



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 14 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 5270

John Stibrick  
Products Chemical Company  
6400 Herman Avenue  
Cleveland, Ohio 44102

Consent Agreement and Final Order, Docket No. **FIFRA-05-2007-0028**

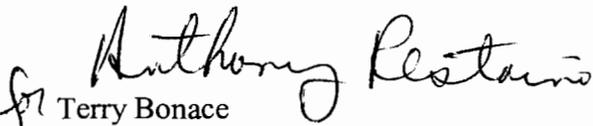
Dear Mr. Stibrick:

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 May 14, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$4,680 is to be paid in the manner prescribed in paragraphs 33, 34 and 35. Please be certain that the number **BD 2750745P029** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 13, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

  
Terry Bonace  
Pesticides and Toxics Branch

Enclosures

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN RE:  STRIB INDUSTRIES, INC. CLEVELAND, OHIO  Respondent.	}	CONSENT AGREEMENT AND FINAL ORDER  Docket No FIFRA-05-2007-0028
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REGIONAL OFFICE

CONSENT AGREEMENT

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

I. Preliminary Statements

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 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 (U.S. EPA), Region 5, and is authorized to institute and settle civil administrative actions brought pursuant to Section 14(a) of FIFRA.
3. Respondent is Strib Industries, Inc., a corporation organized under the laws of the State of Ohio with a place of business a 6400 Herman Avenue, Cleveland, Ohio, 44102.

## II. Jurisdiction/Waiver of Right to Hearing

4. 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 Consent Agreement and Final Order.

40 C.F.R. § 22.13(b).

5. 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. 40 C.F.R. § 22.18(b)(2).

6. 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 attached to this Consent Agreement. 40 C.F.R. § 22.18(b)(2).

## III. Alleged Violation

7. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines a "pest" as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism.

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

10. On March 15, 2006, Felice Fike, an inspector with the Ohio Department of Agriculture, duly authorized to conduct inspections under FIFRA, conducted an inspection at

Respondent's place of business, in order to examine and collect samples of pesticides packaged, labeled, and released for shipment, as authorized under Section 9 of FIFRA, 7 U.S.C. § 136g.

11. During the March 15, 2006 inspection, the inspector collected from Respondent a sample of Acid Free Bathroom Cleaner, EPA Reg. No. 8503-17.

12. Acid Free Bathroom Cleaner is a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

13. "Distribute and sell" is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as "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."

14. Respondent "distributed or sold" the pesticide identified in paragraph 11, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that the pesticide collected by the inspector was from pesticides packaged, labeled, and released for shipment or sale by Respondent.

15. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(C) states that it shall be unlawful for any person in any state to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

16. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C) states that it is unlawful to distribute or sell any registered pesticide whose composition differs at the time of distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

17. The statement of formulation of Acid Free Bathroom Cleaner does not include *Bacillus licheniformis* and *Bacillus amyloliquefaciens*.

18. Analysis of the sample collected on March 15, 2006, and performed by the North Carolina Department of Agriculture Constable Laboratory revealed that the pesticide Acid Free Bathroom Cleaner contained *Bacillus licheniformis* and *Bacillus amyloliquefaciens*.

19. Respondent's distribution or sale of pesticide Acid Free Bathroom Cleaner, whose composition contained *Bacillus licheniformis* and *Bacillus amyloliquefaciens* which were not included as part of the composition in its statement of formula, constitutes an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

#### IV. Settlement of Claims/Reservation of Rights

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

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

22. The terms of this Consent Agreement and attached Final Order constitute a settlement by Complainant 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 specified in Section III of this Consent Agreement.

**Except as it relates to those matters resolved by this Consent Agreement and attached Final Order:**

23. Compliance with this Consent Agreement and attached Final Order shall not be a defense to any other actions commenced pursuant to Federal, state and local environmental laws and it is the responsibility of Respondent to comply with all applicable provisions of FIFRA and any other Federal, state or local laws and regulations.

24. Nothing in this Consent Agreement and attached Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability.

25. Complainant hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable. This Consent Agreement and attached Final Order shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, which Complainant has under FIFRA or any other statutory, regulatory or common law enforcement authority of the United States.

26. Respondent reserves all rights it may have under Federal, state or local statute, regulation or common law, except those rights it has expressly waived under paragraphs 5 and 6 of this Consent Agreement and attached Final Order.

