



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7005 3110 0002 8247 3609

Date:

Mr. Harry Franze, President
Component Hardware Group, Inc.
1890 Swarthmore Avenue
Lakewood, NJ 08701

Re: Consent Agreement and Final Order – John S. Dull Associates, Inc. d/b/a Food Service
Parts and Component Hardware Group, Inc.
Docket No.: FIFRA-09-2010-00 04

Dear Mr. Franze:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning an alleged violation of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by John S. Dull Associates, Inc. d/b/a Food Service Parts and Component Hardware Group, Inc. The terms of the CAFO require the payment of \$98,300 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Margaret Alkon, Assistant Regional Counsel, at 415-972-3890.

Sincerely,

Katherine A. Taylor, Associate Director
Communities and Ecosystems Division

cc: Michael Boucher, Esq., McKenna Long & Aldridge LLP
1900 K Street NW | Washington, DC 20006
Marlene Miller, California Department of Pesticide Regulation (CDPR)
Jorge Hernandez, CDPR



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7005 3110 0002 8247 3593

Date:

Mr. James Whithorne, President
John S. Dull Associates, Inc.
11958 Monarch Street
Garden Grove, CA 92841

Re: Consent Agreement and Final Order – John S. Dull Associates, Inc. d/b/a Food Service
Parts and Component Hardware Group, Inc.
Docket No.: FIFRA-09-2010-00 04

Dear Mr. Whithorne:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning an alleged violation of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by John S. Dull Associates, Inc. d/b/a Food Service Parts and Component Hardware Group, Inc. The terms of the CAFO require the payment of \$98,300 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact Margaret Aikon, Assistant Regional Counsel, at 415-972-3890.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor, Associate Director
Communities and Ecosystems Division

cc: Michael Boucher, Esq., McKenna Long & Aldridge LLP
1900 K Street NW | Washington, DC 20006
Marlene Miller, California Department of Pesticide Regulation (CDPR)
Jorge Hernandez, CDPR

FILED

2010 MAY -5 PM 12:5

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the matter of:) Docket No. FIFRA-09-2010-0004
)
) CONSENT AGREEMENT
John S. Dull Associates, Inc.) and
d/b/a Food Services Parts) FINAL ORDER PURSUANT TO
and) SECTIONS 22.13 AND 22.18
Component Hardware Group, Inc.)
)
Respondents.)
)

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondents John S. Dull Associates, Inc. doing business as Food Service Parts (hereafter "FSP") and Component Hardware Group, Inc. (hereafter "CHG" and together with FSP the "Respondents") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. FSP is a California corporation. CHG is a corporation with headquarters in New Jersey. At the times relevant to this action, Respondents distributed or sold products marked SANIGUARD (the

“Saniguard Products”) with the claim that the Saniguard Products are treated or coated with an inorganic antimicrobial treatment that controls growth of bacteria.

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA (“Administrator”). By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. The Regional Administrator of EPA Region IX redelegated this authority to the Director and the Associate Director for Agriculture of the Communities and Ecosystems Division. EPA Regional Order Number 1255.08 dated June 9, 2005. The Associate Director for Agriculture of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under FIFRA.

5. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) states that the term “to distribute or sell” means 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.

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

7. Section 2(t) of FIFRA, 7 U.S.C. §136(t), states that the term “pest” means (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-organisms on or in

living man or other living animals) which the Administrator declares to be a pest under FIFRA section 25(c)(1).

8. Section 152.25 of Part 152, EPA's regulations setting out the Pesticide Registration and Classification Procedures, exempts certain pesticides or classes of pesticides listed that have been determined to be of a character not requiring regulation under FIFRA, when intended for use, and used, only in the manner specified. Section 152.25(a), 40 C.F.R. § 152.25(a), exempts treated articles as follows: An article or substance treated with, or containing, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), if the pesticide is registered for such use.

