



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

JUN 20 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9615

Mr. David Li, President  
Fairway International Corp.  
783 Brompton Lane  
Bolingbrook, Illinois 60440

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0033

Dear Mr. Li:

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 20, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner prescribed in paragraphs 39 and 40. Please be certain that the number **BD 2750745P033** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 20, 2007 (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 "Terry Bonace".

Terry Bonace  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2007-0033</b>
	)	
<b>Fairway International Corp.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Bolingbrook, Illinois</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
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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 Chief of the Pesticides and Toxics Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.

3. Respondent is Fairway International Corp. (Fairway), a corporation doing business in the State of Illinois, with a place of business at 910 West Fullerton Avenue, Addison, Illinois and 783 Brompton Lane, Bolingbrook, Illinois.

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 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

11. 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.

12. 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.”

13. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

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 “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. §152.5(c) as any insect, rodent, nematode, fungus, weed,...

16. 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).

17. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), authorizes the Administrator to assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred from January 31, 1997 to March 15, 2004, and a civil penalty of up to \$6,500 for each violation of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, as amended by 69 Fed. Reg. 7121 (Feb. 13, 2004).

### **Factual Allegations and Alleged Violations**

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

19. On September 28, 2006, an inspector with the Illinois Department of Public Health, authorized to conduct inspections under FIFRA, conducted a marketplace inspection at Respondent's place of business at 910 West Fullerton Avenue, Addison, Illinois.

20. During the September 28, 2006 inspection, the inspector collected a sample of Power Moth Balls being offered for sale by Respondent.

21. The label for Power Moth Balls states, "Kills moths and house insects."

22. Power Moth Balls is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Respondent is a "distributor" of the Power Moth Balls pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

24. Power Moth Balls is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

25. On December 28, 2005, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

26. On June 28, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

27. On May 17, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

28. On April 28, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

29. On February 10, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

30. On February 3, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

31. On November 11, 2005, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

32. On November 10, 2005, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

33. On October 3, 2005, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

34. On June 7, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

35. On August 3, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. On July 6, 2006, Respondent distributed or sold an unregistered pesticide, Power Moth Balls, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

37. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

#### **Civil Penalty**

38. 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 \$1,000. 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.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 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:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251 - 7531

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

40. 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

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

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

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

42. 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.

43. 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**

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

45. 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.

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

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

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

49. 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.

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

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



In the Matter of Fairway International Corp.  
Docket No. **FIFRA-05-2007-0033**

**Fairway International Corp.**

5/14/2007

Date

David Li

David Li, President  
Fairway International, Inc.

**United States Environmental Protection Agency, Complainant**

June 6, 2007

Date

Mardi Klevs

Mardi Klevs, Chief  
Pesticides and Toxics Branch  
Waste, Pesticides and Toxics Division

6/12/07

Date

Margaret M. Guerriero


Margaret M. Guerriero, Director  
Waste, Pesticides and Toxics Division

**In the Matter of:**  
**Fairway International Corp.**  
**Docket No. FIFRA-05-2007-0033**

**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.

6-19-07  
Date

  
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

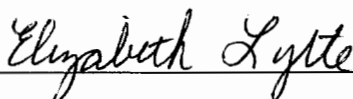
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Fairway International Corp., was filed on June 20, 2007 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 0005 8931 9615, a copy of the original to the Respondents:

Mr. David Li, President  
Fairway International Corp.  
783 Brompton Lane  
Bolingbrook, Illinois 60440

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Nidhi K. O'Meara, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0033**