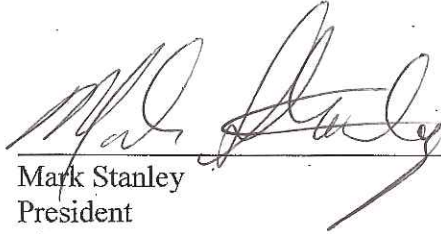
55. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:
Clearwater International LLC d/b/a
Weatherford International, Inc.**

**Clearwater International LLC d/b/a
Weatherford International, Inc., Respondent**

MAY 15, 2012
Date




Mark Stanley
President
Clearwater International LLC

In the Matter of:
Clearwater International LLC d/b/a
Weatherford International, Inc.

United States Environmental Protection Agency, Complainant

6/18/12
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Clearwater International LLC d/b/a
Weatherford International, Inc.
Docket No. FIFRA-05-2012-0015

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.

6-19-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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JUN 20 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in the resolution of the civil administrative action involving Weatherford International, Inc., was filed on June 20, 2012, 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. 7009 1680 0000 7667 7936, a copy of the original to the Respondent:

Mr. Mark Stanley
Clearwater International LLL d/b/a
Weatherford International, Inc.
Leetsdale, Pennsylvania 15056

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mary McAuliffe, 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

Docket No. FIFRA-05-2012-0015

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