



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**JAN 04 2011**

EXPRESS MAIL

Lawrence Culleen, Esq.  
Arnold & Porter, LLP  
555 Twelfth Street, NW  
Washington, D.C. 20004

Re: In the Matter of Reckitt Benckiser  
FIFRA-02-2011-5104

Dear Mr. Culleen:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce H. Aber  
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk  
Marcedius Jameson, NJDEP

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
2011 JAN -4 P 3:40  
REGIONAL HEARINGS  
LAWRENCE CULLEEN

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 JAN -11 P 3:40  
REGIONAL HEARING  
CLERK

In the Matter of

Reckitt Benckiser Inc.  
Respondent,

Proceeding Under the Federal  
Insecticide, Fungicide and  
Rodenticide Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2011-5104

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this

CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Reckitt Benckiser Inc. (hereinafter "Reckitt" or "Respondent"), a Delaware corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent "distributed or sold" within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
4. Respondent is a registrant that maintains and/or operates an "establishment" as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 399 Interpace Parkway, Parsippany, N.J. 07054.
5. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.

6. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
7. Respondent is a “producer” within the meaning of Section 2(w), 7 U.S.C. Section 136(w).
8. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
9. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), as “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.”
10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 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 that is misbranded.
11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. Section 136(q)(1)(E), states that a pesticide is misbranded if any word, statement, or other information required to appear on the label is not prominently placed thereon with such conspicuousness

as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. EPA's regulations at 40 C.F.R. Sections 156.10(a)(1)&(2) describe labeling requirements for pesticide products and state that all words, statements or other information must be clearly legible to a person with normal vision, and must not be obscured.
13. Section 7(a) of FIFRA, 7 U.S.C. Section 136e(a), states that no person shall produce any pesticide in any State unless the establishment in which it is produced is registered with EPA.
14. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. Section 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear an EPA producing establishment registration number.
15. EPA's regulation at 40 C.F.R. Section 156.10(a)(1)(v) states that the label must show clearly and prominently the producing establishment number as prescribed in 40 C.F.R. Section 156.10(f).
16. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. Section 136j(a)(1)(F), states that it shall be unlawful for any person in any state to distribute or sell to any person any device that is misbranded.

17. EPA's regulation at 40 C.F.R. Section 152.500(a) defines a "device" as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest.
18. Pursuant to EPA's regulation at 40 C.F.R. Section 152.500(b), a device is subject to the requirements of FIFRA, including labeling, establishment registration and reporting.
19. On or about February 15, 2008, the Georgia Department of Agriculture conducted a marketplace inspection in K-Mart in Cartersville, Georgia. During the inspection, the inspectors found the following pesticide products: Lysol Disinfectant Cleaner (EPA Reg. No. 777-89) Pacific Fresh (blue color), Lysol Disinfectant Cleaner (EPA Reg. No. 777-89) Orange Breeze (orange color), and Lysol Disinfectant Cleaner (EPA Reg. No. 777-89) Island Berries (purple color).
20. The label on each of the above-mentioned Lysol Disinfectant Cleaner products was double sided, with one side attached to the front of the container and the back of the label to be read through the liquid pesticide cleaner.
21. The backs of the labels for the above-mentioned Lysol Disinfectant Cleaner products were difficult to read, because of the coloring of the liquid pesticides.

22. With respect to the abovementioned Lysol Disinfectant Cleaner pesticide products, EPA found that the words, statements or other information were not clearly legible to a person with normal vision, and the label's directions and information were obscured. Therefore, the Lysol Disinfectant Cleaner pesticide products were misbranded within the meaning of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).
23. On or about May 6, 2009, the North Carolina Department of Agriculture conducted a marketplace inspection at Food Lion in Wallace, North Carolina. During the inspection, the inspectors found rat and mouse trap devices labeled as follows: "d-Con Flat Glue Trap Traps Mice" and "d-Con Rat and Mouse Glue Traps Traps Rats & Mice."
24. EPA interprets each of the above glue trap products to be "devices" within the meaning of 40 CFR 152.500(a).
25. The labels on both of the above products listed the producer as "Reckitt Benckiser Inc."
26. The labels on both of the above products did not include an EPA producer establishment registration number, as required by 40 CFR 152.500(b) and 40 CFR 156.10(f). Therefore, the "d-Con Flat Glue Trap" and "d-Con Rat and Mouse

Glue Trap” devices were misbranded within the meaning of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. Section 136j(a)(1)(F).

27. During 2009, the Respondent distributed or sold the above misbranded pesticides and devices to various persons on numerous occasions, in violation of section 12(a)(1)(E) & (F) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E) & (F).

