

**OFFICE OF ADJUDICATIONS**

***IN THE MATTER OF*** : ***REQUEST FOR VARIANCE***

***MICROPEL CORPORATION*** : ***MARCH 19, 2004***

**FINAL DECISION**

The parties have agreed to resolve the above-captioned matter by means of the issuance of the attached Agreed Draft Decision. By my signature and pursuant to the authority delegated to me by the Commissioner on January 29, 2004, I hereby adopt this Agreed Draft Decision (with its attachment) as the final decision in this matter.

3/19/04  
Date

/s/ Jean F. Dellamarggio  
Jean F. Dellamarggio, Hearing Officer

## AGREED DRAFT DECISION

Procedural history: This matter arose as a result of an application by Micropel Corporation (“Micropel”) for registration of pesticides in the state of Connecticut for 2% and 5% organic arsenic containing formulated compounds. Pursuant to section 22a-66-2(a)(1) of the Regulations of Connecticut State Agencies (RCSA), the state denied the application on the basis that the formulated products contained 2% and 5% of an arsenic active ingredient. Pursuant to RCSA §22a-50-8, Micropel applied for a variance from § 22a-66-2(a)(1).

A hearing was requested and noticed in this matter pursuant to RCSA §22a-50-8. At a Feb. 24, 2004 pre-hearing status conference, the parties agreed that there were no issues in dispute and decided to submit for approval an Agreed Draft Decision. Said Draft Decision was submitted at the hearing held on March 16, 2004 at which the parties answered questions from the hearing officer related to the Draft Decision. Subsequent modifications were made to this Draft Decision, agreed to by the parties, and are incorporated herein. RCSA §22a-3a-6(1)(3)(A)(i) and (ii). The Commissioner delegated final decision-making authority in this matter to the hearing officer on January 29, 2004, General Statutes §22a-2.

Applicant: Micropel is a manufacturer and formulator of oxybisphenoxarsine, an arsenic-containing compound (“OBPA”). OBPA neat is not sold by Micropel. The products that are the subject of the variance request are Micropel’s “Micropel 5 PVC” and “Micropel 2 DIDP”. These formulated products contain either 2% or 5% OBPA dispersed in a carrier and are sold only for industrial use.

Manufacturing Location/Ownership: All Micropel OBPA is manufactured in a US EPA registered establishment in China. All the formulated products are produced in US EPA registered establishments in the US. None of the products are produced in Connecticut.

Morton’s Variance: In 1975, Ventron Corporation (subsequently Morton and now Rohm & Haas Co.) applied for and was granted a variance from RCSA §22a-66-2(a)(1) for registration of OBPA containing products within the state of Connecticut.

Akzo’s Variance: Akzo Nobel Chemicals Inc. and its subsidiary were granted a variance for virtually identical products with substantially similar uses to both Morton’s historical and the instant application on Nov. 8, 2000.

The Product: OBPA is not sold in its pure state. It is only sold as a 2% or 5% formulation of materials in a liquid or plastic pellet. It is not a mutagen, carcinogen or teratogen, but it is a severe skin and eye irritant in its neat form. It is labeled for and sold only in dilute formulations and only for industrial use in the plastics industry. In its formulated state, the product creates a low potential exposure to workers and the environment by virtue of the low concentration. OBPA is not registered for household, agricultural or food use. There is also no known off-label use of the formulated material that would involve an agricultural or food use. Certain environmental factors enumerated in RCSA §22a-50-4 for consideration in classification are not relevant to OBPA because of its end use as an industrial product. See, e.g., §22a-50-4(g) through (l).

The Active Ingredient: OBPA has been a federally approved pesticide since 1965 and its allowed uses are limited to preservation of materials against biological deterioration. More specifically, the present applications are particular to the preservation of plastics. The OBPA molecule contains 30% arsenic. OBPA is similar to some of the herbicides that contain arsenic because the arsenic is in an organic form. However, OBPA is unique in its ability to withstand high temperatures (which are required in material processing) and very low water solubility (which conveys long service-life).

Federal Regulation: The federal EPA has allowed the re-registration of pesticides containing OBPA subject to the requirement that end-use and manufacturing use products must bear the following label statement in the Environmental Hazards section:

“This pesticide is toxic to fish, aquatic invertebrates, birds, and mammals. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or other waters unless in accordance with the requirements of a National Pollutant discharge elimination system (NPDES) permit and permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product into sewer systems without previously notifying the local sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of EPA.”

All Micropel labeling complies with these conditions.

Decision: Based upon the above facts which are not disputed, Micropel Corporation shall be granted a variance pursuant to RCSA §22a-50-8 for Micropel 5 PVC and Micropel 2 DIDP products. These products have been determined not to cause an unreasonable adverse effect on humans or the environment when used according to label directions. These products as registered shall be classified as general use pesticides. They shall not be sold for other than the industrial uses for which they are intended.

Labeling for Micropel 5 PVC shall bear the following precautionary statements and signal word:

**PRECAUTIONARY STATEMENTS**  
**HAZARDS TO HUMANS AND DOMESTIC ANIMALS**

**CAUTION:** Avoid contact with skin, eyes or clothing.  
Wash thoroughly with soap and water after handling.

Labeling for Micropel 2 DIDP shall bear the following precautionary statements and signal word:

**PRECAUTIONARY STATEMENTS**  
**HAZARDS TO HUMANS AND DOMESTIC ANIMALS**

**DANGER:** Corrosive. Causes irreversible eye damage and skin burns. May be fatal if inhaled. Harmful if swallowed. Do not get in eyes, on skin or clothing. Do not breathe vapor or spray mist. Wear goggles or face shield, protective clothing and rubber gloves, a mask or a pesticide respirator jointly approved by MSHA (Mine Safety and Health Administration) and NIOSH.

(National Institute of Occupational Safety and Health). Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash before reuse. Prolonged and frequently repeated contact may cause allergic reaction in some individuals.

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Agreed:

March 16, 2004

Date

March 18, 2004

Date

/s/ Thomas C. McEntee

Signature

Name (print): Thomas C. McEntee

/s/ Michael Harder

Signature

Name (print) Michael Harder

Vice-President, Regulatory Compliance

Title

For: Micropel Corporation

Bureau Chief

Title

For: State of Connecticut,  
Department of Environmental  
Protection

## PARTY LIST

Final Decision in the matter of Micropel Corporation (Variance from Regulations Prohibiting Registrations of Certain Pesticides)

### PARTY

Micropel Corporation  
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### REPRESENTED BY

John Hickman  
President

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Department of Waste Management  
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