

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

R.N. Eaton & Company, Inc. )  
d/b/a Eaton Chemical, Inc. )  
4124 Riverside Street )  
Riverside, Missouri 64153 )

Respondent )

Docket No. FIFRA-07-2009-0019

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and R.N. Eaton & Company, Inc. d/b/a Eaton Chemical, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Section II**

**Parties**

3. The Complainant, by delegation from the Administrator of the 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 R.N. Eaton & Company, Inc. d/b/a Eaton Chemical, Inc., a wholesale distributor of solvents and a manufacturer and distributor of industrial cleaners, degreasers, lubricants and specialty chemicals located at 4124 Riverside Street, Riverside, Missouri.

### Section III

#### Statutory and Regulatory Background

5. 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, bacterial, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under section 25(c)(1).

6. 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.

7. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), defines the term “to use any registered pesticide in a manner inconsistent with its labeling” to mean, among other things, to use any registered pesticide in a manner not permitted by the labeling.

8. The Respondent is and was at all times referred to in this CAFO, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Missouri.

9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

### Section IV

#### General Factual Allegations

10. On April 4, 2007, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection of the Respondent’s Riverside, Missouri facility.

11. During the inspection, the MDA representative observed that Respondent used Stepan BTC 8358 Concentrated Germicide, EPA Reg. No. 1839-68, in the manufacture of a non-pesticidal product, Pro2O Water Based Dust Mop Treatment.

12. The label for the Stepan BTC 8358 Concentrated Germicide states that BTC 8358 is for

the manufacture or formulation of antimicrobial products.

13. The label for Pro2O Water Based Dust Mop Treatment does not claim to be an antimicrobial product, nor is it registered as such.

### VIOLATIONS

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

#### Count 1

15. Complainant hereby incorporates the allegations contained in Paragraphs 5 through 12 above, as if fully set forth herein.

16. Documentation collected during the April 4, 2007, inspection reveals that Stepan BTC 8358 Concentrated Germicide was used in the formulation of Pro2O Water Based Dust Mop Treatment. The label for Stepan BTC 8358 Concentrated Germicide indicates that it may be used in the formulation or manufacture of antimicrobial products. Pro2O is not registered as an antimicrobial product.

17. Respondent violated Section 12(a)(2)(G) of FIFRA by using a registered pesticide in a manner inconsistent with its labeling. 7 U.S.C. § 136j(a)(2)(G).

### **Section V**

### CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

18. For purposes of this proceeding, Respondent admits the statutory and regulatory information 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 set forth below.

19. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

20. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

21. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

22. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

23. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

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

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

26. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Three Thousand One Hundred Twenty Dollars (\$3,120.00) plus interest as set forth in Paragraph 1 of the Final Order.

27. The effect of settlement described in Paragraph 23 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 25 above.

28. Respondent agrees that it has ceased use of Stepan BTC 8358 Concentrated Germicide, EPA Reg. No. 1839-68, in the manufacture of Pro2O Water Based Dust Mop Treatment.

29. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the EPA. 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.

30. Failure to pay the assessed penalty may result in the referral of this matter to the U.S. Department of Justice (DOJ) for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

## Section VI

### FINAL ORDER

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

### Payment of Civil Penalty

1. Respondent shall pay a mitigated civil penalty of Three Thousand One Hundred Twenty Dollars (\$3,120.00), plus interest of Fifty-One Dollars (\$51.00) over a period of twelve (12) months for a total payment of Three Thousand One Hundred Seventy-One Dollars (\$3,171.00). The total civil penalty of Three Thousand One Hundred Seventy-One Dollars (\$3,171.00) shall be paid in twelve (12) monthly payments of Two Hundred Sixty-Four Dollars and Twenty-Five Cents (\$264.25) each. The first payment must be received at the address below on or before thirty (30) days after the effective date of the Final Order. Each subsequent payment will be due thirty (30) days after the previous payment.

2. Payments of the penalty shall be by cashier or certified check and shall reference EPA Docket Number FIFRA-07-2009-0019, and made payable to "Treasurer, United States of America" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

3. Copies of the check shall simultaneously be sent to the following:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101; and

Kelley Catlin  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

4. 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.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

6. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S.  
Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas,  
66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/19/09

By: William A. Spratlin  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date: 8/18/09

By: Kelley Catlin  
Kelley Catlin  
Assistant Regional Counsel

RESPONDENT:

R.N. Eaton & Company, Inc. d/b/a Eaton Chemical, Inc.

Date: 08/07/09

By: Holly J Eaton


Printed Name: Holly J Eaton

Title: Corp. Secretary



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

Date: Sept. 1, 2009

  
ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7

IN THE MATTER OF , R.N. Eaton & Company, Inc. d/b/a Eaton Chemical, Inc., Respondent  
Docket No. FIFRA-07-2009-0019

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Kelley Catlin  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Holly J. Eaton, Corporate Secretary  
R.N. Eaton & Company, Inc.  
d/b/a Eaton Chemical, Inc.  
4124 Riverside Street  
Riverside, Missouri 64153

Dated: 9/1/09



Kathy Robinson  
Hearing Clerk, Region 7