



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 24 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 8931 7956

Bill Metzger, V.P. Regulatory
United Industries Corp.,
d/b/a/ Spectrum Brands Inc.
13870 Corporate Woods Trail
Bridgeton, Missouri. 63044

Consent Agreement and Final Order, Docket No.

FIFRA-05-2008-0013
(Signature)

Dear Mr. Metzger:

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 April 24, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500.00 is to be paid in the manner prescribed in paragraphs 36, 37 and 38. Please be certain that the number **BD** 2750845P013 and the docket number are written on both the transmittal letter and on the check. Payment is due by May 24, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk

Joe Lukascyk

Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
United Industries Corp., d/b/a/)
Spectrum Brands, Inc., Bridgeton,)
Missouri,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2008-0013 *LBW*
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

2008 APR 24 AM 11:04

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5

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, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is United Industries Corp., d/b/a/ Spectrum Brands, Inc., a corporation doing business in the State of Missouri.
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), and 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 Sections 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 U.S. EPA. 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 the Act [7 U.S.C. § 136a], and under the regulation (40 C.F.R. § 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and 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 prior to the arrival of the shipment to the United States.”

13. 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 misbranded.

14. 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.

15. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is “misbranded” if its label does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced (EPA Est. No.). Also see 40 C.F.R. § 156.10(f).

16. Section 2(q)(2)(C)(iv) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iv), states that a pesticide is “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the registration number assigned to the pesticide under FIFRA (EPA Reg. No.).

17. 40 C.F.R. § 156.10(a)(iv) and 40 C.F.R. § 156.10(e) state that every pesticide product shall bear a label that clearly and prominently shows the product registration number assigned to the pesticide product at the time of registration

18. The term “distribute or sell” as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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.”

19. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, and is generally regarded as any substance or mixture of substances intended

for preventing, destroying, repelling, or mitigating any pest.

20. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

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

22. 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).

23. On or about February 20, 2008, Respondent’s broker/agent, Phoenix International (PI), located at 855 IL Route 83, Bensenville, Illinois 60106, submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, along with supporting documentation, to the U.S. EPA for an import shipment of a pesticide product, “**Citriodiol**,” EPA Reg. No. 305-59.

24. On or about February 20, 2008, based on the NOA presented at the time of arrival of the “**Citriodiol**” shipment into the United States, Respondent was distributing and selling “**Citriodiol**,” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

25. The NOA, as submitted by Respondent and its broker/agent reported the EPA Est. No. for the import shipment of “**Citriodiol**” to be “072097-GBR-001.”

26. The Respondent’s broker/agent, PI, also submitted a product label for “**Citriodiol**” to U.S. EPA with the NOA.

27. This product label was represented as a copy of that label which would accompany, and be attached to, the import shipment of “**Citriodiol**” as it entered the United States.

28. On March 3, 2008, an investigator employed by the U.S. EPA, and duly authorized to conduct inspections under FIFRA, conducted a neutral scheme inspection of the import shipment of “**Citriodiol**” at Global CFS, located at 860 Foster Avenue, Bensenville, Illinois 60601, in order to determine compliance with Section 17 of FIFRA.

29. The label observed on the import shipment of “**Citriodiol**,” did not match with the label of “**Citriodiol**” submitted by Respondent and its broker/agent, PI, on February 20, 2008.

30. The label observed on the import shipment of “**Citriodiol**,” also did not match with the U.S. EPA “Accepted” label of December 20, 2002 for the registered pesticide product “**Citriodiol**,” EPA Reg. No. 305-59.

31. The label observed on the import shipment of “**Citriodiol**” did not bear any EPA Est. No.

32. The label observed on the import shipment of “**Citriodiol**” did not bear any EPA Reg. No.

33. The label observed on the import shipment of “**Citriodiol**,” also failed to contain the following information listed on the “Accepted” label of December 20, 2002:

- In the “First Aid” section, under “If in eyes:” *“Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present,*

after the first 5 minutes, then continue rinsing eye.”

- In the “First Aid” section, under “If swallowed:” *“Have a person sip a glass of water if able to swallow.” “Do not induce vomiting unless told to do so by a poison control center or doctor.”*
- In the “First Aid” section, under “If on skin or clothing:” *“Take off contaminated clothing.” “Rinse skin immediately with plenty of water for 15-20 minutes.”*

34. The label observed on the import shipment of “**Citriodiol**,” also contained added language that does not appear on the “Accepted” label of December 20, 2002:

- *“For Pesticide use only – not on the TSCA Inventory of Existing Chemical substances.”*

35. Therefore Respondent’s distribution or sale of the misbranded pesticide product “**Citriodiol**,” EPA Reg. No. 305-59, constituted an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

36. 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 \$6,500.00. In determining the penalty amount, 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 U.S. EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,500.00 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

for checks sent by express mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

38. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, 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-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

40. If Respondent does not pay the civil penalty timely, the U.S. 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.

41. 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

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

43. This CAFO does not affect the right 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.

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

45. This CAFO is a "final order" for purposes of the U.S. EPA's Enforcement Response Policy for FIFRA.

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

47. 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.

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

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

50. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk.

In the Matter of:

United Industries Corp., d/b/a/ Spectrum Brands, Inc.

Docket No. FIFRA-05-2008-0013

United Industries Corp., d/b/a/ Spectrum Brands, Inc.

April 4, 2008

Date

William D. Metzger
Bill Metzger, Vice President, Regulatory

United States Environmental Protection Agency, Complainant

4/17/08

Date

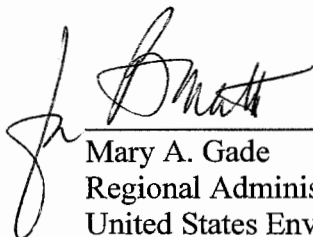
Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of:
United Industries Corp., d/b/a/ Spectrum Brands, Inc.
Docket No. FIFRA-05-2008-0013

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.

4/23/08
Date _____



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2008 APR 24 AM 11:44

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 Industries Corp., d/b/a/ Spectrum Brands, Inc., was filed on April 24, 2008 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 7956, a copy of the original to the Respondents:

Bill Metzger, V.P. Regulatory
United Industries Corp.,
d/b/a/ Spectrum Brands Inc.
13870 Corporate Woods Trail
Bridgeton, Missouri. 63044

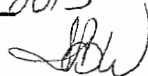
and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery Trevino, 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-15-2008-0013



2008 APR 24 AM 11:45

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V