



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

**November 12, 2021**

**VIA EMAIL ONLY**

Mr. Danny McCaul  
Chief Executive Officer  
Italmatch USA Corporation  
5544 Oakdale Road Southeast  
Smyrna, Georgia 30082

[d.mccaul@italmatch.com](mailto:d.mccaul@italmatch.com)

Consent Agreement and Final Order  
In the Matter of Italmatch USA Corporation  
Docket Number **FIFRA-05-2022-0002**

Mr. McCaul:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on November 12, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$26,700.00 is to be paid in the manner described in paragraphs 74-75 of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

**ANNA  
NGUYEN**

Digitally signed by ANNA  
NGUYEN  
Date: 2021.11.02  
14:05:33 -05'00'

Abigail Wesley  
Enforcement Officer  
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2022-0002</b>
	)	
<b>Italmatch USA Corporation</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Smyrna, Georgia</b>	)	<b>Under Section 14(a) of the</b>
	)	<b>Insecticide, Fungicide, and</b>
	)	<b>Rodenticide Act, 7 U.S.C. § 136l(a)</b>
<b>Respondent.</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 Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Italmatch USA Corporation, a corporation doing business at 5544 Oakdale Road Southeast, Smyrna, Georgia 30082.

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. 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 EPA. These regulations are found at 19 C.F.R. Part 12.110 *et seq.* See also 19 C.F.R. § 12.1(b).

11. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by 7 U.S.C. Title 7, Chapter 6, Subchapter II.

12. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

13. The term “registrant” is defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), as a person who has registered any pesticide pursuant to FIFRA.

14. A distributor is one who distributes or sells pesticides. See 40 C.F.R. § 152.3 (defining the term “to distribute or sell” and other grammatical variations of the term).

15. The regulation at 19 C.F.R. § 12.112(a) states in pertinent part that an importer desiring to import pesticides into the United States shall submit to the EPA, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

16. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf.

17. 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.

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

19. The regulation at 40 C.F.R. § 152.3 defines the term “to distribute or sell” and other grammatical variations of the term such as “distributed or sold” and “distribution or sale,” as the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.

20. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to include any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

21. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other

micro-organisms on or in living man or other living animals) which the Administrator of EPA declares to be a pest under FIFRA. See also 40 C.F.R. § 152.5(d).

22. Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D), provides that a pesticide is “misbranded” if its label does not bear the registration number assigned under section 7 [of FIFRA] to each establishment in which it was produced.

23. Section 2(q)(2)(C)(i), 7 U.S.C. § 136(q)(2)(C)(i), defines a pesticide as “misbranded” if there is not affixed to its container, a label bearing the name and address of the producer, registrant, or person for whom produced.

24. The regulation at 40 C.F.R. § 156.10(a)(1)(v) states in pertinent part that the contents of a label must show clearly and prominently the producing establishment number.

25. The regulation at 40 C.F.R. § 156.10(a)(1)(ii) states in pertinent part that the contents of a label must show clearly and prominently the name and address of the producer, registrant, or person for whom produced.

26. The regulation at 40 C.F.R. § 156.10(c) further states that if the name of the person for whom the pesticide was produced appears on the label, it must be qualified by appropriate wording such as “Packed for \* \* \*,” “Distributed by \* \* \*,” or “Sold by \* \* \*” to show that the name is not that of the producer.

27. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 247 (December 23, 2020).

### Factual Allegations and Alleged Violations

28. Respondent is, and at all times relevant to this CAFO was, a corporation.

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

29. Respondent is, and at all times relevant to this CAFO was, a registrant, as that term is defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y) and a distributor.

30. Respondent is, and at all times relevant to this CAFO was, an “importer” as that term is defined in 19 C.F.R. § 101.1.

31. At all times relevant to this CAFO, Respondent was importing one or more pesticides into the United States.

#### **Bromicide Tablets**

32. Respondent imported **Bromicide Tablets**, EPA Registration Number (EPA Reg. No.) 83451-4 from China under Entry Number 316-51122637, which arrived into the United States through the Chicago, Illinois Port of Entry on or about September 7, 2021.

33. **Bromicide Tablets**, EPA Reg. No 83451-4, are a pesticide as defined by Section 2(u) of FIFRA.

34. Respondent did not submit an NOA to the EPA for this shipment prior to the arrival of the shipment into the U.S.

35. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) makes it unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file a report required under FIFRA.

36. NOAs are a report required under FIFRA. See 19 C.F.R. § 12.112(a).

#### **Bromicide Granules**

37. Respondent imported **Bromicide Granules**, EPA Reg. No. 83451-3 from China under Entry Number 316-51097458, which arrived into the United States through the Chicago, Illinois Port of Entry on or about September 7, 2021.

38. **Bromicide Granules**, EPA Reg. No. 83451-3 are a pesticide as defined by Section 2(u) of FIFRA.

39. Respondent did not submit a NOA to the EPA for this shipment prior to the arrival of the shipment into the U.S.

40. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) makes it unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file a report required under FIFRA.

41. NOAs are a report required under FIFRA. See 19 C.F.R. § 12.112(a).

### **Spectrus OX103**

42. Respondent imported **Spectrus OX103**, EPA Reg. No. 83451-4-3876 from China under Entry Number 316-51107042, which arrived into the United States through the Chicago, Illinois Port of Entry on or about August 28, 2021.

43. **Spectrus OX103**, EPA Reg. No. 83451-4-3876 is a pesticide as defined by Section 2(u) of FIFRA.

44. Under U.S. Customs and Border Protection (CBP) procedures, imported merchandise for which EPA requests an “Intensive” status will result in an “Intensive Exam” message from CBP being sent to the Port Authority, directing that the merchandise at issue be delivered to a designated examination facility or site for actual physical examination.

Merchandise so directed remains in CBP custody and may only be moved under bond.

45. On August 16, 2021, EPA requested that CBP at the Port of Chicago to place an “Intensive” status on the subject import shipment described by the NOA for Entry Number 316-51107042, and that the shipment be held for examination by EPA.

46. On September 20, 2021, EPA inspected the import shipment of **Spectrus OX103**, EPA Reg. No. 83451-4-3876 described above at a Central Examination Station in Bensenville, Illinois.

47. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

48. According to the electronic filing for Entry Number 316-51107042, the containers of **Spectrus OX103**, EPA Reg. No. 83451-4-3876, within the shipment described above, were to be delivered to BWA Water Additives US LLC, in Smyrna, Georgia. These containers of **Spectrus OX103**, EPA Reg. No. 83451-4-3876, were held by Respondent for distribution/shipment and were offered for delivery, and therefore were “distributed or sold” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

49. The labeling for the containers of **Spectrus OX103**, EPA Reg. No. 83451-4-3876 did not contain an EPA Establishment Registration Number as required by 40 C.F.R. § 156.10(a)(1)(v) and did not identify the person for whom the pesticide was produced for as required by 40 C.F.R. § 156.10(c).

### **Count 1**

50. Complainant reincorporates the preceding paragraphs by reference, as though fully set forth herein.

51. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file a report required under FIFRA.



52. Respondent is a registrant and distributor.

53. Respondent failed to submit an NOA to the EPA for **Bromicide Tablets**, EPA Reg. No 83451-4 under Entry Number 316-51122637, prior to the arrival of the shipment into the United States.

54. An NOA is a report required under FIFRA. See 19 C.F.R. § 12.112(a).

55. Respondent, therefore, violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), by failing to submit an NOA for Entry Number 316-51122637 prior to its arrival into the United States.

56. Respondent's violation of Section 12(a)(2)(N) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA.

### Count 2

57. Complainant reincorporates the preceding paragraphs by reference, as though fully set forth herein.

58. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file a report required under FIFRA.

59. Respondent is a registrant, and distributor.

60. Respondent failed to submit an NOA to the EPA for **Bromicide Granules**, EPA Reg. No. 83451-3 under Entry Number 316-51097458, prior to the arrival of the shipment into the United States.

61. An NOA is a report required under FIFRA. See 19 C.F.R. § 12.112(a).

62. Respondent, therefore, violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), by failing to submit an NOA for Entry Number 316-51097458 prior to its arrival into the United States.

63. Respondent's violation of Section 12(a)(2)(N) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA.

### Count 3

64. Complainant reincorporates the preceding paragraphs by reference, as though fully set forth herein.

65. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

66. Respondent is a person, as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

67. Spectrus OX103 is a pesticide, as that term is defined by Section 2(u) of FIFRA.

68. The quantity of **Spectrus OX103**, EPA Reg. No. 83451-4-3876, described above, that Respondent imported into the United States under entry number 316-51107042, were misbranded because the labeling failed to include the EPA Establishment Number for the establishment in which the Spectrus OX103 was produced, and failed to identify for whom the pesticide was produced.

69. Respondent distributed or sold the quantity of **Spectrus OX103**, EPA Reg. No. 83451-4-3876, described above, by holding it for distribution/shipment and offering it for delivery.

70. Therefore, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

71. Respondent's violation of Section 12(a)(1)(E) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the violation.

**Civil Penalty**

72. Respondent is a wholesaler, dealer, retailer, or other distributor within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1).

73. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(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.

74. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$26,700.

75. Within thirty (30) days after the effective date of this CAFO, Respondent must pay a \$26,700 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "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 should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Italmatch USA Corporation," and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
[whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

Abigail Wesley (ECP-17J)  
[wesley.abigail@epa.gov](mailto:wesley.abigail@epa.gov)

Andrew Futerman  
[futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov)

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

77. If Respondent does not pay the civil penalty in a timely manner, 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.

78. 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**

79. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective attorneys/representatives: [futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov) (for Complainant), and [d.mccaul@italmatch.com](mailto:d.mccaul@italmatch.com) (for Respondent).

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

81. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

85. 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.


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

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

**In the Matter of:  
Italmatch USA Corporation,**

**Italmatch USA Corporation, Respondent**


Nov 1, 2021  
Date

  
\_\_\_\_\_  
Danny McCaul  
Chief Executive Officer Americas  
Italmatch USA Corporation

**In the Matter of:  
Italmatch USA Corporation**

**United States Environmental Protection Agency, Complainant**

**Harris,  
Michael**

 Digitally signed by Harris,  
Michael  
Date: 2021.11.08 12:24:09  
-06'00'

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Michael D. Harris, Director  
Enforcement & Compliance Assurance Division

**In the Matter of:**  
**Italmatch USA Corporation,**  
**Docket No. FIFRA-05-2022-0002**

**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.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.11.09  
09:59:58 -06'00'

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Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5



Consent Agreement and Final Order  
In the Matter of: Italmatch USA Corporation  
Docket Number: **FIFRA-05-2022-0002**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2022-0002**, which was filed on November 12, 2021, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant: Mr. Andrew Futerman  
[futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov)

Copy by E-mail to  
Respondent: Mr. Danny McCaul  
[dmccaul@italmatch.com](mailto:dmccaul@italmatch.com)

Copy by E-mail to  
Regional Judicial Officer: Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

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LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5