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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
Wilbur Ellis Company)	Docket No. FIFRA 10-2012-0048
)	
Hood River, Oregon)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is Wilbur Ellis Company (“Respondent”).

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,”

40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant") has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

2.3. A concise statement of the factual basis for alleging violations of FIFRA, together with specific references to the provisions of FIFRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Respondent is a company which owns and operates a facility located at 3900 Heron Drive, Hood River, Oregon 97031.

3.2 This facility produces Wilbur Ellis Supreme Oil (EPA Reg. No. 2935-405).

3.3 The facility has the EPA Establishment Number 2935-OR-002.

3.4 On April 13, 2010, the Oregon Department of Agriculture conducted a producer establishment inspection at the Wilbur Ellis facility in Hood River, Oregon on behalf of EPA.

3.5 Wilbur Ellis distributed and sold misbranded Supreme Oil with an incorrect EPA Establishment Number on at least 37 separate occasions in 2010.

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

3.7 Section 2(q)(1)(D) of FIFRA, 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 to each establishment in which it was produced.

3.8 Therefore, Wilbur Ellis violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and selling pesticides which were misbranded.

3.9 According to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 136f of FIFRA, taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, Respondent's cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$50,320.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Derrick Terada, OCE-084
Pesticides and Toxics Unit
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.12. Except as provided in Paragraph 4.15, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

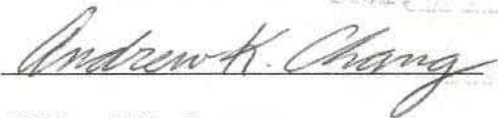
4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.14. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR WILBUR ELLIS COMPANY



Dated: 1/16/12

Wilbur Ellis Company

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10



Dated: 2/27/2012

Edward J. Kowalski, Director

Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 28th day of February, 2012



Thomas M. Jahnke

Regional Judicial Officer

U.S. Environmental Protection Agency

Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER in the Matter of: Wilbur-Ellis Company, Docket No. FIFRA-10-2012-0048** was filed with the Regional Hearing Clerk on Feb 28, 2012

On Feb 28th the undersigned certifies that a true and correct copy of the document was hand delivered to:

Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on _____, to:

Andrew Chang
Product Registration Manager
Wilbur-Ellis Company
2903 South Cedar Avenue
Fresno, California 93725

Dated: Feb 28, 2012



Carol Kennedy
Regional Hearing Clerk

