



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.7009 1680 0000 7670 5677

Mr. William H. Metzger  
United Industries Corporation  
13260 Corporate Exchange Dr.  
Bridgeton, Missouri 63044

Consent Agreement and Final Order, Docket No. FIFRA-05-2010-0021

Dear Mr. Metzger:

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 8, 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 32. Please be certain that the number **BD 2751045P020** and the docket number are written on the transmittal letter. Payment is due by August 7, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Estrella Calvo".

Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
United Industries Corporation )  
Bridgeton, Missouri, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2010-0021  
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  
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**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 United Industries Corporation (United), a corporation doing business in Bridgeton, Missouri.
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)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims

made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA.

13. 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.”

14. 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).

15. 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.”

16. 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.”

17. 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**

18. 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).

19. On or about May 14, 2010, Phoenix International (Phoenix), located at

1501 N. Mittel, Suite A, Wood Dale, Illinois 60191 was a broker/agent for Respondent.

20. On or about May 14, 2010, Phoenix submitted a Notice Of Arrival to EPA for an import shipment of the pesticide "Hot Shot Ultra Liquid Roach Bait," EPA Registration Number 9688-239-8845 ("Hot Shot Ultra Liquid Roach Bait") from China.

21. The Notice of Arrival identified United as the importer of record for this shipment of Hot Shot Ultra Liquid Roach Bait.

22. Respondent, as importer of "Hot Shot Ultra Liquid Roach Bait," and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

23. "Hot Shot Ultra Liquid Roach Bait" is also a "distributor product," as defined at 40 C.F.R. § 152.132. As such, the label on the distributor product "Hot Shot Ultra Liquid Roach Bait" must be the same as the underlying registered pesticide product. 40 C.F.R. § 152.132(d). The underlying registered product is "Chemsico Roach Control 5DW."

24. On or about September 15, 2006, the EPA, Office of Pesticide Program, Registration Division accepted the label with comments for "Chemsico Roach Control 5DW," under EPA Registration Number 9688-239.

25. The labels of the distributor product "Hot Shot Ultra Liquid Roach Bait" that entered into the United States on or about May 17, 2010 at the Chicago, Illinois port of entry substantially differed from the underlying label submitted to EPA by Chemsico and accepted by EPA as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. On or about May 17, 2010, Respondent "distributed or sold" the pesticide product "Hot Shot Ultra Liquid Roach Bait," as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

### **Specific Allegations**

27. Complainant incorporates by reference the allegations contained in paragraphs 1 through 26 of this Complaint.

28. On or about May 17, 2010, Respondent distributed or sold a registered pesticide with claims on its label that substantially differed from claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

29. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), 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**

30. 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.

31. 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 \$7,500. 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. 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 electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message is  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of: United Industries Corporation," the docket number of this CAFO, and the billing document number.

32. 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

Susan Perdomo (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 Enforcement Response Policy for FIFRA.

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:  
United Industries Corporation  
Docket No. FIFRA-05-2010-0021**

**RESPONDENT**

June 28, 2010  
Date

William H. Metzger  
William H. Metzger  
Division Vice President  
Regulatory Affairs  
United Industries Corporation

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

July 2, 2010  
Date

Josi D. Lesvaca  
for Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

**In the Matter of:  
United Industries Corporation  
Docket No. FIFRA-05-2010-0021**

**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.

7-6-2010  
Date

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

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JUL 08 2010  
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 resolution of the civil administrative action involving United Industries Corporation, was filed on July 8, 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 7670 5677, a copy of the original to the Respondent:

Mr. William H. Metzger  
United Industries Corporation  
13260 Corporate Exchange Dr.  
Bridgeton, Missouri 63044

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, 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-05-2010-0021**

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