



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
June 5, 2013

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7676 8498

Mr. David Konja
International Wholesale, Inc.
21170 W. 8 Mile Rd.
Southfield, Michigan 48075

Consent Agreement and Final Order In the Matter of
International Wholesale, Inc. FIFRA-05-2013-0011


Dear Mr. Konja:

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 5, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,268 is to be paid in the manner described in paragraphs 34 and 35. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by July 5, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2013-0011
)	
International Wholesale, Inc.)	Proceeding to Assess a Civil Penalty
Southfield, Michigan,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>		

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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 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, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is International Wholesale, Inc., a corporation doing business in the State of Michigan.
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). *See* 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 general 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.

Statutory and Regulatory Background

9. 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 any pesticide which is adulterated or misbranded.

10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “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.

11. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), states that the term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

12. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), states that the term “labeling” means all labels and all other written, printed, or graphs matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

13. 40 C.F.R. § 156.10(a)(5)(ix) states that pesticide label claims as to the safety of the pesticides or its ingredients are considered “false and misleading statements.”

14. Section 2(q)(2)(C)(i) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(i), states that a pesticide is “misbranded” if there is not affixed to the container, and to its outside container or wrapper of the retail package, the name and address of the producer, registrant, or person for whom produced.

15. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

16. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

17. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

18. 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).

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

General Allegations

20. Complainant incorporates paragraphs 1 through 19 of this Complaint as if set forth in this paragraph.

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

22. Respondent is a wholesaler, retailer or distributor.

23. Respondent owned or operated a place of business located at 21170 West 8 Mile Road, Southfield, Michigan (place of business) during calendar year 2008.

24. On April 28, 2009, an inspector employed by the Illinois Department of Public Health and authorized to conduct inspections under FIFRA conducted an inspection at Chicago Import, Inc., 3801 West Lawrence Avenue, Chicago, Illinois.

25. During the April 28, 2009 inspection, the inspector collected a physical sample, photographs, and an invoice from Respondent dated June 11, 2008 of *Zap-A-Roach Roach & Ant Killer*, EPA Reg. No. 51311-1 that Respondent distributed to Chicago Import, Inc.

26. The labeling on *Zap-A-Roach Roach & Ant Killer* lists directions for how to use the product to control several different insects and bears an EPA pesticide registration number.

27. *Zap-A-Roach Ant & Roach Killer* is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Count I

28. Complainant incorporates by reference the allegations contained in paragraphs 1 through 27 of this CAFO.

29. Respondent distributed or sold *Zap-A-Roach Roach & Ant Killer* on or about June 11, 2008 to Chicago Import, Inc.

30. The label of *Zap-A-Roach Roach & Ant Killer* bore the statement “Natural...Earth

Friendly.”

31. The label of *Zap-A-Roach Roach & Ant Killer* failed to bear the name and address of the producer, registrant, or person for whom produced.

32. Respondent’s distribution or sale of the misbranded pesticide *Zap-A-Roach Roach & Ant Killer* constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$2,268. In determining the penalty, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,268 civil penalty for the FIFRA violation by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note the following: In the Matter of International Wholesale, Inc. and the docket number of this CAFO.

35. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

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

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Robert M. Peachey (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

37. If Respondent does not pay timely the civil penalty, EPA may refer this 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 overdue amount 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 alleged in the CAFO.

40. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

41. Respondent certifies that it is complying with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

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

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

45. Each person signing this CAFO 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.


46. Each party agrees to bear its own costs and attorneys fees in this action.

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

**In the Matter of: International Wholesale, Inc., Southfield, Michigan.
Docket No.**


International Wholesale, Inc., Respondent

5-3-13
Date


Shoki Konja
President
International Wholesale, Inc.

U.S. Environmental Protection Agency, Complainant

May 30, 2013
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
International Wholesale, Inc.
Docket No. FIFRA-05-2013-0011

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.

6-3-13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5


JUN 05 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 International Wholesale, Inc, was filed on June 5, 2013 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 7676 8498, a copy of the original to the Respondents:

Mr. David Konja
International Wholesale, Inc.
21170 W. 8 Mile Rd.
Southfield, Michigan 48075

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Robert M. Peachey, Regional Judicial Officer, ORC/C-14J
Eric Volek, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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