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

DEC 13 2007

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL
Receipt No. 7001 0320 0006 0185 7781

Santosh Krinsky, President
Lotus Brands, Inc.
1100 Lotus Drive
Silver Lake, Wisconsin 53170

Consent Agreement and Final Order, Docket No. **FIFRA-05-2008-0005**

Dear Mr. Krinsky :

Enclosed pleased 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 December 13, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of $14,040 is to be paid in the manner prescribed in paragraphs 50, 51 and 52. Please be certain that the number **BD 2750845P007** and the docket number are written on both the transmittal letter and on the check. Payment is due by January 14, 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

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Stephen Thorn, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. FIFRA-05-2008-0005**
	)	
Lotus Brands, Inc.	)	**Proceeding to Assess a Civil Penalty**
Silver Lake, Wisconsin	)	**Under Section 14(a) of the Federal**
	)	**Insecticide, Fungicide, and Rodenticide**
Respondent.	)	**Act, 7 U.S.C. § 136*l*(a)**
	)	

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. § 136*l*(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 Lotus Brands, Inc., a corporation doing business in the State of Wisconsin.

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 interests 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 it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. 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 of FIFRA, 7 U.S.C. § 136a.

11. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).

12. The term "distribute or sell" 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." 7 U.S.C. § 136(gg).

13. A "pesticide" is, among other things, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." 7 U.S.C. § 136(u).

14. A "pest" is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

15. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if 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. 40 C.F.R. § 152.15(c).

Factual Allegations and Alleged Violations

17. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent owned and operated a place of business located at 1100 East Lotus Drive, Silver Lake, Wisconsin 53170, during the calendar years 2005 through 2007.

19. Respondent is a manufacturer, importer, or distributor of Neem Aura Naturals Products.

Count I

20. Complainant incorporates by reference the allegations contained in paragraphs 1 through 19 of this Complaint.

21. On August 1, 2005, an inspector employed by the Alaska Department of Environmental Conservation and authorized to conduct inspections under FIFRA conducted an inspection at All About Herbs, a retailer in Wasilla, Alaska.

22. During the August 1, 2005 inspection, the inspector recorded notes on the product Neem Aura Naturals Neem Herbal Outdoor Spray, which bore a label identifying Respondent as the distributor of the product.

23. On January 18, 2007, Respondent's websites, www.lotusbrands.com and www.neemnaturals.com, offered for distribution and sale Neem Aura Naturals Neem Herbal Outdoor Spray.

24. Respondent's label for Neem Aura Naturals Neem Herbal Outdoor Spray at the time of the August 1, 2005 inspection, made the following pesticidal claims for Neem Aura Naturals Herbal Outdoor Spray:

a. "The Bug Disenchanter"

b. "Use where insects are going to be a nuisance."

c. "No deet"

25. Respondent's label for Neem Aura Naturals Neem Herbal Outdoor Spray, as of January 18, 2007, made the following pesticidal claims for Neem Aura Naturals Neem Herbal Outdoor Spray:

a. "Use this spray whenever you are going to be out of doors and exposed to the elements or in areas where insect bites are irritating the skin."

b. "No Deet"

c. "Use whenever you are outdoors to protect your skin, repair damage, and reduce irritation caused by insect bites."

d. "Formulated so everyone can appreciate the wonders of nature without the nuisance of the pesky elements."

26. On January 18, 2007, Respondent's website, www.neemnaturals.com, made the following pesticidal claims for Neem Aura Naturals Neem Herbal Outdoor Spray:

a. "formulated so everyone can appreciate the wonders of nature without the nuisance of the pesky elements."

b. "No DEET"

27. Neem Aura Naturals Neem Herbal Outdoor Spray is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15(a)(1) and (c).

28. Neem Aura Naturals Neem Herbal Outdoor Spray is not registered and has never been registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

29. Respondent's distribution or sale of the unregistered pesticide Neem Aura Naturals Neem Herbal Outdoor Spray constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count II

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 19 of this Complaint.

31. On December 22, 2005, an inspector employed by the Missouri Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Root Diggin Nation Health Food Store, a retailer in St. Clair, Missouri.

32. During the December 22, 2005 inspection, the inspector collected photographs of the product Neem Aura Naturals Neem Herbal Pet Spray, which bore a label identifying Respondent Lotus Brands as the distributor of the product.

33. During the December 22, 2005 inspection, the inspector obtained a signed statement from Mamie Irwin, President of retailer Root Diggin Nation Health Food Store, stating that Neem Aura Naturals Neem Herbal Pet Spray is distributed by Respondent.

34. On January 18, 2007, Lotus Brands' websites, www.lotusbrands.com and www.neemnaturals.com, offered for distribution and sale Neem Aura Naturals Neem Herbal Pet Spray.

