



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

December 29, 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7662 1021

Mr. Peter Martin

Technical Director

Bell Laboratories, Inc.

3699 Kinsman Boulevard

Madison, Wisconsin 53704

Consent Agreement and Final Order FIFRA-05-2011-0005


Dear Mr. Martin:

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 December 29, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 31 thru 35. Please be certain that the number **BD 2751145P004** and the docket number is written on both the transmittal letter and on the check. Payment is due by January 28, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*for*   
Christine Anderson  
Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
 )  
**Bell Laboratories, Inc.** )  
**Madison, Wisconsin,** )  
 )  
**Respondent.** )  
\_\_\_\_\_ )

**Docket No. FIFRA-05-2011-0005**  
**Proceeding to Assess a Civil Penalty**  
**Under Section 14(a) of the Federal**  
**Insecticide, Fungicide, and Rodenticide**  
**Act, 7 U.S.C. § 136l(a)**

**RECEIVED**  
**DEC 29 2010**

**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, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Bell Laboratories, Inc. (Bell), a corporation doing business in Madison, Wisconsin.
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 Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and (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 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 162) promulgated thereunder by the Administrator before being permitted entry into the United States.

11. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1, or NOA), prior to the arrival of the shipment in 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 shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is 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(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.

15. 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).

16. 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.

17. 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.

18. The Administrator of EPA may assess a civil penalty against any distributor 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**

19. Respondent is, and was at all times relevant to this Complaint, a corporation and

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

20. On or about September 21, 2010, M.E. Dey & Co. (M.E. Dey), located at 1000 Tower Lane, Bensenville, Illinois, 60106, was a broker/agent for Respondent.

21. On or about September 21, 2010, M.E. Dey submitted a NOA, under entry number 420-0852821-0, to EPA (September 21 NOA). The September 21 NOA stated that it was related to an import shipment of the pesticide “ZP-80,” EPA Registration Number (EPA Reg. No.) 12455-24.

22. On or about September 23, 2010, Respondent “distributed or sold” the pesticide product “ZP-80,” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

23. The September 21 NOA stated that Respondent was the importer of record.

24. Respondent, as importer of “ZP-80,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

25. “ZP-80,” EPA Reg. No. 12455-24, is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about August 11, 2010, the EPA, Office of Prevention, Pesticides and Toxics Substances, Registration Division, stamped the label submitted with the Application for Pesticide Notification under Pesticide Registration Notice 98-10 as “Notification” for “ZP-80,” under EPA Reg. No. 12455-24 (August 11, 2010, accepted label).

27. Labels affixed to pallets of “ZP-80,” EPA Reg. No. 12455-24, that entered into the United States on or about September 23, 2010, associated with the September 21 NOA, substantially and materially differed from the August 11, 2010, accepted label.

28. On or about September 23, 2010, Respondent distributed or sold a misbranded pesticide with a label bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading.

29. Respondent's distribution or sale of the misbranded pesticide product "ZP-80" constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

**Civil Penalty**

30. 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 \$7,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

31. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 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, Missouri 63197-9000

The check, must state "In the Matter of: Bell Laboratories, Inc.," the docket number of this CAFO, and the billing document number.

32. A copy of the 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 check and 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

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

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

34. 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.

35. 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**

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

37. 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.

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

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

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

41. 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.

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

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

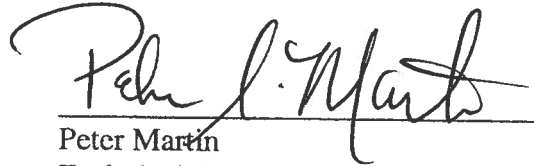


**In the Matter of:  
Bell Laboratories, Inc.  
Docket No.**

**RESPONDENT**

December 16, 2010

\_\_\_\_\_  
Date

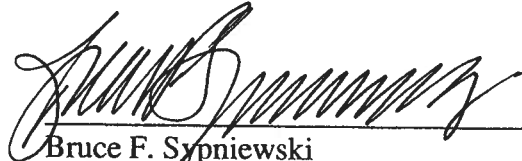


\_\_\_\_\_  
Peter Martin  
Technical Director  
Bell Laboratories, Inc.

**COMPLAINANT  
Region 5  
United States Environmental Protection Agency**

12/22/10

\_\_\_\_\_  
Date



\_\_\_\_\_  
Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

In the Matter of:  
Bell Laboratories, Inc.  
Docket No. **FIFRA-05-2011-0005**

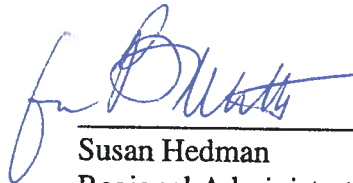
**RECEIVED**  
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**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**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.

12-23-10  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

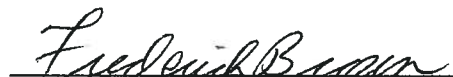
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Bell Laboratories, Inc., was filed on December 29, 2010 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 7662 1021, a copy of the original to the Respondents:

Mr. Peter Martin  
Technical Director  
Bell Laboratories, Inc.  
3699 Kinsman Boulevard  
Madison, Wisconsin 53704

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Deborah Carlson, 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-05-2011-0005

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PROTECTION AGENCY