

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of:</b>	<b>: Consent Agreement and : Final Order</b>
Misco Products Corporation	<b>: U.S. EPA Docket Number</b>
1048 Stinson Drive	<b>: FIFRA-03-2015-0193</b>
Reading, PA 19605,	<b>: : Proceeding Under Section 14 of the</b>
<b>Respondent.</b>	<b>: Federal Insecticide, Fungicide and : Rodenticide Act, as amended, 7 : U.S.C. § 136l</b>

REGIONAL HEARINGS CLERK  
EPA REGION III PHILA. PA

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**CONSENT AGREEMENT**

**Preliminary Statement**

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and by Misco Products Corporation (“Respondent”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits (“Consolidated Rules of Practice”)*, 40 C.F.R. §§ 22.13(b) and 22.18(b). This Consent Agreement (“CA”) and the attached Final Order (collectively, “CAFO”) resolve Complainant's civil penalty claims against the Respondent arising from the violations of FIFRA alleged herein.

In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in the Findings of Fact and Conclusions of Law of this Consent Agreement.

**Jurisdiction**

1. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l; 40 C.F.R. Part 156; and 40 C.F.R. §§ 22.1(a)(1) and 22.4.

General Provisions

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Except as provided in paragraph 2 herein, for purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency (“EPA”) with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of this CAFO.
5. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
7. Respondent shall bear its own costs and attorney’s fees.
8. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA’s Findings of Fact and Conclusions of Law

9. In accordance with Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the following findings of fact and conclusions of law:
10. Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), authorizes EPA to prescribe regulations to carry out the provisions of FIFRA.
11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
12. Respondent is a corporation, with a principal place of business located at 1048 Stinson Drive, Reading, Pennsylvania.
13. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
14. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to “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.

15. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
16. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” includes “viruses, bacteria, or other micro-organisms. . . .”
17. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” means, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
18. Pursuant to 40 C.F.R. § 152.15, “[a] substance is considered to be intended for a pesticidal purpose . . . if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide . . . .”
19. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15, anyone (“Registrant”) who is going to distribute or sell a pesticide for a pesticidal purpose to any person must register that pesticide with EPA.
20. In order to register a pesticide, Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C), requires the Registrant to submit, among other things, a complete copy of the pesticide’s labeling.
21. In accordance with Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), EPA will register the pesticide if, among other things, the labeling meets the requirements of FIFRA.
22. In accordance with Section 3(b)(1) of FIFRA, 7 U.S.C. § 136a(b)(1), and 40 C.F.R. §§ 152.30(b) and 152.132, a registered pesticide may be distributed or sold using another person's name and address instead of (or in addition to) the Registrant’s own.
23. In accordance with 40 C.F.R. 152.132, if the Registrant distributes or sells his registered product under another person's name and address instead of (or in addition to) his own, the distribution and sale is termed a “supplemental distribution” and the pesticide is referred to as a “distributor product.”
24. 40 C.F.R. 152.132(d) requires that the label of the distributor product be the same as (with some minor exceptions) the label the Registrant submitted to EPA to register the pesticide.
25. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

Count I  
(Distribution or Sale of a Misbranded Pesticide)

26. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
27. Microgen, Inc. is the primary registrant for the pesticide "D-125" (EPA Reg. No. 61178-1).
28. Fiberlock Technologies, Inc. ("Fiberlock") has an agreement with Microgen to distribute or sell the pesticide "D-125" under the name "Shockwave" (EPA Reg. No. 61178-1-73884).
29. Respondent distributes or sells "Shockwave" on behalf of Fiberlock.
30. At all times relevant to the violations alleged herein, the label that Respondent placed on containers of Shockwave bore the following language:

HOSPITAL DISINFECTANT, BROAD SPECTRUM CLEANER &  
DISINFECTANT, HIV & HBV VIRUCIDE, KILLS COMMON HOUSEHOLD  
GERMS, CARPET SANITIZER AGAINST ODOR CAUSING BACTERIA,  
CLEANER DISINFECTANT, SANITIZER, DETERGENT, FUNGICIDE,  
DEODORIZER, VIRUCIDE, MILDEWSTAT.

