



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

~~MAR~~ 30 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rhonda Amendt, Laboratory Director
U.N.X. Incorporated
707 East Arlington Boulevard
Greenville, NC 27858

SUBJ: Docket No. FIFRA-04-2007-3013(b)
U.N.X. Incorporated

Dear Ms. Amendt:

In your letter of March 14, 2007, to Beverly H. Banister, Director, Air, Pesticides and Toxics Management Division, you requested information on Lonza, Inc., the registrant of L-15, EPA Reg. No. 6836-164. U.N.X., as a subregistrant of Lonza, used the L-15 formula supplied by Lonza to produce REV!. After testing REV!, EPA informed U.N.X. that the product failed certain antimicrobial testing requirements. In resolution of the matter, U.N.X. agreed to no longer offer the product for sale as an antimicrobial and agreed to pay a penalty. At this time, we can advise you that EPA is investigating Lonza. Since it is an open enforcement matter, we cannot comment further.

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in regard to the production and sale or distribution of REV! by U.N.X. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$5,200, which is due within 30 days from the effective date of the CAFO. If paying by cashier's or certified check, we request that the payment be identified by writing the company name and docket number on the face of the check.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Internet Address (URL) • <http://www.epa.gov>

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Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. EPA, Cincinnati Accounting Operations address identified in Section IV of the CAFO. Should you have any questions about your compliance status in the future, please call me or Ms. Cheryn Jones at (404) 562-9006.

Sincerely,



Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures (2)

cc: Flo Lamphier
Pesticide Program Liaison
NC Department of Agriculture
& Consumer Services

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
U.N.X. Incorporated)
)
Respondent.)
_____)

Docket No. **FIFRA-04-2007-3013(b)**

RECEIVED
EPA REGION 4
2007 MAR 30 AM 9:01
HEARINGS CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is U.N.X. Incorporated.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.

4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9006

5. Respondent is U.N.X. Incorporated, a North Carolina Corporation, located at 707 E. Arlington Blvd., Greenville, NC 27858.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On or about April 4, 2005, an inspector with the North Carolina Department of Agriculture and Consumer Services, an authorized representative of the EPA, conducted an inspection at U.N.X. Incorporated.
8. During the aforementioned inspection, two one-gallon jugs of REV!, EPA Registration No. 6836-164-7116, were collected by the inspector.
9. REV! is produced by U.N.X. Incorporated, which has been assigned EPA Establishment No. 7116-NC-01.
10. REV! is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other

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).

12. “Producer and Produce” is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w). The term “producer” is defined to include the person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide. “Produce” is defined to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.
13. “Distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and includes 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. Analyses of the samples of REV! by EPA found the pesticide to be ineffective against the microorganisms *Pseudomonas aeruginosa* and *Staphylococcus aureus* for one-step cleaning of areas with light to medium soil loads when used in accordance with label directions for hospital disinfection.
15. Analyses of the samples of REV! by EPA found the pesticide to be ineffective against *Staphylococcus aureus* following precleaning for heavy soiled areas when used in accordance with label directions for hospital disinfection.
16. On September 29, 2006, EPA issued a Stop Sale, Use, or Removal Order (SSURO) to Respondent prohibiting all further sale and distribution of REV! because it failed the efficacy testing for hospital disinfection as described in paragraphs 14 and 15 above.

17. On December 4, 2006, EPA issued an Amended SSURO to Respondent for the purpose of more correctly reflecting the tests performed on the samples of REV!.
18. The entry of this CAFO does not in any way constitute a release of the Amended SSURO. The Amended SSURO remains in effect and will remain in effect until a release has been issued by EPA.
19. According to Section 2(q)(1)(A) of FIFRA, 7 U.S.C § 136(q)(1)(A), a pesticide is misbranded if its label bears a statement which is false or misleading. The efficacy claims on the label of REV! under hospital disinfection for both one-step cleaning and for cleaning heavy soiled areas are considered false and misleading.
20. According to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(12)(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
21. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
23. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.

24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200) against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
26. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
27. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

31. **Respondent is assessed a civil penalty of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200) which shall be paid within 30 days from the effective date of this CAFO.**
32. Respondent shall pay the penalty by (1) forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099

or (2) pay the penalty by wire transfer in US dollars to the following address:

Mellon Bank
SWIFT address = MELNUS3P
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, PA 15235.

The check or wire transfer notification shall reference on its face the name and the Docket Number of the CAFO ["U.N.X. Incorporated, FIFRA-04-2007-3013(b)"].

33. At the time of payment, Respondent shall send a separate copy of the check or wire transfer notification and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

34. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondent, its successors and assigns.

38. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

39. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

U.N.X. Incorporated

By: Rhonda G Amendt (Signature)

Date: 3/13/07

Name: Rhonda G Amendt (Typed or Printed)

Title: Director of Lab (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister

Date: 3/26/07

Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29th day of March, 2007.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: U.N.X. Incorporated, FIFRA Docket No. 04-2007-3013(b), on the parties listed below in the manner indicated.

For Complainant:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4, 4APT-PTSB
61 Forsyth Street
Atlanta, GA 30303-8960

Alan E. Dion
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960

(Via EPA's internal mail)

For Respondent:

Rhonda Amendt
Laboratory Director
U.N.X. Incorporated
707 East Arlington Boulevard
Greenville, NC 27835-7206

(Via Certified Mail - Return Receipt Requested)

Date: 3-30-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 3/27/07
(Name) (Date)

in the OEA, OLS OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: U.N.X. Incorporated
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 5,200
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2007-3013(B)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |