



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

AUG 03 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9431

Steve Levy, President
Bell Laboratories, Inc.
Motomco LTD
3699 Kinsman Blvd
Madison, WI 53704

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0036

Dear Mr. Levy:

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 August 3, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$18,200 is to be paid in the manner prescribed in paragraphs 105-109. Please be certain that the number **BD 2750745P036** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 4, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Anthony Restaine
for Terry Bonace
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:

BELL LABORATORIES, INC.)	CONSENT AGREEMENT AND FINAL ORDER
MADISON, WISCONSIN)	
)	
and)	
)	
MOTOMCO LTD.)	
MADISON, WISCONSIN,)	
)	
)	
Respondents.)	Docket No. FIFRA-05-2007-0036
)	
)	

CONSENT AGREEMENT

The parties agree that settlement of this action without further delay is in their best interest, and having consented to the entry of this Consent Agreement and the attached Final Order (CAFO) before taking testimony and without adjudication of any issue of law or fact herein, Respondents agrees to comply with the terms of this CAFO.

Preliminary Statements

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. §136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Chief of the Chemicals Management Branch, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, and is authorized to institute and settle civil administrative actions brought pursuant to Section 14(a) of FIFRA.

3. Respondents are Bell Laboratories, Inc. and Motomco Ltd., corporations organized under the laws of the State of Wisconsin with a place of business at 3699 Kinsman Road, Madison, Wisconsin, 53704.

Jurisdiction/Waiver of Right to Hearing

4. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. § 22.13(b).

5. Respondents agree not to contest U.S. EPA's jurisdiction with respect to the execution of this Consent Agreement, issuance of the attached Final Order, or the enforcement thereof. 40 C.F.R. § 22.18(b)(2).

6. For purposes of this Consent Agreement and the enforcement thereof, Respondents hereby waives their right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement. Respondents waives their right to appeal the proposed Final Order attached to this Consent Agreement. 40 C.F.R. §22.18(b)(2).

Alleged Violations

7. Respondents are "persons" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 36(s).

8. 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 micro-organism.

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. On September 25, 2006, Terence Bonace, a U.S. EPA inspector, duly authorized to conduct inspections under FIFRA, conducted an inspection at Respondents' place of business at 3699 Kinsmen Boulevard, Madison, Wisconsin, in order to examine and collect samples of pesticides packaged, labeled, and released for shipment, as authorized under Section 9 of FIFRA, 7 U.S.C. § 136g.

11. During the September 25, 2006 inspection, the inspector collected samples of Tomcat Ultra Block Bait, EPA Reg. No. 12455-79-3240, Tomcat Ultra Pelleted Bait, EPA Reg. No. 12455-86-3240, Tomcat Ultra Prebaited Mouse Bait Station, 12455-68-3240, Tomcat Mouse Control Kit, EPA Reg. No. 12455-79-3240 and Tomcat Ultra Pre-Filled Bait Trays, EPA Reg. No. 12455-69-3240.

12. The inspector also collected a bin label for Tomcat Ground Squirrel Bait, EPA SLN No. CA 780146, a special local need registration in the State of California, pursuant to Section 24(c) of FIFRA, 7 U.S.C. § 136(v).

13. In addition, the inspector collected labels for the unregistered pesticides, produced for export; Contract, Fastrac Pellets, Contract Blox, Notrac Rotteblock, Notrac Blox, Solo Blox, and Todo Tiempo Notrac Blox.

14. Furthermore, the inspector collected distribution records for all of the products referenced in paragraphs 11 through 13 above.

15. Tomcat Ultra Block Bait, EPA Reg. No. 12455-79-3240, Tomcat Ultra Pelleted Bait, EPA Reg. No. 12455-86-3240, Tomcat Ultra Prebaited Mouse Bait Station,

12455-68-3240, Tomcat Mouse Control Kit, and Tomcat Ultra are “pesticides” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), by their action of killing or poisoning mice and rats.

16. Contract, Fastrac Pellets, Contrac Blox, Notrac Rotteblock, Notrac Blox, Solo Blox, and Todo Tiempo Notrac Blox are “pesticides,” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), by their action of killing or poisoning mice and rats.