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Sections 22.13(b) and 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. §§ 22.13(b) and 22.18, it is hereby agreed that:

1. 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.
2. Respondent’s signatory certifies on behalf of the Respondent that: (1) Respondent, as of the date of its execution of this Consent Agreement, has relabeled all existing stock and new production of the pertinent Lysol Disinfectant Cleaner pesticide products identified in paragraph 19 of the Findings of Fact section, above, so that the statements, words and/or information on the label are

clearly legible to a person with normal vision, and the label's directions and information are not obscured; and (2) Respondent has relabeled existing stock and new production of the "d-Con Flat Glue Trap" and "d-Con Rat and Mouse Glue Trap" devices indicated in paragraph 23 of EPA's Findings of Fact and Conclusions of Law section, above, so that they have an EPA producer establishment number on the label.

3. If in the future EPA believes that any information certified to, pursuant to paragraph 2, above, of the Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA or correct any alleged untrue or inaccurate certification. If, after consideration of Respondent's reply, EPA determines that the certification(s) is untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$25,000 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.
4. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Sixty-Three Thousand Dollars (\$63,000) in settlement of this case. If payment is by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America."

The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Reckitt Benckiser, Inc., Docket No. FIFRA-02-2011-5104.

The check shall be mailed to:

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 the remitter bank (Federal Reserve Bank of New York):

- A) Amount of Payment (\$63,000.00)
- 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 (Reckitt Benckiser, Inc.)
- G) Case Docket Number (FIFRA-02-2011-5104)

Respondent shall also send a proof of the payment to:

Bruce Aber  
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

The check must be received at the above address, or the EFT must be received by the Federal Reserve Bank of New York, on or before 45 calendar days after the date of the Regional Administrator's signature on the Final Order, which is located at the end of this CA/FO (the date by which 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 the 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.
- d. If Respondent fails to pay the civil penalty within thirty (30) days of its due date, Respondent shall also be liable to the United States for an additional stipulated penalty of Twenty Five Thousand Dollars (\$25,000) for such failure unless, on or before the due date, Respondent has submitted to EPA a writing that demonstrates to EPA's satisfaction good cause for such failure, as provided in paragraph 5 of this Consent Agreement.
- e. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

5. Unless Respondent provides EPA with a written explanation in accordance with subparagraph 6, below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed to Respondent via its counsel, Lawrence E. Culleen, Esq., Arnold & Porter LLP, 555 Twelfth Street, NW, Washington, D.C. 20004. All stipulated penalty payments shall be made by cashier's or certified check or EFT in accordance with the payment instructions in Paragraph 4 of this Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 *et seq.* or any other applicable law. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

6. After receipt of a demand from EPA for stipulated penalties pursuant to paragraphs 3 and 4 above, Respondent shall have fifteen (15) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 7, below, EPA shall evaluate the written explanation provided by the Respondent.
  
7. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated

penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

8. At any time prior to Respondent's payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify Respondent in writing of any such action.
9. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 1361(a), to commence a civil administrative proceeding for the allegations in the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies any allegations in the EPA Findings of Fact and Conclusions of Law contained herein.
10. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, state or local law.

11. 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, any applicable stipulated penalty that becomes due, and the accuracy of the Respondent's representations in this proceeding) the civil and administrative claims alleged in this Consent Agreement. 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.
12. 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.
13. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any applicable stipulated penalties in accordance with the terms of this Consent Agreement.

14. 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.
15. The Respondent agrees not to contest the validity or any term of this 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.
16. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.
17. 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.
18. 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,

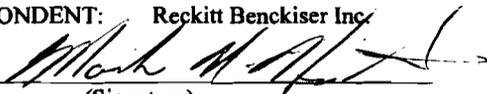
or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state 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.
20. 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.
21. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

22. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.
23. 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.
24. Each party hereto agrees to bear its own costs and fees in this matter.
25. 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.
26. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

**In the Matter of Reckitt Benckiser Inc. FIFRA-02-2011-5104**

RESPONDENT: Reckitt Benckiser Inc.

BY:   
(Signature)

NAME: Mark St. Hartman

TITLE: VP & General Counsel

DATE: 17 DEC 2010

**In the Matter of Reckitt Benckiser Inc., FIFRA-02-2011-5104**

COMPLAINANT:

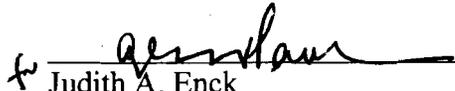
  
\_\_\_\_\_  
Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

DATE: December 22, 2010

**In the Matter of Reckitt Benckiser Inc., FIFRA-02-2011-5104**

FINAL ORDER

The Regional Administrator 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. 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.

  
for Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007

DATE: December 24, 2010

**In the Matter of Reckitt Benckiser Inc., FIFRA-02-2011-5104**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

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

Copy by Certified Mail/  
Return Receipt Requested:

Lawrence E. Culleen, Esq.  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, D.C. 20004

**JAN 04 2011**

Dated: \_\_\_\_\_, ~~2010~~  
New York, New York

  
Mildred N. Bae