



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
December 19, 2014

REPLY TO THE ATTENTION OF:  
LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8159

Mr. Gerhardt Beske  
President  
Beskill Chemical Co., Inc.  
W 9701 County Rd. Ste. F  
Fox Lake, Wisconsin 53933

Consent Agreement and Final Order In the Matter of  
Beskill Co. Inc. Docket No. FIFRA-05-2015-0017


Dear Mr. Beske:

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 19, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,290 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 January 19, 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: ) Docket No. FIFRA-05-2015-0017  
)  
Beskill Chemical Co., Inc. ) Proceeding to Assess a Civil Penalty  
Fox Lake, Wisconsin, ) Under Section 14(a) of the Federal  
) Insecticide, Fungicide, and Rodenticide  
Respondent. ) 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, Region 5.

3. Respondent is Beskill Chemical Co., Inc., a corporation doing business in the State of Wisconsin.

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 3(a) of FIFRA, 7 U.S.C. § 136(a), states no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states 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.

12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” as “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.” See also, 40 C.F.R. § 152.3.

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

repelling, or mitigating any pest.” See also, 40 C.F.R. § 152.3.

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines the term “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 micro-organism which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. See also, 40 C.F.R. § 152.5.

16. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA.

17. The Administrator of EPA may assess a civil penalty against any 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**

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

19. At all times relevant to this Complaint, Respondent owned or operated a place of business located at W 9701 County Road Suite F, Fox Lake, Wisconsin.

20. On March 18, 2014, an inspector employed by the Wisconsin Department of Agriculture, Trade and Consumer Protection and authorized to conduct inspections under FIFRA conducted an inspection at Murray’s Dairy Farm & Refrigeration (Murray Dairy & Refrigeration), Inc. at 463 North Washington Street, Lancaster, Wisconsin.

21. During the March 18, 2014 inspection, the inspector collected photographs of Beskill Wik Rub Insecticide Concentrate and an invoice for the shipment of Beskill Wik Rub Insecticide from Respondent’s facility to Murray Dairy & Refrigeration dated February 17, 2014.

22. The label collected during the inspection shows that Beskill Wik Rub Insecticide contained the active ingredients pyrethrins and piperonyl butoxide.

23. Pyrethrins and piperonyl butoxide are known pesticides.

24. Therefore, *Beskill Wik Rub Insecticide Concentrate* is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15

25. *Beskill Wik Rub Insecticide Concentrate* was not registered with the EPA at the time of the March 18, 2014 inspection or the February 7, 2014 shipping invoice, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

26. On or about February 7, 2014, Respondent distributed or sold *Beskill Wik Rub Insecticide Concentrate* to Murray Dairy & Refrigeration.

27. Respondent's distribution or sale of the unregistered pesticide, *Beskill Wik Rub Insecticide Concentrate*, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

28. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. §136l(a).

#### 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 \$2,290. In determining the penalty amount, Complainant considered the appropriateness of the penalty relative 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 30 days after the effective date of this CAFO, Respondent must pay a \$2,290 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to

\$ 2290.00

"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 Beskill Chemical Co., Inc. and the docket number of this CAFO.

Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

32. If Respondent does not pay timely 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 a collection action.

33. 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**

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

35. 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.

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

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

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

39. 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.

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

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

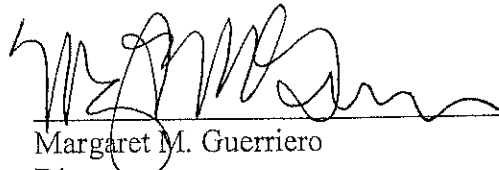
**Beskill Chemical Co., Inc., Respondent**

11-26-14  
Date

Gerhardt J. Beske  
Gerhardt Beske  
President  
Beskill Chemical Co., Inc.

United States Environmental Protection Agency, Complainant

12/10/2014  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division



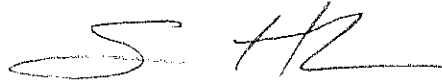
In the Matter of:  
Beskill Chemical Co., Inc.  
Docket No. FIFRA-05-2015-0017

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.

12-17-2014

Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

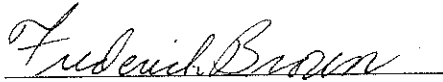
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Beskill Chemical Co. Inc., was filed on December 19, 2014, 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 8159, a copy of the original to the Respondent:

Mr. Gerhardt Beske  
President  
Beskill Chemical Co., Inc.  
W 9701 County Rd. Ste. F  
Fox Lake, Wisconsin 53933

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Steven Kaiser, 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

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