



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

JAN 31 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0198 4319

Mr. Tony Groll, Executive VP  
Gordon Food Service, Inc.  
d/b/a G F S Marketplace  
333 50<sup>th</sup> Street SW  
Grand Rapids, Michigan 49548

Joint Complaint and Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0018

Dear Mr. Groll:

Enclosed please find a copy of a fully executed Joint Complaint and 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 January 31, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,400 is to be paid in the manner prescribed in paragraphs 41, 42, 43 and 44. Please be certain that the number **BD 2750745P020** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 2, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Joseph G. Lukascyk".

Joseph Lukascyk  
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
John Matson, ORC/C-14J (w/Encl.)  
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	<b>Docket No.: FIFRA-05-2007-0018</b>
	)	
<b>Gordon Food Service, Inc.</b>	)	<b>Joint Complaint and Consent Agreement</b>
<b>d/b/a G F S Marketplace</b>	)	<b>and Final Order to Assess a Civil Penalty</b>
<b>333 50<sup>th</sup> Street SW</b>	)	<b>under Section 14(a) of the Federal</b>
<b>Grand Rapids, Michigan 49548</b>	)	<b>Insecticide, Fungicide, and Rodenticide</b>
	)	<b>Act, amended, (FIFRA), 7 U.S.C. §136l(a)</b>
<b>Respondent</b>	)	
_____	)	

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**Joint Complaint and Consent Agreement and Final Order**

The parties agree that settlement of this action without further delay is in their interest and in the public interest and having consented to the entry of this Consent Agreement and the attached Final Order before taking testimony and without any adjudication of any issues of law or fact herein, Respondent agrees to comply with the terms of this Consent Agreement and the attached Final Order.

**I. Preliminary Statement**

1. This is an administrative action to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, 7 U.S.C. § 136l(a), and 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 (the Consolidated Rules)," 40 C.F.R. Part 22.

2. Complainant is by lawful delegation the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency Region 5 (U.S. EPA or the Agency), and is authorized to institute and settle civil administrative actions brought pursuant to Section 14(a) of FIFRA.

3. Respondent is Gordon Food Service, Inc. d/b/a G F S Marketplace, which is, and was at all times relevant to the allegations set forth in the Joint Complaint and Consent Agreement and Final Order (CAFO), a corporation organized under the laws of the State of Michigan, with headquarters located at 333 50<sup>th</sup> Street SW, Grand Rapids, Michigan 49548.

4. The Complainant and Respondent, having sought to informally settle the matter, have agreed to the terms of this Consent Agreement in order to resolve this action without trial or other litigation. *See* 40 C.F.R. § 22.18(b) and (c).

5. The terms of this CAFO constitute a settlement by U.S. EPA for all claims for civil penalties pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the alleged violations of FIFRA as specified in Section III (Conclusions of Law) of this Consent Agreement. Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to federal, state, and local environmental laws and it is the responsibility of the Respondent to comply with all applicable provisions of FIFRA and any other federal, state or local laws and regulations. The issuance of this CAFO does not constitute a waiver by U.S. EPA of its remedies, either judicial or administrative, under FIFRA or any other federal environmental law, to address any other matters of unlawful acts not specified in this Consent Agreement.

6. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors and assigns.

7. The Respondent neither admits nor denies the factual allegations contained in this Consent Agreement, *See* 40 C.F.R. § 22.18(b), and nothing herein shall be construed as an admission of liability by Respondent.

8. The Respondent agrees to pay the civil penalty specified in Section IV (Payment of Penalty) of this Consent Agreement. *See* 40 C.F.R. § 22.18(b).

9. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

10. This Consent Agreement and attached Final Order constitute the entire agreement between the Complainant and the Respondent.

## **II. Jurisdiction/Waiver of Right to Hearing**

11. This Consent Agreement is entered into pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 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," 40 C.F.R. Part 22 (Consolidated Rules).

12. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO.

13. Respondent agrees not to contest U.S. EPA's jurisdiction with respect to the execution of this Consent Agreement, issuance of the attached Final Order, or the enforcement thereof. *See* 40 C.F.R. § 22.18(b)(2).

