



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG - 1 P 3:04  
REGIONAL HEARING  
CLERK

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Lisa M. Santiago Ruiz, Esq.  
#300 Avenida La Sierra, Apt. 172  
San Juan, Puerto Rico 00926

Re: *In the Matter of Technical Industrial Sales, Inc.*,  
Docket No. FIFRA-02-2013-5301

Dear Ms. Santiago:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given in the Final Order.

Sincerely,

Naomi P. Shapiro  
Assistant Regional Counsel

cc: Miguel Ortiz  
Director, Agrological Laboratory  
Puerto Rico Department of Agriculture  
#7 Carr. 693  
Dorado, Puerto Rico 00646-3445

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 AUG - 1 P 3:04  
REGIONAL HEARING  
CLERK

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In the Matter of :  
 :  
Technical Industrial Sales, Inc. : CONSENT AGREEMENT AND  
 : FINAL ORDER  
 :  
Respondent. :  
 :  
 : Docket No. FIFRA-02-2013-5301  
 :  
Proceeding Under the Federal :  
Insecticide, Fungicide and :  
Rodenticide Act, as amended. :  
----- X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 1361(a), of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). On January 10, 2013, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-02-2013-5301, to Respondent Technical Industrial Sales, Inc. The Complaint alleges four violations of FIFRA Section 12(a)(1)(B), 7 U.S.C. § 136j(a)(1)(B), distribution or sale of a registered pesticide for which claims were made that substantially differ from those made for it as a part of its registration. The Complaint seeks a total civil penalty of \$22,700.

*Handwritten initials*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Technical Industrial Sales, Inc. (hereinafter alternatively referred to as “TIS” or “Respondent”).
2. Respondent is incorporated in the Commonwealth of Puerto Rico.
3. Respondent is a “person” as defined by FIFRA Section 2(s), 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Respondent operates a facility located at Road #1, KM 25.9, Bo. Quebrada Arena, Caguas, Puerto Rico (the “facility”) from which it sells ventilation and air cleaning products.
5. At times relevant to this Consent Agreement, Respondent also sold from its Caguas facility the Zimek brand Rapid Decontamination and Disinfecting System for Room and Vehicle Application (“Zimek System”) and the registered pesticides Zimek QD (EPA Reg. No. 70263-6-81632), and Zimek D&I Plus (EPA Reg. No. 70263-3-81632).
6. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg). ZV
7. Respondent is a “wholesaler,” “dealer,” or “other distributor” within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1).
8. On October 5, 2011, duly authorized inspectors from EPA’s Region 2 Office conducted an inspection at the Facility (hereinafter “R2 Inspection”).
9. On or about May 12, 2011, duly authorized inspectors from EPA’s Region 4 Office conducted an inspection of the records of Zimek, Inc. (hereinafter “R4 Inspection”).
10. During the R2 and R4 inspections, inspectors obtained copies of records demonstrating that Respondent had sold the Zimek System, an alleged disinfectant system that operates by dispersing a micro-fog of pesticide in rooms and vehicles.

11. During the R2 and R4 inspections, inspectors obtained copies of records demonstrating that Respondent sold the registered pesticides Zimek QD (EPA Reg. No. 70263-6-81632) and Zimek D&I Plus (EPA Reg. No. 70263-3-81632).

12. During the R2 and R4 inspections, inspectors obtained copies of records demonstrating that Respondent made claims regarding the use of the registered pesticides Zimek QD (EPA Reg. No. 70263-6-81632) and Zimek D&I Plus (EPA Reg. No. 70263-3-81632) in the Zimek System that substantially differ from the claims made for those pesticides as part of each product's registration.

13. Based on the R2 and R4 inspections, EPA alleged in the Complaint a total of four instances of distribution of a pesticide in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

14. The parties participated in an ADR conference on May 2, 2013 to pursue settlement. As part of ongoing settlement discussions, Respondent provided its tax returns to EPA.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent certifies that it is now in compliance with any applicable requirements of FIFRA and its implementing regulations.



2. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.

3. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of **seven thousand and seven hundred dollars (\$7,700)** according to the following schedule:

- a. \$1,100 due on or before thirty (30) days after the date of signature of the Final Order at the end of this document;
- b. \$1,100 due on or before sixty (60) days after the date of signature of the Final Order at the end of this document;
- c. \$1,100 due on or before ninety (90) days after the date of signature of the Final Order at the end of this document;
- d. \$1,100 due on or before one hundred and twenty (120) days after the date of signature of the Final Order at the end of this document;
- e. \$1,100 due on or before one hundred and fifty (150) days after the date of signature of the Final Order at the end of this document;
- f. \$1,100 due on or before one hundred and eighty (180) days after the date of signature of the Final Order at the end of this document; and
- g. \$1,100 due on or before two hundred and ten (210) days after the date of signature of the Final Order at the end of this document.

4. Payments must be received at the address listed in Paragraph 5, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due dates specified

above (the date by which each payment must be received shall hereafter be referred to as the “due date”).

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

5. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." All checks shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Technical Industrial Sales, Inc., Docket No. FIFRA-02-2013-5301.

Checks shall be mailed to:

*In the Matter of Technical Industrial Sales, Inc.*, Docket No. FIFRA-02-2013-5301

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer (“EFT”), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:  
FRNYUS33  
33 Liberty Street  
New York, N.Y. 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: “D 68010727  
Environmental Protection Agency”
- f. Name of Respondent: Technical Industrial Sales, Inc.
- g. Case Docket Number: FIFRA-02-2013-5301

Respondent shall also send proof of each payment, whether by check or EFT, to:

Naomi Shapiro  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

and

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

6. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

7. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits (a) the jurisdictional allegations of the Complaint; and (b) neither admits nor denies the factual allegations in the Complaint.

8. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.

9. The civil penalty provided for herein is a penalty within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal law.

10. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

11. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.



12. The Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order (“CA/FO”) in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

13. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

14. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

15. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

16. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, Commonwealth of Puerto Rico or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, Commonwealth of Puerto Rico or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

17. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

18. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, their officers/officials, agents, authorized representatives and successors or assigns.

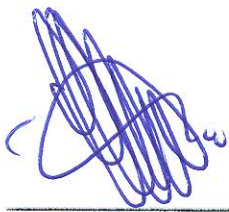
19. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

20. Each party hereto agrees to bear its own costs and fees in this matter.

21. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

22. Each signatory of this Consent Agreement certifies that he or she is duly and fully authorized to enter into the terms of this Consent Agreement and to legally bind the party on behalf of which he or she signs this Consent Agreement.

**RESPONDENT:**



\_\_\_\_\_  
**Eduardo Varón**, President  
Technical Industrial Sales, Inc.

**DATE:** 7/16/2013

**COMPLAINANT:**



\_\_\_\_\_  
**Dore LaPosta**, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

**DATE:** JULY 21, 2013



FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b)



Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

DATE: July 30, 2013

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the below-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Hand:

Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency –Region 2  
290 Broadway  
16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by Pouch Mail:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Copy by Certified Mail,  
Return Receipt Requested:

Lisa M. Santiago Ruiz, Esq.  
Attorney for Technical Industrial Sales, Inc.  
#300 Avenida La Sierra, Apt. 172  
San Juan, Puerto Rico 00926

Dated: \_\_\_\_\_

AUG - 1 2013

