



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

NOV 06 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8932 9102

Gary F. Franke Co., L.P.A.
120 East Fourth Street
Suite 1040
Cincinnati, Ohio 45202

Consent Agreement and Final Order, Docket No. *FIFRA-05-2007-0004*

Dear Mr. Franke:

Enclosed please find a copy of a fully executed 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 November 6, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,560.00 is to be paid in the manner prescribed in paragraphs 64, 65 and 66. Please be certain that the number BD 2750745 P006 and the docket number are written on both the transmittal letter and on the check. Payment is due by December 13, 2006 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

for Joseph G. Lukascyk
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Jacqueline Hejmanowski, ORC/C-14J (w/Encl.)
Ray Marasigan, Finance/MF-10J (w/Encl.)

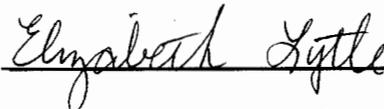
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Murphy Supply Company, Inc., was filed on November 6, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8932 9102, a copy of the original to the Respondents:

Gary F. Franke Co., L.P.A.
120 East Fourth Street
Suite 1040
Cincinnati, Ohio 45202

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Jacqueline Hejmanowski, Counsel for Complainant/C-14J
Ray Marisigan, Finance/MF-10J



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2007-0004*
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:)
)
MURPHY SUPPLY COMPANY, INC.)
HAMILTON, OHIO)
)
Respondent.)
_____)

Docket No. *FIFRA-05-2007-0004* *BBW*
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

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 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 (2005).

2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Murphy Supply Company, Inc. (MSC) a corporation with a place of business located at 4911 Mulhauser Road, Hamilton, Ohio 45011.

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) (2005).

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.

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6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. MSC admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. MSC waives any 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.

Statutory and Regulatory Background

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

10. The term “registrant,” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(s), “means a person who has registered any pesticide pursuant to the provisions of this subchapter.”

11. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

12. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in relevant part as to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

13. The regulations at 40 C.F.R. § 156.10 set forth labeling requirements for pesticide products and require, inter alia, that a pesticide product must bear an ingredient statement, the position of which is normally required on the front panel of the label.

14. The regulations at 40 C.F.R. § 156.10 also require, inter alia, that a product must bear “Directions for Use,” the contents of which must include specific directions concerning the storage and disposal of the pesticide and its container, and such directions must be grouped and appear under the heading “Storage and Disposal.”

15. The regulations at 40 C.F.R. § 156.64 require, inter alia, that each pesticide product must bear on the front panel a signal word, reflecting the highest Toxicity Category to which the product is assigned by any of the five routes of exposure in 40 C.F.R. § 156.62.

16. The regulations at 40 C.F.R. §§ 156.60 and 156.70 require, inter alia, that each product label is required to bear hazard and precautionary statements for humans and domestic animals (if applicable), and the statements must appear together on the label under the general heading “Precautionary Statements” and under appropriate subheadings similar to “Humans and Domestic Animals.”

17. The regulations at 40 C.F.R. § 156.68 require, inter alia, that each product must bear a first aid statement if the product has skin or eye irritation effects in Category I or II, and the heading of the statement may be “First Aid” or “Statement of Practical Treatment.”

18. The regulations at 40 C.F.R. § 152.132 permit a registrant to distribute or sell his registered product under another person's name and address instead of his own if, inter alia, the registrant has submitted to the EPA for each product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand names to be used, and the registration number of the product.

19. 40 C.F.R. § 152.132(d) requires that the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

20. The Administrator of EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may assess a civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

Factual Allegations and Violations

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

22. At all times relevant to this Complaint, Respondent has been a distributor of pesticides within the meaning of the term as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

23. On or about November 16, 1982, Respondent and Misco Products Corporation (Misco), located at 1048 Stinson Drive, Reading, Pennsylvania 19605, submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (U.S. EPA Form 8570-5), which identifies Misco as the registrant of "One Step Heavy Duty Cleaner & Disinfectant,"

EPA Reg. No. 8325-18, and Respondent as the supplemental distributor, whose distributor product brand names are “Pine Disinfectant” or “White Cross Disinfectant.”

24. “One Step Heavy Duty Cleaner & Disinfectant,” EPA Reg. No. 8325-18, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about August 22, 1995, Respondent and H&S Chemicals Division c/o Lonza, Inc. (H&S), located at 17-17 Route 208, Fair Lawn, New Jersey 07410, submitted to EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (U.S. EPA Form 8570-5), which identifies H&S as the registrant of “Formulation RTU-90,” EPA Reg. No. 47371-97, and Respondent as the supplemental distributor, whose distributor product brand name is “Non-Acid Disinfectant Bathroom Cleaner.”

26. “Formulation RTU-90,” EPA Reg. No. 47371-97, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. On or about November 15, 1977, Respondent and Claire Manufacturing Company (Claire), located at 500 Vista Avenue, Addison, Illinois 60101, submitted to EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (U.S. EPA Form 8570-5), which identifies Claire as the registrant of “Claire Disinfectant Spray,” EPA Reg. No. 706-69, and Respondent as the supplemental distributor, whose distributor product brand name is “New Mur-Gly Hospital Disinfectant Deodorant.”

