



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

FEB 06 2009

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0182 9962

S.C. Johnson & Son, Inc.  
ATTN: Mr. Donald A. Lofty  
1525 Howe Street  
Racine, Wisconsin 53403-2236

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0005

Dear Mr. Lofty:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on February 6, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,600 is to be paid in the manner described in paragraphs 35 and 36. Please be certain that the number BD 27509458002<sup>22</sup> and the docket number are written on both the transmittal letter and on the check. Payment is due by March 8, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Claudia Niess

Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Steve Kaiser, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2009-0005</b>
	)	
<b>S.C. Johnson &amp; Son, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Racine, Wisconsin</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
_____	)	

**RECEIVED**  
FEB - 6 2009

**Consent Agreement and Final Order**

**Preliminary Statement**

**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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is S.C. Johnson & Son, Inc., a corporation doing business in the State of Wisconsin.
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.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Section 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.

11. 19 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 (NOA) (EPA form 3540-1), prior to the arrival of the shipment to 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 is 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(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. § 136 w(c)(1).”

14. 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.”

15. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines a “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, 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. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

18. The Administrator of EPA may assess a civil penalty against any retailer or other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 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 Violations**

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent owned or operated a place of business located at 1525 Howe Street, Racine, Wisconsin 53403 during the calendar years 2007 and 2008.

21. On July, 23, 2007, Respondent submitted a “Post Notification” to EPA which

documented Respondent's importation of 29 cans of "Raid Fast Roach and Ant Insecticide" through the Port of Milwaukee on or about September 28, 2006.

22. "Raid Fast Roach and Ant Insecticide" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. On August 14, 2007, Respondent submitted a "Post Notification" to EPA which documented Respondent's importation of one "Vape-Ecological Fly Trap" through the Port of Milwaukee on or about July 30, 2007.

24. "Vape-Ecological Fly Trap" is a pesticidal device as defined at Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

25. On August 22, 2007, Respondent submitted a "Post Notification" to EPA which documented Respondent's importation of one bottle of "KabiKiller Just Spray Mold Prevent Mist" through the Port of Milwaukee on or about July 30, 2007.

26. "KabiKiller Just Spray Mold Prevent Mist" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. On April 28, 2008, Respondent submitted a "Post Notification" to EPA which documented Respondent's importation of one bottle of "Fantastik with Bleach All Purpose Cleaner" through the Port of Milwaukee on or about December 20, 2007.

28. "Fantastik with Bleach All Purpose Cleaner" is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

29. On or about September 26, 2006, Respondent failed to file a report (a NOA) for the import shipment of the pesticide product "Raid Fast Roach and Ant Insecticide," as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and 19 C.F.R. § 12.112.

30. On or about July 30, 2007, Respondent failed to file a report (a NOA) for the import shipment of the pesticide product "Vape-Ecological Fly Trap," as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and 1360(e), and 19 C.F.R. § 12.112.

31. On or about July 30, 2007, Respondent failed to file a report (a NOA) for the import shipment of the pesticide product "KabiKiller Just Spray Mold Prevent Mist," as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and 1360(e), and 19 C.F.R. § 12.112.

32. On or about December 20, 2007, Respondent failed to file a report (a NOA) for the import shipment of the pesticide product "Fantastik with Bleach All Purpose Cleaner," as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and 1360(e), and 19 C.F.R. § 12.112.

33. Respondent's failure to file four reports as required by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 1360(c) and (e), constitutes four unlawful acts according to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

#### **Civil Penalty And Other Relief**

34. Based upon the initial self-disclosure, Complainant has determined that Respondent has satisfied seven of the nine Self-Disclosure Policy criteria. Complainant has determined that there was minimal economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$15,600.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,600 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note "In the Matter of S.C. Johnson & Son, Inc.", the docket number of this CAFO and the billing document number.

36. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, 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-13J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

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

38. 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.

39. 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.

40. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to reduce or eliminate violations of Section 12(a)(2)(N) of FIFRA. A copy of the Compliance Plan will be provided to EPA upon the plan's implementation.

#### **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 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 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's fees, in this action.

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



**S. C. Johnson & Son, Inc., Respondent**

1/12/09  
Date

Donald A. Lofty  
Donald A. Lofty  
Corporate Counsel  
S. C. Johnson & Son, Inc.

**United States Environmental Protection Agency, Complainant**

2/4/09  
Date

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

In the Matter of:  
S. C. Johnson & Son, Inc.  
Docket No. FIFRA-05-2009-0005

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PROTECTION AGENCY

**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.

2/4/09  
Date

Walter W. Kovalick Jr.  
for  
Bharat Mathur  
Acting Regional Administrator


**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 Valspar Corporation, was filed on February 6, 2009, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9962, a copy of the original to the Respondents:

S.C. Johnson & Son, Inc.  
Attn: Mr. Donald A. Lofty  
1525 Howe Street  
Racine, Wisconsin 53403-2236

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Steve Kaiser, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_  
Frederick Brown, PTCS (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. FIFRA-05-2009-0005

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