



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
April 29, 2013

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL**

**Receipt No. 7009 1680 0000 7676 7521**

Mr. Paul Eberhardt  
TeeMark Corporation  
1132 Air Park Drive  
Aitkin, Minnesota 56431

Consent Agreement and Final Order in the Matter of  
TeeMark Corporation, Docket No. FIFRA-05-2013-0007

Dear Mr. Eberhardt:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on April 29, 2013, with the Regional Hearing Clerk.

The civil penalty in the amount of \$27,500 is to be paid in the manner described in paragraphs 30 and 31. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by May 29, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures



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 - 136y.

**Statutory and Regulatory Background**

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. A “label” is the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. 7 U.S.C. § 136(p)(1).

16. “Labeling” means, among other things, all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time. 7 U.S.C. § 136(p)(2).

17. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

18. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. Respondent is a distributor.

20. Respondent owned or operated a place of business located at 1132 Air Park Drive, Aitkin, Minnesota during calendar year 2009.

21. On March 10, 2010, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Aitkin, Minnesota.

22. During the March 10, 2010 inspection, the inspector collected labeling and advertising literature for DePhos-A Buffered Alum (DePhos-A).

23. The label of DePhos-A says, “DePhos-A REDUCES ALGAE BLOOMS BY REDUCING THE NUTRIENT PHOSPHORUS THAT FEEDS THE ALGAE” and provides instructions for treatment of “floating filamentous algae or water plants” and “algal blooms.”

24. Respondent’s literature includes an information sheet entitled “Control of Algae

with Alum/Sodium Aluminate” that states, “SWEETWATER TECHNOLOGY has developed an improved process for applying aluminum chemicals to lakes for the control of algae blooms;” and “Alum controls algae by controlling the internal loading of phosphorous from the bottom of the lake.”

25. DePhos-A is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

### **Count 1**

26. Respondent distributed or sold DePhos-A on at least 6 occasions between March 27, 2009 and October 1, 2009.

27. DePhos-A is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

28. Respondent’s distribution or sale of the unregistered pesticide DePhos-A constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### **Civil Penalty**

29. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$27,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December, 2009.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$27,500 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 checks sent by regular U.S. Postal Service mail]

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

[for checks sent by express mail]

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

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

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

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

Robert H. Smith (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

33. If Respondent does not pay the civil penalty timely, 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. 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

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

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

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

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

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

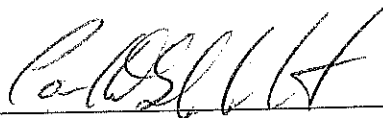
40. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

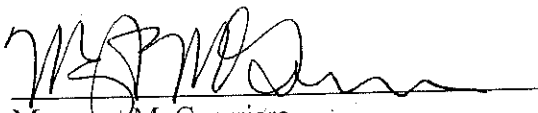
**TeeMark Corporation, Respondent**

3-27-13  
Date

  
\_\_\_\_\_  
Paul Eberhardt  
Chief Executive Officer  
TeeMark Corporation

**United States Environmental Protection Agency, Complainant**

4/22/2013  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division



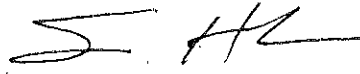


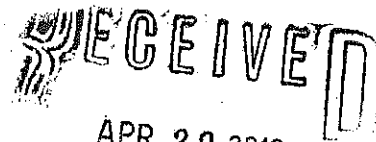
In the Matter of:  
TeeMark Corporation  
Docket No. FIFRA-05-2013-0007

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.

4-25-13  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

  
APR 29 2013  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**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 TeeMark Corporation, was filed on April 29, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No 009 1680 0000 7676 7521 to, a copy of the original to the Respondent:

Mr. Paul Eberhardt  
TeeMark Corporation  
1132 Air Park Drive  
Aitkein, Minnesota 56431

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Rob Smith, Regional Judicial Officer, ORC/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

Docket No. FIFRA-05-2013-0007

**RECEIVED**  
APR 29 2013

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**