



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 16 2009

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0182 9801

Mr. Brian Weekley
Bugg Products, LLC
630 Lanewood Lane
Plymouth, MN. 55447

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0008

Dear Mr. Weekley:

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 March 16, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 39 and 40. Please be certain that the number **BD 2750945P007** and the docket number are written on both the transmittal letter and on the check. Payment is due by April 15, 2009 (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

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

[UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2009-0008
)	
Bugg Products, LLC)	Proceeding to Assess a Civil Penalty
Plymouth, Minnesota,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

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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, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Bugg Products, LLC, a limited liability corporation doing business in the State of Minnesota.
4. At all times relevant to this Consent Agreement and Final Order (CAFO), the Respondent had a place of business at 630 Lanewood Avenue, Plymouth, Minnesota.
5. 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 CAFO. 40 C.F.R. § 22.13(b).

6. 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.

7. 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

8. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

9. 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.

Statutory and Regulatory Background

10. 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.”

11. 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).

12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism . . . which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

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

14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. §136a.

15. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 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 if any claims made for it as part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration.

16. Pursuant to 40 C.F.R. § 168.22(a), FIFRA sections 12(a)(1)(A) and (B) make it unlawful for any person to 'offer for sale' any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.

17. The Administrator of U.S. EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(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 owned or operated a place of business located at 630 Lanewood Avenue, Plymouth, Minnesota during the calendar year 2007.

20. On January 16, 2007, Respondent's Internet site, www.buggspray.com, provided the opportunity to purchase Buggspray Insect Repellant, EPA Reg. No. 67867-4; Buggslayer Insecticide, EPA Reg. No. 67867-6; and Buggspray Insect Repellant for Biting Flies, EPA Reg.

No. 67867-5.

21. Buggspray Insect Repellant, EPA Reg. No. 67867-4; Buggslayer Insecticide, EPA Reg. No. 67867-6; and Buggspray Insect Repellant for Biting Flies, EPA Reg. No. 67867-5 are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Count I

22. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this Complaint.

23. Respondent distributed Buggspray Insect Repellant on its web site, www.buggspray.com, on January 16, 2007, with the following claims:

(a)“EPA approved protection from encephalitis, West Nile virus, malaria, dengue fever, and Lyme disease.”

(b)“Buggspray Insect Repellants are the only ones on the market, or in the military, that are EPA approved to make the claims below as shown on the EPA stamped, approval label”

(c)“Which Bug Spray is Best? We have rated the various attributes of our products on a scale of 1 to 10 and compared them with the competition to help you choose which one is right for you based on what you think is important . . . “

24. The claims identified in paragraph 23 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondent's product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

25. The claims identified in paragraph 23 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondent's product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Respondent's sale or distribution of the registered pesticide Buggspray Insect Repellant constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that a claim made for this pesticide as a part of its sale or distribution substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count II

27. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this Complaint.

28. Respondent distributed Buggslayer Insecticide on its web site, www.buggspray.com, on January 16, 2007, with the following claims:

(a)“Buggslayer- a super long-lasting residual contact insecticide.”

(b)“If a bug walks on a surface treated with Buggslayer Insecticide, it picks up tiny bits of this extract of chrysanthemum flowers and will eventually die. Yet it is perfectly safe stuff.”

(c)“This formula will prove to be the best insecticide on the market for these reasons:

(1)It is the ONLY concentrated insecticide that is EPA approved for use by consumers for the control of multicolored Asian lady beetles.

(2)It uses the same compound found in the formula used only by professional pest control operators (we have diluted and modified this restricted use pesticide for this purpose).”

(3)“Provides excellent control of MOSQUITOS and lasts 10 times longer than permethrin hose-end sprayers.”

29. The claims identified in paragraph 28 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondent's product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

30. The claims identified in paragraph 28 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondent's product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

31. Respondent's sale or distribution of the registered pesticide Buggslayer Insecticide constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Count III

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 21 of this Complaint.

33. Respondent distributed Buggspray Insect Repellant for Biting Flies on its web site, www.buggspray.com, on January 16, 2007, with the following claims:

(a)“However, this composite formula effectively REPELS: . . . sand flies in Iraq and the Middle East.”

(b)“Which Bug Spray is Best? We have rated the various attributes of our products on a scale of 1 to 10 and compared them with the competition to help you choose which one is right for you based on what you think is important.”

34. The claims identified in paragraph 33 were not approved by the Office of Pesticide Programs, U.S. EPA, in connection with the registration of Respondent's product pursuant to

Section 3 of FIFRA, 7 U.S.C. § 136a.

35. The claims identified in paragraph 33 differ substantially from claims made as part of the statement submitted in connection with the registration of Respondent's product pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

36. Respondent's sale or distribution of the registered pesticide Buggsray Insect Repellant for Biting Flies constitutes an unlawful act pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that claims made for this pesticide as a part of its sale or distribution substantially differ from any claims made for it as a part of the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

Civil Penalty

37. 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 \$1,000, reduced from \$8,124. 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 pay the penalty and 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 [or] U.S. EPA's *Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement*, dated February 10, 1986.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000 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:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

[for checks sent by express mail]

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

39. 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

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

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

40. The check must note Bugg Products, LLC, the docket number of this CAFO and the billing document number.

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

42. 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. § 136(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. 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

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

45. 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.

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

47. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

48. This CAFO is a "final order" pursuant to § 22.31 of the Consolidated Rules and for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

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

50. 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.

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

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

Bugg Products, LLC, Respondent

March 2, 2009
Date

Brian J. Weekley
Brian Weekley, President

United States Environmental Protection Agency, Complainant

March 11, 2009
Date

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

**In the Matter of:
Bugg Products, LLC
Docket No. FIFRA-05-2009-0008**

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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.

3-13-09
Date



Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

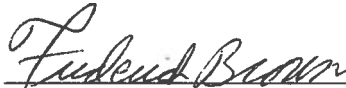
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Bugg Products, LLC, was filed on March 16, 2009 with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9801, a copy of the original to the Respondents:

Mr. Brian Weekley
Bugg Products, LLC
630 Lanewood Lane
Plymouth, MN. 55447

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Joanna Glowacki, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick brown
Pesticides and Toxics Compliance Section
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Chicago, Illinois 60604-3590

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