

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Univar USA, Inc.) Docket No. FIFRA-07-2007-0008
17425 NE Union Hill Road)
Redmond, Washington 98124) CONSENT AGREEMENT
) AND
) FINAL ORDER
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Univar USA, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Univar USA, Inc., a pesticide registrant, located at 17425 NE Union Hill Road, Redmond, WA 98052. The Respondent is and was at all times referred to in this CAFO, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Washington.

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean 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 micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest.

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and any nitrogen stabilizer.

8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to 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.

9. According to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, the term “produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.

10. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) defines the term “establishment” to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

11. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term “registrant” to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.

12. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not a label affixed to the pesticide container (and to the outside wrapper of the retail package if the required information on the immediate container cannot be clearly read), 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, when required by regulation, the registration number assigned to the pesticide and

the use classification.

13. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered pesticide under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." The distributor is considered an agent of the registrant for all intents and purposes under the FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted upon notification to the EPA if specific conditions at 40 C.F.R. § 152.132(a) through (e) are met.

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

15. Univar USA, Inc., 17425 NE Union Hill Road, Redmond, Washington 98052 is the registrant of Liquichlor 12.5% Solution, EPA Registration Number (EPA Reg. No.) 550-198.

16. The label for Liquichlor 12.5% Solution, EPA Reg. No. 550-198, which was in effect for this pesticide on May 7, 2003, was submitted by the registrant and accepted by EPA on January 7, 2003. EPA accepted an amended label for EPA Reg. No. 550-198 on June 5, 2003. The accepted label of June 5, 2003, is the label currently in effect for this registered pesticide.

17. Brenco Corporation, formerly located at 284 East Kirkham, St. Louis, Missouri, is currently located at 9246 Shorridge, St. Louis, Missouri. EPA assigned a pesticide-producing establishment number to Brenco Corporation's facility, EPA Establishment Number (EPA Est. No.) 7299-MO-001, on or about February 1, 1985, pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.

18. On May 7, 2003, Brenco properly signed and submitted to Univar USA, EPA Form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide Product, in order to supplementally distribute Univar USA's Liquichlor 12.5% Solution. The pesticide product named on the form is Brenco 550 Hi-Chlor, and the distributor company number is 7299. The distributor EPA Reg. No. would appear as 550-198-7299 if Brenco was properly authorized to supplementally distribute Liquichlor 12.5% Solution as Brenco 550 Hi-Chlor.

19. On January 18, 2007, the Brenco Corporation submitted to EPA its 2006 Pesticide Report for Pesticide-Producing and Device-Producing Establishments, in compliance with Section 7 of FIFRA, 7 U.S.C. § 136e. The document reported production of Brenco 550 Hi-Chlor, under the EPA Reg. No. 550-198-7299. The Brenco Corporation also reported production of 550 Hi-Chlor, EPA Reg. No. 550-198-7299, on Pesticide Reports for Pesticide-Producing and Device Producing Establishment forms for years 2003 through 2005.

20. Since 2003, Univar USA had Brenco's May 7, 2003 signed EPA Form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide Product, referenced in paragraph 18, in its files. From 2003 to April 16, 2007, Form 8570-5 had never been signed by Univar USA nor submitted to EPA as required by 40 C.F.R. § 152.132. Thus, Brenco, acting as Univar USA's agent, was supplementally distributing EPA Reg. No. 550-198 without proper authorization.

Count 1

21. Complainant hereby incorporates the allegations contained in paragraphs 5 through 20 above, as if fully set forth herein.

22. The Brenco Corporation reported production of EPA Reg. No. 550-198-7299 on its 2003 Pesticide Report for Pesticide-Producing and Device-Producing Establishments document.

23. In 2003, Respondent distributed EPA Reg. No. 550-198-7299 through its unauthorized agent, the Brenco Corporation.

24. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

25. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 21 through 24, a civil penalty of \$3,120 is assessed against Respondent.

Count 2

26. Complainant hereby incorporates the allegations contained in paragraphs 5 through 20 above, as if fully set forth herein.

27. The Brenco Corporation reported production of EPA Reg. No. 550-198-7299 on its 2004 Pesticide Report for Pesticide-Producing and Device-Producing Establishments document.

28. In 2004, Respondent distributed EPA Reg. No. 550-198-7299 through its unauthorized agent, the Brenco Corporation.

29. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

30. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 26 through 29, a civil penalty of \$3,120 is assessed against Respondent.

Count 3

31. Complainant hereby incorporates the allegations contained in paragraphs 5 through 20 above, as if fully set forth herein.

