



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 22 2010

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7662 1014

Mr. William Schawbel  
The Schawbel Corp.  
26 Crosby Drive  
Bedford, Massachusetts 01730

Consent Agreement and Final Order  
Commencing and Concluding a proceeding Docket No. FIFRA-05-2011-0004

Dear Mr. Schawbel:

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 December 22, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 34 thru 37. Please be certain that the number **BD 2751145P003** and the docket number is written on both the transmittal letter and on the check. Payment is due by January 21, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*Christine Anderson*  
for Joseph Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

The Schawbel Corporation, )

Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2011-0004

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136(a)

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**Consent Agreement and Final Order**  
**Commencing and Concluding a Proceeding** REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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 The Schawbel Corporation (Schawbel), a corporation doing business in the State of Illinois.
4. 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.
5. 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**

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. 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.

8. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

### **Statutory and Regulatory Background**

9. 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 the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

10. 19 C.F.R. § 12.111 states in part 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.

11. 19 C.F.R. § 12.112 states in part 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).

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

13. 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.

14. 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).

15. 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.

16. 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.

17. 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. § 136l(a)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violation**

18. 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).

19. Kamino INT’L d/b/a KAT Import Brokers (Kamino), located at 2551 Allan Drive, Elk Grove Village, Illinois, 60007, acted as a broker/agent for Respondent in this

matter.

20. On or about July 8, 2010, Kamino submitted a pair of NOAs, under entry numbers MA701661765 and MA701661492, to EPA (July 8 NOAs). The July 8 NOAs stated that they were related to import shipments of the pesticide “Thermacell Mosquito Repellent,” EPA Registration Number (EPA Reg. No.) 71910-2.

21. The import shipments associated with entry numbers MA701661765 and MA701661492 and the July 8 NOAs both entered the United States on or about July 13, 2010.

22. The July 8 NOAs stated that Respondent was the importer of record.

23. On July 28, 2010, an EPA representative authorized to conduct inspections under FIFRA conducted an inspection of the imported shipments under entry numbers MA701661765 and MA701661492 and the July 8 NOAs at Global CFS, Inc., 860 Foster Avenue, Bensenville Illinois.

24. During the July 28, 2010 inspection, the EPA representative identified the pesticide being imported as “Thermacell Mosquito Repellent with Earth Scent,” EPA Reg. No. 71910-3.

25. “Thermacell Mosquito Repellent with Earth Scent,” EPA Reg. No. 71910-3, is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about July 13, 2010, Respondent “distributed or sold” the pesticide product “Thermacell Mosquito Repellent with Earth Scent,” EPA Reg. No. 71910-3, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

27. Respondent, as importer of “Thermacell Mosquito Repellent with Earth Scent,” EPA Reg. No. 71910-3, 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 July 8, 2010, Respondent failed to file a true and accurate NOA for the pesticide, "Thermacell Mosquito Repellent with Earth Scent," EPA Reg. No. 71910-3, prior to its arrival in the United States.

30. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), 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).

### **Count 2**

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

32. On or about July 8, 2010, Respondent failed to file a true and accurate NOA for the pesticide, "Thermacell Mosquito Repellent with Earth Scent," EPA Reg. No. 71910-3, prior to its arrival in the United States.

33. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), 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**

34. 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.

35. 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 \$15,000. 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.

36. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 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: The Schawbel Corporation," the docket number of this CAFO, and the billing document number (BD number).

37. 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

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

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

39. 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.

40. 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**

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

42. 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.

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

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

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

46. 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.

47. Each party agrees to bear its own costs and attorney fees in this action.


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

49. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

**In the Matter of:  
The Schawbel Corporation  
Docket No.**

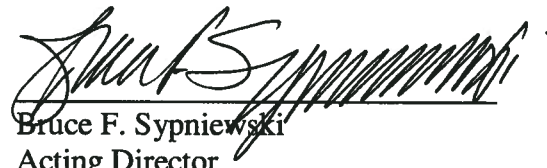
**RESPONDENT**

11/15/10  
Date

  
\_\_\_\_\_  
William Schawbel  
Chief Executive Officer  
The Schawbel Corporation

**COMPLAINANT  
United States Environmental Protection Agency  
Region 5**

12/20/10  
Date


  
\_\_\_\_\_  
Bruce F. Sypniewski  
Acting Director  
Land and Chemicals Division

**In the Matter of:  
The Schawbel Corporation  
Docket No. FIFRA-05-2011-0004**

**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.

12-21-10  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY  
NOV 17 2010  
OFFICE OF REGIONAL  
COUNSEL

**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 The Schawbel Corp., was filed on December 22, 2010, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and will be mailed no later than the next business day by Certified Mail, Receipt No. 7009 1680 0000 7662 1014, a copy of the original to the Respondents:


Mr. William Schawbel  
The Schawbel Corp.  
26 Crosby Drive  
Bedford, Massachusetts 01730

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DEC 22 2010

and forwarded copies (intra-Agency) to:

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Kris Vezner, 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

Docket No. FIFRA-05-2011-0004