



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

NOV 09 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8932 8969

John L. Chrosniak
DuPont Crop Protection
Stine-Haskell Research Center
PO Box 30 Elkon Road
Newark, DE 19714-0030

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0005

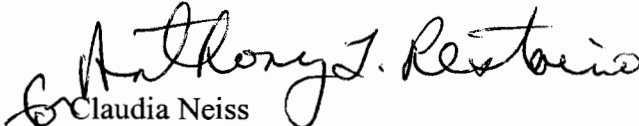
Dear Mr. Chrosniak:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on November 9, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500 is to be paid in the manner prescribed in paragraphs 46 and 47. Please be certain that the number BD2750745P007 and the docket number are written on both the transmittal letter and on the check. Payment is due by December 11, 2006 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Claudia Neiss
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Ray Marasigan, Finance/MF-10J (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN RE:)
)
)
E.I. DUPONT DE NEMOURS AND CO.)
U.S. HIGHWAY 24 E)
EL PASO, ILLINOIS 61738)
)
)

RESPONDENT)

Proceeding to assess a civil penalty
under Section 14(a) of FIFRA,
7 U.S.C. §136l(a)

Docket No. FIFRA-05-2007-0005

RECEIVED
REGIONAL OFFICE
OF ENVIRONMENTAL
ENFORCEMENT
MAY 9 9 AM 2010
[Signature]

CONSENT AGREEMENT AND FINAL ORDER

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 136l(a), and 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 (the Consolidated Rules). 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, Waste, Pesticides, and Toxics Division, United States Environmental Protection Agency (U.S. EPA or the Agency).
3. Respondent is E.I. DuPont de Nemours and Company (DuPont), which is, at all times relevant to this Complaint, a corporation incorporated under the laws of the State of Delaware with a place of business located at U.S. Highway 24 E, El Paso, Illinois 61738.
4. The parties have agreed to a settlement of this matter through the entry of this Joint Complaint and Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.18(b) and (c), 64 Fed. Reg. at 40813.
5. This Joint Complaint and CAFO simultaneously commences and concludes an administrative penalty and proceeding, as provided under Section 22.13(b) of the Consolidated

Rules, 40 Fed. Reg. at 40181 (July 23, 1999), codified at 40 C.F.R. § 22.13(b), for Respondent's alleged unlawful acts pursuant to Section 12(a)(1)(E) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(N).

STATUTORY AND REGULATORY BACKGROUND

6. 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 U.S. EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

7. 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 FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

8. 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).

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 any pesticide which is misbranded.

10. 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.

11. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), 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 be one, through which the required information on the immediate container cannot clearly be read, a label bearing all the following information: 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.

12. 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.”

13. 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. § 136 w(c)(1).”

14. 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.”

15. 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.”

GENERAL ALLEGATIONS

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

17. On or about September 15, 2006, BDP International, located at 875 Devon Avenue, Elk Grove Village, Illinois 60007, was a broker/agent for Respondent.

18. On or about September 15, 2006, Respondent submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to U.S. EPA for an import shipment of the pesticide product “Chlorsulfuron Technical,” EPA Registration Number 352-516 from China.

19. The NOA identified Respondent as the importer of record for the pesticide product “Chlorsulfuron Technical,” EPA Registration Number 352-516.

20. “Chlorsulfuron Technical,” EPA Registration Number 352-516, is a pesticide as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

21. Respondent, as the importer of record of registered pesticides and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

22. The NOA submitted by Respondent, via its broker/agent, reported the EPA Establishment Number for the import shipment of “Chlorsulfuron Technical,” EPA Registration Number 352-516, to be “70875-CN-01.”

23. On September 28, 2006, an inspector employed by U.S. EPA and duly authorized to conduct inspections under FIFRA, conducted a for cause inspection of the September 15, 2006 shipment of “Chlorsulfuron Technical,” EPA Registration Number 352-516, at a bonded Customs warehouse, Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois 60143, in order to determine compliance with Section 17(c) of FIFRA.

24. During the September 28, 2006 inspection, the U.S. EPA inspector observed 12 / 500 kilogram supersacks of “Chlorsulfuron Technical,” EPA Registration Number 352-516.

25. Each 500 kilogram bag of “Chlorsulfuron Technical,” EPA Registration Number 352-516, was enclosed in an octagonal cardboard box.

26. The label affixed to the side of each box containing the 500 kilogram bag of “Chlorsulfuron Technical,” EPA Registration Number 352-516, was marked with permanent marking that covered and obscured the label contents.

27. During the September 28, 2006 inspection, the U.S. EPA inspector also observed the contents of one of the boxes containing the 500 kilogram bag of “Chlorsulfuron Technical,” EPA Registration Number 352-516.

