

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is McLaughlin Gormley King Company located at 8810 Tenth Avenue North, Minneapolis, Minnesota. Respondent is incorporated in the state of Minnesota.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

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

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. Pursuant to 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. One condition which must be met in order for supplemental distribution to be permitted is that the label of the distributor product must be the same as that of the registered product except for the following:

- (i) The product name of the distributor product may be different (but may not be misleading);
- (ii) The name and address of the distributor may appear instead of that of the registrant;
- (iii) The registration number of the registered product must be followed by a dash, followed by the distributor’s company number;

(iv) The establishment number must be that of the final establishment at which the product was produced; and

(v) Specific claims may be deleted, provided that no other changes are necessary.

11. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), states that a pesticide is “misbranded” if, among other things, 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)(F) of FIFRA, 7 U.S.C. § 136(1)(1)(F), states a pesticide is “misbranded” 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...are adequate to protect health and the environment.

13. Section 2(q)(1)(G) of FIFRA 7 U.S.C. § 136(q)(1)(G), states that a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with...is adequate to protect health and the environment.

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

Section IV

General Factual Allegations

15. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

16. Respondent is the registrant of the following pesticide products:

(i) Evercide Esfenvalerate RTU 28062 bearing the EPA Reg. No. 1021-1779;

and

(ii) Synergized Pyrethrin Home and Industrial Spray 6631 bearing the EPA

Registration Number (Reg. No.) 1021-923.

17. On or about April 27, 2005, Respondent entered into a supplemental distribution agreement with Camicide, LLC. That agreement authorized Camicide, LLC to produce Evercide Esfenvalerate RTU as a supplemental distributor.

18. Camicide, LLC produces Evercide Esfenvalerate under the name Camicide Home Pest Control bearing the EPA Reg. No. 1021-1779-82264.

19. On or about May 12, 2005, Respondent entered into a supplemental distribution agreement with Camicide, LLC which authorized Camicide, LLC to produce Synergized Pyrethrin Home and Industrial Spray 6631 as a supplemental distributor.

20. Camicide, LLC produces Synergized Pyrethrin Home and Industrial Spray 6631 under the name Camicide Inspect Spray - Classic Formula 50 bearing the EPA Reg. No. 1021-923-82264.

21. On or about June 17, 2013, representatives of the Missouri Department of Agriculture (MDA) conducted an inspection at Camicide, LLC located at 4357 California, St. Louis, Missouri (Camicide Inspection).

22. During the Camicide Inspection, the MDA representative collected two supplemental distribution agreements between Camicide LLC and Respondent which allowed Camicide to manufacture the named products.

23. During the Camicide Inspection, the MDA representative collected a representative label of Camicide Home Pest Control and Camicide Inspect Spray - Classic Formula 50. These are each Distributor Products. The label for each Distributor Product failed to include portions of the language as provided in the EPA approved label.

24. After the Camicide Inspection, Respondent provided the MDA representative approximately ten (10) invoices documenting the sale and distribution of the Distributor Products.

25. On or about June 3, 2011, representatives of the Michigan Department of Agriculture (MDA) conducted an inspection at Dun Roamin Feed & Tack, LLC located at 52499 N. US 131, Three Rivers, Michigan (Dun Roamin Inspection).

26. During the Dun Roamin Inspection, the Michigan Department of Agriculture representatives purchased and photographed a bottle of Manna Pro Equine Fly & Mosquito Spray bearing the EPA Reg. No. 1021-1742-55392. This is a Distributor Product. The label for this Distributor Product failed to include portions of the language as provided in the EPA approved label.

27. Respondent is the registrant for Evercide Permethrin Multi-Purpose Spray 27782 Bearing the EPA Reg. No. 1021-1742.

28. Respondent entered into a supplemental distribution agreement with Manna Pro Products, LLC d/b/a Manna Pro Corporation on or about January 11, 2005.

Violations

29. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

30. The facts stated in Paragraphs 14 through 28 are realleged and incorporated as if fully stated herein.

31. Invoices collected as a result of the Camicide Inspection reveal that between October 3, 2012 and April 11, 2013, a quantity of the Distributor Product Camicide Home Pest Control was sold or distributed.

32. The label on the Distributor Product Camicide Home Pest Control was misbranded because it failed to include the complete Environmental Hazards statement, complete Directions for Use, and complete Storage and Disposal statements as provided in the EPA approved label.

33. Pursuant to 40 C.F.R. § 152.132, Respondent, as the registrant, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the Distributor Product Camicide Home Pest Control was sold or distributed with a label that was adulterated or misbranded.

Count 2

34. The facts stated in Paragraphs 14 through 28 are realleged and incorporated as if fully stated herein.

35. Invoices collected as a result of the Camicide Inspection reveal that between December 4, 2012 and April 9, 2013, a quantity of the Distributor Product Camicide Insect Spray – Classic Formula 50 was sold or distributed.

36. The label on the Distributor Product Camicide Insect Spray – Classic Formula 50 was misbranded because it failed to include the complete Precautionary Statements, Directions for Use, and Storage and Disposal statements as provided in the EPA approved label.

37. Pursuant to 40 C.F.R. § 152.132, Respondent, as the registrant, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the Distributor Product Camicide Insect Spray – Classic Formula 50 was sold or distributed with a label that was adulterated or misbranded.

Count 3

38. The facts stated in Paragraphs 14 through 28 are realleged and incorporated as if fully stated herein.

39. Information collected at the time of the Dun Roamin Inspection reveal a quantity of the Distributor Product Manna Pro Equine Fly & Mosquito Spray was offered for sale or distribution.

40. The label on the Distributor Product Manna Pro Equine Fly & Mosquito Spray was misbranded because it failed to include the complete First Aid statements, Precautionary Statements and Storage and Disposal statements as provided in the EPA approved label.

41. Pursuant to 40 C.F.R. § 152.132, Respondent, as the registrant, violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when the Distributor Product Manna Pro Equine Fly & Mosquito Spray was sold or distributed with a label that was adulterated or misbranded.

Section V

Consent Agreement

42. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

43. Respondent neither admits nor denies the factual allegations set forth above.

44. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

45. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

46. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

47. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

48. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

49. The effect of settlement as described in Paragraph 50 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 48 above.

50. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Fifteen Thousand Dollars (\$15,000.00) as set forth in Paragraph 1 of the Final Order. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by the EPA.

51. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

52. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136f, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States

Treasury” and sent to the following address:

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

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Lucretia Myers
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

RESPONDENT

McLaughlin Gormley King Company

Date: 10/6/14

By: 

JOSEPH MARTYN
Print Name

ASSOCIATE GENERAL COUNSEL
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10-10-14



Karen Flournoy
Director
Water, Wetlands, and Pesticides Division

Date: 10/10/14



Lucretia Myers
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: 10-14-14

Karina Borromeo

KARINA BORROMEEO
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF McLaughlin Gormley King Company, Respondent
Docket No. FIFRA-07-2014-0019

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

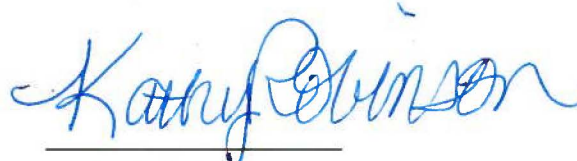
Copy by email to Attorney for Complainant:

myers.lucetia@epa.gov

Copy by First Class Mail to:

McLaughlin, Gormley, King
Attn: Joe Martyn
8810 Tenth Avenue North
Minneapolis, Minnesota 55427

Dated: 10/21/14



Kathy Robinson
Hearing Clerk, Region 7