



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 5, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 6810

Ms. Tonya C. O'Neill
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

Consent Agreement and Final Order In the Matter of
Kleen Test Products Corporation, Inc., Docket No. FIFRA-05-2014-0026

Dear Ms. O'Neill:

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 5, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,750 is to be paid in the manner described in paragraphs 37 and 38. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by September 4, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Kleen Test Products Corporation)
Mequon, Wisconsin,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2014-0026
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

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, U.S. Environmental Protection Agency, Region 5 (EPA).
3. The Respondent is Kleen Test Products Corporation (Kleen Test), which is a subsidiary of Meridian Industries, 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 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 in full compliance with FIFRA.

Statutory and Regulatory Background

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

11. Section 2(q)(1)(A), 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “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. *See* 40 C.F.R. 156.10(a)(5)(i).

12. Section 2(q)(2)(B)(iii), 7 U.S.C. § 136(q)(2)(B)(iii), defines a pesticide as misbranded if there is not affixed to its container or wrapper of the retail package a label bearing the net weight or measure of the content.

13. 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).

14. 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.”

15. A “pest,” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA.

16. A “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor 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. § 136(a)(1), and 40 C.F.R. Part 19.

General Allegations

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

19. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

20. At all times relevant to the CAFO, Respondent owned or operated a place of business located at 5600 West County Line Road, Mequon, Wisconsin 53092.

21. Respondent produces pesticides at this producing establishment.

22. EPA has assigned EPA establishment number (EPA Est. No.) 8251-WI-05 to Respondent’s producing establishment, located at 5600 West County Line Road, Mequon, Wisconsin.

23. Respondent produces **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144 at its producing establishment, located at 5600 West County Line Road, Mequon, Wisconsin.

24. **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about September 23, 2010, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s place of business.

26. During the September 23, 2010, the inspector collected physical samples of the pesticide product, **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144, which Respondent produced and was holding for distribution or sale.

27. The label of the physical sample of **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144 did not bear the net contents of the product.

28. On or about December 20, 2010, the WDATCP completed a formulation analysis of the sample of **Gymwipes Antibacterial**, EPA. Reg. No. 1839-178-82144, lot number 0266 12:18 601-67 8251-WI-05, that was collected during the September 23, 2010 inspection.

29. The WDATCP’s analysis of the sample of **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144, collected during the September 23, 2010 inspection showed that the total concentration of quaternary ammonium compounds was .219%.

30. The label of **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144, states that the pesticide product contains a total concentration of quaternary ammonium compounds of .133%.

Count 1

31. Complainant incorporates paragraphs 1 through 30 of this CAFO, as if set forth in this paragraph.

32. On September 23, 2010, Respondent distributed or sold a pesticide, **Gymwipes**

Antibacterial, EPA Reg. No. 1839-178-82144, that was misbranded as that term is defined by Sections 2 (q)(1)(A) and 2(q)(2)(B)(iii), 7 U.S.C. §§ 136(q)(1)(A) and 136(q)(2)(B)(iii).

33. Respondent's distribution or sale of **Gymwipes Antibacterial**, EPA Reg. No. 1839-178-82144 on or about September 23, 2010, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

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

Civil Penalty And Other Relief

35. 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.

36. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$3,750.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,750 civil penalty for the alleged 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "In the Matter of Kleen Test Products Corporation," and the docket number of this CAFO.

38. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address and the case docket 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

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

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

40. If Respondent does not pay the civil penalty in a timely manner, 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.

41. 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

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

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

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

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

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

47. 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.

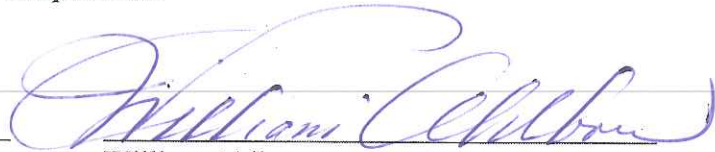
48. Each party agrees to bear its own costs and attorney's fees, in this action.

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

In the Matter of:
Kleen Test Products Corporation

Kleen Test Products Corporation, Respondent

06-16-14
Date



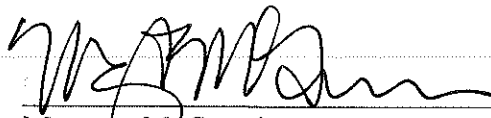
William Ahlborn,
President,
Kleen Test Products Corporation

FCD Reviewed

**In the Matter of:
Kleen Test Products Corporation**

United States Environmental Protection Agency, Complainant

7/15/2014
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Kleen Test Products Corporation
Docket No. FIFRA-05-2014-0026

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.

7-28-2014
Date



Susan Hedman
Regional Administrator
U.S. 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 Kleen Test products Corporation, was filed on August 5, 2014, 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 7649 6810, a copy of the original to the Respondent:

Ms. Tonya C. O'Neill
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, 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

Docket No. **FIFRA-05-2014-0026**