

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

10 JUL 13 AM 8:38  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of )

Brenntag Mid-South )

Respondent )

) Docket No. FIFRA-07-2010-0032  
)  
)  
)  
)  
)

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Brenntag Mid-South, Inc. (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is a pesticide registrant, located at 1405 State Route 136 West, Box 20, in Henderson, Kentucky.

## Section III

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term “registrant” to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.

11. Pesticide registrants may distribute or sell a registered product under another person's name and address instead of (or in addition to) their own. Such distribution and sale is termed “supplemental distribution,” and the product is referred to as a “distributor product,” as stated in 40 C.F.R. § 152.132. As a requirement of supplemental distribution, the label of the distributor product must be the same as that of the registered product, subject to exceptions stated at 40 C.F.R. § 152.132(d)(1) through (5).

12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

**Section IV**

**General Factual Allegations/Violation**

14. Respondent is and, at all times referred to herein, was a "person" within the meaning of FIFRA.

15. Respondent is the registrant for the pesticide Sno-Glo Bleach, EPA Registration Number (EPA Reg. No.) the EPA Reg. No. 6785-20002. Respondent has a supplemental distributor agreement with Meyer Laboratory, Inc. (Meyer), in Blue Springs, Missouri. Under this agreement, Meyer is authorized by Respondent to supplementally distribute its registered pesticide, using the brand name Meyer Sanitizer, EPA Reg. No. 6785-20002-60052.

16. Or or about February 9, 2010, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Meyer's facility at 2401 West Jefferson Street in Blue Springs, Missouri, and collected evidence documenting that Meyer was holding for sale or distribution a quantity of the product Meyer Sanitizer, EPA Reg. No. 6785-20002-60052.

17. The labeling for the product Meyer Sanitizer, EPA Reg. No. 6785-20002-60052, referenced in Paragraph 16, lacked the following required language from the EPA-accepted label for the product registered to Respondent: "If inhaled, Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible."

18. The pesticide product Sno-Glo Bleach, EPA Reg. No. 6785-20002, supplementally distributed as Meyer Sanitizer, EPA Reg. No. 6785-20002-60052, referenced in Paragraph 17, was misbranded in that it was sold or distributed without the required complete labeling for the product.

19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed or sold a misbranded pesticide.

20. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$3,268.80 be assessed against the Respondent.

## Section V

### Consent Agreement

21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

22. Respondent neither admits nor denies the factual allegations set forth above.

23. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

24. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

25. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

26. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

27. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

28. The effect of settlement as described in Paragraph 29 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above.

29. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by EPA.

30. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

31. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

**Section VI**

**Final Order**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Three Thousand Six Hundred and Twenty-Eight Dollars and Eighty Cents (\$3,628.80) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101;

and

Chris R. Dudding  
Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

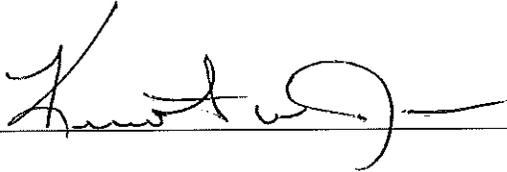
3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
**BRENNTAG MID-SOUTH, INC.**

Date: July 2, 2010

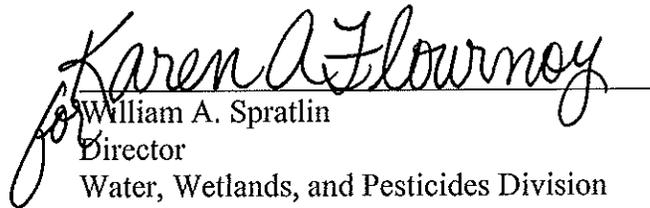
By:

  
\_\_\_\_\_

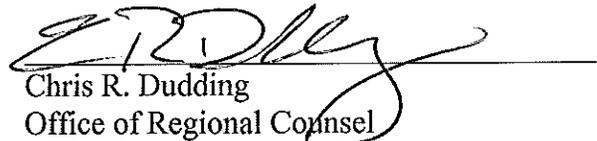
Kenneth W. Jones, Vice President Operations  
Print Name Title

**COMPLAINANT  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 7-12-10

  
for William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date: 7/12/10

  
Chris R. Dudding  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: July 13, 2010

  
\_\_\_\_\_  
ROBERT L. PATRICK  
Regional Judicial Officer

IN THE MATTER OF Brenntag Mid-South, Respondent  
Docket No. FIFRA-07-2010-0032

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris Dudding  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Kenneth W. Jones  
Vice President, Operations  
Brenntag Mid-South, Inc.  
1405 Highway 136 West  
P.O. Box 20  
Henderson, Kentucky 42419-0020

Dated: 7/13/10.

  
Kathy Robinson  
Hearing Clerk, Region 7