

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

REGIONAL HEARING  
CLERK

2014 APR 16 PM 4:00

U.S. Environmental  
Protection Agency-Reg 2

In the Matter of  
  
United Biotech Corporation,  
Respondent.  
  
Proceeding under the Federal  
Insecticide, Fungicide and Rodenticide  
Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2014-5101

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is United Biotech Corporation.
2. Respondent is located at 45 W. Jefryn Boulevard, Suite E, Deer Park, NY 11729.
3. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
5. Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm) defines the term "antimicrobial pesticide" as, among other things, "a pesticide that (A) is intended to- (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.
6. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, pesticides intended for distribution or sale must be registered with EPA.
7. Respondent produces enzymatic cleaners for use in medical establishments.
8. Respondent's products include the "Tri-Power" line of cleaners: Tri-Power Enzymatic Cleaner, Tri-Power Enzymatic Foam Spray, Tri-Power Pre-Treatment Spray Gel, Tri-Power Advanced Ultra-Concentrated Enzymatic Cleaner, and Tri-Power Enzymatic Cart Wash.
9. Respondent's Tri-Power products are not registered pesticides.
10. On or about July 28, 2011, pursuant to Sections 8 and 9 of FIFRA, a duly authorized representative of EPA conducted an inspection of Respondent's facility. During

the inspection, the EPA inspector conducted label reviews of products offered for sale by Respondent and collected pertinent documentary samples.

11. The labels on the packages of Tri-Power products viewed by the EPA inspector included pesticidal claims, specifically “bacteriostatic.”

12. Tri-Power products Promotional literature for the Tri-Power products viewed by the EPA inspector included pesticidal claims, specifically that Tri-Power products contained “three vital enzymes necessary to break down and eliminate bioburden”.

13. On August 2, 2011 and November 16, 2011, EPA – Region 2 sought information from Respondent pursuant to Sections 8 and 9 of FIFRA, requesting information and records regarding the sale or distribution of the Tri-Power products bearing labels that made pesticidal claims on behalf of the products during the period August 1, 2009 – July 27, 2011.

14. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 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.”

15. On or about December 8, 2011, Respondent provided a response to the information request letters documenting numerous sales or distributions of the Tri-Power products bearing labels that made pesticidal claims on behalf of the products during the period August 1, 2009 through July 27, 2011.

16. Respondent distributed or sold pesticides within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

17. Section 12(a)(1)(a) of FIFRA, 7 U.S.C. § 136j(a)(1)(a), provides it shall be unlawful for any person to distribute or sell to any person an unregistered pesticide.

18. Each of Respondent's sales or distributions of the Tri-Power products described in Paragraph 15, above, constitutes an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

19. Upon notification that its products were distributed in violation of FIFRA, Respondent worked quickly to create new non-violative labels for the Tri-Power line of products and to relabel all such products held for distribution and sale in its warehouse.

20. On November 25, 2013, the parties met to discuss settlement.

21. In advance of the November 25, 2013 settlement conference, Respondent provided to EPA - Region 2 copies of its federal corporate tax returns for the years 2009 through 2012.

22. In reliance upon the accuracy and completeness of the information reported on the tax returns provided by Respondent, EPA – Region 2 staff concluded that Respondent has a severely constrained ability to pay any penalty for the violations described in paragraph 18, above.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed that:

*In the Matter of United Biotech Corporation, FIFRA-02-2014-5101*

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.

2. Respondent's signatory certifies on behalf of the Respondent that as of the effective date of this Consent Agreement it no longer produces or distributes any products labeled with pesticidal claims.

3. Respondent also certifies that, to the best of its knowledge, none of its Tri-Power line of products continues to be offered for sale with labeling that makes pesticidal claims on behalf of the product.

4. Respondent further certifies that it has submitted true, complete, and accurate corporate federal tax returns for calendar years 2009, 2010, 2011, and 2012 and acknowledges that EPA has based its conclusion that Respondent lacks the ability to pay a penalty greater than what is assessed in paragraph 7, below upon the tax returns submitted by Respondent.

5. Respondent also certifies that it is fully aware of the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations. Should Respondent desire to change the labels of its current line of products, introduce new products, or register any product as a pesticide, sales or distribution of such products will be made only in compliance with FIFRA and its implementing regulations.

6. If in the future EPA believes that any information certified to in paragraphs 2, 3 or 4, above, of this Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA and/or correct any alleged untrue or inaccurate certification. If, after

consideration of Respondent's reply, the Complainant determines that any of the certification(s) was untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$25,000 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

7. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Two Thousand Dollars (\$2,000) on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.

8. Payment must be received at the address listed in Paragraph 9, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)

day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

9. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of United Biotech Corporation, Docket No. FIFRA-02-2014-5101.

Each such check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:  
FRNYUS33  
33 Liberty Street  
New York, N.Y. 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004

*In the Matter of United Biotech Corporation, FIFRA-02-2014-5101*

- e. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: United Biotech Corporation
- g. Case Docket Number: FIFRA-02-2014-5101

Respondent shall also send proof of each payment, whether by check or EFT, to:

Naomi Shapiro  
Assistant Regional Counsel

and

Office of the Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

10. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraphs 8 and 9, above. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law. Failure to pay any stipulated penalty demanded by EPA in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or appropriate action.

11. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

12. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

13. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits (a) that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 136l(a), to commence a civil administrative proceeding for the determinations in the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies the specific allegations in the EPA Findings of Fact above.

14. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

15. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims described above in EPA's Findings of Fact and Conclusions of Law. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

16. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any applicable stipulated penalties in accordance with the terms of this Consent Agreement.

17. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

18. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce the terms of this CA/FO, or b) to enforce a judgment relating to this CA/FO.

19. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

20. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

21. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

22. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

23. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

24. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

*In the Matter of United Biotech Corporation, FIFRA-02-2014-5101*

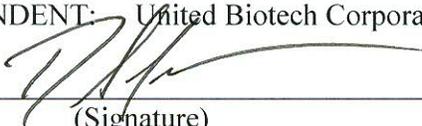
25. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.

26. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

27. Each party hereto agrees to bear its own costs and fees in this matter.

28. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: United Biotech Corporation

BY:   
(Signature)

NAME: Dominick Salzone  
(Please Print)

TITLE: Director of Finance

DATE: 3/28/14

COMPLAINANT:

  
Dore F. LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

DATE: April 8, 2014

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

DATE: April 10, 2014

## CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

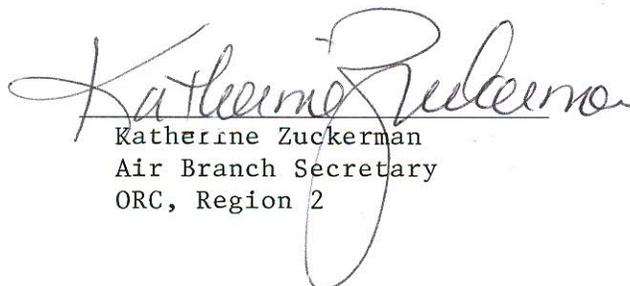
Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

Howard E. Greenberg, Esq.  
Law Office of Howard E Greenberg  
180 East Main Street, Suite 308  
Smithtown, NY 11787

Dated: 4/16/2014  
New York, NY

  
Katherine Zuckerman  
Air Branch Secretary  
ORC, Region 2