



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

APR 11 2007

REPLY TO THE ATTENTION OF:
D1-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5799

Mr. Roger Hayes
Claire Manufacturing Company
1005 Westgate Avenue
Addison, Illinois 60101-4468

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0023

Dear Mr. Hayes:

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 April 11, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,960 is to be paid in the manner prescribed in paragraphs 35, 36 and 37. Please be certain that the number BD 2750745P025⁰² and the docket number are written on both the transmittal letter and on the check. Payment is due by May 11, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Joseph G. Lukascyk
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Jacqueline Clark, 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-05-2007-0023
)	
Claire-Sprayway, Inc.)	
d/b/a Claire Manufacturing Company)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
Addison, Illinois)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

2007 APR 11 AM 10:58
REGIONAL CLERK

Consent Agreement and Final Order

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 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 (2005).

2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Claire-Sprayway, Inc. (Claire) d/b/a Claire Manufacturing, a corporation doing business in 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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Claire admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Claire waives any 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

9. 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.”

10. The term “registrant,” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(s), “means a person who has registered any pesticide pursuant to the provisions of this subchapter.”

11. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

12. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in relevant part as to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

13. The regulations at 40 C.F.R. § 152.132 permit a registrant to distribute or sell his registered product under another person's name and address instead of his own if, inter alia, the registrant has submitted to the U.S. EPA for each product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand names to be used, and the registration number of the product.

14. According to 40 C.F.R. § 152.132, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

15. The Administrator of U.S. EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may assess a civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

Factual Allegations and Violations

16. At all times relevant to this Complaint, Respondent has been a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. At all times relevant to this Complaint, Respondent was a registrant within the meaning of the term as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

18. On or about November 15, 1977, Respondent and Murphy Supply Company, Inc. (MSC), located at 4911 Mulhauser Road, Hamilton, Ohio 45011, submitted to U.S. EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (U.S. EPA Form 8570-5), which identifies Respondent as the registrant of "Claire Disinfectant Spray," EPA Reg. No.

706-69, and MSC as the supplemental distributor, whose distributor product brand name is “New Mur-Gly Hospital Disinfectant Deodorant.”

19. “Claire Disinfectant Spray,” EPA Reg. No. 706-69, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

20. The Supplemental Distribution Notice filed with U.S. EPA on or about November 15, 1977 between Respondent and MSC for “Claire Disinfectant Spray,” EPA Reg. No. 706-69, entitles MSC to be considered Respondent’s agent.

21. The number “**15231**” is MSC’s company number as assigned by the U.S. EPA.

22. The number “**15231**,” by its location in the U.S. EPA Registration Numbers, as printed on the product labels, indicates that MSC is a supplemental distributor of the registered pesticide with the U.S. EPA Registration Number 706-69-15231.

23. On March 25, 2002, an inspector employed by the Ohio Department of Agriculture (ODA), and duly authorized to conduct inspections under FIFRA, conducted an inspection at MSC’s establishment located at 4911 Mulhauser Road, Cincinnati, Ohio 45011.

24. During the March 25, 2002 inspection, the ODA inspector collected a physical sample consisting of one -15½ ounce aerosol can of “Murphy Mur-Gly Hospital Type Disinfectant Deodorant,” EPA Reg. No. 706-69-15231.

25. According to evidence obtained by the U.S. EPA, MSC distributed or sold “Murphy Mur-Gly Hospital Disinfectant Deodorant,” EPA Reg. No. 706-69-15231, on or about March 25, 2002.

26. The physical sample that was collected during the March 25, 2002 inspection was shipped to the Ohio Department of Agriculture, Consumer Analytical Laboratory (ODACAL) on March 27, 2002 for analysis.

27. On March 27, 2002 the ODACAL received the physical sample that was collected during the March 25, 2002 inspection.

28. The "Accepted" label of December 27, 2001, which was submitted by Respondent in support of the pesticide product's registration, describes the composition of the product and states that the product contains 0.176% of the active ingredient "o-phenylphenol" and 0.045% of the active ingredient "p-tertiary Amylphenol."

29. According to a laboratory report from the ODACAL, dated August 19, 2002, the physical sample of "Murphy Mur-Gly Hospital Type Disinfectant Deodorant," EPA Reg. No. 706-69-15231, that was submitted to ODACAL contained 0.208% of the active ingredient "o-phenylphenol" and 0.075% of the active ingredient "p-tertiary Amylphenol."

30. On July 17, 2006, U.S. EPA mailed a pre-filing notice letter to Respondent informing it that U.S. EPA intended to file an administrative complaint against Respondent for violations of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), in connection with MSC's sale and distribution of one product whose composition differs from its composition as described in the statement required in connection with the pesticide's registration.

31. Respondent "distributed or sold" pesticides, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) in that the sample collected in Paragraph 24 was obtained from pesticides packaged, labeled, and released for shipment or sale by MSC.

32. Because the active ingredients in MSC's pesticide, "Murphy Mur-Gly Hospital Type Disinfectant Deodorant," EPA Reg. No. 706-69-15231, are greater in concentration than the active ingredients described in the December 27, 2001 "Accepted" label of "Claire Disinfectant Spray," EPA Reg. No. 706-69, MSC's pesticide's composition differs.

33. MSC's sale and distribution of the pesticide "Murphy Mur-Gly Hospital Disinfectant Deodorant," EPA Reg. No. 706-69-15231, whose composition differs from its composition as described in the statement required in connection with its registration, constitutes an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), for which Respondent is liable.

Civil Penalty

34. In consideration of Respondent's attitude and good faith efforts to comply with FIFRA, U.S. EPA agrees to mitigate the proposed penalty of \$4,400.00 to \$3,960.00.

35. Respondent must pay the \$3,960.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

36. Respondent must send the check to:

U.S. EPA Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

37. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Joseph G. Lukascyk (DT-8J)
Pesticides and Toxics Enforcement Section
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Jacqueline Clark (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

38. This civil penalty is not deductible for any local, state, or federal tax purposes.

39. If Respondent does not timely pay the civil penalty, 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. § 136l(a)(5).

40. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

Final Statement

41. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Violations section of this CAFO.

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

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

44. Respondent certifies that it is complying fully with FIFRA, 7 U.S.C. § 136 *et. seq.*

45. The terms of this CAFO bind Claire, and its successors, and assigns.

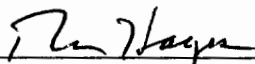
46. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company, Respondent

3-20-07
Date



Roger Hayes
Vice President of Finance
Claire Manufacturing Company

U. S. Environmental Protection Agency, Complainant

3-26-07
Date

Mardi Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides, and Toxics Division

4/5/07
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Waste, Pesticides, and Toxics Division

CONSENT AGREEMENT AND FINAL ORDER

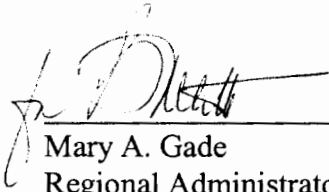
In the Matter of: [Claire-Sprayway, Inc. d/b/a Claire Manufacturing Company]

Docket No. FIFRA-5-[FIFRA-05-2007-0023]

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

4/10/07
Date



Mary A. Gade
Regional Administrator
U. S. 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 Claire Manufacturing Company, was filed on April 11, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5799, a copy of the original to the Respondents:

Mr. Roger Hayes
Claire Manufacturing Company
1005 Westgate Avenue
Addison, Illinois 60101-4468

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jacqueline Clark, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0023**

2007 APR 11 AM 10:58

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604-3590