



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

MAR 15 2010

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0189 9521

Mr. Roger Kayser
Miami Products & Chemical Company
520 Lonoke Street
Dayton, Ohio 45403

Consent Agreement and Final Order Docket No. FIFRA-05-02009-0015

Dear Mr. Kayser:

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 March 15, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$24,000 is to be paid in the manner described in paragraphs 10 and 11. Please be certain that the number **BD 2751065P008** and the docket number are written on both the transmittal letter and on the check. First payment is due by April 14, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Joseph G. Lukascyk".

Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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|---|---|--|
| In the Matter of: |) | Docket No. FIFRA-05-2009-0015 |
| |) | |
| Miami Products & Chemical Company, |) | Proceeding to Assess a Civil Penalty |
| Dayton, Ohio, |) | Under Section 14(a) of the Federal |
| |) | Insecticide, Fungicide, and Rodenticide |
| Respondent. |) | Act, 7 U.S.C. § 136l(a) |
| <hr/> | | |

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CONSENT AGREEMENT

Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. On June 4, 2009, EPA filed the Complaint in this action against Respondent Miami Products & Chemical Company, 1260 Schwerman Drive, Fairborn, Ohio, 45324, and 520 Lonoke Street, Dayton, Ohio. The Complaint alleged that Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(L), from June 8, 2004, to January 31, 2005, when it manufactured or prepared "SANYGEN LIQUID SHOCK," EPA Reg. No. 278-43, at its facility at 1260 Schwerman Drive, Fairborn, Ohio, 45324, which is not registered with EPA as a pesticide producing "establishment." The Complaint also alleged that Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on April 19, 2004, September 16, 2004, January 21, 2005, February 10, 2005, and February 16, 2005, when it distributed and sold to a person "SANYGEN LIQUID SHOCK," EPA Reg. No. 278-43, a "misbranded" pesticide, at its facility at 520 Lonoke Street, Dayton, Ohio, 45403.

3. Respondent filed an Answer and requested a hearing under Section 14 of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. § 22.15.

Stipulations

4. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint, other than those admitted in its Answer.

5. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

6. Respondent certifies that it is complying fully with FIFRA, 7 U.S.C. § 136 *et seq.* and the regulations at 40 C.F.R. Subpart E, Pesticides Program.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's attitude and good faith efforts to comply with FIFRA, as well as other factors, Complainant agrees to mitigate the proposed penalty of \$32,500.00 to \$24,000.00.

10. Within 30 days after the effective date of this CAFO, Respondent must pay \$10,000.00 of the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Within 90 days after the effective date of this CAFO, Respondent must pay \$3,710.00 (\$3,500.00 + \$210.00 (6% annual interest of \$14,000.00 balance for 90 days)) of the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to the same address. Within 180 days after the effective date of this CAFO, Respondent must pay \$3,657.50 (\$3,500.00 + \$157.50 (6% annual interest of \$10,500.00 balance for 90 days)) of the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to the same address. Within 270 days after the effective date of this CAFO, Respondent must pay \$3,605.00 (\$3,500.00 + \$105.00 (6% annual interest of \$7,000.00 balance for 90 days)) of the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to the same address. Within 360 days after the effective date of this CAFO, Respondent must pay \$3,552.50 (\$3,500.00 + \$52.50 (6% annual interest of \$3,500.00 balance for 90 days)) of the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to the same address. If Respondent fails to comply with this payment schedule, the full balance is immediately due and owing. All checks must state the case name, case docket number, and assigned case billing document number.

11. A transmittal letter stating the Respondent's name, complete address, case docket number, and the assigned billing document no. must accompany all payments. Respondent must send a copy of each check and transmittal letter to:

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

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

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

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

13. If Respondent does not pay the civil penalty timely, EPA may refer this 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.

14. 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 overdue amount 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

15. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

16. 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 violation of law.

17. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state and local laws.

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

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

20. 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.

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

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

Miami Products & Chemical Company, Dayton, Ohio, Respondent

Feb 16, 2010
Date

Roger Kayser
Roger Kayser
President
Miami Products & Chemical Company

United States Environmental Protection Agency, Complainant

3/10/10
Date

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

In the Matter of:
Miami Products & Chemical Company, Dayton, Ohio
Docket No. FIFRA-05-2009-0015

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FINAL ORDER

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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.

3/11/10
Date

Walter W. Kovaloff
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
FEB 18 2010
OFFICE OF REGIONAL
COUNSEL

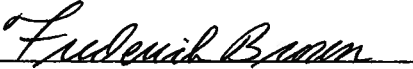
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Miami Products & Chemical Company, was filed on March 15, 2010, 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. 7001 0320 0006 0189 9521, a copy of the original to the Respondents:

Mr. Roger Kayser
Miami Products & Chemical Company
520 Lonoke Street
Dayton, Ohio 45403

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, 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

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