



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

AUG 23 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 2542

Mr. Stanley H. Abramson
Arent Fox LLP/ Attorney at Law
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339

Consent Agreement and Final Order

FIFRA-05-2010-0023

Dear Mr. Abramson:

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 August 23, 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 39 thru 40. Please be certain that the number **BD 2751045P022** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 22, 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 "Estrella Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2010-0023
)	
Tree Care Innovations, LLC)	Proceeding to Assess a Civil Penalty
Wilmington, Delaware)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
and)	Act, 7 U.S.C. § 136l(a)
)	
Delta Analytical Corporation)	
Silver Spring, MD)	
)	
Respondents.)	
_____)	

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AUG 23 2010

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

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

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. Respondents are Tree Care Innovations, LLC, a corporation doing business in the United States and Delta Analytical Corporation, doing business at 12510 Prosperity Drive, Silver Springs, MD 20904.
4. The parties agree that settling this action without the filing of a complaint, the adjudication of any issue of fact or law or any admission of violation is in their interest and in the

public interest.

5. Respondents consent 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

6. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations and alleged violation set forth in this CAFO.

7. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any rights to contest the allegations in this CAFO, and their rights to appeal this CAFO.

8. Respondents certify that they are complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

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

10. 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.”

11. 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).

12. 40 C.F.R. Part 156.10 states, in pertinent part, that “Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part.”

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), 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.

14. 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 as assigned under section 7 to each establishment in which it was produced.

15. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

16. Section 2(q)(2)(c)(i) of FIFRA, 7 U.S.C. § 2(q)(2)(c)(i), 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 be clearly read, a label bearing the name and address of the producer, registrant, or person for whom produced.

17. Section 2(q)(2)(c)(iii) of FIFRA, 7 U.S.C. § 2(q)(2)(c)(iii), 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 be clearly read, a label bearing the net weight or measure of the content.

18. 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.”

19. 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).

20. 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.”

21. 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.”

22. 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 Violation

23. Respondents are, and were at all times relevant to this Complaint, a corporation and therefore, are “persons” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. On or about April 27, 2010, Respondents submitted a NOA to EPA for an import shipment of a product “Dutch Trig,” EPA Registration Number 83170-1, from the Netherlands.

25. The importer of record for this shipment of the pesticide product “Dutch Trig,” EPA Registration Number 83170-1 is Tree Care Innovations, LLC of the United States. Delta



Analytical Corporation is the United States agent of Tree Care Innovations, LLC.

26. Respondents, as importer/agent of "Dutch Trig," and by doing business in the United States, are subject to the requirements of FIFRA and the regulations promulgated thereunder.

27. "Dutch Trig" is a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), because it is intended to repel or mitigate a pest.

28. On or about October 19, 2005, the EPA, Office of Pesticide Program, Registration Division accepted the label as amended for "Dutch Trig," under EPA Registration Number 71927-1.

29. The accepted label for "Dutch Trig" contained the following statement: "The label must be in the possession of the user at the time of application."

30. On or about April 27, 2010, Respondents distributed or sold "Dutch Trig" with labeling that did not contain the statement identified in paragraph 29 above.

31. On or about April 27, 2010, Respondents distributed or sold "Dutch Trig" with a label affixed to the product that did not contain the producing establishment's registration number.

32. On or about April 27, 2010, Respondents distributed or sold "Dutch Trig" with a label affixed to the product that did not contain the net weight or measure of contents.

33. On or about April 27, 2010, Respondents distributed or sold "Dutch Trig" with a label affixed to the product that did not contain a complete ingredient statement.

34. On or about April 27, 2010, Respondents distributed or sold "Dutch Trig" with a label affixed to the product that did not contain the address of the producer, registrant, or person for whom produced.

35. Respondents' sale and distribution of a misbranded pesticide on one occasion



constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

36. The unlawful act referenced in paragraph 35 subjects Respondents to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

37. 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.

38. 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 Respondents 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 July 2, 1990.

39. Within 30 days of the effective date of this CAFO, Respondents must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "In the Matter of: Tree Care Innovations, LLC," the docket number of this CAFO, and the billing document



number.

40. A transmittal letter stating Respondents' name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondents 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

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

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

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

42. If Respondents do 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.

43. Pursuant to 31 C.F.R. § 901.9, Respondents 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. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondents must pay a 6 percent per year penalty on any principal amount 90 days



past due.

General Provisions

44. This CAFO resolves only Respondents' liability for federal civil penalties for the violations and facts alleged in the CAFO.

45. 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.

46. This CAFO does not affect Respondents' responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

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

48. The terms of this CAFO bind Respondents, its successors, and assigns.

49. 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.

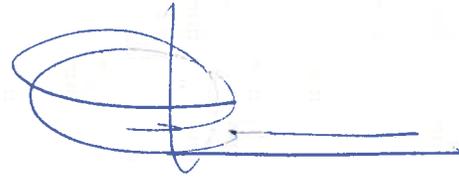
50. Each party agrees to bear its own costs and attorney fees in this action.

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

In the Matter of:
Tree Care Innovations, LLC
and
Delta Analytical Corporation
Docket No. FIFRA-05-2010-0023

RESPONDENT

04 august 2010
Date

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Frank Crucq, President
Tree Care Innovations, LLC

**In the Matter of:
Tree Care Innovations, LLC
and
Delta Analytical Corporation
Docket No. FIFRA-05-2010-0023**

RESPONDENT

4 Aug 2010

Date



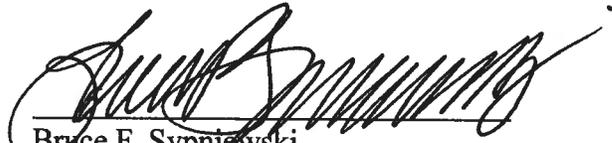
Jeff Jones
President, Delta Analytical Corporation

In the Matter of:
Tree Care Innovations, LLC.
and
Delta Analytical Corporation
Docket No. FIFRA-05-2010-0023

COMPLAINANT
Region 5
United States Environmental Protection Agency

8/12/10

Date



Bruce F. Sypniewski
Acting Director
Land and Chemicals Division

In the Matter of:
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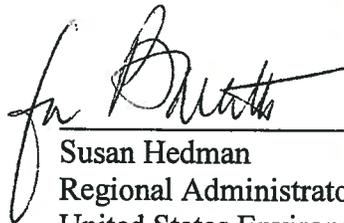
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PROTECTION AGENCY

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.

Date

8-20-10



Susan Hedman
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 Tree Care Innovations, LLC and Delta Analytical Corporation was filed on August 23, 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 7667 2542, a copy of the original to the Respondent;

Mr. Stanley H. Abramson
Arent Fox LLP/ Attorney at Law
1050 Connecticut Avenue, NW
Washington, D.C. 20036-5339

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, 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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