28. “Claire Disinfectant Spray,” EPA Reg. No. 706-69, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

29. The number “**15231**” is Respondent’s company number as assigned by the EPA.

30. The number “15231,” by its location in the EPA Registration Numbers, as printed on the product labels, indicates that Respondent is a supplemental distributor of the registered pesticides with the EPA Registration Numbers: 8325-18-15231, 47371-97-15231, and 706-69-15231.

31. On March 25, 2002, an inspector employed by the Ohio Department of Agriculture (ODA), and duly authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s establishment located at 4911 Mulhauser Road, Cincinnati, Ohio 45011.

32. During the March 25, 2002 inspection, the ODA inspector collected physical samples consisting of one - 1 gallon plastic bottle of “Murphy Disinfectant Cleaner,” EPA Reg. No. 8325-18-15231, one -1 quart plastic bottle of “Murphy Non-Acid Disinfectant Bathroom Cleaner,” EPA Reg. No. 47371-97-15231, and one -15½ ounce aerosol can of “Murphy Mur-Gly Hospital Type Disinfectant Deodorant,” EPA Reg. No. 706-69-15231.

33. The physical samples that were collected during the March 25, 2002 inspection were shipped to the Ohio Department of Agriculture, Consumer Analytical Laboratory (ODACAL) on March 27, 2002 for analysis.

34. On March 27, 2002 the ODACAL received the physical samples that were collected during the March 25, 2002 inspection.

35. Respondent “distributed or sold” pesticides, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) in that the samples collected in paragraph 32 were obtained from pesticides packaged, labeled, and released for shipment or sale by Respondent.

36. On May 18, 2006, EPA mailed a pre-filing notice letter to Respondent informing it that EPA intended to file an administrative complaint against Respondent for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), in connection with its sale and distribution of two misbranded pesticide products and its sale and distribution of one product whose composition differs from its composition as described in the statement required in connection with the pesticide's registration.

Violations Specific to "Murphy Disinfectant Cleaner," EPA Reg. No. 8325-18-15231:

37. Respondent's label does not bear an "Ingredient Statement" on the front panel of the label as it appears on the "Accepted" label of November 23, 1990, which was submitted by the registrant in support of the pesticide product's registration.

38. Because the label accompanying Respondent's label does not bear an ingredient statement on the front panel of the label as it appears on the "Accepted" label of November 23, 1990, which was submitted by the registrant in support of the pesticide product's registration, Respondent's pesticide is misbranded.

39. Respondent's label contains an incomplete warning statement due to the failure to bear a "Signal Word" on the front panel as it appears on the "Accepted" label of November 23, 1990, which was submitted by the registrant in support of the pesticide product's registration.

40. Because Respondent's label does not contain a complete warning or caution statement which, if complied with, is adequate to protect the health and environment, Respondent's pesticide is misbranded.

41. Respondent's label contains the distributor product brand name of "Murphy Disinfectant Cleaner," which was not listed on the Supplemental Distribution Notice filed with EPA on November 16, 1982 between Respondent and Misco for "One Step Heavy Duty Cleaner & Disinfectant," EPA Reg. No. 8325-18.

42. Because Respondent's label bears a false distributor product brand name, Respondent's pesticide is misbranded.

43. The label attached to the container of the physical sample that was collected during the March 25, 2002 inspection, states that the product contains 1.6% of the active ingredient Alkyl dimethyl benzyl ammonium chloride (technically referred to as "Quaternary Ammonium Chlorides").

44. According to a laboratory report from the ODACAL, dated May 15, 2002, the physical sample of "Murphy Disinfectant Cleaner," EPA Reg. No. 8325-18, that was submitted to ODACAL contained 2.0% of Quaternary Ammonium Chlorides.

45. Because Respondent's label bears a statement relative to its ingredients which is false, Respondent's pesticide is misbranded.

46. According to evidence obtained by the EPA, Respondent distributed or sold "Murphy Disinfectant Cleaner," EPA Reg. No. 8325-18, on or about March 25, 2002.

47. Respondent's sale and distribution of the misbranded pesticide "Murphy Disinfectant Cleaner," EPA Reg. No. 8325-18-15231, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Violations Specific to “Murphy Non-Acid Disinfectant Bathroom Cleaner,”
U.S. EPA Reg. No. 47371-97-15231:

48. Respondent’s label contains incomplete directions for use due to the failure to bear the heading “STORAGE AND DISPOSAL” or, under the “Storage and Disposal” section, the statement “Store in areas inaccessible to small children,” as it appears on the “Accepted” label of November 2, 2000, which was submitted by the registrant in support of the pesticide product’s registration.

49. Because Respondent’s label does not contain complete directions for use, which, if complied with, are inadequate for protection of health and the environment, Respondent’s pesticide is misbranded.