28. The label attached to the 500 kilogram supersack of “Chlorsulfuron Technical,” EPA Registration Number 352-516, did not have an establishment number on it.

29. The label attached to the 500 kilogram supersack of “Chlorsulfuron Technical,” EPA Registration Number 352-516, did not have a registration number on it.

30. The label attached to the 500 kilogram supersack of “Chlorsulfuron Technical,” EPA Registration Number 352-516, did not match the “accepted” label for “Chlorsulfuron Technical,” EPA Registration Number 352-516, dated March 2, 1998.

SPECIFIC ALLEGATIONS

Count 1

31. The statements provided in paragraphs 1 through 30 are incorporated by reference as though set forth here in full.

32. On or about September 28, 2006, Respondent distributed or sold a pesticide product, "Chlorsulfuron Technical," EPA Registration Number 352-516, that was misbranded, as that term is defined by Sections 2(q)(1)(D) and 2(q)(2)(C) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D) and 136(q)(2)(C), because of defaced and incomplete labels placed on the 12 / 500 kilogram supersacks of "Chlorsulfuron Technical," EPA Registration Number 352-516.

33. The fact that Respondent distributed or sold a misbranded pesticide, "Chlorsulfuron Technical," constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. § 156.10(a).

34. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. § 156.10(a) 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).

INITIAL CIVIL PENALTY

35. 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.

36. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$6,500. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated July 2, 1990.

43. Respondent has transported the September 15, 2006 import shipment of "Chlorsulfuron Technical," EPA Reg. No. 352-516 to Channel Distribution Corporation for proper labeling with the proper U.S. EPA "Accepted" label.

44. Respondent agrees to the following:

A. Respondent shall immediately notify the U.S. EPA when the entire September 15, 2006 import shipment of "Chlorsulfuron Technical," has been properly labeled. U.S. EPA will then verify that the September 15, 2006 import shipment of "Chlorsulfuron Technical," has been labeled in accordance with requirements of FIFRA.

B. Respondent shall bear all costs associated with labeling the September 15, 2006, import shipment of "Chlorsulfuron Technical," in accordance with the requirements of FIFRA. U.S. EPA shall not be responsible or liable for any such costs.

C. Respondent shall pay a civil penalty of \$6,500.

45. Respondent certifies that it is currently in full compliance with FIFRA and all rules and regulations promulgated thereunder.

46. Respondent agrees to pay the civil penalty of \$6,500 within 30 days of the effective date of this CAFO. Payment of the penalty shall be made by certified or cashier's check, payable to "Treasurer, United States of America," and sent to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, Pennsylvania 15251-7531

47. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must also send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Claudia Niess (DT-8J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3509

48. According to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1).

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

49. The Respondent shall not deduct any penalty payment made pursuant to the provisions of this CAFO under any local, state or Federal tax law.

50. The Respondent's failure to comply with the provisions of this CAFO shall result in the referral of this matter to the U.S. Department of Justice for collection. The validity, amount and appropriateness of the penalty is not subject to review in a collection proceeding.

GENERAL PROVISIONS

51. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the complaint.

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

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

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

55. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

56. Each party will bear its own costs and attorneys' fees in this action.

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

58. Respondent consents to the issuance of the accompanying Final Order without further notice.

SIGNATORIES

Each undersigned representatives of a Party to this CAFO certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind legally such Party to this document. The terms and conditions of this CAFO shall be binding on both parties to this action, including their officers, directors, employees, agents, successors and assigns.

Consent Agreement and Final Order
In the Matter of E.I. DuPont de Nemours & Co.
El Paso, Illinois
Docket No. *FIFRA-05-2007-0005* *[Signature]*

For E.I. DuPont de Nemours & Co.
Respondent:

[Signature]

John L. Chrosniak
Regional Business Director, North America
DuPont Crop Protection

Date: *10/25/06*

For United States Environmental Protection
Agency, Region 5
Complainant

Mardi Klevs

Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date: *11-06-06*

[Signature] *jsr*

Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Date: *11/6/06*

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U.S. EPA - REGION 5


Consent Agreement and Final Order
In the Matter of E.I. DuPont de Nemours & Co.

El Paso, Illinois

Docket No. *FIFRA-05-2007-0005 SDW*

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. This Final Order disposes of this proceeding in accordance with 40 C.F.R. § 22.31. Accordingly, this Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law other than those violations resolved by this Agreement. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.



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

11 / 08 / 06
Date

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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 Spectrum Brands, Inc., was filed on November 9, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8932 8969, a copy of the original to the Respondents:

Jim Lucke
Senior Vice President, Secretary and General Counsel
Spectrum Brands, Inc.
Six Concourse Parkway, Suite 3300
Atlanta, GA 30328

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Ray Marisigan, Finance/MF-10J



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2007-0005*
ELW

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