9. EPA has clarified the interpretation of Section 152.25(a) in a Pesticide Registration (PR) Notice and a Federal Register Notice. Clarification of Treated Articles Exemption; Availability of Draft PR Notice, 63 Fed. Reg. 19256 (April 17, 1998), and Pesticide Registration Notice 2000-1. The Federal Register notice states that unregistered products may be marketed provided that: (1) no implied or explicit public health claims of any kind are made; (2) the claims concerning the presence of a pesticide in the treated article are limited to protection of the treated article only; (3) when such claims involve antibacterial properties, (a) the words "antibacterial," "antimicrobial," or "germicidal," or related terms, are not a part of the name of the product, and (b) the permissible claims are qualified by statements indicating that the presence of the antibacterial properties does not protect users and others against disease and that users should follow prudent hygienic measures, i.e., cleaning and washing the article; and 4) the pesticide in a treated article is present only as a result of using a pesticide product which is registered under FIFRA and labeled for use in treating the article in question. 63 Fed. Reg. at 19257.

C. COMPLAINANT'S ALLEGATIONS

10. CHG ships Saniguard Products to FSP and CHG and FSP worked together to distribute or sell Saniguard Products. Respondents are each and together a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such are each subject to FIFRA and the regulations promulgated thereunder. Saniguard Products distributed or sold by Respondents include faucets, faucet assemblies, spigots, handles, pre-rinse assemblies, spray heads, grips, handles, light switches and socket covers, door push and pull plates, and food service hardware including drawer pans, drawer assemblies, and ice scopes. At the times relevant to this enforcement action, Respondents' Saniguard marketing materials stated that Saniguard Products are "treated with an inorganic antimicrobial treatment that controls growth of bacteria" and such unqualified statements, which were not limited to protection of the treated article only, fall outside the scope of the treated article exemption at 40 CFR Section 152.25(a). Respondents offered Saniguard Products for sale with public health claims including that Saniguard Products' antimicrobial technology controls growth on treated surfaces of E. coli, legionella pneumophils, salmonella gallinarum, staphylococcus aureus, staphylococcus epidermidis, streptococcus faecilis, streptococcus mutans, pseudomonas aeruginosa, stachybotrys, aspergillus niger, and candida albicans. Respondents distributed or sold the Saniguard Products with pesticidal claims which do not qualify for the treated article exemption found at section 152.25(a), 40 C.F.R. § 152.25(a). Each of the Saniguard Products is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). None of the Saniguard Products are registered pesticides.

11. On or about June 18, 2008, Respondents were holding for distribution or sale the following Saniguard Products: Encore Service Faucet SKU#K77-8102 with Saniguard; Encore Service Faucet SKU#K77-8106 with Saniguard; Encore Double Pantry Faucet SKU#KN51-9001 with Saniguard;

Encore Wall Mount Faucet SKU#KN53-1000 with Saniguard; Encore Swivel Arm PreRinse SKU#KN53-5026-12 with Saniguard; Encore Heavy Duty Wall Faucet SKU#KN54-8010 with Saniguard; Encore Heavy Duty Wall Faucet SKU#KN54-8010 with Saniguard; Encore Heavy Duty Wall Faucet SKU#KN54-8014 with Saniguard; Encore Heavy Duty Wall Faucet SKU#KN54-8016 with Saniguard; Encore Add On Faucet SKU#KN55-7008 with Saniguard; Encore Add On Faucet SKU#KN55-7010 with Saniguard; Encore Add On Faucet SKU#KN55-7012 with Saniguard; Encore Add On Faucet SKU#KN55-7014 with Saniguard; Encore Add On Faucet SKU#KN55-7016 with Saniguard; Encore Wall Pre-Rinse SKU#KN69-1000 with Saniguard; Encore Single Wall Mount SKU#KN70-9006 with Saniguard; Encore Single Wall Mount SKU#KN70-9018 with Saniguard; and Ice Scope SKU#SIS-6400 with Saniguard.

12. On or about June 18, 2008, Respondents were offering for sale the following Saniguard Products: Encore 8" Widespread Cast Spout with Saniguard Handle with Product Numbers KP86-8105-CE1, KP86-8005-CE1, KP86-8105-CE2, KP86-8005-CE2, KP84-8108-AE1, KP84-8008-AE1, KP84-8108-AE2, and KP84-8008-AE2; Saniguard Light Switch and Socket Covers, with Product Numbers R70-0720-Q, R70-0722-Q, R70-0723-Q, R70-0724-Q, R70-0725-Q, R70-0726-Q, R71-0722-Q, R71-0723-Q, R71-0721-Q, and R71-0720-Q; and Saniguard Door Push and Pull Plates, with Product Numbers P75-1000, P75-4000, P75-5000, P50-1010-Q, P45-3000-Q, P45-3500-Q, P45-4000-Q, P51-1010-Q, P46-1012-Q, and P46-1010-Q.