31. The language described in Paragraph 30 claims, states or implies that Shockwave can or should be used as a pesticidal product within the meaning of 40 C.F.R. § 152.15.
32. As a result of the language described in Paragraph 30 that claims, states or implies that Shockwave is a pesticidal product, at all times relevant to the violations alleged herein, Shockwave was a "pesticide" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
33. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is "misbranded" if, *inter alia*, the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.
34. On August 26, 2009, EPA accepted the label submitted by Microgen for D-125 ("EPA-Accepted Label").
35. As the result of a June 5, 2012 inspection of the Respondent's facility and subsequent information submitted by the Respondent, EPA obtained the Shockwave pesticide label ("Collected Label").
36. The Collected Label during the June 5, 2012 inspection for the pesticide "Shockwave" is misbranded in the following ways:

**In the Matter of:**

Misco Products Corporation  
EPA Docket No. FIFRA-03-2015-0193

- a. The Precautionary Statements section in the Collected Label does not match the EPA Accepted Label. Under the subheading “KEEP OUT OF REACH OF CHILDREN”, the Collected Label is missing the following underlined statements: Wear protective clothing and rubber gloves... Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove contaminated clothing and wash before reuse."
- b. The Container Disposal section in the Collected Label does not match the EPA Accepted Label. The Collected Label is missing the following underlined statements: "Triple rinse container (or equivalent) promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a tank mix and drain for 10 seconds after the flow begins to drip. Fill the container ¼ full with water and recap. Shake for 10 seconds. Discard rinsate. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. Nonrefillable container. Do not reuse or refill this container. Offer for recycling if available."
- c. The Directions for Use for “Meat/Poultry/Food Processing plants” in the Collected Label do not specifically match any of the sections on the EPA Accepted Label.
- d. The Directions for Use under the section titled “DISINFECTION” in the Collected Label do not specifically match any of the sections on the EPA Accepted Label.
- e. The Directions for Use under the section titled “MILDEWSTAT” in the Collected Label do not specifically match any of the directions for use in control of mildew on the EPA Accepted Label.
- f. The Directions for Use under the section titled “CLEANING AND DEODORIZATION” in the Collected Label do not match the directions for General Deodorization on the EPA Accepted Label. Additionally, this section in the Collected Label appears to focus on garbage related items and does not include the directions for “Deodorizing Garbage Cans, Garbage Trucks, Industrial Waste Receptacles and Garbage Handling Equipment”.
- g. Under the section titled “Fungicide” the following underlined language, found on the EPA Accepted Label, is missing from the Collected Label: At 2 ounces per gallon use-level, is effective against the pathogenic fungus Trichophyton mentagrophytes on inanimate surfaces in the presence of 5% organic soil load and 300 ppm water hardness as CaCO<sub>3</sub> in...
- h. Under the Section titled “SPECIAL INSTRUCTIONS FOR CLEANING AND DECONTAMINATION AGAINST HBV AND HIV-1 ON SURFACES/OBJECTS SOILED WITH BLOOD/BODY FLUIDS” and the subtitle “PERSONAL PROTECTION”, personal protection items are listed on the

EPA Accepted Label as “latex gloves, gowns, masks and eye coverings” whereas the Collected Label states “latex gloves, gowns, masks or eye coverings”. The EPA Accepted Label indicates that “eye coverings” are not optional.

- i. Under the section titled “DISPOSAL OF INFECTIOUS MATERIALS”, the following underlined language is missing from the Collected Label: Blood and other body fluids, cleaning materials and clothing *must* be autoclaved and disposed of according to Federal, State and local regulations for infectious waste disposal. Additionally, the word “should” is used on the Collected Label where the EPA Accepted Label uses “must”.
  - j. In the paragraph preceding the section titled “Sanitization - Food Contact Surfaces” the following underlined language, found on the EPA Accepted Label, is missing from the Collected Label: “This product is an effective sanitizer when diluted in tap water with a contact time of 1 minute”.
  - k. Under the section titled “Sanitization - Food Contact Surfaces” the first item on the Collected Label does not match the EPA Accepted Label. The Collected Label reads “Scrape and pre-wash utensil, glassware, cookware, and dishware.” while the EPA Accepted Label reads “Remove gross food particles and soil from utensils, glassware, cookware and dishware by a preflush, or pre-scrape and when necessary, pre-soak.”
  - l. Under the section “SANITATION - FOOD CONTACT IMMOBILE SURFACES”, item 6, the word “should” is used on the Collected Label where the EPA Accepted Label uses “must”.
  - m. The Collected Label section titled “CARPET SANITIZER AGAINST ODOR-CAUSING BACTERIA, FOR HOME, INSTITUTIONAL, INDUSTRIAL AND HOSPITAL USE” does not match the EPA Accepted Label that uses the word “DEODORIZER” in the place of “SANITIZER”. Additionally the Collected Label states, “This product sanitizes the carpet by controlling/reducing the growth of odor-causing bacteria.” whereas the EPA Accepted Label states, “This product cleans and deodorizes the carpet (by controlling/reducing the growth of odor causing bacteria)”.
  - n. The introduction to the section listing microorganisms does not match the EPA Accepted Label. The Collected Label states: “This product is effective against the following microorganisms: Contact time is 10 minutes unless noted as below.” Whereas the EPA Accepted Label states: “Disinfection Performance: At 2 ounces of this product to one gallon of water use level, this product is bactericidal and fungicidal on hard inanimate surfaces modified in the presence of 5% organic serum with a 10 minute contact time against:”.
37. On two (2) occasions in between June 5, 2011 and June 5, 2012, Misco distributed and/or sold Shockwave to a person.