27. The entry of this Consent Agreement and attached Final Order and Respondent's consent to comply shall not limit or otherwise preclude Complainant from taking additional enforcement action should Complainant determine that such actions are warranted, except as it relates to those matters resolved by this Consent Agreement and attached Final Order.

28. This Consent Agreement and attached Final Order constitutes the entire agreement between Complainant and Respondent.

#### V. Payment of Penalty

29. Section 14(a) of FIFRA, 7 U.S.C. § 1361, authorizes a civil penalty of up to \$5,000 for each violation of FIFRA. 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 thereto at 40 C.F.R. Parts 19 and 27, *see* 61 Fed. Reg. 13514-13517 (March 20, 1997), this amount was increased to \$5,500 on or after January 31, 1997 and to \$6,500 for each offense of FIFRA that occurred after March 15, 2004.

30. Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent's business and Respondent's ability to continue in business in light of the proposed penalty, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in Section III of this Consent Agreement and attached Final Order:

Distribution/Sale of Pesticide whose Composition Differs.....\$5,850  
Section 12(a)(1)(C) of FIFRA

31. To prevent reoccurrence of this violation, Respondent has segregated the disinfectant production line from bacterial enzyme production to prevent any future cross-contamination.

32. Consistent with the provisions of the FIFRA Enforcement Response Policy, Complainant has adjusted the penalty downward \$1,170 for "good attitude." Accordingly, Complainant agrees to mitigate the proposed civil penalty from \$5,850 to \$4,680.

33. The Respondent agrees to pay the civil penalty of **\$4,680**.

34. The Respondent shall pay this penalty by certified or cashier's check payable to the "Treasurer of the United State of America," and remit the check to:

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

35. The Respondent shall provide a transmittal letter, stating 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.

36. The Respondent shall also provide copies of the check and transmittal letter to:

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

Terence Bonace (DT-8J)  
U.S. EPA- Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Susan Perdomo (C-14J)  
Associate Regional Counsel  
U.S. EPA - Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

37. Respondent shall pay interest that accrues on any amount overdue under the terms of the 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 which will be imposed after 30 days, with an additional charge of \$15 for each subsequent 30-day period over which an unpaid balance remains. In addition, Respondent shall pay a 6 per annum penalty assessed on any principal amount not paid within 90 days of the date of the attached Final Order is filed with the Regional Hearing Clerk.

38. The Respondent's failure to comply with the provisions of paragraphs 33, 34 and 37 shall result in the referral of this matter to the United States Department of Justice for collection.

39. 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.

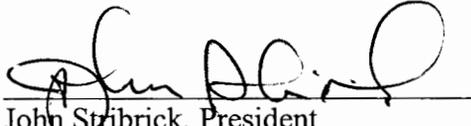
40. The Respondent consents to the issuance of the attached Final Order without further notice.

41. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and attached Final Order.

42. This Consent Agreement and attached Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk, as required by 40 C.F.R. § 22.18(b)(3).

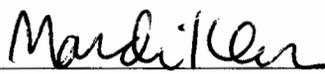
The foregoing Consent Agreement is hereby stipulated, agreed and approved for entry.

For Respondent:

  
John Stribrick, President  
Strib Industries, Inc.

4-20-07  
Date

For Complainant:

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

5-3-07  
Date

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

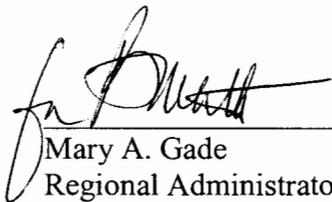
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Date

61-2-11-01-100-100  
MAY 10 2007  
EPA REGION 5

IN THE MATTER OF:  
Strib Industries, Inc.  
Docket No. **FIFRA-05-2007-0028**

FINAL ORDER

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



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

5-9-07  
\_\_\_\_\_  
Date

61-2-11-11-2006  
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REGIONAL HEARING CLERK

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Agreement and Final Order in resolution of the civil administrative action involving Strib Industries, Inc., was filed on May 14, 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 0005 8910 5270, a copy of the original to the Respondents:

John Stibrick  
Products Chemical Company  
6400 Herman Avenue  
Cleveland, Ohio 44102

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, Counsel for Complainant/C-14J  
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-05-2007-0028**

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CHICAGO, ILLINOIS