17. “Distribute and 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 sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

18. Respondents "distributed or sold" the pesticides identified in paragraphs 11 through 13, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that the pesticides collected by the inspectors were from pesticides packaged, labeled, and released for shipment or sale by Respondents.

19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered.

20. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

21. 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.

22. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136(j)(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 differ substantially from any 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.

COUNT I

23. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

24. The label of Respondents' pesticide, Tomcat Ultra Block Bait states, among other things: "Can Kill In One Feeding"; "Reliable, All Weather Formula"; "Can be used indoors or out"; and "Can be used alone or in Tomcat Bait Station."

25. The claims identified in paragraph 24 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

26. The claims identified in paragraph 24 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

27. Respondents' sale or distribution of the registered pesticide Tomcat Ultra Block Bait constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 36j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution 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, 7 U.S.C. § 136a.

COUNT II

28. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

29. The label of Respondents' pesticide Tomcat Ultra Pelleted Bait states, among other things, "Can Kill in One Feeding" and "Ready to Use."

30. The claims "Can Kill in One Feeding" and "Ready to Use" were not approved by the U.S. EPA Office of Pesticide Programs, in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

31. The claims identified in paragraph 29 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondents' product, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondents' sale or distribution of the registered pesticide Tomcat Ultra Pelleted Bait constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 36j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution 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, 7 U.S.C. § 136a .

COUNT III

33. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

34. The label of Respondents pesticide Tomcat Ultra Prebaited Bait Station states, among other things: "The next generation of safer baiting alternatives"; "Made from durable, long lasting plastic"; "Our exclusive patented design"; and "New!"

35. The claims, identified in paragraph 34 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondents product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

36. The claims identified in paragraph 34 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Respondents' sale or distribution of the registered pesticide Tomcat Ultra Prebaited Mouse Bait Station constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution 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, 7 U.S.C. § 136a.

COUNT IV

38. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

39. The label of Respondents' pesticide Tomcat Ultra Pre-Filled Bait Trays states, among other things: "Can Kill in One Feeding"; "Ready to Use Smart Packs"; "Trays can be used inside or out"; "Plastic seal keeps bait fresher"; and "Pre-Filled Bait Trays."

40. The claims identified in paragraph 39 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

41. The claims identified in paragraph 39 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

42. Respondents' sale or distribution of the registered pesticide Tomcat Ultra Pre-Filled Bait Trays constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution 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, 7 U.S.C. 136a.

COUNT V

43. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

44. The label of Respondents' pesticide, Tomcat Mouse Control Kit states, among other things: "A complete package for home mouse control"; "Includes Baiting Instructions, Tips & Strategies Sheet Inside"; "Can Kill in One Feeding"; "Ready to Use "Smart Packs"; "Trays can be used inside or out"; "Plastic seal keeps bait fresher"; and "Pre-Filled Bait Trays."

45. The claims identified in paragraph 44 were not approved by the U.S. EPA Office of Pesticide Programs in connection with the registration of Respondents' product, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

46. The claims identified in paragraph 44 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondents' product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

47. Respondents' sale or distribution of the registered pesticide Tomcat Mouse Control Kit constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution 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, 7 U.S.C. § 136a.

COUNT VI

48. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

49. Respondents have a special local needs registration for the unregistered pesticide Tomcat Ground Squirrel Bait, EPA SLN No. CA 780146, as permitted under Section 24(c) of FIFRA, 7 U.S.C. § 136(v)(24)(c) for sale and distribution only in the State of California.

50. Tomcat Ground Squirrel Bait is not a registered pesticide for sale and distribution in the United States, with the exception of the State of California.

51. Respondents distributed or sold Tomcat Ground Squirrel Bait to: True Value Company in Kingman, Arizona; Precision Logistics in Kansas City, Missouri; Precision Logistics in Liberty, Missouri; Do It Best Corporation in Mesquite, Nevada; Do It Best Corporation in Woodburn, Oregon; RX Veterinary Products Co. in Memphis, Tennessee and Lowe's Company in Cheyenne, Wyoming on at least one occasion to each location in calendar years 2005 and 2006.

52. No person in any state may distribute or sell to any person any pesticide that is not registered under FIFRA, 7 U.S.C. § 136a(a).

53. Respondents distributed, offered for sale, or sold Tomcat Ground Squirrel Bait.

54. Respondents' distribution of the unregistered pesticide Tomcat Ground Squirrel Bait on at least seven occasions in 2005 and 2006 constitutes seven unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 36j(a)(1)(A).

COUNT VII

55. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

56. Respondents distributed or sold the unregistered pesticide Contrac to a customer in Brantford, Ontario on or about June 8, 2006.

57. Respondents' distribution of the unregistered pesticide Contrac constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT VIII

58. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

59. Respondents distributed or sold the unregistered pesticide Fastrac Pellets to a customer in Mexico City, Mexico on or about February 24, 2006.

60. Respondents' distribution of the unregistered pesticide Fastrac Pellets constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C §136j(a)(1)(A).

COUNT IX

61. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

62. Respondents distributed or sold the unregistered pesticide Contrac Blox to a customer in Mexico City, Mexico on or about February 11, 2005.

63. Respondents' distribution of the unregistered pesticide Contrac Blox constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT X

64. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22.

65. Respondents distributed or sold the unregistered pesticide Notrac Rotteblok to a customer in Esbjerg, Denmark on or about March 17, 2006.

66. Respondents' distribution of the unregistered pesticide Notrac Rotteblock constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT XI

67. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22 of the Complaint.

68. Respondents distributed or sold the unregistered pesticide Notrac Blox to a customer in Neuss, Germany on or about June 29, 2006.

69. Respondents' distribution of the unregistered pesticide Contrac constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT XII

70. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22 of the Complaint.

71. Respondents distributed or sold the unregistered pesticide Solo Blox to a customer in Petah-Tikvah, Israel on or about September 5, 2005.

72. Respondents' distribution of the unregistered pesticide Solo Blox constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT XIII

73. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22 of the Complaint.

74. Respondents distributed or sold the unregistered pesticide Notrac Blox to a customer in Replonge, France on or about October 21, 2005.

75. Respondents' distribution of the unregistered pesticide Notrac Blox constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT XIV

76. Complainant incorporates by reference the allegations contained by paragraphs 7 through 22 of the Complaint.

77. Respondents distributed or sold the unregistered pesticide Todo Tiempo Notrac Blox to a customer in Barcelona, Spain on or about April 7, 2006.

78. Respondents' distribution of the unregistered pesticide Todo Tiempo Notrac Blox constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Supplemental Environmental Project

79. Respondents shall complete a supplemental environmental project (SEP) designed to protect endangered island birds from non-native black rats on Rat Island in the Alaskan Maritime Preserve.

80. Respondents shall contribute 35,850 pounds of rodenticide, at a retail cost of \$85,000, to the not-for-profit Island Conservation and Ecology Group for use in the elimination of black rats in the Alaskan Maritime Preserve by September 1, 2008.

81. Respondents certify that they are not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondents further certify that they have not received, and are not negotiating to receive, credit for the SEP in any other enforcement action.

82. Respondents shall submit to U.S. EPA by October 1, 2008 proof of timely shipment of the 35,850 lbs. of rodenticide to Island Conservation and Ecology Group.

83. Respondents shall submit a SEP completion letter to the U.S. EPA by April 1, 2009. This letter shall contain the following information:

- a. Detailed description of the SEP as completed;

- b. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- c. Certification that Respondents has completed the SEP in compliance with this CAFO and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits).

84. Respondents must submit all notices and reports required by this CAFO by first class mail to Terry Bonace, of the Pesticides and Toxics Enforcement Section, at the address specified in paragraph 108.

85. In each report that Respondents submit as provided by this CAFO, Respondents must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

86. If Respondents violate any requirement of this CAFO relating to the SEP, Respondents must pay stipulated penalties to the United States as follows:

- a. If Respondents spent less than the amount set forth in paragraph 80, above, Respondents shall pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 80.
- b. If Respondents halt or abandon the work on the SEP, Respondents must pay a stipulated penalty of \$2,000 in addition to any penalty required under subparagraph 85, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

87. The U.S. EPA's determination of whether Respondents satisfactorily completed the SEP will bind Respondents.

88. Respondents must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondents will use the method of payment specified in paragraph 105 below, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

89. Any public statement that Respondents make referring to the SEP must include the following language, "Bell Laboratories, Inc. and Motomco Ltd., undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Bell Laboratories, Inc. and Motomco Ltd. for violation of the Federal Insecticide, Fungicide and Rodenticide Act."

90. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondents must notify the U.S. EPA in writing within ten days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondents' past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondents must take all reasonable actions to avoid or minimize any delay. If Respondents fail to notify the U.S. EPA according to this paragraph, Respondents will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondents caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If the U.S. EPA does not agree that circumstances beyond the control of Respondents caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondents in writing of its decision and any delay in completing the SEP will not be excused.
- d. Respondents have the burden of proving that circumstances beyond their control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

91. Respondents must make the following certification to the U.S. EPA at the time Bell Laboratories, Inc. and Motomco Ltd. submit their tax returns for the taxable year 2008 to the IRS and the Wisconsin state revenue agency:

Under penalties of perjury, I declare that I have examined the tax returns pertaining to the year(s) []. To the best of my knowledge and belief, these tax returns do not contain deductions or depreciation for any supplemental environmental project expenses my company has incurred.

Respondents should send the certification to Terry Bonace of the Pesticides and Toxics Enforcement Section at the address specified in paragraph 109.

Settlement of Claims/Reservation of Rights

92. Complainant and Respondents, having sought to informally settle this matter, have agreed to the terms of this Consent Agreement in order to resolve this action without trial or other litigation. 40 C.F.R. § 22.18 (b) and (c).

93. Respondents neither admit nor deny the factual allegations contained in this Consent Agreement, 40 C.F.R. § 22.18(b), and nothing herein shall be construed as an admission of liability by Respondents.

94. The terms of this CAFO constitute a settlement by Complainant for all claims for civil penalties pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the alleged violations of FIFRA specified in Section III of this Consent Agreement.

Except as it relates to those matters resolved by this CAFO:

95. Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to Federal, state and local environmental laws and it is the responsibility of Respondents to comply with all applicable provisions of FIFRA and any other Federal, state or local laws and regulations.

96. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability.

97. Complainant hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable. This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, which Complainant has under FIFRA or any other statutory, regulatory or common law enforcement authority of the United States.

98. Respondents reserve all rights they may have under Federal, state or local statute, regulation or common law, except those rights they have expressly waived under paragraphs 5 and 6 of this CAFO.

99. The entry of this CAFO and Respondents' consent to comply shall not limit or otherwise preclude Complainant from taking additional enforcement action should Complainant determine that such actions are warranted, except as it relates to those matters resolved by this CAFO.

100. This CAFO constitutes the entire agreement between Complainant and Respondents.

Payment Provisions

101. Section 14(a) of FIFRA, 7 U.S.C. § 136l, authorizes a civil penalty of up to \$5,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, see 61 Fed. Reg. 13514-13517 (March 20, 1997), this amount was increased to \$5,500 on or after January 31, 1997 and to \$6,500 for each offense of FIFRA that occurred after March 15, 2004.

102. Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondents business and Respondents ability to continue in business in light of the proposed penalty, Complainant proposes that Respondents be assessed the following civil penalty for the violations alleged in the Complaint:

COUNT I

Distribution/Sale of Pesticide whose Claims Differ\$4,550
Section 12(a)(1)(E) of FIFRA

COUNT II

Distribution/Sale of Pesticide whose Claims Differ.....\$4,550
Section 12(a)(1)(C) of FIFRA

COUNT III

Distribution/Sale of Pesticide whose Claims Differ.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNT IV

Distribution/Sale of Pesticide whose Claims Differ..... \$4,550
Section 12(a)(1)(E) of FIFRA

COUNT V

Distribution/Sale of Pesticide whose Claims Differ.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS VI

Distribution/Sale of Unregistered Pesticide.....\$31,850
Section 12(a)(1)(E) of FIFRA (7 x \$4,550)

COUNTS VII

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS VIII

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS IX

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS X

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS XI

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS XII

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS XIII

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

COUNTS XIV

Distribution/Sale of Unregistered Pesticide.....\$4,550
Section 12(a)(1)(E) of FIFRA

TOTAL PROPOSED CIVIL PENALTY.....\$91,000

103. Respondents certify that they are currently in compliance with FIFRA and the regulations promulgated thereunder.

104. Consistent with the provisions of the FIFRA Enforcement Response Policy and Respondents' agreement to perform the SEP described in paragraph 80, Complainant agrees to mitigate the proposed civil penalty from \$91,000 to \$18,200.