14. For purposes of this Consent Agreement and the enforcement thereof, Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement. Respondent waives its right to appeal the proposed Final Order accompanying this Consent Agreement. *See* 40 C.F.R. § 22.18(b)(2).

15. The parties have agreed to settle Respondent's liability in this matter prior to U.S. EPA filing a complaint through the entry of this Joint Complaint CAFO. *See* 40 C.F.R. § 22.18(b) and (c).

### **III. Complainant's Factual Allegations and Conclusions of Law**

16. The parties agree that the terms in this CAFO shall have the same meaning as those contained in FIFRA, including, but not limited to, those definitions established in Section 2 of the Act, 7 U.S.C. § 136.

17. **Complainant alleges that:**

a. On October 25, 2005, Respondent was the recipient of a Stop Sale, Use or Removal Order (SSURO), issued under Section 13(a) of FIFRA, 7 U.S.C. § 136k(a) by U.S. EPA, Region 5, for the distribution or sale of misbranded pesticide, "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT.**"

b. On or about July 15, 1993, Online Packaging Inc. (Online), located at 4311 Plover Road, Plover, Wisconsin 54467, registered with U.S. EPA the pesticide product "**SO-WHITE BRAND BLEACH AND DISINFECTANT.**"

c. The U.S. EPA subsequently assigned EPA Registration Number 9009-15 to Online's pesticide product "**SO-WHITE BRAND BLEACH AND DISINFECTANT.**"

d. "**SO-WHITE BRAND BLEACH AND DISINFECTANT,**" EPA Reg. No. 9009-15, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. 136(u).

e. On or about March 2, 2001, a Notice of Supplemental Distribution between the registrant, Online, and Respondent was filed with the Agency allowing Respondent to distribute Online's registered pesticide product "**SO-WHITE BRAND BLEACH AND**

**DISINFECTANT,” EPA Reg. No. 9009-15, under Respondents’s brand name, “G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT.”**

f. The number **“9009 ”** is Online’s Company Number. The number **“45133 ”** is Respondent’s Company Number.

g. On October 15, 2002, an inspector employed by the Michigan Department of Agriculture (MDA), conducted an inspection under the authority of Sections 8 and 9 of FIFRA, 7 U.S.C. § 136f and 136g, at Respondent’s establishment located at 38150 Ford Road, Westland, Michigan 48185.

h. During the October 15, 2002 inspection, the MDA inspector observed and collected from Respondent, a sample of the pesticide product, **“G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT,”** EPA Reg. No. 9009-15-45133.

i. The MDA inspector issued a “Receipt for Samples” to Mark Saum, Assistant Manager for Respondent, for all samples collected.

j. Mr. Saum signed the Receipt for Samples.

k. By his signature on the Receipt for Samples, Mr. Saum indicated that he was an owner, operator, or agent of Respondent.

l. By his signature on the Receipt for Samples, Mr. Saum indicated that all samples collected were from pesticide products that were packaged, labeled, and released for shipment.

m. Because **“G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT,”** EPA Reg. No. 9009-15-45133 was packaged, labeled, and released for shipment or sale, Respondent “distributed or sold” this pesticide product.

n. The EPA Registration Number shown on the "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT**" label, from the sample collected during the October 15, 2002 inspection, is "**9009-15-45133**."

o. The number "**45133**" by its location in the EPA Registration Number as printed on the "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT**," label indicates that Respondent is a supplemental distributor of Online's registered pesticide product "**SO-WHITE BRAND BLEACH AND DISINFECTANT**," EPA Reg. No. 9009-15.

18. The term "distribute or sell " means "to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver." *See* Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

19. The term "pesticide" is defined as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." *See* Section 2(u) of FIFRA, 7 U.S.C. § 136(u); 40 C.F.R. § 152.3.

20. The term "establishment" is defined as "any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale." *See* Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

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

22. Respondent did, at all times relevant to this Complaint, "distribute or sell" as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

23. At all times relevant to this Complaint, Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within

the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

24. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

25. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if “any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) 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.”

