



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 0005 8921 6433

Al Carpenter
Lindhaus USA, Inc.
2500 West County Road 42
Burnsville, Minnesota 55337

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0021 *DB*

Dear Mr. Carpenter:

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 July 1, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,600.00 is to be paid in the manner described in paragraphs 27 thru 30. Please be certain that the number **BD 2750845P021** 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,

Terance Bonace
Terance Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Lindhaus USA, Inc.)
Burnsville, Minnesota,)

Respondent.)

Docket No. *FIFRA-052008-002120*,
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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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 Lindhaus USA, Inc., a corporation doing business in the State of Minnesota.

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. 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 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” 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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 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

16. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Respondent owned or operated a place of business located at 2500 West Country Road 42, Burnsville, Minnesota during the calendar year 2007.

18. On January 29, 2007, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Burnsville, Minnesota.

19. During the January 27, 2007 inspection, the inspector collected advertising literature and sales invoices for the product Lindhaus Dry Cleaning System which Respondent was offering for sale.

20. Respondent’s advertising literature for Lindhaus Dry Cleaning System collected on January 24, 2007 states:

“Just one treatment of Pure Power Bio-Sponges may reduce

- Dust Mites by almost 80%
- Mold Spores by up to 90%
- Pet Allergens by up to 90%

“Regular dry cleaning treatments can reduce and remove:

- Chemical residues

- Toxins

- Soap Film

- Germs-Bacteria-Viruses”

21. On October 11, 2007, Respondent’s Internet site at www.lindhaususa.com stated:

“The DCS scrubs the Lindhaus compound until it penetrates into the fibers cleaning and reducing bacteria and dust mites”

“Just one treatment of Pure Power Bio-Sponges may reduce

- Dust Mites by almost 80%

- Mold Spores by up to 90%

- Pet Allergens by up to 90%

“Regular dry cleaning treatments can reduce and remove:

- Chemical residues

- Toxins

- Soap Film

- Germs-Bacteria-Viruses”

22. Lindhaus Dry Cleaning System is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Respondent sold Lindhaus Dry Cleaning System to Idaho Sewing & Vacuum on March 29, 2006.

24. Lindhaus Dry Cleaning System is not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

25. Respondent’s distribution or sale of the unregistered pesticide Lindhaus Dry

Cleaning System constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(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 \$3,600. 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 \$3,600 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:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to:

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

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

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

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

29. 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.

30. 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

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

32. 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.

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

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

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

36. 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.

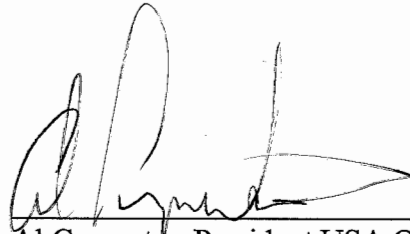
37. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Lindhaus USA, Inc., Respondent

5/5/08

Date

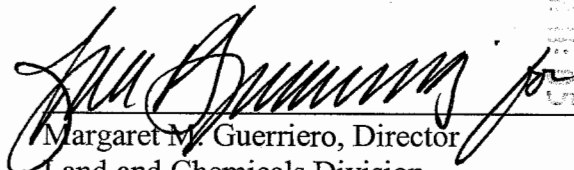


Al Carpenter, President USA Operations
Lindhaus USA, Inc.

United States Environmental Protection Agency, Complainant

6/25/08

Date



Margaret M. Guerriero, Director
Land and Chemicals Division


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In the Matter of:
Lindhaus USA, Inc.
Docket No. FIFRA-05-2008-0021 22

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.

6/26/08
Date



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

2008 JUN 27 AM 11:05
REGIONAL HEARING CLERK
U.S. 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 Linhaus USA, Inc., was filed on July 1, 2008 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true copy was sent by Certified Mail, Receipt No. 7001 0320 0005 8921 6433, a copy of the original to the Respondents:

Al Carpenter
Lindhaus USA, Inc.
2500 West County Road 42
Burnsville, Minnesota, 55337

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Harriet Croke, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick J. Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2008-0021²³*

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