



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

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PROTECTION AGENCY

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7673 4493

Mr. Lee A. Cavano  
Scranton Associates, Inc.  
17647 Foltz Pkwy.  
Strongsville, Ohio 44149

Consent Agreement and Final Order In The Matter  
of Scranton Associates, Inc. FIFRA-05-2012-0008

Dear Mr. Cavano:

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 April 12, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,400.00 is to be paid in the manner described in paragraphs 36 and 37. Please be certain that the number **BD 2751245P007** and the docket numbers are written on both the transmittal letter and on the check. Payment is due by May 11, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

David Star  
Pesticides and Toxics Compliance Section

Enclosures

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APR 18 2012  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No. FIFRA-05-2012-0008
	)	
Scranton Associates, Inc.	)	Proceeding to Assess a Civil Penalty
Strongsville, Ohio 44149	)	Under Section 14(a) of the Federal
	)	Insecticide, Fungicide, and Rodenticide
Respondent.	)	Act, 7 U.S.C. § 136l(a)
_____	)	

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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Scranton Associates, Inc., a corporation doing business in the State of Ohio.

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, and has been in compliance with the Stop Sale, Use or Removal Order issued by Region 5 on April 5, 2007 (Stop Sale Order), since Respondent's receipt of the Order.

**Statutory and Regulatory Background**

10. Pursuant to 40 C.F.R. § 152.132, the term "supplemental distribution" means that the registrant distributes or sells the registered product under another person's name and address instead of, or in addition to, his own.

11. Pursuant to Section 2(y) of FIFRA, 7 U.S.C. § 136(y), the term "registrant" means a person who has registered any pesticide pursuant to the provisions of FIFRA, 7 U.S.C. §§ 136 to 136y.

12. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "to distribute or sell" means 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.

13. Pursuant to 40 C.F.R. § 152.132, when a registered product is distributed or sold by supplemental distribution, the product is referred to as a "distributor product."

14. Pursuant to 40 C.F.R. § 152.132, when a registered product is distributed or sold by supplemental distribution, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

15. 40 C.F.R. Part 156 sets forth the labeling requirements for pesticides. Pursuant to 40 C.F.R. § 156.10, the final printed labeling must be submitted to EPA and accepted prior to registration of the pesticide.

16. Pursuant to 40 C.F.R. § 152.132, supplemental distribution is permitted if the conditions set forth in 40 C.F.R. § 152.132(a)-(e) are met, and upon notification to EPA. The conditions set forth at 40 C.F.R. § 152.132(d) require that the label of the distributor product is the same as that of the registered product, except that:

- (1) The product name of the distributor product may be different (but may not be misleading);
- (2) The name and address of the distributor may appear instead of that of the registrant;
- (3) The registration number of the registered product must be followed by a dash, followed by the distributor's company number;
- (4) The establishment number must be that of the final establishment at which the product was produced; and
- (5) Specific claims may be deleted, provided that no other changes are necessary.

17. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), 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.

18. Pursuant to 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any

person in any state to distribute or sell to any person any pesticide which is misbranded.

19. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA up to \$6,500 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

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

21. At all times relevant to this CAFO, Respondent did “distribute or sell” a pesticide as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

22. At all times relevant to this CAFO, the Respondent has been a registrant, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

23. On or about September 21, 2004, an inspector, employed by the Michigan Department of Agriculture (MDA) and authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at Twenty First Century Water Systems (TFCWS), located at 11400 Verona Road, Battle Creek, Michigan 49014, to examine and collect samples of any pesticides packaged, labeled, and released for shipment, and to inspect and obtain copies of those records specified in Section 8 and 40 C.F.R. Part 169.

24. During the September 21, 2004 inspection, the MDA inspector reviewed and collected documentary samples, including photographs, of the label of the distributor pesticide product “MB-101,” EPA Reg. No. 1448-171-74159.

25. During the September 21, 2004 inspection, the MDA inspector reviewed and collected documentary samples of an Invoice, No. 49052, and a Bill of Lading, No. 49052, showing the distribution or sale, by Respondent, of the pesticide product "MB-101," EPA Reg. No. 1448-171-74159, to TFCWS, on or about June 28, 2004.

26. "MB-101," EPA Reg. No. 1448-171-74159, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. The basic registration for the pesticide product EPA Reg. No. 1448-171 belongs to Buckman Laboratories, Inc. (Buckman or Registrant), located at 1256 North Mclean Blvd., Memphis, Tennessee 38108.

