



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
AUG 16 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7673 3472

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

Consent Agreement and Final Order In The Matter of
The Schawbel Corporation, Docket No. FIFRA-05-2012-0019

Dear Mr. Schawbel:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on August 16, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 37 and 38. Please be certain that the number **BD 2751245P018** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 15, 2012, (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: Eric Volck, Cincinnati Finance/MWD (w/Encl.)
Susan Prout, Counsel for Complainant/C-14J



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2012-0019
)	
The Schawbel Corporation)	Proceeding to Assess a Civil Penalty
Bedford, Massachusetts)	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 (EPA), Region 5.
3. Respondent is The Schawbel Corporation, a corporation doing business at 26 Crosby Drive, Bedford, Massachusetts 01730.
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)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any State to distribute or sell to any person a pesticide which is adulterated or misbranded.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states, in pertinent part, a pesticide is misbranded if any word, statement, or other information required by, or under authority of this Act to appear on the label or labeling is not prominently placed thereon with

such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states in pertinent part that a pesticide is “misbranded” if there is not affixed to its container a label bearing the name and address of the producer, registrant, or person for whom produced; the name brand or trademark under which the pesticide is sold; the net weight or measure of the content; and the registration number assigned to the pesticide under FIFRA.

15. 40 C.F.R. § 156.10(a)(1) states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part. The contents of a label must show clearly and prominently the following:

- (i) The name, brand or trademark under which the product is sold;
- (ii) The name and address of the producer, registrant, or person for whom produced;
- (iii) The net contents;
- (iv) The product registration number;
- (v) The producing establishment number;
- (vi) An ingredient statement;
- (vii) Hazard and precautionary statements for human and domestic animal hazards and for environmental hazards;
- (viii) The directions for use; and
- (ix) The use classification assigned under FIFRA.

16. 40 C.F.R. § 156.10(a)(4) states, in pertinent part, that a pesticide’s label shall appear on or be securely attached to the immediate container of the pesticide product. It also states that if the immediate container is enclosed within a wrapper or outside container through

which the label cannot be clearly read, the label must also be securely attached to such outside container.

17. 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.

18. 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).

19. 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.

20. 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.

21. The Administrator of EPA may assess a civil penalty against any registrant or other distributor 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 Violations

22. 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).

23. On or about June 22, 2012, World Commerce Services, LLC, doing business as WLG USA, LLC (World Commerce), located at 2551 Allan Drive, Elk Grove Village, Illinois 60007, was a broker/agent for Respondent.

24. On or about June 22, 2012, World Commerce submitted an NOA for a shipment of 80 cartons of "Thermacell," EPA Registration Number 71910-2, under entry number BEA-95057309, to EPA.

25. Respondent was the importer of record for the shipment of "Thermacell," EPA Registration Number 71910-2, under entry number BEA-95057309.

26. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

27. "Thermacell," EPA Registration Number 71910-2, is a pesticide as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. On or about June 17, 2012, the shipment of "Thermacell," EPA Registration Number 71910-2, under entry number BEA-95057309 arrived at and entered into the United States at the Chicago, Illinois port of entry, officially designated by the U.S. Customs and Border Protection.

29. On or about June 17, 2012, Respondent "distributed or sold" the pesticide "Thermacell," EPA Registration Number 71910-2, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

30. The 80 cartons of "Thermacell," EPA Registration Number 71910-2, imported under entry number BEA-95057309, failed to bear a label that contained the information required for pesticide labels at 40 C.F.R. § 156.10.

31. The 80 cartons of “Thermacell,” EPA Registration Number 71910-2, imported under entry number BEA-95057309, were misbranded, as that term is defined at Sections 2(q)(1)(E) and 2(q)(2)(C) of FIFRA, 7 U.S.C. §§ 136(q)(1)(E) and 136(q)(2)(C).

Specific Allegations

Count 1

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 31 of this CAFO.

33. On or about June 17, 2012, Respondent distributed or sold the misbranded pesticide product “Thermacell,” EPA Registration Number 71910-2, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

34. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

35. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(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.

36. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA’s Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$7,500. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 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. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of the Schawbel Corporation," 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-19J)
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

Susan Prout (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 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.

Respondent:
The Schawbel Corporation

7/30/12
Date



William Schawbel
Chief Executive Officer
The Schawbel Corporation

Complainant:
U.S. Environmental Protection Agency, Region 5

8/9/12
Date



Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of:
The Schawbel Corporation
Docket No. FIFRA-05-2012-0019

RECEIVED
AUG 16 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
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.

8-14-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

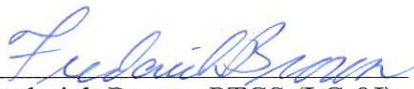
This is to certify that the original and one copy of this Consent Agreement and Final Order in the resolution of the civil administrative action involving The Schawbel Corporation, was filed on August 16, 2012, with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that a true correct copy was sent by Certified Mail, Receipt No.7009 1680 0000 7673 3472 to:

Mr. Willaim Schawbel
26 Crosby Drive
Bedford, Massachusetts 01730



and forwarded intra-Agency copies to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Prout, 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

Docket No. FIFRA-05-2012-0019