



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 0182 4394

William D. Yaffa
Senior Vice President
BMT Commodity Corporation
530 Fifth Avenue
New York, New York 10036

Consent Agreement and Final Order, Docket No.

FIFRA-05-2008-0017
BBW

Dear Mr. Yaffa:

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 5, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$11,648.00 is to be paid in the manner prescribed in paragraphs, 36 thru 38. Please be certain that the number **BD 2750845P017** and the docket number are written on both the transmittal letter and on the check. Payment is due by July 7, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
)
)
BMT Commodity Corporation)
530 Fifth Avenue)
New York, New York 10036)
)
Respondent.)
)
Docket No. FIFRA-05-2008-0017

Consent Agreement and Final Order
Proceeding to Assess a Civil Penalty
under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order



Preliminary Statement

1. This is a civil administrative action commenced and concluded pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a)(1), and Sections 22.1(a)(1), 22.13, 22.18, and 22.35 of 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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is BMT Commodity Corporation (BMT), a corporation organized under the laws of the State of New York.

4. At all times relevant to this Consent Agreement and Final Order (CAFO), the Respondent had a place of business at 530 Fifth Avenue, New York, New York 10036.

5. 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 CAFO. 40 C.F.R. § 22.13(b).

6. 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.

7. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. Respondent waives any 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.

Statutory and Regulatory Background

10. 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.”

11. 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.

12. 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 . . . which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

13. Insects, bacteria and fungi meet the definition of a “pest” pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

15. Pursuant to 40 CFR § 152.15(a)(1,) if a person distributes or sells a substance and claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide, the substance is considered to be intended for a pesticidal purpose, and requires registration under Section 3 of FIFRA.

16. Pursuant to 40 CFR § 152.25(a,) an article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use, is defined as a treated article or substance exempt from FIFRA registration.

17. If a pesticide is not registered for the treatment of an article or substance, then the treated article or substance is therefore not exempt and is subject to full FIFRA regulation.
40 C.F.R. § 152.25(a).

18. Section 12 (a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides 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 of FIFRA, 7 U.S.C. § 136a.

19. The Administrator of U.S. EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may assess a civil penalty of up to \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

Factual Allegations and Violations

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

21. On February 16, 2006, an inspector with the Virginia Department of Agriculture and Consumer Services, authorized to conduct inspections under the authorities of Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, conducted an inspection at The Griffith Bag Company (Griffith), located at 510 Waterman Drive, Harrisonburg, Virginia 22802.

22. During this inspection, the inspector collected a sales invoice detailing the distribution and sale of “Treated ‘Rot Resistant’ Burlap” from BMT to Griffith (Invoice Number 1028960, dated November 30, 2005).

23. On February 16, 2006, the inspector collected a physical sample of “Treated ‘Rot Resistant’ Burlap,” Sample Number 3328-01, from a bundle of Hessian material corresponding to Invoice Number 1028960.

24. The Office of Indiana State Chemist (OISC) tested Sample Number 3328-01 using Ion-Chromatography with Electron Conductivity Detection (IE-ECD). OISC determined the sample was treated with copper sulfate.

25. On or about June 7, 2006, U.S. EPA issued a Stop Sale, Use or Removal Order (SSURO) to BMT in accordance with its authorities provided in Section 13(a) of FIFRA,

7 U.S.C. § 136k(a), for the distribution or sale of copper sulfate treated burlap, jute or Hessian cloth, as unregistered pesticides. The SSURO will remain in effect until amended and withdrawn by U.S. EPA.

26. On or about July 11, 2007, Griffith supplied U.S. EPA with three additional sales invoices documenting the distribution and sale of “Treated ‘Rot Resistant’ Burlap” from BMT to Griffith (Invoice Numbers 1027292, 1027685, and 1029731, dated April 6, 2005, May 26, 2005, and March 10, 2006, respectively).

27. Respondent distributed or sold imported burlap, jute or Hessian materials treated with copper sulfate, which is used to prevent micro-organisms such as bacteria and fungi from degrading the natural fabric when used to ball the roots of trees, shrubs, and other horticultural plants for packaging, handling and distribution in commerce.

28. According to U.S. EPA records, there are no active registrations containing copper sulfate as the active ingredient for incorporation into burlap, jute or Hessian cloth.

29. The use of copper sulfate as the active ingredient for incorporation into burlap, jute or Hessian cloth makes any such treated material a pesticide according to Section 2(u) of FIFRA and 40 CFR § 152.15(a)(1), and as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

30. It is a violation of FIFRA to distribute or sell, including import into the United States, a treated product with copper sulfate which is not registered by U.S. EPA and makes claims of materials preservation, unless the treated product itself is registered by U.S. EPA.

31. Respondent distributed or sold copper sulfate-treated, burlap, jute or Hessian materials as “Treated ‘Rot Resistant’ Burlap,” a product for which it had no registration with U.S. EPA.

32. Respondent’s distribution or sale of an unregistered pesticide on at least four separate occasions is an unlawful act as stated at Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the “Enforcement Response Policy for FIFRA (July 2, 1990),” U.S. EPA has determined that a civil penalty of \$11,648 is an appropriate penalty. The penalty resolves Respondent’s violations of Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), of FIFRA, for at least four shipments of burlap, jute, or Hessian cloth treated with copper sulfate, which were distributed or sold (imported) by Respondent and placed under the June 7, 2006 SSURO.

34. Respondent certifies that it has ceased any and all importation and subsequent distribution or sale, as required by the SSURO, of burlap, jute, or Hessian cloth treated with copper sulfate or any other pesticide not registered for such use.

35. Respondent certifies that it will not distribute or sell any burlap, jute or Hessian cloth with any claims, stated or implied (by labeling or otherwise), that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

36. Respondent agrees to pay a civil penalty in the amount of the \$11,648 to settle this matter.

37. Respondent must pay the \$11,648 civil penalty by cashiers or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

38. Respondent must send the payment to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

39. 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 send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Joanna Glowacki (C-14J)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

40. This civil penalty is not deductible for federal tax purposes. If Respondent does not timely pay the civil penalty, 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). Pursuant 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.

(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 6 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).

General Provisions

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Violations section of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

42. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

43. Respondent consents to all of the conditions in this CAFO.

44. 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 violations of law.

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

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

47. 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.

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

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

50. This CAFO constitutes a Final Order pursuant to § 22.31 of the Consolidated Rules.

51. The effective date of this CAFO shall be the day it is filed with the Regional Hearing Clerk as required by § 22.18(b)(3) of the Consolidated Rules.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: BMT Commodity Corporation, New York, New York

Docket No. FIFRA-05-2008-0017 

BMT Commodity Corporation, Respondent

Date: 5/19/08



William D. Yaffa, Senior Vice President
BMT Commodity Corporation

United States Environmental Protection Agency, Complainant

Date: 5/29/08

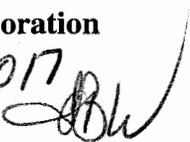


Margaret M. Guerriero, Director
Land and Chemicals Division

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of: BMT Commodity Corporation

Docket No. FIFRA-05-2008-0017



FINAL ORDER

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

Date:

6/3/08



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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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 June 5, 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 0006 0182 4394, a copy of the original to the Respondents:

William D. Yaffa
Senior Vice President
BMT Commodity Corporation
530 Fifth Avenue
New York, New York 10036

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Joanna Glowaski, 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 - 05-2008-0017

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