105. The Respondents agrees to pay the civil penalty of \$18,200.

106. The Respondents shall pay this penalty by certified or cashier's check payable to the "Treasurer of the United State of America," and remit the check to:

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

107. The Respondents shall provide a transmittal letter, stating Respondents' name, complete address, the case docket number and the billing document number with the payment.

108. The Respondents must write the case docket number and the billing document number on the face of the check.

109. The Respondents shall also provide copies of the check and transmittal letter to:

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

Terence Bonace (DT-8J)
U.S. EPA-Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Susan Perdomo (C-14J)
Associate Regional Counsel
U.S. EPA-Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

110. Respondents shall pay interest that accrues on any amount overdue under the terms of the Consent Agreement and attached Final Order at the rate established by the Secretary

of the Treasury pursuant to 31 U.S.C. § 3717. Respondents shall pay a late payment handling charge of \$15 which will be imposed after 30 days, with an additional charge of \$15 for each subsequent 30-day period over which an unpaid balance remains.

111. In addition, Respondents shall pay a 6 per annum penalty assessed on any principal amount not paid within 90 days of the date of the attached Final Order is filed with the Regional Hearing Clerk.

112. The Respondents' failure to comply with the provisions of paragraphs 104, 105 and 109 shall result in the referral of this matter to the United States Department of Justice for collection.

113. The Respondents shall not deduct any penalty payment made pursuant to the provisions of this CAFO under any Federal, state or local tax law.

114. The Respondents consents to the issuance of the attached Final Order without further notice.

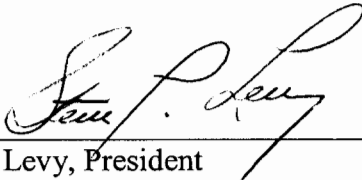
115. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and attached Final Order.

116. This Consent Agreement and attached Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk, as required by 40 C.F.R. § 22.18(b)(3).

117. The foregoing Consent Agreement is hereby stipulated, agreed and approved for entry.

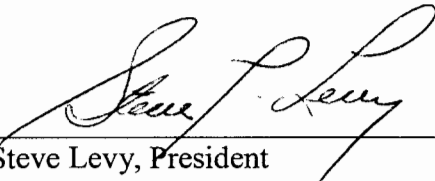
In the Matter of:
Bell Laboratories, Inc. and Motomco Ltd.
Docket No.

For Respondents:



Steve Levy, President
Bell Laboratories, Inc.

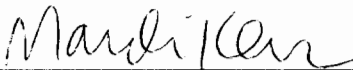
6-26-07
Date



Steve Levy, President
Motomco Ltd.


6-26-07
Date

For Complainant:



Mardi Klevs, Chief
Chemicals Management Branch
Land and Chemicals Division

7-13-07
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

7/19/07
Date

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REGIONAL
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In the Matter of:
Bell Laboratories, Inc. and Motomco Ltd.
Docket No.

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondents are hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing with the Regional Hearing Clerk.



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

7/30/2007

Date

RECEIVED
REGIONAL HEARING CLERK

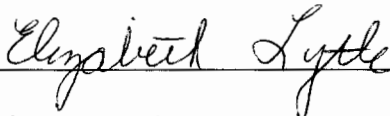
CERTIFICATE OF SERVICE

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. and Motomco LTD, was filed on August 3, 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 9431, a copy of the original to the Respondents:

Steve Levy, President
Bell Laboratories, Inc.
Motomco LTD
3699 Kinsman Blvd
Madison, WI 53704

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



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

Docket No. **FIFRA-05-2007-0036**

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