13. On or about June 18, 2008, Respondents distributed or sold, as the term "to distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), each of the Saniguard Products listed above in Paragraphs 11 and 12, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

D. RESPONDENT'S ADMISSIONS

14. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, each Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondents; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

15. Respondents consent to the assessment of a joint and several penalty in the amount of **NINETY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$98,300)** as final settlement and complete satisfaction of the civil claims against Respondents arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO.

16. Respondents shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

17. The civil penalty shall be paid by certified or cashier's check (unless otherwise instructed in writing by EPA), payable to "Treasurer, United States of America," and sent by certified mail, return receipt requested, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

The check (or other instrument of payment) should note the case title and docket number, and a

transmittal letter, indicating Respondents' names, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondents shall send a copy of the check (or other instrument of payment) and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

- b) Bill Lee
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

18. In the event that Respondents fail to pay the civil administrative penalty assessed above by its due date, Respondents shall pay to Complainant an additional joint and several stipulated penalty in the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that payment is late. Upon Complainant's written demand, the stipulated penalty shall immediately become due and payable.

19. Respondents' failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. EPA will assess interest on all delinquent debts in accordance with the Debt Collection Act, unless prohibited by statute, regulation, or contract. 40 C.F.R. §13.11; 40 C.F.R. § 22.31(c). In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

- b. The debt being collected by administrative offset (i.e., the withholding of money

payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondents' licenses or other privileges; (ii) suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

F. CERTIFICATION OF COMPLIANCE

20. In executing this CAFO, each Respondent certifies (1) that it is no longer distributing or selling unregistered Saniguard Products marketed with pesticide claims in violation of FIFRA; (2) that it is not distributing or selling any unregistered products in violation of FIFRA; and (3) that it has complied with all other FIFRA requirements at all facilities under its control.

G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

21. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve each Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

22. The provisions of this CAFO shall be binding on each Respondent and on each Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

23. Except as set forth in Paragraph 19 above, each party shall bear its own costs, fees, and disbursements in this action.


24. For the purposes of state and federal income taxation, Respondents shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

25. This Consent Agreement constitutes the entire agreement between the Respondents and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondents for the violations alleged in Section I.C. of this CAFO.

26. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

27. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

JOHN S. DULL ASSOCIATES, INC. DOING BUSINESS AS FOOD SERVICE PARTS:

Date: 3/4/10 By: 
JAMES C. WHITHORNE
President
John S. Dull Associates, Inc.

COMPONENT HARDWARE GROUP, INC.:

Date: 2/4/10 By:



HARRY FRANZE
President and CEO
Component Hardware Group, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 5/03/10 By:

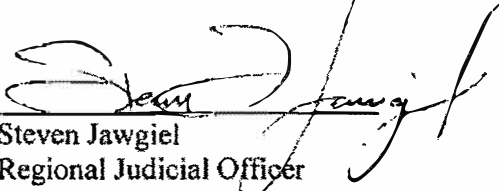


KATHERINE TAYLOR
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondents shall pay a civil administrative penalty in the amount of **NINETY EIGHT THOUSAND THREE HUNDRED DOLLARS (\$98,300)** in accordance with the terms set forth in the Consent Agreement. This penalty is a joint and several liability of Respondents.

Date: 05/05/10


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX


CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-09-2010-00 04 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 3110 0002 8247 3609), return receipt requested, to:

Mr. Harry Franze, President
Component Hardware Group, Inc.
1890 Swarthmore Avenue
Lakewood, NJ 08701

5/5/10

DATE



FOR: RHC

U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

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Mr. James Whithorne, President
John S. Dull Associates, Inc.
11958 Monarch Street
Garden Grove, CA 92841

5/5/10

DATE



FOR: RHC

U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105