



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 26, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7668 0738

Mr. James H. Hunter III
Dynamic Solutions Worldwide, LLC
12247 W. Fairview Ave.
Milwaukee, Wisconsin 53226

Consent Agreement and Final Order in the Matter of
Dynamic Solutions Worldwide, LLC., Docket No. **FIFRA-05-2012-0026**

Dear Mr. Hunter III:

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 September 26, 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 33 through 35. Please be certain that the number **BD 2751245P025** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 26, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2012-0026
)	
Dynamic Solutions Worldwide, LLC)	Proceeding to Assess a Civil Penalty
Milwaukee, Wisconsin)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
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RECEIVED
SEP 26 2012

Consent Agreement and Final Order

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 Dynamic Solutions Worldwide, LLC, a corporation doing business in 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 Consent Agreement and Final Order (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 rights 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 rights to appeal this CAFO.

9. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136-136y.

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. § 12.111 states, in pertinent part, that devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

12. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (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).)

13. 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 any device which is misbranded.

14. 40 C.F.R. § 152.500(b) states, in pertinent part, a device is subject to the requirements set forth in FIFRA section 2(q)(1) and part 156 with respect to labeling.

15. 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 relative thereto or to its ingredients which is false or misleading in any particular.

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(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).

18. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), in pertinent part, defines a “device” as any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest.

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. The Administrator of EPA may assess a civil penalty against any 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 Violation

21. Respondent is, and was at all times relevant to this CAFO, 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 July 8, 2012, Toll Global Forwarding (USA) Inc., located at 1371 North Wood Dale Road, Wood Dale, Illinois 60191, was a broker/agent for Respondent.

23. On or about July 8, 2012, Toll Global Forwarding (USA) Inc. submitted a Notice of Arrival to EPA for the import shipment of the device “Dynatrap Insect Trap” (Model DT1200) from China under entry number FV4-0034777-2.

24. The Notice of Arrival identified Dynamic Solutions Worldwide, LLC, located at 12247 West Fairview Avenue, Milwaukee, Wisconsin 53226, as the importer of record for the shipment of “Dynatrap Insect Trap.”

25. Respondent, as the importer of record of “Dynatrap Insect Trap,” and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

26. “Dynatrap Insect Trap” is a “device,” as defined in Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

27. The label for the imported device “Dynatrap Insect Trap,” bore the following false or misleading statements relating to the efficacy of the product:

- a) “No Bugs;” and
- b) “Effectively Reduce Mosquitos, Biting Flies, Asian Beetles, Wasps, Hornets, Yellow Jackets, Moths, Stink Bugs, and other Flying Insects From Your Outdoor or Indoor Living Spaces.”

28. On or about July 8, 2012, Respondent “distributed or sold” the device “Dynatrap Insect Trap,” as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

29. On or about July 8, 2012, Respondent distributed or sold the misbranded device “Dynatrap Insect Trap,” under entry number FV4-0034777-2 with a label bearing statements that were false or misleading.

30. Respondent’s distribution or sale of the misbranded device identified in paragraph 29, above, constitutes an unlawful act under Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F).

Civil Penalty

31. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the appropriateness of a penalty to 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 determining the amount of the penalty for violations of FIFRA.

32. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated a civil penalty against Respondent in the amount of \$7,500.

33. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending by first class mail 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

34. The check must note “In the Matter of Dynamic Solutions Worldwide, LLC,” the

docket number of this CAFO, and the billing document (BD) number.

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

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

37. 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.

38. 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.

39. Respondent relabeled all the devices referenced in this CAFO such that the false or misleading statements identified in paragraph 27, above, have been eliminated.

40. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(F) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

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 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 responsibilities 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 fees in this action.

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

**In the Matter of:
Dynamic Solutions Worldwide, LLC**

Dynamic Solutions Worldwide, LLC, Respondent

11 September 2012
Date



James H. Hunter III
President
Dynamic Solutions Worldwide, LLC

In the Matter of:
Dynamic Solutions Worldwide, LLC
Docket No. FIFRA-05-2012-0026

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.

9-29-12

Date



Susan Hedman
Regional Administrator
United States 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 Dynamic Solutions Worldwide, LLC., was filed on September 26, 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 7668 0738, a copy of the original to the Respondent:

Mr. James H. Hunter III
Dynamic Solutions Worldwide, LLC
12247 W. Fairview Ave.
Milwaukee, Wisconsin 53226

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mony Chabria, 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-05-2012-0026

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