



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 15 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7662 0604

Mr. Robert C. Ehn

U.S. Agent for:

Sulphur Mills, Ltd.

1629 Pollasky, Suite 111

Clovis, California 93612

Consent Agreement and Final Order **FIFRA-05-2011-0001**

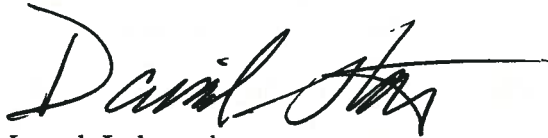
Dear Mr. Ehn:

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 October 15, 2010, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000.00 is to be paid in the manner described in paragraphs 40 thru 41. Please be certain that the number **BD 2751145P001** and the docket number are written on both the transmittal letter and on the check. Payment is due by November 14, 2010, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*for*   
Joseph Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

**RECEIVED**

Sulphur Mills, Ltd.

OCT 15 2010

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

Docket No. FIFRA-05-2011-0001

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 Commencing and Concluding the Proceeding**

**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. § 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, Region 5.
3. Respondent is Sulphur Mills, Ltd, a partnership, association, corporation, or any organized group of persons whether incorporated or not, doing business in the State of Michigan.
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 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 the EPA. These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in 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. 162.10) promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1, or NOA), prior to the arrival of the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

15. The term “misbranded” is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(a), and states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

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

17. 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.

18. According to the EPA Label Review Manual, Chapter 14, Section IV.C, if a producer lists multiple establishment numbers, the establishment number for the actual production site must be very obviously marked or highlighted.

### **Factual Allegations and Alleged Violations**

19. Respondent is, and was at all times relevant to this Complaint, a partnership, association, corporation, or any organized group of persons whether incorporated or not, and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Mainfreight International, Inc. (MII), located at 1400 Glenn Curtiss Street, Carson, California, 90746, acted as a broker/agent for Respondent in this matter.

21. On or about June 24, 2010, Respondent’s broker/agent, MII, submitted an NOA, under Entry No. E7A-0005604-3, to the EPA (first NOA). The first NOA stated that it related to the import shipment of a pesticide product “Cosavet DF,” EPA Reg. No. 62562-4.

22. The import shipment associated with Entry No. E7A-0005604-3 and the first NOA entered the United States on or about June 16, 2010.

23. “Sulphur W.G.” is the only brand name of the registered pesticide product, EPA Reg. No. 62562-4.

24. Respondent is listed with U.S. Customs and Border Protection (U.S. CBP) as the importer of record for the import shipment associated with Entry No. E7A-0005604-3 and the first NOA.

25. The Port of Entry listed on the first NOA is Detroit, Michigan.

26. On or about July 6, 2010, EPA Region 5 “Denied Entry” of the import shipment associated with Entry No. E7A-0005604-3 and the first NOA.

27. On or about July 7, 2010, Respondent submitted to EPA a second NOA under Entry No. E7A-0005604-3 (second NOA). The second NOA stated that it related to the import shipment of a pesticide product “Cosavet DF,” EPA Reg. No. 70905-1.

28. "Cosavet DF" is the only brand name of the registered pesticide product, EPA Reg. No. 70905-1.

29. On or about July 8, 2010, EPA issued an "Enforcement Hold for Inspection" memo to U.S. CBP and Respondent.

30. The product "Cosavet DF," EPA Reg. No. 70905-1, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

31. The product "Sulphur W.G.," EPA Reg. No. 62562-4, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

32. On or about July 12, 2010, an investigator employed by the Michigan Department of Agriculture (MDA), and duly authorized to conduct inspections under FIFRA, conducted an inspection of the shipment associated with Entry No. E7A-0005604-3 and the first and second NOAs, at the U.S. CBP truck inspection station, located at 2810 West Fort Street, Detroit, Michigan 48216, to determine compliance with Section 17 of FIFRA, 7 U.S.C. § 136o.

33. During the inspection, the MDA inspector observed that the label, on the import pesticide product, contained two EPA Producer Establishment Numbers, 70905-IND-1 and 62562-CHL-002 without any indication as to which of these establishments was the actual producer of the import pesticide product.

34. The inspector also observed that the EPA Registration Number listed on the label of the imported pesticide product was "70905-1."

35. On or about June 24, 2010, Respondent failed to file a true and accurate NOA for Entry No. E7A-0005604-3, prior to the arrival of this shipment in the United States, as required

by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and 19 C.F.R. § 12.112 and in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

36. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(c) of FIFRA, 7 U.S.C. § 136l(a).

37. On or about June 16, 2010, Respondent distributed or sold (imported) a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

#### **Civil Penalty**

39. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$15,000.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000.00 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197

for checks sent by express mail:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
Contact: Natalie Pearson  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

The check must note the following: the case name, the docket number of this CAFO and the billing document number (BD number).

41. 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-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

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



43. 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.

44. 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**

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

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

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

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

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

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

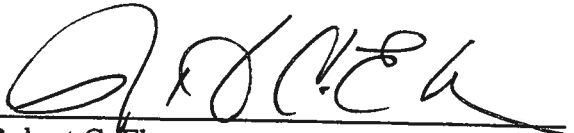
51. Each party agrees to bear its own costs and attorney's fees, in this action.

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

53. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

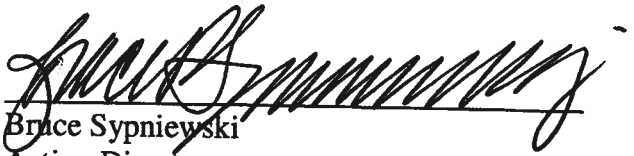
**Sulphur Mills, Inc., Respondent**

20-Sept.-2010  
Date

  
Robert C. Ehn  
U.S. Agent for:  
Sulphur Mills, Ltd.

**United States Environmental Protection Agency, Complainant**

10/12/10  
Date

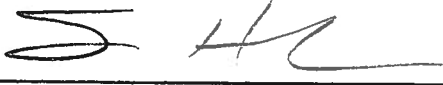
  
Bruce Sypniewski  
Acting Director  
Land and Chemicals Division

**In the Matter of:  
Sulphur Mills, Ltd.  
Docket No. FIFRA-05-2011-0001**

**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.

10-13-10  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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OCT 15 2010  
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U.S. ENVIRONMENTAL  
PROTECTION AGENCY.

**U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**SEP 21 2010**

**OFFICE OF REGIONAL  
COUNSEL**

**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 Sulphur Mills, Ltd., was filed on October 15, 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. 7009 1680 0000 7662 0048, a copy of the original to the Respondent:

Mr. Robert C. Ehn  
U.S. Agent for:  
Sulphur Mills, Ltd.  
1629 Pollasky, Suite 111  
Clovis, California 93612

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Kris P. Vezner, 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

**FIFRA-05-2011-0001**

Docket No. \_\_\_\_\_

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY**