

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

In the Matter of**Westport Corporation
dba Mundi Westport Group,****Respondent.****CONSENT AGREEMENT AND
FINAL ORDER****Docket No. FIFRA-02-2021-5022****Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)**

Consent Agreement

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* (CROP) as codified at 40 C.F.R. Part 22. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 2.

3. Respondent is the Westport Corporation, a New Jersey corporation doing business as Mundi Westport Group, located at 331 Changebridge Road, Pine Brook, NJ 07058.

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 right to request a hearing as provided at 40 C.F.R. § 22.15(c), and any rights it may have to contest the allegations in this CAFO or to appeal this CAFO.

Statutory and Regulatory Background

8. 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.

9. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), and 19 C.F.R. § 12.1(b) provide that the regulations for the importation of pesticides and devices are joint regulations enforceable by the cooperating agencies.

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

11. Section 12 (a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states in pertinent part that it is unlawful for a distributor to fail to file reports required by the Act.

12. Nineteen 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 promulgated thereunder by the Administrator before being permitted entry into the United States. These regulations are found at 40 C.F.R. Parts 152 and 156. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as "misbranded" if its labeling bears any statement, design, or graphic representation that is false or misleading in any particular.

14. Forty C.F.R. § 156.10(a)(5) provides that a pesticide or a device is misbranded if its labeling is false or misleading in any particular, including both pesticidal and non-pesticidal claims.

15. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), states that it is unlawful for any person in any State to distribute or sell to any person a device which is misbranded.

16. 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.

17. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines a "device," in pertinent part, as any instrument or contrivance which is intended for destroying or mitigating any pest or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism.

18. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a "label" as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

19. 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.

20. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 *note*, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$20,288 for each offense occurring after November 2, 2015.

Factual Allegations and Alleged Violation

21. 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).

22. On or about October 9, 2020, Alba Wheels Up International (Alba Wheels Up), a customs broker acting on behalf of Respondent, submitted a NOA to EPA, Region 2, for an import shipment identified by Entry Number 820-7040718-2, which arrived from China into the Port of Newark on or about October 5, 2020.

23. The NOA identified Respondent as the importer of record for the import shipment identified by Entry Number 820-7040718-2 (the Shipment).

24. The NOA submitted for the Shipment was submitted several days after the shipment's arrival in the United States.

25. The Shipment consisted of 1500 units of a UVC sanitizer described as "Mundi – My Body Guards" on the NOA and also sold by Respondent as "My Secret Sanitizer" clutch.

26. The UVC sanitizers in the Shipment are devices within the meaning of Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

27. Respondent is an importer within the meaning of 19 C.F.R. § 12.112.

28. Respondent is a distributor within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C.

§ 136l(a)(1).

29. Respondent's failure to file the NOA for the Shipment prior to its arrival in the United States constitutes an unlawful act as described by Section 12(a)(2)(N) of FIFRA, 7 U.S.C.

§ 136j(a)(2)(N).

30. Respondent's failure to file the NOA for the Shipment prior to its arrival in the United States is a violation of FIFRA for which a penalty may be assessed under Section 14(a)(1), 7 U.S.C.

§ 136l(a)(1)

31. Respondent's import of the devices in the Shipment into the United States on or about October 6, 2020 constitutes activity to "distribute or sell," as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the devices in the Shipment.

32. Labels affixed to the 1500 units of the UVC Sanitizer in the Shipment displayed, among other information, an EPA product registration number.

33. The UVC Sanitizer in the Shipment is not registered as a pesticide with EPA.

34. The EPA product registration number on the label of the UVC Sanitizers in the Shipment is a false and misleading claim.

35. Respondent's distribution or sale of misbranded UVC Sanitizers as alleged herein, constitutes an unlawful act as described by Section 12(a)(1)(F) of FIFRA, 7 U.S.C.

§ 136j(a)(1)(F).

36. Respondent's distribution or sale of misbranded UVC Sanitizers as alleged herein, is a violation of FIFRA for which a penalty may be assessed under Section 14(a)(1), 7 U.S.C.

