



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
December 3, 2013

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL: No 7009 1680 0000 7676 4384**  
**RETURN RECEIPT REQUESTED**

Lawrence J. Stark, Esq.  
Stone Pogrud & Kerey LLC  
1 East Wacker Drive Suite 2610  
Chicago, Illinois 60601

Consent Agreement and Final Order In the Matter of  
Dong Kee Co., Inc. Docket No. FIFRA-05-2014-0003

Mr. Stark:

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 December 3, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$500 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by January 3, 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:

Dong Kee Co., Inc.  
Chicago, Illinois

Respondent.



Docket No. FIFRA-05-2014-0003

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 Commencing and Concluding the Proceeding**

**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.
3. Respondent is Dong Kee Company, Inc., a corporation doing business in the State of Illinois.
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 to 136y.

**Statutory and Regulatory Background**

10. 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.

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. 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).

13. 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. 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; the

substance consists of or contains one or more active ingredients and has no significantly commercially valuable use as distributed or sold other than use for pesticidal purpose; or the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose. 40 C.F.R. § 152.15.

15. The Administrator of EPA may assess a civil penalty against any 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. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

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

17. Respondent is a retailer or distributor.

18. Respondent owned or operated a place of business located at 2252 South Wentworth Avenue, Chicago, Illinois, during the calendar years 2006 to 2009.

19. On August 22, 2006, an inspector employed by Illinois Department of Public Health (DPH) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Chicago, Illinois

20. During the August 22, 2006, inspection, the Illinois DPH inspector collected a physical sample and photographs of the product, which Respondent was holding for distribution or sale.

21. The product consisted of a box containing ten coils.

22. The product (hereinafter called “Mosquito Coils”) was named and labeled in Korean. The label states that Mosquito Coils is to be used to kill mosquitoes by burning the “coiled shape.” The label also states that Mosquito Coils contains the insecticide d-trans allethrin and bore an

image of a dead mosquito. No EPA registration number appeared on the label.

23. Mosquito Coils is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. During the August 22, 2006, inspection, the Illinois DPH inspector issued to Respondent a Stop Sale/Use Order ordering Respondent to “cease and desist the sale of unregistered and misbranded product,” referring to Mosquito Coils.

25. On January 22, 2007, EPA issued a Notice of Warning to Respondent for the sale and distribution of an unregistered pesticide, Mosquito Coils.

26. On July 1, 2009, an inspector employed by Illinois Department of Public Health and authorized to conduct inspections under FIFRA conducted a second inspection at Respondent’s place of business in Chicago, Illinois.

27. During the July 1, 2009, inspection, the Illinois DPH inspector collected a physical sample and photographs of Mosquito Coils, which Respondent again was holding for distribution or sale.

#### **Count I**

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

29. Respondent offered for sale, held for sale, and held for distribution Mosquito Coils on July 1, 2009.

30. Mosquito Coils were not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 1, 2009.

31. Respondent’s distribution or sale of the unregistered pesticide Mosquito Coils constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Civil Penalty**

32. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$500. 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 *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009.

33. Within 30 days after the effective date of this CAFO, Respondent must pay a \$500 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  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

[for checks sent by express mail]

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

The check must note Dong Kee Co., Inc. and the docket number of this CAFO.

Alternatively, Respondent may pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

[for electronic funds transfer]

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Dong Kee Co., Inc., and the docket number of this CAFO.

34. 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 transmittal letter to:

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

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

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

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

36. If Respondent does not pay the civil penalty timely, 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.

37. 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**

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

39. 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.

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

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

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

43. 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.

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

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



**Dong Kee Co., Inc., Respondent**

10/28/13  
Date

Betty Wong  
Betty Wong  
President  
Dong Kee Co., Inc.

**United States Environmental Protection Agency, Complainant**

11/22/2013  
Date


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

**In the Matter of:**  
**Dong Kee Co., Inc.**  
**Docket No. FIFRA-05-2014-0003**

**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.

11/27/13  
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 Dong Kee Co., Inc., was filed on December 3, 2013, 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 7676 4384, a copy of the original to the Respondent:

Lawrence J. Stark, Esq.  
Stone Pogrud & Kerey LLC  
1 East Wacker Drive Suite 2610  
Chicago, Illinois 60601

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Reginald A Pallesen, 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-05-2014-0003

