

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

JOTUN PAINTS, INCORPORATED
9203 HIGHWAY 23
BELLE CHASSE, LOUISIANA 70037

RESPONDENT

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DOCKET NO. FIFRA 06-2007-0309

COMPLAINT AND
CONSENT AGREEMENT AND
FINAL ORDER

**COMPLAINT AND
CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Jotun Paints, Incorporated, located in Belle Chasse, Louisiana (hereinafter Jotun Paints, or Respondent) in the above referenced action, have consented to the terms of this Complaint and Consent Agreement and Final Order (Complaint and CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint and CAFO.

**I.
PRELIMINARY STATEMENT**

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 United States Code (U.S.C.) § 136l(a) which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$5,000¹ for each violation of Section 12(a) of FIFRA, 7 U.S.C. § 136j. This

¹The Civil Penalty Inflation Adjustment Rule (61 Fed. Reg. 69360, December 31, 1996 and 62 Fed Reg. 13514, March 20, 1997) provides for increases in the statutory penalty provisions by ten percent (10%) for violations which occur after the date the increases took effect, January 30, 1997. The potential maximum penalty for such violations will then change from \$5,000 to \$5,500. The Agency is required to review its penalties once every four years and adjust them for inflation. Therefore, a Final Rule was published at 69 Fed Reg. 7121 (February 13, 2004) and raised the FIFRA penalty to \$6,500, effective March 14, 2004.

proceeding was instituted by the issuance of a Complaint and Notice of Opportunity for Hearing [hereinafter Complaint] incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to the FIFRA.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this Complaint and CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint and CAFO.

5. By signature on this Complaint and CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this Complaint and CAFO and that the party signing this Complaint and CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint and CAFO.

7. Respondent agrees that the provisions of this Complaint and CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

II.

STATUTORY AND REGULATORY BACKGROUND

8. Section 2(s) of FIFRA defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Section 2(gg) of FIFRA defines the term “to distribute or sell” as distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

11. Section 3 of FIFRA states that “no person in any State may distribute or sell to any person any pesticide that is not registered under this Act.”

12. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$5,000² for each offense.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The Respondent is Jotun Paints, located at 9203 Highway 23, Belle Chasse, Louisiana 70037.

14. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA.

15. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

16. Respondent’s product, Zineb, is a pesticide as defined in FIFRA Section 2(u) because the product is a “Biocide for Antifouling Paints.”

17. At all relevant times, the Respondent was a “distributor,” as that term is defined at Section 2(gg) of FIFRA, of the pesticide Zineb, which was not registered with EPA under Section 3 of FIFRA.

18. A Notice of Arrival of Pesticides and Devices (NOA) submitted for Jotun Paints to EPA on July 3, 2006 (EPA Tracking Number: LA-06-07-026), stated product as “Unregistered”

²See footnote 1.

and the EPA Producer Establishment Number as 002568-LA-001.

19. A Notice of Arrival of Pesticides and Devices (NOA) submitted for Jotun Paints to EPA on February 23, 2007 (EPA Tracking Number: LA-07-02-025), stated product as “Unregistered” and the EPA Producer Establishment Number as 033910-ESP-001.

20. The NOAs presented to EPA and described in paragraphs 18 and 19 notified EPA that the pesticide described in paragraph 16 was being presented for import into the United States.

21. On February 27, 2007, Louisiana Department of Agriculture and Forestry (LDAF) conducted an inspection at Jotun Paints located at 9203 Highway 23, Belle Chasse, Louisiana 70037, in relation to the NOAs described in paragraphs 18 and 19.

22. On March 2, 2007, LDAF conducted an inspection at Cargo Logistics located at 5620 Tchopitolas Street, New Orleans, Louisiana, 70115, in relation to the NOAs described in paragraphs 18 and 19.

23. At the time of the inspections described in paragraphs 21 and 22, Respondent was the distributor of the pesticide described in paragraph 16.

24. At the time of the arrival of the product to the United States of America, the product was not registered under Section 3 of FIFRA, nor was the establishment in which the product was produced registered with EPA as a “pesticide-producing and device-producing establishment.”

25. At the time of the inspections described in paragraphs 21 through 22, Respondent was the distributor of the pesticide described in paragraph 16.