32. The Brenco Corporation reported production of EPA Reg. No. 550-198-7299 on its 2005 Pesticide Report for Pesticide-Producing and Device-Producing Establishments document.

33. In 2005, Respondent distributed EPA Reg. No. 550-198-7299 through its unauthorized agent, the Brenco Corporation.

34. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

35. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 31 through 34, a civil penalty of \$3,120 is assessed against Respondent.

Count 4

36. Complainant hereby incorporates the allegations contained in paragraphs 5 through 20 above, as if fully set forth herein.

37. The Brenco Corporation reported production of EPA Reg. No. 550-198-7299 on its 2006 Pesticide Report for Pesticide-Producing and Device-Producing Establishments document.

38. In 2006, Respondent distributed EPA Reg. No. 550-198-7299 through its unauthorized agent, the Brenco Corporation.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

40. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 36 through 39, a civil penalty of \$3,120 is assessed against Respondent.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified checks, a civil penalty for the violations cited herein, in the amount of \$12,480, on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
c/o Mellon Bank
P.O. Box 371099M,
Pittsburgh, Pennsylvania 15251.**

3. The payment shall reference Docket Number, FIFRA 07-2007-0008 and **In the Matter of Univar USA, Inc.** Copies of the check shall be forwarded to:

Demetra O. Salisbury
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

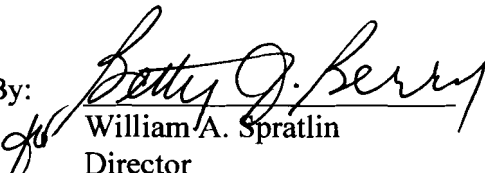
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

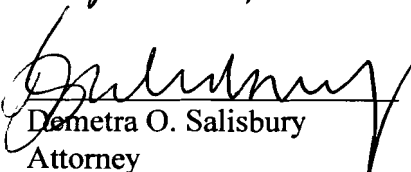
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division

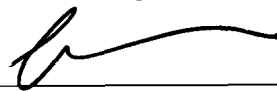
Date: August 7, 2007

By: 
Demetra O. Salisbury
Attorney
Office of Regional Counsel

Date: August 6, 2007

RESPONDENT:

Univar USA, Inc.

By:  _____

Title: DIRECTOR-REGULATORY, HEALTH & SAFETY

Date: JULY 26, 2007

IN THE MATTER OF Univar USA, Inc., Respondent
Docket No. FIFRA-07-2007-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Demetra O. Salisbury
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Ed Higbee
Director, Regulatory, Health and Safety
Univar USA, Inc.
PO Box 34325
Seattle, Washington 98124

Dated: 8/9/07


Kathy Robinson
Hearing Clerk, Region 7



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

JUL 18 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Article No.: 7004 2510 0006 9721 3838

Mr. Ed. Higbee
Director, Regulatory, Health and Safety
Univar USA, Inc.
P.O. Box 34325
Seattle, WA 98124

Re: Univar USA Inc., Docket No. FIFRA-07-2007-0008

Dear Ed:

Please find enclosed a Consent Agreement and Final Order ("CAFO") memorializing the terms and conditions of the settlement agreed to by the parties in the referenced matter. Please sign page 9 of the CAFO and return the entire document within 10 days of receipt to:

Demetra O. Salisbury
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

After the CAFO has been returned it will then be executed by the Regional Judicial Officer, disposing of this proceeding. The Regional Hearing Clerk will then send you a copy of the executed final order.

As stated in the Final Order, the payment is due thirty calendar days from the effective date of the executed order. Payment should be made by certified or cashier's check made payable to the "United States Treasury" and sent to:

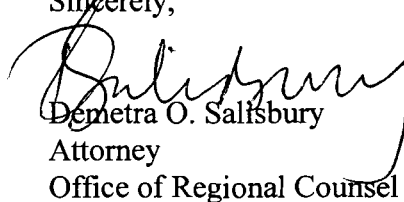
EPA - Region 7
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

Copies of the payment check shall be forwarded to me and to the Regional Hearing Clerk at 901 North 5th Street, Kansas City, Kansas 66101.



If there are any questions pertaining to this case, please telephone me at (913) 551-7369.
Thank you for your cooperation in resolving this matter.

Sincerely,



Demetra O. Salisbury
Attorney
Office of Regional Counsel

Enclosure: Consent Agreement Final Order

cc: Ms. Kathy Robinson
Regional Hearing Clerk

Ms. Barbara Shepard
WWPD/TOPE