26. Every pesticide product shall bear a label containing the information specified by FIFRA. *See* 40 C.F.R. § 156.10. The contents of a label must clearly and prominently show the hazard and precautionary statements prescribed by 40 C.F.R. § 156.60-156.78, Subpart D. *See* 40 C.F.R. § 156.10(a)(vii).

27. Pursuant to 40 C.F.R. § 156.60(a), a product is required to have on its front label the signal word, child hazard warning (“Keep Out of Reach of Children”) and, in certain cases, the first aid statement. Any supplemental labeling intended to accompany the product in distribution or sale is also required to contain this information.

28. The front panel of each pesticide product must bear only one of three signal words, based upon the toxicity of the pesticide product. *See* 40 C.F.R. § 156.64.

29. In no case may a product bear different signal words on different parts of the label. *See* 40 C.F.R. § 156.64(b)(3).

30. 40 C.F.R. § 156.64(a)(1) requires any pesticide product meeting the criteria of Toxicity Category I for any route of exposure must bear on the front panel the signal word "DANGER."

31. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is also misbranded if "the label 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 136a(d) of this title, are adequate to protect health and the environment."

32. In addition, the directions for use appearing on the label must include under the heading "Directions for Use" the statement "It is a violation of Federal Law to use this product in a manner inconsistent with its labeling." *See* 40 C.F.R. § 156.10(i)(2)(ii).

33. Finally, pursuant to 40 C.F.R. § 152.132, the label of the distributor product must be the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary.

34. On or about October 15, 2002, Respondent distributed or sold the pesticide product, **"G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT,"** EPA Reg. No. 9009-15-45133.

35. On or about October 15, 2002, "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT,**" was a Toxicity Category I pesticide.

36. On or about October 15, 2002, the pesticide product label for "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT,**" EPA Reg. No. 9009-15-45133 was misbranded as follows:

- a. The label (the distributor label) being used by Respondent shows the Signal Word "*DANGER,*" and the "child hazard warning" statement on the side panel, instead of on the front panel.
- b. The label (the distributor label) being used by Respondent contains two Signal Words, "*DANGER*" and "*CAUTION,*" when it should only have the Toxicity Category I word "DANGER."
- c. Respondent has entirely deleted from its label (the distributor label) the statement "*It is a violation of Federal law to use this product in a manner inconsistent with its labeling,*" as it appears on the U.S. EPA "Accepted" label of September 24, 1993, for EPA Reg. No. 9009-15.
- d. Respondent has entirely deleted from its label (the distributor label) the "*STORAGE AND DISPOSAL*" section as it appears on the U.S. EPA "Accepted" label of September 24, 1993.
- e. Respondent has entirely deleted from its label (the distributor label) the "PRECAUTIONARY STATEMENTS" section as it appears on the U.S. EPA "Accepted" label of September 24, 1993, for EPA Reg. No. 9009-15.
- f. Respondent has entirely deleted from its label (the distributor label) the statement "*IMPORTANT: Bleach is concentrated and must be diluted before use,*" as it appears on the U.S. EPA "Accepted" label of September 24, 1993, for EPA Reg. No. 9009-15.
- g. Respondent has improperly added to its label (the distributor label) the statement "*BLEACH, G F S BLEACH is the finest available. It is specially formulated, produced and bottled to meet the needs of discriminating hotels, restaurants, schools and institutions,*" which was not on the "Accepted" label of the registered product, "**SO-WHITE BRAND BLEACH AND DISINFECTANT,**" EPA Reg. No. 9009-15.

37. Therefore, on or about October 15, 2002, the pesticide product label for "**G F S GORDON FOOD SERVICE BLEACH AND DISINFECTANT**," was "misbranded" pursuant to Section 2(q)(1)(E) and (F) of FIFRA, 7 U.S.C. § 136(q)(1)(E) and (F).

38. Respondent's distribution or sale of a misbranded pesticide product constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and 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). Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of a civil penalty of up to \$5,000 for each offense of FIFRA.