35. Respondent's label for Neem Aura Naturals Neem Herbal Pet Spray, at the time of the December 22, 2005 inspection, made the following pesticidal claims for Neem Aura Naturals Neem Herbal Pet Spray:

a. "Use this spray whenever your pet is going to be out of doors and exposed to elements or where insects are a nuisance."

b. "Use whenever your pet will be out of doors to... disenchant bugs."

c. "No Deet"

36. Respondent's label for Neem Aura Naturals Neem Herbal Pet Spray, at the time of this complaint, makes the following pesticidal claims for Neem Aura Naturals Neem Herbal Pet Spray:

a. "Use this spray whenever your pet is going to be out of doors... or in areas where insect bites are irritating the skin."

b. "No Deet"

c. "Use whenever your pet will be out of doors to protect the skin, repair damage and reduce irritation caused by insect bites."

37. On January 18, 2007, Respondent's website, www.neemauranaturals.com, made the following pesticidal claim for Neem Aura Naturals Neem Herbal Pet Spray:

"Pet lovers have found our neem based spray ideal for helping maintain control of irritating pests, particularly when the pet is joining one for a hike in the great outdoors!"

38. Neem Aura Naturals Neem Herbal Pet Spray is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15(a)(1) and (c).

39. Neem Aura Naturals Neem Herbal Pet Spray is not registered and has never been registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

40. Respondent's distribution or sale of the unregistered pesticide Neem Aura Naturals Neem Herbal Pet Spray constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count III

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 19 of this Complaint.

42. On January 18, 2007, Respondent's websites, www.lotusbrands.com and www.neemnaturals.com, offered for distribution and sale Neem Aura Naturals Citronella Sticks.

43. Respondent's label for Neem Aura Naturals Citronella Sticks makes the following pesticidal claims for Neem Aura Naturals Neem Citronella Outdoors Sticks:

a. "No DEET"

b. "Whether in the mountains, forests, canoeing in the swamps, or even in your own back yard... Clear the air with NEEM AURA Citronella Sticks."

c. "Citronella Outdoor Incense"

44. On January 18, 2007, Respondent's website, www.neemnaturals.com, made the following pesticidal claims for Neem Aura Naturals Citronella Sticks:

a. "3 times the active fragrance of ordinary citronella candles, and with a more pleasant fragrance."

b. "Combining the active power of citronella, lemongrass and neem to provide outstanding protection for outdoor seating, parties or other outdoor activities."

c. "NO DEET"

d. "Citronella Sticks"

45. Neem Aura Naturals Citronella Sticks are a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. §§ 152.15(a)(1) and (c).

46. Neem Aura Naturals Citronella Sticks are not registered and have never been registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

47. Respondent's distribution or sale of the unregistered pesticide Neem Aura Naturals Citronella Sticks constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

48. Section 14(a) of FIFRA, 7 U.S.C. § 1361, authorizes a civil penalty of up to $5,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Action of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, see 61 Fed. Reg. 13514-13517 (March 20, 1997), this amount was increased to $5,500 on or after January 31, 1997 and to $6,500 for each offense of FIFRA that occurred after March 15, 2004.

49. Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent's business and Respondent's ability to continue in business in light of the proposed penalty, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged:

Count I

Distribution or sale of Neem Aura Naturals Neem Herbal Outdoor Spray $5,850

Count II

Distribution or sale of Neem Aura Naturals Neem Herbal Pet Spray..... $5,850

Count III

Distribution or sale of Neem Aura Naturals Citronella Sticks $5,850

Total proposed civil penalty $17,550

50. Consistent with the provisions of the FIFRA Enforcement Response Policy, Complainant agrees to mitigate the proposed civil penalty from $17,550 to $14,040.

51. Within 30 days after the effective date of this CAFO, Respondent must pay the $14,040 civil 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

52. 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

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

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

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

54. If Respondent does not pay the civil penalty timely, 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. § 136*l*(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55. 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

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

57. 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.

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

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

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

61. 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.

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

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

Lotus Brands, Inc., Respondent

11/20/07
Date

Santosh Krinsky, President
Lotus Brands, Inc.

United States Environmental Protection Agency, Complainant

12/5/07
Date

Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0005

In the Matter of:
Lotus Brands, Inc.
Docket No. FIFRA-05-2008-0005

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.

12-1-07
Date

Mary A. Gade
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 Lotus Brands, Inc., was filed on December 13, 2007 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 0185 7781, a copy of the original to the Respondents:

Santosh Krinsky, President
Lotus Brands, Inc.
1100 Lotus Drive
Silver Lake, Wisconsin 53170

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Stephrn Thorn, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD

Elizabeth Lytle

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

Docket No. **FIFRA-05-2008-0005**