



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 18 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7666 6589

Mr. Hans Rasmussen
General Manager
Kongskilde Industries, Inc.
19500 N 1425 East Road
Hudson, Illinois 61748

Consent Agreement and Final Order **FIFRA-05-2011-0006**

Dear Mr. Rasmussen:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on January 18, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 33 thru 37. Please be certain that the number **BD 2751145P005** and the docket number are written on both the transmittal letter and on the check. Payment is due by February 17, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

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

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2011-0006
)	
Kongskilde Industries Inc.,)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

RECEIVED
JAN 18 2011

**Consent Agreement and Final Order
Commencing and Concluding a Proceeding**

**REGIONAL HEARING CLERK
USEPA
REGION 5**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Kongskilde Industries Inc. (Kongskilde), a corporation doing business in the State of 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 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 Consent Agreement and Final Order (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 rights to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its rights to appeal this CAFO.

9. Respondent certifies that it is currently in compliance 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 the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. In relevant part, 19 C.F.R. § 12.111 states that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States.

12. In relevant part, 19 C.F.R. § 12.112 states that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1, or NOA), prior to the arrival of the shipment in the United States. *See also* Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. 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 distribute or sell to any person any pesticide which adulterated or misbranded.

14. Section 12(a)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment. Specifically, the label did not contain language warning that the product is toxic to fish, that the product requires draw directly from the temporary storage container, and the label did not warn against use without safety goggles and dust mask when applying with blower units.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

20. Respondent is, and was at all times relevant to this Complaint, a corporation and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. CSI International (CSI), located at 351 W. Touhy Avenue, Des Plaines, Illinois 60018, acted as a broker/agent for Respondent in this matter.

22. On or about November 3, 2010, CSI submitted three NOAs, under entry number AYP-0030875-5, to EPA (NOAs). The November 3 NOAs are related to import shipments of the pesticide “Stalosan F,” EPA Registration Number (EPA Reg. No.) 75613-1.

23. The import shipments associated with entry number AYP-0030875-5 entered the United States on or about November 3, 2010.

24. The NOAs stated that Respondent was the importer of record.

25. “Stalosan F,” EPA Reg. No. 75613-1, is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about November 3, 2010, Respondent “distributed or sold” the pesticide product “Stalosan F,” EPA Reg. No. 75613-1, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) by receiving the import shipment and/or holding it for sale or distribution.

27. Respondent, as importer of “Stalosan F,” EPA Reg. No. 75613-1, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

Specific Allegations

Count 1

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

29. On or about November 3, 2010, Respondent distributed or sold “Stalosan F,” EPA Reg. No. 75613-1, with a label or labeling that did not contain a warning or caution statement necessary under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), to protect health and the environment. Specifically, the label did not contain language warning that the product is toxic to fish, that the product requires draw directly from the temporary storage container, and the label did not warn against use without safety goggles and dust mask when applying the product with blower units.

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

Civil Penalty

31. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(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.

32. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal

Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

33. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

for checks sent by express mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check, must state "In the Matter of: Kongskilde Industries Inc.," the docket number of this CAFO, and the billing document number (BD number).

34. A copy of the transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

36. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. 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

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

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

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


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

42. The terms of this CAFO bind Respondent, its successors, and assigns.
43. 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.
44. Each party agrees to bear its own costs and attorney fees in this action.
45. This CAFO constitutes the entire agreement between the parties.
46. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

**In the Matter of:
Kongskilde Industries Inc.
Docket No.**

RESPONDENT

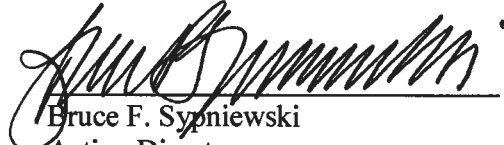
11/6/11
Date


Hans Rasmussen
General Manager
Kongskilde Industries Inc.

COMPLAINANT
United States Environmental Protection Agency
Region 5

1/12/11

Date




Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

In the Matter of:
Kongskilde Industries Inc.
Docket No. FIFRA-05-2011-0006

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.

1/14/11
Date


Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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USEPA
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 Kongskilde Industries, Inc., was filed on December 18, 2011 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7666 6589, a copy of the original to the Respondents:

Mr. Hans Rasmussen
General Manager
Kongskilde Industries, Inc.
19500 N 1425 East Road
Hudson, Illinois 61748

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Luis Oviedo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



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

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