



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

MAR - 5 2008

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1456 1859

Christopher J. Riley, General Council and Secretary
McLaughlin Gormley King Company
8810 Tenth Avenue North
Minneapolis, MN 55427-6437

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0011

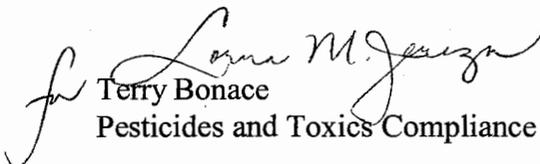
Dear Ms. Bayer:

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 March 5, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of ~~\$32,400~~ ^{\$6,013.00} is to be paid in the manner prescribed in paragraphs ³⁴ 61 and ³⁵ 62. Please be certain that the number **BD 2750845 P011** and the docket number are written on both the transmittal letter and on the check. Payment is due by (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


Terry Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Paul Liemandt
Environmental Response & Enforcement, MN Agriculture

MAR 11 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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In the Matter of:)
)
McLaughlin Gormley King Company)
Minneapolis, Minnesota)
)
Respondent.)
_____)

Docket No. FIFRA-05-2008-0011
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

Preliminary Statement

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 Sections 22.13(b) and 22.18(b)(2) and (3) of 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.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is McLaughlin Gormley King Company, a corporation doing business in the State of Minnesota.
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).
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.

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

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its 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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

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

11. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

12. Section 2(q)(1)(D), 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA to each establishment in which it was produced.

13. Section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if its label 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 other requirements, are adequate to protect health and the environment.

14. Section 2(q)(2)(C), 7 U.S.C. § 136(q)(1)(C), states that a pesticide is misbranded if there is not affixed to the container a label bearing the name and address of the producer, registrant, or person for whom produced; the name, brand or trademark under which the pesticide is sold; and the net weight or measure of the content.

15. "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."

16. A person is defined, in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as meaning any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

17. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

18. Respondent distributed or sold the registered pesticide, PyGanic Crop Protection EC 5.0 II, EPA Reg. No. 1021-1772, with incorrect placement on its label of the directions for "Use around Homes and Other Buildings."

19. Respondent distributed or sold the misbranded pesticide, PyGanic Crop Protection EC 5.0 II.

20. Respondent distributed or sold the registered pesticide, PyGanic Crop Protection EC 1.4 II, EPA Reg. No. 1021-1771, with incorrect storage and disposal instructions.

21. Respondent distributed or sold the misbranded pesticide, PyGanic Crop Protection EC 1.4 II.
22. Respondent distributed or sold the registered pesticide, NyGuard IGR Concentrate, EPA Reg. No. 1021-1603, with an incorrect producing establishment number.
23. Respondent distributed or sold the misbranded pesticide, NyGuard IGR Concentrate.
24. Respondent distributed or sold the registered pesticide, Ecolab Aero-Max Synergized Permethrin, EPA Reg. No. 1021-1739-1677, with the incorrect distributor product name and company number.
25. Respondent distributed or sold the misbranded pesticide, Ecolab Aero-Max Synergized Permethrin.
26. Respondent distributed or sold the registered pesticide, Pyrocide® Concentrate 7369, EPA Reg. No. 1021-1544, with an incorrect first aid and precautionary statement.
27. Respondent distributed or sold the misbranded pesticide, Pyrocide® Concentrate.
28. Respondent distributed or sold the registered pesticide, Onslaught™ Microencapsulated Insecticide, EPA Reg. No. 1021-1815, with incomplete limitations for mosquito adulticide use.
29. Respondent distributed or sold the misbranded pesticide Onslaught™ Microencapsulated Insecticide.
30. Respondent distributed or sold the registered pesticide, Evercide ®Permethrin 10% EC 2784, EPA Reg. No. 1021-1736, with incomplete limitations for use on plants grown for sale or other commercial use, for commercial seed production, and for research purposes.

31. Respondent distributed or sold the misbranded pesticide, Evercide ® Permethrin 10% EC 2784.

32. Respondent's distribution or sale of the misbranded pesticides, PyGanic Crop Protection EC 5.0 II, PyGanic Crop Protection EC 1.4 II, NyGuard IGR Concentrate, Ecolab Aero-Max Synergized Permethrin, Pyroicide® Concentrate 7369, Onslaught™ Microencapsulated Insecticide, and Evercide ® Permethrin 10% EC constitutes unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. In conformity with the *Final Policy Statement on Incentives for Self-Policing: Discovery, Disclosure, Correction, and Prevention of Violations* (the Self-Disclosure Policy), 65 Fed. Reg. 19618 (April 11, 2000), the violations of Section 7 of FIFRA at Respondent's establishment which are the subject of this CAFO were voluntarily disclosed to U.S. EPA by letters dated March 2, 2007, March 21, 2007, March 28, 2007, April 13, 2007, June 6, 2007 and July 19, 2007.

Civil Penalty

34. Based upon the initial self-disclosure and the information Respondent subsequently submitted, Complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Therefore, a 75 percent reduction of the gravity-based portion of the civil penalty to be assessed in this matter is appropriate under the Self-Disclosure Policy. Complainant has determined that there was no economic benefit associated with the alleged violations. Therefore, Complainant has determined that the appropriate penalty to settle this action is \$6,013.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,013 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for check sent by regular U.S. Postal Service mail]

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

[for check sent by express mail]

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case title, the docket number of this CAFO and the billing document number.

36. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

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

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Peter Felitti (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

38. If Respondent does not pay the civil penalty timely, U.S. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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 amount overdue 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

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

41. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

45. 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.

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

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

McLaughlin Gormley King Company, Respondent

February 15, 2008
Date

Christopher P. Riley
Christopher P. Riley
General Counsel and Secretary
McLaughlin Gormley King Company

United States Environmental Protection Agency, Complainant

2/29/08
Date

Allen Nelson
for Margaret M. Guerriero, Director
Land and Chemicals Division

FIFRA-05-2008-0011

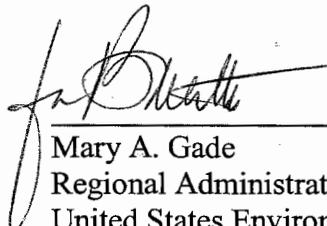
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In the Matter of:
McLaughlin Gormley King Company
Docket No. FIFRA-05-2008-0011

Final Order

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.

Date 3/3/08



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

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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 McLaughlin Gormley King Company, was filed on March 5, 2008, 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 1456 1859, a copy of the original to the Respondents:

Christopher J. Riley, General Council and Secretary
McLaughlin Gormley King Company
8810 Tenth Avenue North
Minneapolis, MN 55427-6437

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Peter Felitti, Counsel for Complainant/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 60604-3590

Docket No. **FIFRA-05-2008-0011**

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