



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

OCT 16 2007

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8290

Joseph Robinson, Vice-President of Regulatory Affairs
Lonza, Inc.
90 Boroline Road
Allendale, New Jersey 07401

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0002

Dear Mr. Robinson:

Enclosed please 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 October 16, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,400 is to be paid in the manner prescribed in paragraph 44. Please be certain that the number **BD 2750845P002** and the docket number are written on both the transmittal letter and on the check. Payment is due by November 15, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Joseph G. Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

FIFRA-05-2008-0002

In the Matter of:)	Docket No. _____
)	
Lonza, Inc)	Proceeding to Assess a Civil Penalty
Allendale, New Jersey 07401)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

REGIONAL CLERK

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. § 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 Chief of the Chemicals Management Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Land and Chemicals Division, U.S. EPA, Region 5.

3. Respondent is Lonza, Inc. (Lonza), which is, and was at all times relevant to the alleged violations, a corporation organized under the laws of the State of New Jersey, with a place of business located at 90 Boroline Road, Allendale, New Jersey 07401.

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 term “person” is defined as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.” Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

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

13. 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.

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

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

15. According to the Regulations at 40 C.F.R. § 152.132 *et al*, supplemental distribution is permitted only when all of the conditions in the Regulations are met by both the registrant and the distributor.

16. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor's company number.

17. According to 40 C.F.R. 152.132 *et seq.*, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

18. Also, according to 40 C.F.R. § 152.132(d), the label of the distributor product is the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

Factual Allegations and Alleged Violations

19. Respondent was, at all times relevant to this Complaint, a “person” as that term is defined in Section 2(s) of FFRA, 7 U.S.C. § 136(s).

20. Respondent did, at all times relevant to this Complaint, “distribute or sell” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

21. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

22. On or about April 18, 1981, Respondent registered with the U.S. EPA its pesticide product “**205M WATER TREATMENT MICROBIOCIDE.**”

23. The U.S. EPA subsequently assigned EPA Registration Number **6836-79** to Respondent’s pesticide product.

24. Respondent’s pesticide product. “**205M WATER TREATMENT MICROBIOCIDE,**” is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about May 18, 1999, Respondent and Oxisolv, Inc., (Oxisolv), located at 14916 Telegraph Road, Suite 6, Flat Rock, Michigan 48134, submitted to U.S. EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) allowing Oxisolv to distribute Respondent’s registered pesticide product, “**205M WATER TREATMENT MICROBIOCIDE,**” EPA Registration Number 6836-79, under Oxisolv’s brand name “**OXISOLV WATER TREATMENT MICROBIOCIDE.**”

26. On October 9, 2002, an inspector employed by the Michigan Department of Agriculture (MDA), conducted an authorized inspection at Oxisolv, located at 12055 Universal Drive, Taylor, Michigan 48180.

27. During the October 9, 2002 inspection, the MDA inspector reviewed and collected from Oxisolv, a documentary sample of the label for the pesticide product **“OXISOLV WATER TREATMENT MICROBIOCIDES,”** EPA Reg. No. 6836-79-072156.

28. The MDA inspector issued a “Receipt for Samples” to Jeni Dunn, Product Coordinator for Oxisolv, for the sample collected.

29. Ms. Dunn signed the Receipt for Samples.

30. By her signature on the Receipt for Samples, Ms. Dunn indicated that she was an owner, operator, or agent of Oxisolv.

31. By her signature on the Receipt for Samples, Ms. Dunn indicated that all samples collected were from pesticide products that were packaged, labeled, and released for shipment.

32. In that **“OXISOLV WATER TREATMENT MICROBIOCIDES,”** EPA Reg. No. 6836-79-072156 was packaged, labeled, and released for shipment or sale, Respondent “distributed or sold” this pesticide product.

33. The EPA Registration Number shown on the **“OXISOLV WATER TREATMENT MICROBIOCIDES,”** from the sample collected during the October 9, 2002 inspection, is **“6836-79-072156.”**

34. The number **“072156,”** is Oxisolv’s Company Number.

35. The number **“072156,”** by its location in the EPA Registration Number as printed on

the “**OXISOLV WATER TREATMENT MICROBIOCID**,” label indicates that Oxisolv is a supplemental distributor of Respondent’s registered pesticide product “**205m WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79.

36. As set forth below, the label being used by Oxisolv for the pesticide product “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156, does not correspond to the U.S. EPA “Accepted” label of September 19, 1989, for Respondent’s registered pesticide product “**205m WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79.

37. On or about October 9, 2002, Respondent distributed or sold the pesticide product “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156.

38. On or about October 9, 2002, the pesticide product label for “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156 was misbranded as follows:

- a. Respondent had entirely deleted, from its label, the section, *“ENVIRONMENTAL HAZARDS,” This pesticide is toxic to fish. Do not apply in marine and/or estuarine oil fields. Do not discharge treated effluent into lakes, streams, ponds, or public waters unless in accordance with an NPDES permit. For guidance contact your regional office of the Environmental Protection Agency,* as it appears on the U.S. EPA “Accepted” label of September 19, 1989.
- b. Under the label heading “CONTAINER DISPOSAL,” Respondent had

entirely deleted from its label, the statements, “ *Triple rinse (or equivalent) then offer for recycling or reconditioning or puncture and dispose of in a sanitary landfill or incineration or if allowed by state and local authorities by burning; if burned, stay out of smoke. Metal Container: triple rinse (or equivalent), then offer for recycling or reconditioning or dispose of in a sanitary landfill or by other procedures approved by state and local authorities.*” as it appears on the U.S. EPA “Accepted” label of September 19, 1989.

39. Therefore, on or about October 9, 2002, the pesticide product label for “**OXISOLV WATER TREATMENT MICROBIOCID**,” EPA Reg. No. 6836-79-072156. was “misbranded,” according to Section 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) and (G).

40. According to 40 C.F.R.152.132 *et seq.*, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

41. Respondent’s distribution or sale of a misbranded pesticide product constitutes an unlawful act According to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §136l(a).

Civil Penalty

42. 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 \$5,500. 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 July 2, 1990.

43. Consistent with the provisions of the FIFRA ERP, Complainant has adjusted the penalty downward \$1,100 for "good attitude," and cooperation. Accordingly, Complainant agrees to mitigate the proposed civil penalty from \$5,500 to \$4,400.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$4,400 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. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251 - 7531

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

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

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

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

46. 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. 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

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

49. 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.

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

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

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

53. 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.

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

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

Lonza, Inc., Respondent

10/1/07
Date

Joseph R. Robinson
Joseph Robinson, Vice President of
Regulatory Affairs

United States Environmental Protection Agency, Complainant

10-10-07
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemical Division

FIFRA-05-2008-0002

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In the Matter of:
Lonza, Inc.
Docket No. FIFRA-05-2008-0002

Final Order

This Consent Agreement, as agreed to by the parties, shall become a final order 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.

10/11/07
Date

Walter W. Kovachik for
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 Lonza, Inc., was filed on October 16, 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 8290, a copy of the original to the Respondents:

Joseph Robinson, Vice-President of Regulatory Affairs
Lonza, Inc.
90 Boroline Road
Allendale, New Jersey 07401

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jose C. de Leon, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



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

Docket No. **FIFRA-05-2008-0002**

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REGIONAL HEARING CLERK
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