



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

APR 16 2010

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 8210

Mr. Norman Glassberg
President
Trade Associates Group
1730 West Wrightwood Avenue
Chicago, Illinois 60614

Consent Agreement and Final Order **FIFRA-05-2010-0013**

Dear Mr. Glassberg:

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 16, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 35 thru 36. Please be certain that the number **BD 2751045P013** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 16, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2010-0013
)	
Trade Associates Group)	Proceeding to Assess a Civil Penalty
Chicago, Illinois)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

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Consent Agreement and Final Order
Commencing and Concluding a Proceeding

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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 (EPA), Region 5.
3. Respondent is Trade Associates Group (TAG), a corporation doing business at 1730 West Wrightwood Avenue, Chicago, Illinois 60614.
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 to the best of its knowledge, 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 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 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.”

12. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a) and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act.

13. 40 C.F.R. § 152.15 states no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use

for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

- (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

14. 40 C.F.R. § 152.25 exempts minimum risk pesticides from the requirements of FIFRA provided that all criteria of 40 C.F.R. § 152.25(f) are met as follows:

- (a) The product only contains active ingredients that are listed under FIFRA,
- (b) The product only contains inert ingredients that are listed under FIFRA,
- (c) Each product bears a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient,
- (d) The product does not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease

transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease, and

(e) The product does not include any false and misleading labeling statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii).

15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

16. The term “distribute and sell” is defined at 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.”

17. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3, means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

18. 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.”

19. The Administrator of EPA may assess a civil penalty against any registrant 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

20. Respondent is, and was at all times relevant to this CAFO, a corporation and

therefore, is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. On or about December 30, 2009, Schmidt, Pritchard & co. Inc., located at 9801 W. Lawrence Avenue, Schiller Park, IL 60176, was a broker/agent for Respondent.

22. On or about December 30, 2009, Respondent submitted a NOA to EPA for an import shipment of a product “Summertime Scented Citronella Candle,” SKU Number 410264, from Hong Kong.

23. Respondent was the importer of record listed on the NOA for this shipment of “Summertime Scented Citronella Candle,” SKU Number 410264.

24. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated there under.

25. The label on “Summertime Scented Citronella Candle,” SKU Number 410264, did not bear an ingredient statement identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient.

26. “Summertime Scented Citronella Candle,” SKU Number 410264, failed to qualify for the minimum risk exemption under 40 C.F.R. § 152.25(f) because the product label failed to bear an ingredient statement identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient as required by 40 C.F.R. § 152.25(f)(3)(i).

27. “Summertime Scented Citronella Candle,” SKU Number 410264, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

28. “Summertime Scented Citronella Candle,” SKU Number 410264, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

29. On or about December 30, 2009, Respondent was distributing or selling

“Summertime Scented Citronella Candle,” SKU Number 410264, as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

31. Respondent distributed or sold “Summertime Scented Citronella Candle,” SKU Number 410264 on or about December 30, 2009, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

32. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

33. 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.

34. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

35. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500

civil penalty for the FIFRA violation. 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

36. A transmittal letter stating Respondent's name, complete address, the case title, 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-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

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

38. 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.

39. 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

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

41. 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.

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

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

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

45. 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.

46. Each party agrees to bear its own costs and attorney fees in this action.

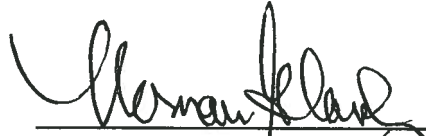
47. This CAFO constitutes the entire agreement between the parties.

48. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, Chicago, Illinois.

Respondent:
Trade Associates Group
Chicago, Illinois

3/19/10

Date




Norman Glassberg, President
Trade Associates Group

Complainant:
Region 5
U.S. Environmental Protection Agency

4/13/10

Date



for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Trade Associates Group
Docket No. **FIFRA-05-2010-0013**

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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.

4/14/10
Date

Walter W. Kavalich
Bharat Mathur *for*
Acting Regional Administrator
United States 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 Trade Associates Group, was filed on April 16, 2010, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0189 8210, a copy of the original to the Respondent:


Mr. Norman Glassberg
President
Trade Associates Group
1730 West Wrightwood Avenue
Chicago, Illinois 60614

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PROTECTION AGENCY

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

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