28. On March 18, 2004, the EPA "Accepted" the label for Buckman's registered pesticide product "M-5-1," EPA Reg. No. 1448-171. *See*, 40 C.F.R. § 156.10.

29. The distributor product label used by Respondent for the distributor product pesticide "MB-101," which Respondent produced, contains false, misleading, and inaccurate information.

30. The distributor product label used by Respondent for the distributor product pesticide "MB-101," which Respondent produced, does not correspond to the EPA "Accepted" label of March 18, 2004, for Buckman's registered pesticide product "M-5-1," EPA Reg. No.1448-171.

31. Or about September 21, 2004, the distributor product pesticide label for "MB-101," EPA Reg. No. 1448-171-74159, was misbranded as follows:

- A. Respondent had **entirely deleted** from its label (the distributor product label) the statement "***Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye,***" as it appears on the U.S. EPA "Accepted" label of March 18, 2004, for EPA Reg. No. 1448-171.

- B. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Take off contaminated clothing,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- C. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Call poison control center or doctor immediately for treatment advice,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- D. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Have person sip a glass of water, if able to swallow,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- E. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Do not give anything by mouth to an unconscious person,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- F. Respondent had **entirely deleted** from its label (the distributor product label) the words ***“or inhaled”*** from the statement ***“May be fatal if swallowed or absorbed through skin or inhaled,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- G. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Prolonged or frequently repeated skin contact may cause allergic reaction in some individuals,”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- H. Respondent had **entirely deleted** from its label (the distributor product label) the heading ***“PERSONAL PROTECTIVE EQUIPMENT (PPE)”*** as it appears on the EPA “Accepted” label of March 18, 2004, for EPA Reg. No. 1448-171.
- I. Respondent had **entirely deleted** from its label (the distributor product label) the statement ***“Improper disposal of excess pesticides, spray mixture, or rinsate is a violation of Federal Law”*** as it appears on the EPA “Accepted” label of March 18, 2004.
- J. Respondent had **improperly added** to its label (the distributor product label) the statements ***“Drink promptly a large quantity of milk, egg whites, gelatin solution, or if these are not available, large quantities of water. Avoid alcohol,”*** which did not appear on the “Accepted” label of the registered product, of March 18, 2004, for EPA Reg. No. 1448-171.
- K. Respondent’s distributor product bin label, as collected during the inspection, bears the incorrect EPA Reg. No. 1448-171-7459, which is not the EPA Reg. No. (1448-171-74159) assigned to this distributor product pesticide.

L. Respondent's distributor product label, as attached to the product container, bears the incorrect EPA Registration Number (1448-212-74159), which is not the EPA Reg. No. (1448-171-74159) assigned to this distributor product pesticide.

32. Respondent's distribution or sale of a misbranded pesticide product constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. Complainant issued the Stop Sale Order to Respondent on April 5, 2007.

#### **Civil Penalty**

34. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$4,250. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *FIFRA Enforcement Response Policy* (FIFRA ERP), dated December 2009.

35. Consistent with the provisions of the FIFRA ERP, Complainant has adjusted the penalty downward \$850 for good faith negotiations and cooperation. Accordingly, Complainant agrees to mitigate the proposed civil penalty from \$4,250 to \$3,400.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,400 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:  
for a check sent by regular U.S. Postal Service mail:

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



for a check sent by overnight mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document (BD) number.

37. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

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

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

William Wagner (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 violation 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 responsibility to comply with FIFRA and other applicable federal, state, and local laws.

44. This CAFO is a "final order" for purposes of EPA's ERP 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's fees, in this action.

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

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**Scranton Associates, Inc., Respondent**

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

3/27/12  
Date

Lee A. Cavano  
Lee A. Cavano  
President  
Scranton Associates, Inc.

**United States Environmental Protection Agency, Complainant**

4/3/12  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

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PROTECTION AGENCY

In the Matter of:  
Scranton Associates, Inc.  
Docket No. FIFRA-05-2012-0008

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.

4-9-12

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U. S. Environmental Protection Agency  
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 Scranton Associates, Inc., was filed on April 12, 2012 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 7673 4493, a copy of the original to the Respondent:

Mr. Lee A. Cavano  
Scranton Associates, Inc.  
17647 Foltz Pkwy.  
Strongsville, Ohio 44149

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
William Wagner 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-05-2012-0008