



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

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7670 5004

Ms. Vickie Volpano
Goodwill Commercial Services
5300 North 118th Court
Milwaukee, Wisconsin 53225

Consent Agreement and Final Order FIFRA-05-2010-0020

Dear Ms. Volpano:

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 June 18, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 34 thru 35. Please be certain that the number **BD 2751045P019** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 18, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Claudia Niess".

for Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

cc: Eric Volck, Cincinnati Finance/MWD (w/Encl.)

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 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 “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 (40 C.F.R. Part 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. 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).

13. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide if any

claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

14. 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.”

15. 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).”

16. 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.”

17. 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.”

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

19. Respondent is, and was at all times relevant to this Complaint, a corporation and therefore, is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. On or about April 1, 2010, UTI, USA Inc., located at 5120 International Drive #200, Cudahy, Wisconsin 53110, was a broker/agent for Respondent.

21. On or about April 1, 2010, Respondent submitted a NOA to EPA for an import shipment of a product "Off Mosquito Coils," EPA Registration Number 4822-501, from Malaysia.

22. The importer of record listed on the NOA for this shipment of "Off Mosquito Coils," EPA Registration Number 4822-501, was Goodwill.

23. The entry date listed on the NOA for this shipment of "Off Mosquito Coils," EPA Registration Number 4822-501, was March 31, 2010.

24. 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 there under.

25. "Off Mosquito Coils" is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended to repel or mitigate a pest.

26. On July 8, 2004, EPA, Office of Pesticide Programs, Registration Division issued a "label accepted with comments" for "Off Mosquito Coils," EPA Registration Number 4822-501.

27. The labels on the shipment of "Off Mosquito Coils," EPA Registration Number 4822-501, that entered into the United States on March 31, 2010 at the Chicago, Illinois port of entry substantially differed from the July 8, 2004 label accepted as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

28. On or about March 31, 2010, Respondent was distributing or selling the pesticide product "Off Mosquito Coils," EPA Registration Number 4822-501, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

29. Complainant incorporates by reference the allegations contained in paragraphs 1 through 28 of this Complaint.

30. On or about March 31, 2010, Respondent distributed or sold a registered pesticide with claims on its label that substantially differed from claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

31. Respondent's violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

32. 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.

33. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with

specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

34. 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 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

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 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

Nidhi O'Meara (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.

General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

40. 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.

41. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

42. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

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

44. 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.

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

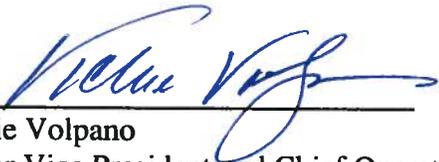
46. This CAFO constitutes the entire agreement between the parties.

47. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

Respondent:

**Goodwill Commercial Services
Milwaukee, Wisconsin**

5.25.2010
Date


Vickie Volpano
Senior Vice President and Chief Operating Officer
Goodwill Commercial Services

Complainant:

**Region 5
U.S. Environmental Protection Agency**

6/15/10
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Goodwill Commercial Services
Docket No. FIFRA-05-2010-0020

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.

6-16-2010
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
JUN 18 2010
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

U.S. ENVIRONMENTAL
PROTECTION AGENCY
MAY 28 2010
OFFICE OF REGIONAL
COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Goodwill Commercial Services., was filed on June 18, 2010, 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 7670 5004, a copy of the original to the Respondents:

Ms. Vickie Volpano
Goodwill Commercial Services
5300 North 118th Court
Milwaukee, Wisconsin 53225

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Counsel for Complainant/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 60604-3590

FIFRA-05-2010-0020

Docket No. _____

RECEIVED
JUN 18 2010

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**