



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
January 16, 2015

REPLY TO THE ATTENTION OF:  
LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8203

Tietje, Mullet & Klink, Inc.

P.O. Box 3068

Bakersville, Ohio 43803

Consent Agreement and Final Order In the Matter of  
Tietje, Mullet & Klink, Inc. Docket No. FIFRA-05-2015-0021


Dear Mr. Tietje, Mullet & Klink, Inc.

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 January 16, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,750 is to be paid in the manner described in paragraph 30. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 17, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

  
for Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

In the Matter of: )  
)  
Tietje, Mullet & Klink, Inc. )  
Bakersville, Ohio, )  
)  
Facilities: )  
)  
28003 Township Road 101 )  
Newcomerstown, Ohio, )  
)  
and )  
)  
28646 CR 97 )  
Newcomerstown, Ohio, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2015-0021

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 (EPA), Region 5.
3. Respondent is Tietje, Mullet & Klink, Inc., a corporation doing business in the State of Ohio.

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. §§ 136-136y.

#### **Statutory and Regulatory Background**

10. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states that it is unlawful for any person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a) or 136q.

11. Pursuant to the authority given the EPA Administrator in Sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and 136w, on August 16, 2006, EPA promulgated the Pesticide Management and Disposal standards for Pesticide Containers and Containment Final Rule, 71 *Fed. Reg.* 47220 under 40 C.F.R. Parts 9, 156 and 165.

12. 40 C.F.R. § 165.70(e) requires that refillers who are not registrants have all of the following items at their establishment before repackaging a pesticide product into any refillable

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

**Factual Allegations and Alleged Violations**

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

19. Respondent owned or operated places of business located at 28003 Township Road 101 in Newcomerstown, Ohio, and at 28646 CR 97 in Newcomerstown, Ohio, during the 2012 calendar year (the Facilities).

20. On July 10, 2012, inspectors authorized to conduct inspections under FIFRA conducted inspections at Respondent’s Facilities.

**Count I**

21. During the July 10, 2012 inspection, the inspectors observed that Respondent repackaged and distributed or sold the pesticide Keystone Herbicide (EPA Reg. No. 62719-368).

22. Respondent is not the registrant of Keystone Herbicide (EPA Reg. No. 62719-368).

23. The EPA alleges Respondent did not have the registrant’s written refilling residue removal procedures for the pesticide Keystone Herbicide (EPA Reg. No. 62719-368), and did not have the registrant’s written description of acceptable containers for this pesticide product.

24. The repackaging and distribution or sale of the pesticide Keystone Herbicide (EPA Reg. No. 62719-368) without having the registrant’s written refilling residue removal procedures for this pesticide product, and without having the registrant’s written description of acceptable containers for this pesticide product, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

**Count II**

25. During the July 10, 2012 inspection, the inspectors observed that Respondent repackaged and distributed or sold the pesticide Cinch (EPA Reg. No. 352-624).

container for distribution or sale:

- (1) A written contract from the pesticide registrant;
- (2) The pesticide product's label and labeling;
- (3) The registrant's written refilling residue removal procedure for the pesticide product; and
- (4) The registrant's written description of acceptable containers for the pesticide product.

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. A "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

15. A "pest" is 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 (see Section 2(t) of FIFRA, 7 U.S.C. § 136(t)), which the EPA Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

17. The EPA Administrator 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

26. Respondent is not the registrant of Cinch (EPA Reg. No. 352-524).

27. The EPA alleges Respondent did not have the registrant's written refilling residue removal procedures for the pesticide Cinch (EPA Reg. No. 352-624), and did not have the registrant's written description of acceptable containers for this pesticide product.

28. The repackaging and distribution or sale of the pesticide Cinch (EPA Reg. No. 352-624) without having the pesticide registrant's written refilling residue removal procedures for this pesticide product, and without having the registrant's written description of acceptable containers for this pesticide product, constitutes an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

#### **Civil Penalty**

29. 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 \$4,750. 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 EPA's FIFRA Enforcement Response Policy, dated December 2009.

30. Within thirty (30) days after the effective date of this CAFO, Respondent agrees to pay a \$4,750 civil penalty for the FIFRA violations alleged herein by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

The check must note Respondent's name, complete address and the docket number of this CAFO.

31. Respondent agrees to send a notice of their civil penalty payment that states Respondent's name, complete address, and the case docket number of this CAFO, to the following EPA addressees when it pays the penalty (a copy of the check bearing this information would satisfy this requirement):

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

Terence Stanuch (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

33. If Respondent does not timely pay the civil penalty, 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 such a collection action.

34. 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 thirty (30) days past

due. In addition, Respondent must pay a six percent (6%) per year penalty on any principal amount ninety (90) days past due.

**General Provisions**

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

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

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

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

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

40. 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.

41. Each party agrees to bear its own costs and attorneys' fees, in this action.

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

**Tietje, Mullet & Klink, Inc., Respondent**

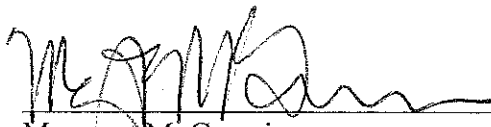
11/10/2014  
Date

Larry M. Tietje, President  
Larry Tietje  
President  
Tietje, Mullet & Klink, Inc.  
Bakersville, Ohio



**United States Environmental Protection Agency, Complainant**

1/7/2015  
Date


  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region 5

**In the Matter of:**  
**Tietje, Mullet & Klink, Inc.**  
**Docket No. FIFRA-05-2015-0021**

**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, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

1/12/2015  
Date

  
\_\_\_\_\_  
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 Tietje, Mullet & Klink, Inc., was filed on January 16, 2015, 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. 7011 1150 0000 2643 8203, a copy of the original to the Respondent:

Tietje, Mullet & Klink, Inc.  
P.O. Box 3068  
Bakersville, Ohio 43803

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Terence Stranuch, Assistant Regional Counsel, 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-05-2015-0021**