IV. **VIOLATIONS**

26. Complainant incorporates by reference the allegations contained in paragraphs 1-25 of this Complaint and CAFO.

27. Section 12(a)(1)(A) of FIFRA states that “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is not registered under Section 3 of FIFRA.”

28. By shipping the pesticide for import and requesting release of the shipment by EPA through the NOA, the Respondent distributed the pesticide described in paragraph 16.

29. Respondent’s distribution or sale of the unregistered pesticide product Zineb constituted an unlawful act in violation of Section 12(a)(1)(A) of FIFRA.

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

30. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and the Civil Penalty Inflation Adjustment Rule³ which authorizes EPA to assess a civil penalty of up to SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00) for each violation of FIFRA.

Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of: (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA’s “Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)” dated July 2, 1990, located at:

<http://www.epa.gov/Compliance/resources/policies/civil/erp/index.html>, a copy of which is

³ See footnote 1.

enclosed with this Complaint and CAFO. It is ORDERED that Respondent be assessed a civil penalty of **THREE THOUSAND NINE HUNDRED DOLLARS AND NO CENTS (\$3,900.00)**.

31. Within thirty (30) days of Respondent's receipt of this fully executed Complaint and CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6." Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail, overnight mail, or wire transfer. For regular U.S. Postal mail, the check(s) should be remitted to:

Regional Hearing Clerk
U.S. EPA Region 6
P.O. Box 371099M
Pittsburgh, PA 15251

For overnight mail, the check(s) should be remitted to:

Regional Hearing Clerk
U.S. EPA Region 6
Attn: P.O. Box 371099M
500 Ross Street, 154-0455
Pittsburgh, PA 15251

with a phone number of (412) 234-4381.

For wire transfer, the payment should be remitted to:

SWIFT Address: MELNUS3P (only needed for international transfers)
MELLON BANK
ABA 043000261
Account: 9109125
22 Morrow Drive
Pittsburgh, PA 15235

with a phone number of (412) 234-4381.

Docket number FIFRA-06-2007-0309 shall be clearly typed on the check to ensure proper credit.

Respondent shall send a simultaneous notice of such payment, including a copy of the money

order or check to the following:

Marie Conroy
Pesticides Section (6PD-P)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

Jan Gerro, Esq.
Senior Enforcement Counsel (6RC-EA)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

32. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

33. Pursuant to 31 U.S.C. § 3717 and 40 Code of Federal Regulations (C.F.R.) § 13.11 unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any

amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

34. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

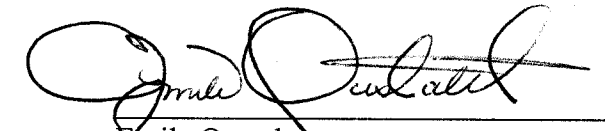
VI.
COSTS

35. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

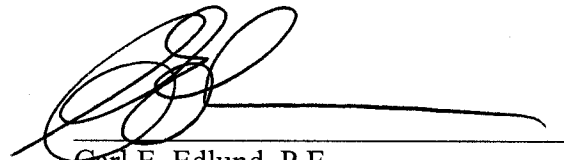
Date: 6/14/07



Emile Oustalet
President
Jotun Paints, Inc.
9203 Highway 23
Belle Chasse, Louisiana 70037

FOR THE COMPLAINANT:

Date: _____

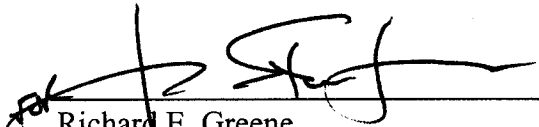


Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 7/19/07



Richard E. Greene
Regional Administrator

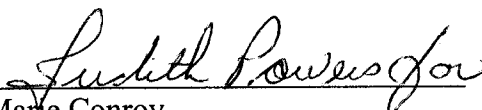
CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of July, 2007, the original and one copy of the foregoing Complaint and Consent Agreement and Final Order ("Complaint and CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED # 7003 0500 0003 0875

9922

Emile Oustalet
Jotun Paints, Inc.
9203 Highway 23
Belle Chasse, Louisiana 70037


Marie Conroy
Enforcement Officer
Pesticides Section