38. Respondent's distributions and/or sales of the pesticide Shockwave on at least two occasions constitute two separate unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

39. In settlement of the above-captioned action including Count I, Respondent consents to the assessment of a civil penalty of twelve thousand dollars (\$12,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not seek to recover interest on any amount of the penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue.
40. For the purposes of this CAFO only, the Parties represent that the settlement terms of this Consent Agreement are reasonable.
41. The Complainant states that the settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, the gravity of the violation, and the Respondent's good faith efforts. The Complainant applied these factors to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, and Rodenticide Act* and 40 C.F.R. Part 19.
42. Payment of the civil penalty amount required under the terms of Paragraph 39, above, shall be made as follows:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, FIFRA-03-2015-0193;
  - b. All checks shall be made payable to "United States Treasury";
  - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

US Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Craig Steffen 513-487-2091

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W ML King Drive  
Cincinnati, OH 45268-0001

- f. All electronic payments made through Fedwire (generally for foreign payments) shall be directed to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: US Environmental Protection Agency

- g. All electronic payments made through the automated clearinghouse (ACH) using the US Treasury's Vendor Express Program shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact customer assistance at the closest Regional Finance Center for more information about Vendor Express. See <http://fms.treas.gov/aboutfms/locations.html> for the locations of centers.



h. On-Line Payment Option for credit and debit card payments:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

43. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy  
Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Philip Yeany  
Sr. Asst. Regional Counsel (3RC50)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

44. The person signing this CA on behalf of the Respondent certifies to Complainant that, upon investigation, to the best of their knowledge and belief, the Respondent is in compliance with all applicable requirements of FIFRA, 7 U.S.C. § 136 *et seq.*

Other Applicable Laws

45. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations nor does this CAFO constitute a waiver, suspension or modification of the requirements of FIFRA, 7 U.S.C. § 136 *et seq.*, or any regulations promulgated thereunder.

Reservation of Rights

46. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition that EPA determines may present an imminent and substantial endangerment to the public health,

public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

47. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

48. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date


49. The effective date of this CAFO is the date on which the Consent Agreement and the Final Order, signed by the Regional Administrator, EPA, Region III, or his designee, the Regional Judicial Officer, are filed with the Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

Entire Agreement

50. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CA and the attached Final Order.

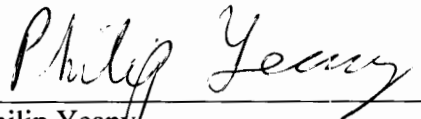
For Respondent:

9/10/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Benjamin J. Gable  
Executive Vice President

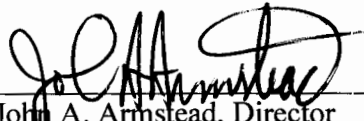
For Complainant:

9/22/15  
Date

  
Philip Yeany  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

9.23.15  
Date

  
John A. Armstead, Director  
Land and Chemicals Division  
U.S. EPA, Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

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<b>In the Matter of:</b>	:	<b>Consent Agreement and</b>
	:	<b>Final Order</b>
Misco Products Corporation	:	
1048 Stinson Drive	:	<b>U.S. EPA Docket Number</b>
Reading, PA 19605,	:	<b>FIFRA-03-2015-0193</b>
	:	
	:	<b>Proceeding Under Section 14 of the</b>
	:	<b>Federal Insecticide, Fungicide and</b>
	:	<b>Rodenticide Act, as amended, 7</b>
<b>Respondent.</b>	:	<b>U.S.C. § 136l</b>
	:	

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**FINAL ORDER**

Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Misco Products Corporation ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits*, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

**NOW, THEREFORE, PURSUANT TO** 40 C.F.R. § 22.18(b)(3) and Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein is based upon a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of twelve thousand dollars (\$12,000.00), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this FINAL ORDER

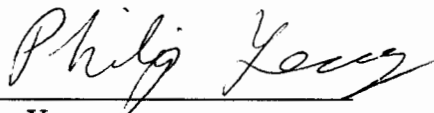
**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order and the accompanying memorandum to the Regional Judicial Officer. I sent a copy of these documents to the following individual in the manner described below:

By certified mail, return receipt requested:

David J. Parsells, Esq.  
Stevens & Lee  
620 Freedom Business Center, Suite 200  
King of Prussia, PA 19406

Date: 9/29/15

  
Philip Yeany  
Senior Assistant Regional Counsel  
US EPA Region III

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