



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

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0182 4561

Tom Paganetti, CEO
The Schawbel Corporation
100 Crosby Drive Suite 102
Bedford, Massachusetts, 01930

Consent Agreement and Final Order, Docket No. *FIFRA-05-2008-0016* *BD*

Dear Mr. Paganetti:

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 5, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500 is to be paid in the manner prescribed in paragraph 27 and 28. Please be certain that the number BD 2750845P016 and the docket number are written on both the transmittal letter and on the check. Payment is due by July 7, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk
Joseph G. Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Jeffery M. Trevino, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

The Schawbel Corporation)
Bedford, Massachusetts,)

Respondent.)
_____)

Docket No. FIFRA-05-2008-0016
RBW

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

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 Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is The Schawbel Corporation, a corporation doing business in the State of Massachusetts.

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.

RECEIVED
REGIONAL HEARING CLERK
700 JUN -5 AM 11:54
1000 WASHINGTON ST
BOSTON MA 02118

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 the 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 (EPA Form 3540-1 or NOA) 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. Kamino International d/b/a Kat Brokers (KI), located at 1370 Thorndale Avenue, Elk Grove Village, Illinois 60007, is the broker/agent for Respondent.

18. On or about March 13, 2008, Respondent’s broker/agent, KI, submitted an NOA to the U.S. EPA for the import shipment of a pesticide product, “Thermacell Mosquito Repellant,” EPA Reg. No. 43917-7-71910.

19. Respondent was listed as the importer of the March 13, 2008 shipment.

20. On March 25, 2008, the U.S. EPA, Region 5, detained the import shipment of “Thermacell Mosquito Repellant,” that was imported on March 13, 2008, for inspection.

21. The product “Thermacell Mosquito Repellant,” EPA Reg. No. 43917-7-71910, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

22. On April 14, 2008, an investigator employed by the U.S. EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of the import shipment imported by Respondent on March 13, 2008 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.

23. During this inspection, the inspector confirmed that the March 13, 2008 import shipment imported by Respondent was "Thermacell Mosquito Repellent," EPA Reg. No. 71910-2 rather than "Thermacell Mosquito Repellant," EPA Reg. No. 43917-7-71910, as presented in Respondent's NOA of March 13, 2008.

24. On or about March 13, 2008, Respondent failed to file an NOA for "Thermacell Mosquito Repellent," EPA Reg. No. 71910-2, prior to the arrival of the shipment of "Thermacell Mosquito Repellent," EPA Reg. No. 71910-2 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).

25. 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

26. 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 \$6,500.00. 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.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,500.00 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. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

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

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

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

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

30. Respondent must also submit to U.S. EPA, Region 5 an NOA for the import shipment of "Thermacell Mosquito Repellent," EPA Reg. No. 71910-2, U.S. Customs and Border Protection Entry Number MA7-0164150-2.

31. 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.

32. 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

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

34. 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.

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

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

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

38. 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.

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

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

41. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

The Schawbel Corporation, Respondent

5/2/08

Date



Tom Paganetti
Chief Financial Officer

United States Environmental Protection Agency, Complainant

5/29/08

Date



Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0016


In the Matter of:

The Schawbel Corporation

Docket No. FIFRA-05-2008-0016 *bbw*

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.

6/3/08
Date

Bharat Mathur
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
REGIONAL HEARING CLERK
US ENVIRONMENTAL PROTECTION AGENCY
REGION 5
2008 JUN -5 AM 11:54

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 The Schawbel Corporation, was filed on June 5, 2008 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 0006 0182 4561, a copy of the original to the Respondents:

Tom Paganetti, CEO
The Schawbel Corporation
100 Crosby Drive Suite 102
Bedford, Massachusetts 01930

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, Counsel for Complainant/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 60604-3590

Docket No. *FIFRA-05-2008-0016*



RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2008 JUN -5 AM 11:55