However, this \$5,000 maximum civil penalty was increased to \$5,500 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant to 40 C.F.R. Parts 19 and 27, *See* 61 Fed. Reg. 69360 (Dec. 31, 1996) and 62 Fed. Reg. 13514 (March 20, 1997).

#### **IV. Payment of Penalty**

39. The civil penalty proposed in this Complaint has been determined in accordance with the penalty criteria of FIFRA, set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which provides that the Administrator shall consider the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, in light of the proposed penalty, and the gravity of the violation alleged herein. In analyzing the facts of this case and in consideration of the statutory criteria, Complainant has utilized the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act," (the FIFRA ERP) dated July 2, 1990, as amended. Complainant proposes that Respondent be assessed the

following civil penalty for the violation alleged in the Complaint:

**Count 1**

Distribution/sale of a misbranded pesticide:

7 U.S.C. § 136j(a)(1)(E). . . . . \$5,500

40. Consistent with the provisions of the FIFRA ERP, Complainant has adjusted the penalty downward \$1,100 for "good attitude," and cooperation. Accordingly, Complainant agrees to mitigate the proposed civil penalty from \$5,500 to \$4,400.

41. The Respondent agrees to pay the civil penalty of **\$4,400**.

42. The Respondent shall pay this civil penalty within 30 days after the effective date of this CAFO by certified or cashier's check payable to the "Treasurer of the United States of America," and remit the check to:

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

43. The Respondent shall provide a transmittal letter, stating the Respondent's name, complete address, the case docket number and the billing document number with the payment. The Respondent must write the case docket number and the billing document number on the face of the check.

44. The Respondent must also provide copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604  
  
Joseph Lukascyk (DT-8J)  
Enforcement Officer  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

John Matson (C-14J)  
Associate Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

45. Respondent shall pay interest that accrues on any amount overdue under the terms of this Consent Agreement and attached Final Order at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. Respondent shall pay a late payment handling charge of \$15.00 which will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, Respondent shall pay a five percent per annum penalty assessed on any principal amount not paid within 90 days of the date of this Final Order signed by the Regional Administrator.

46. The Respondent shall not deduct any penalty payment made pursuant to the provisions of this Consent Agreement and attached Final Order under any federal, state or local tax law.

47. The Respondent's failure to comply with the provisions of paragraphs 42 through 46 shall result in the referral of this matter to the United States Department of Justice for collection.

#### **V. Final Statement**

48. Respondent certifies that it is currently in full compliance with FIFRA and all rules and regulations promulgated thereunder.

49. The Respondent consents to the issuance of the attached Final Order without further notice.

50. This Consent Agreement and attached Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk.

**IN THE MATTER OF: GORDON FOOD SERVICE, INC.**

**Docket No. FIFRA-05-2007-0018**

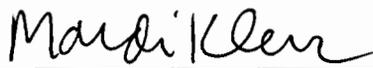
The foregoing Consent Agreement is hereby stipulated, agreed and approved for entry.

**For Respondent:**

  
\_\_\_\_\_  
Tony Groll, Executive VP  
Gordon Food Service, Inc.

12-21-06  
Date

**For Complainant:**

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

1-18-07  
Date

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

1/25/07  
Date

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EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: )  
)  
Gordon Food Service, Inc. )  
d/b/a G F S Marketplace )  
333 50<sup>th</sup> Street SW )  
Grand Rapids, Michigan 49548 )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No.: FIFRA-05-2007-0018

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon filing with the Regional Hearing Clerk.

  
\_\_\_\_\_  
Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

1/29/07  
Date

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U.S. ENVIRONMENTAL PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Joint Complaint and Consent Agreement and Final Order in resolution of the civil administrative action involving Gordon Food Service, Inc., was filed on January 31, 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 0006 0198 4319, a copy of the original to the Respondents:

Mr. Tony Groll, Executive VP  
Gordon Food Service, Inc.  
d/b/a G F S Marketplace  
333 50<sup>th</sup> Street SW  
Grand Rapids, Michigan 49548

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
John Matson, ORC/C-14J (w/Encl.)  
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-05-2007-0018**

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