50. Respondent’s label contains an incomplete warning statement due to the failure to bear the heading “PRECAUTIONARY STATEMENTS” and sub-heading “HAZARDS TO HUMANS AND DOMESTIC ANIMALS” or, under the “Precautionary Statements” and “Hazards to Humans and Domestic Animals” section, the statements “CAUTION. Harmful if absorbed through the skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling,” as it appears on the “Accepted” label of November 2, 2000, which was submitted by the registrant in support of the pesticide product’s registration.

51. Respondent’s label also contains an incomplete warning statement due to the failure to bear the heading “FIRST AID” or, under the “First Aid” section, the statements “IF ON SKIN: Wash with plenty of soap and water. Get medical attention,” as it appears on the “Accepted” label of November 2, 2000, which was submitted by the registrant in support of the pesticide product’s registration.

52. Because Respondent's label does not contain a complete warning or caution statement which, if complied with, is adequate to protect the health and environment, Respondent's pesticide is misbranded.

53. The label attached to the container of the physical sample that was collected during the March 25, 2002 inspection, states that the product contains 0.18% of the active ingredient Alkyl dimethyl benzyl ammonium chloride (technically referred to as "Quaternary Ammonium Chlorides").

54. According to a laboratory report from the ODACAL, dated May 15, 2002, the physical sample of "Murphy Non-Acid Disinfectant Bathroom Cleaner," EPA Reg. No. 47371-97-15231, that was submitted to ODACAL contained 0.24% of Quaternary Ammonium Chlorides.

55. Because Respondent's label bears a statement relative to its ingredients which is false, Respondent's pesticide is misbranded.

56. According to evidence obtained by the EPA, Respondent distributed or sold "Murphy Non-Acid Disinfectant Bathroom Cleaner," EPA Reg. No. 47371-97-15231, on or about March 25, 2002.

57. Respondent's sale and distribution of the misbranded pesticide "Murphy Non-Acid Disinfectant Bathroom Cleaner," EPA Reg. No. 47371-97-15231, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Violations Specific to “Murphy Mur-Gly Hospital Disinfectant Deodorant,”
EPA Reg. No. 706-69-15231:

58. The “Accepted” label of December 27, 2001, which was submitted by the registrant in support of the pesticide product’s registration, describes the composition of the product and states that the product contains 0.176% of the active ingredient “o-phenylphenol” and 0.045% of the active ingredient “p-tertiary Amylphenol.”

59. According to a laboratory report from the ODACAL, dated August 19, 2002, the physical sample of “Murphy Mur-Gly Hospital Type Disinfectant Deodorant,” EPA Reg. No. 706-69-15231, that was submitted to ODACAL contained 0.208% of the active ingredient “o-phenylphenol” and 0.075% of the active ingredient “p-tertiary Amylphenol.”

60. Because the active ingredients in Respondent’s pesticide, “Murphy Mur-Gly Hospital Type Disinfectant Deodorant,” EPA Reg. No. 706-69-15231, are greater in concentration than the active ingredients described in the December 27, 2001 “Accepted” label of “Claire Disinfectant Spray,” EPA Reg. No. 706-69, Respondent’s pesticide’s composition differs.

61. According to evidence obtained by the EPA, Respondent distributed or sold “Murphy Mur-Gly Hospital Disinfectant Deodorant,” EPA Reg. No. 706-69-15231, on or about March 25, 2002.

62. Respondent’s sale and distribution of the pesticide “Murphy Mur-Gly Hospital Disinfectant Deodorant,” EPA Reg. No. 706-69-15231, whose composition differs from its composition as described in the statement required in connection with its registration, constitutes an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

Civil Penalty

63. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on MSC's ability to continue in business, and the gravity of the violation, EPA has determined that an appropriate civil penalty to settle this action is \$10,560.00.

64. Respondent must pay the \$10,560.00 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

65. Respondent must send the check to:

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

66. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Joseph G. Lukascyk (DT-8J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Jacqueline Hejmanowski, ORC (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

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

68. If Respondent does not timely pay 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).

69. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

Final Statement

70. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Violations section of this CAFO.

71. 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 violations of law.

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

73. Respondent certifies that it is complying fully with Section 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(ii).

74. The terms of this CAFO bind MSC, and its successors, and assigns.

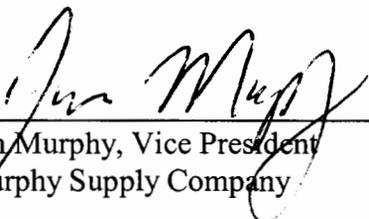
75. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

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

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

Murphy Supply Company, Respondent

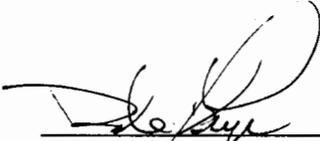
10/18/06
Date



Jim Murphy, Vice President
Murphy Supply Company

United States Environmental Protection Agency, Complainant

10/24/06
Date

for 

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

10/24/06
Date



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

CONSENT AGREEMENT AND FINAL ORDER

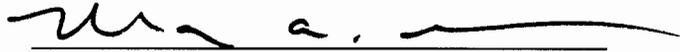
In the Matter of: Murphy Supply Company

Docket No. *FIFRA-05-2007-0004 (BW)*

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

11 / 03 / 06
Date



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

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