§ 136l(a)(1).

Civil Penalty

37. 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 \$8,511. 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 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009 (FIFRA ERP).

38. Respondent shall pay, either by certified check or electronically by Fedwire, a civil penalty in the amount of **Eight Thousand, Five Hundred and Eleven Dollars (\$8,511)**. If the payment is made by check, then such check shall be made payable to the "Treasurer of the United States of America" and shall be mailed by one of the following two methods:

a. STANDARD DELIVERY

Each check shall be mailed to:

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

b. SIGNED RECEIPT CONFIRMATION DELIVERY (Fedex, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Each check shall be identified with a notation thereon listing the following: ***In the Matter of Westport Corporation dba Mundi Westport Group*** and shall bear the Docket No. **FIFRA-02-2021-5022**.

If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when

payment is made:

- a. Amount of payment
- b. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 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**
- e. Field Tag 4200 of the Fedwire message should read: **“D 68010727 Environmental Protection Agency”**
- f. Name of Respondent: **Westport Corporation dba Mundi Westport Group**
- g. Case Docket Number: **FIFRA-02-2021-5022.**

39. The civil penalty of \$8,511 must be received by EPA *on or before* thirty (30) calendar days from the date on which the Regional Judicial Officer signs the Final Order located at the end of this CA/FO (the “due date”). Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.119(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) on installment payments, which is two percent (2%) per annum for calendar year 2020.

- a. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date(s) specified above. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

- b. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar period, or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

41. The civil penalty, including any payment(s) for interest or late payment and handling charges that come due, constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

General Provisions

42. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136-136y, and its implementing regulations.

43. EPA does not register devices and has taken no position on the safety and efficacy claims made by Respondent. Respondent understands that compliance with FIFRA includes making no false and misleading claims on the label or labeling of its products and further acknowledges its awareness of the October 2020 EPA compliance advisory regarding antimicrobial claims and UV lights: <https://www.epa.gov/compliance/compliance-advisory-epa-regulations-about-uv-lights-claim-kill-or-be-effective-against>.

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

Consent Agreement. Full payment of the penalty shall only resolve Respondent's liability for federal civil penalties for the violations described in paragraphs 21-30, above. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, 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.

46. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of FIFRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

47. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following addressee(s).

Robert Lombardi, RLombardi@mundiwestport.com

Delivery of the fully executed documents to the email addresses in this paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

48. Any responses, documentation, and other communication submitted to EPA in connection with this Consent Agreement shall be sent by regular mail and email to:

Nicholas Ferreira
Lead Paint & Pesticides Compliance Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
2890 Woodbridge Avenue, MS 500
Edison, NJ 08837
ferreira.nicholas@epa.gov

Unless the above-named EPA contact is later advised otherwise by electronic mail, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty in accordance with the provisions of this CAFO), to the addressee identified in the preceding paragraph.

49. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent agrees that this CAFO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.

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

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

RESPONDENT:

BY: Robert Lombardi
Digitally signed by Robert Lombardi
DN: cn=Robert Lombardi, o, ou,
email=rlombardi@mundiwestport.com, c=US
Date: 2020.11.10 10:45:44 -05'00'
(Signature)

NAME: Robert Lombardi

TITLE: General Counsel

COMPANY NAME: Westport Corporation dba Mundi Westport Group

DATE: 11/20/20

COMPLAINANT:

Kate Anderson _____

For
Dore LaPosta, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency Region 2

DATE: 11/24/20

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of Westport Corporation dba Mundi Wesport Group, FIFRA-02-2021-5022**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of electronic filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

CERTIFICATE OF SERVICE

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

By Electronic Mail:

Karen Maples
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.karen@epa.gov

By Electronic Mail

Robert Lombardi, Esq.
Westport Corporation
331 Changebridge Road
PO Box 2002
Pine Brook, NJ 07058
RLombardi@mundiwestport.com

Dated: _____
New York, New York
