



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. 7001 0320 0006 1468 9515

Mr. Sunil Menon

United Phosphorus, Inc.

630 Freedom Business Center, Suite 402

King of Prussia, PA 19406

Consent Agreement and Final Order Docket No. FIFRA-05-2011-0015

Dear Mr. Menon:

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 20, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$37,500 is to be paid in the manner described in paragraphs 60 and 61. Please be certain that the number **BD 2751145P015** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 20, 2011 (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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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U.S. EPA REGION 5
2011 JUN 20 PM 4:35

In the Matter of:)	Docket No. FIFRA-05-2011-0015
)	
United Phosphorus, Inc.)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

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, Region 5.

3. Respondent is United Phosphorus, Inc. (United Phosphorus), a corporation doing business at 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.

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 12(a)(2)(N) states it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file reports required by FIFRA.

14. 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.

15. 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.

16. 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).

17. 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.

18. 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.

19. 40 C.F.R. § 156.10(a)(4)(i) states, in pertinent part, that the label shall appear on or be securely attached to the immediate container of the pesticide product. It further states that for the purpose of the misbranding provisions of the act, “securely attached” shall mean that a label can reasonably be expected to remain affixed during foreseeable conditions and period of use.

20. 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

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

22. On or about April 15, 2011, Respondent imported a shipment (Entry Number 279-97227365-4) of the pesticide product, “Penncap-M,” EPA Reg. No. 70506-193, into the United States.

23. On or about April 24, 2011, Respondent imported a second shipment (Entry Number 279-9728125-1) of the pesticide product, “Penncap-M,” EPA Reg. No. 70506-193, into the United States.

24. On or about April 27, 2011, Respondent imported a third shipment (Entry Number 279-9728837-1) of the pesticide product, “Penncap-M,” EPA Reg. No. 70506-193, into the United States.

25. On or about May 10, 2011, Respondent imported a fourth shipment (Entry Number 279-9730650-4) of the pesticide product, “Penncap-M,” EPA Reg. No. 70506-193, into the United States.

26. “Penncap-M” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. On or about April 25, 2011, an inspector from EPA, Region 5, inspected shipments of “Penncap-M” at a U.S. Customs and Border Protection central examination site located in Itasca, Illinois.

28. The shipments contained three different types of labels on each physical product: (a) a booklet containing the full label; (b) an abbreviated one page label, containing a subset of the information required in the full booklet label; (c) and a European Label.

29. The booklet labels on the shipments were damp which caused pages of the booklets to fall to the floor upon touch. The booklet labels were not securely attached to the immediate containers of “Penncap-M.”

30. The abbreviated label on the shipments of “Penncap-M” referenced the company website, www.upi-usa.com.

31. As a result, the website is labeling under FIFRA.

32. The website contained claims regarding “Penncap-M” that were inconsistent with its accepted label, dated April 14, 2009.

33. In particular, the website contained the following unapproved language: “Insecticide in a microencapsulated formulation that gradually releases active ingredient over an extended period of time for longer residual control.”

34. Additionally, the website identified sweet potatoes and walnuts as crops that the pesticide could be used on without qualifying that pesticides could be used on these crops only through special local needs registrations.

35. The European labels on the shipments conflicted with the accepted label, dated April 14, 2009.

36. In particular, (a) the product name on the European labels was identified as “Pennacap-M240” rather than “Pennacap-M,” and (b) the European labels contained the language “Harmful by inhalation and if swallowed. May cause sensitization by skin contact” while the accept label, dated April 14, 2009 required the language to state “MAY BE FATAL IF INHALED ... HARMFUL IF ABSORBED THROUGH THE SKIN.”

37. Respondent submitted a NOA for the May 10, 2011 shipment of “Pennacap-M” (Entry Number 279-9730650-4) on or about May 12, 2011.

38. Respondent did not submit a NOA for the May 10, 2011 shipment of “Pennacap-M” (Entry Number 279-9730650-4) prior to its arrival into the United States.

39. On or about April 15, 2011, Respondent distributed or sold the pesticide product “Pennacap-M,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

40. On or about April 24, 2011, Respondent distributed or sold the pesticide product “Pennacap-M,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

41. On or about April 27, 2011, Respondent distributed or sold the pesticide product “Pennacap-M,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

42. On or about May 10, 2011, Respondent distributed or sold the pesticide product “Pennacap-M,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

43. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

44. On or about April 15, 2011, Respondent distributed or sold the pesticide product "Penncap-M," EPA. Reg. No. 70506-193, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

45. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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).

Count 2

46. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

47. On or about April 24, 2011, Respondent distributed or sold the pesticide product "Penncap-M," EPA. Reg. No. 70506-193, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

48. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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).

Count 3

49. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

50. On or about April 27, 2011, Respondent distributed or sold the pesticide product "Penncap-M," EPA. Reg. No. 70506-193, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

51. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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).

Count 4

52. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

53. On or about May 10, 2011, Respondent distributed or sold the pesticide product "Penncap-M," EPA. Reg. No. 70506-193, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

54. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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).

Count 5

55. Complainant incorporates by reference the allegations contained in paragraphs 1 through 42 of this Complaint.

56. Respondent failed to submit a NOA for the pesticide product "Penncap-M," EPA. Reg. No. 70506-193, Entry Number 279-9730650-4, before the shipment entered the United States, as required by Section 17(c) of FIFRA, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

57. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), 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) for each separate unlawful act.

Civil Penalty And Other Relief

58. 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.

59. Based on an evaluation of the facts alleged in this complaint, 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 \$37,500.

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$37,500 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 United Phosphorus, Inc.," the docket number of this CAFO and the billing document (BD) number.

61. 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

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

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

63. 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.

64. 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

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

66. 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.

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

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

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

70. 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.

71. Each party agrees to bear its own costs and attorney's fees, in this action.

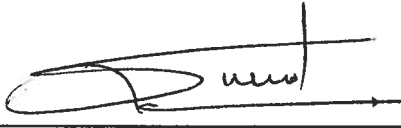
72. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
United Phosphorus, Inc.**

United Phosphorus, Inc., Respondent

05/31/2011

Date




Mr. Sunil Menon
General Manager – Business Operations
United Phosphorus, Inc.

**In the Matter of:
United Phosphorus, Inc.**

United States Environmental Protection Agency, Complainant

6/14/11

Date



Margaret M. Guerriero
Director
Land and Chemicals Division


**In the Matter of:
United Phosphorus, Inc.
Docket No. FIFRA-05-2011-0015**

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U.S. EPA REGION 5
2011 JUN 20 PM 4:35

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.

6-15-11
Date



Susan Hedman
Regional Administrator
U.S. 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 United Phosphorus, Inc., was filed on June 20, 2011, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and will be mailed no later than the next business day by Certified Mail, Receipt No.7001 0320 0006 1468 9515, a copy of the original to the Respondents:

Mr. Sunil Menon
United Phosphorus, Inc.
630 Freedom Business Center, Suite 402
King of Prussia, PA 19406

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, 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-05-2011-0015

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