

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

In the Matter of:)
)
)
Phoenix Products Company,)
55 Container Drive,)
Terryville, Connecticut 06786) Docket No. FIFRA-01-2021-0030
)
Respondent.) **CONSENT AGREEMENT**
) **and**
) **FINAL ORDER**
Proceedings under Section 14(a))
of the Federal Insecticide, Fungicide,)
and Rodenticide Act, as amended,)
7 U.S.C. Section 136l(a).)
_____)

I. INTRODUCTION

1. The United States Environmental Protection Agency-Region 1 (“EPA”), as Complainant, and Phoenix Products Company as Respondent (“Phoenix” or “Respondent”), enter into this Consent Agreement and Final Order (“CAFO” or “Consent Agreement”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Respondent for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 (the “FIFRA Regulations”). The CAFO also informs Phoenix of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), at 40 C.F.R.

Part 22, and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this Consent Agreement.

II. PRELIMINARY STATEMENT

4. Phoenix Products Company is a company incorporated under the laws of the Connecticut. Phoenix has two pesticide producing establishments in Terryville, Connecticut: its corporate office, quality control laboratory, sales, and production department located at 55 Container Drive, Terryville, Connecticut (EPA Est. No. is 48520-CT-001) (“Container Drive Establishment”) and its main manufacturing, packaging and distribution facility located at 97 Napco Drive, Terryville, Connecticut (EPA Est. No. is 48520-CT-002) (“Napco Establishment”).

5. Respondent is a *person*¹ as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and is also a *producer* as defined by Section 2(w) of FIFRA, 7 U.S.C § 136(w), and 40 C.F.R. § 167.3.

6. Respondent operates both the Container Drive Establishment and the Napco Establishment (collectively, “Establishments”) as pesticide-producing

¹ Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

establishments under Section 7 of FIRA, 7 U.S.C. § 136e. Under Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, the Napco Establishment, Respondent’s main manufacturing, packaging and distribution facility, has been registered as a pesticide-producing establishment and assigned the EPA Establishment Number (EPA Est. No.) “Number 48520-CT-002.”

7. Prior to the violations alleged in this CAFO, Respondent sought status as a supplemental registrant and contract manufacturer to produce, distribute, or sell as “distributor products” within the meaning of 40 C.F.R. § 152.132, each of the pesticide products (collectively, “Products”) listed below, except 7(f) and 7(g), identified by the supplemental registration numbers assigned thereto:

- a. St. Cyr’s Spa Granular Dichlor (EPA Reg. No. 48520-23-71325);
- b. Teddy Bear Pools Bear Shock- 56 (EPA Reg. No. 48520-23-51009);
- c. Spa Ease chlorinating granules (EPA Reg. No. 48520-23-81649);
- d. Distinctive Swimming Pools, Inc. Giant Tabs (EPA Reg. No. 48520-10-79410);
- e. Softcare Chlorinating Granules (EPA Reg. No. 48520-23-62852);
- f. Sundance Spas Spa Concentrated Chlorinating Granules (EPA Reg. No. 48520-23);
- g. Paradise by Superior Chlorinating Granules (EPA Reg. No. 48520-23);
- h. Oxygen Pools Granular Shock (EPA Reg. No. 48520-23-92654);
- i. Kenwood Pools Granular Dichlor, 5 lb (EPA Reg. No. is 48520-23-57586);
- j. Kenwood Pools Granular Dichlor, 10 lb (EPA Reg. No. is 48520-23-57586); and,
- k. Kenwood Pools Granular Dichlor, 25 lb (EPA Reg. No. is 48520-23-57586).

8. Each of the Products listed in Subparagraphs 7(a) through 7(k) is a “pesticide,” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and the FIFRA Regulations.

9. Respondent produces, distributes and sells pesticides as a primary

registrant and as a supplemental registrant. At all times relevant to the violations alleged in this CAFO, Respondent produced each of the Products identified in Subparagraphs 7(a) through 7(k) at the Napco Establishment. Each of the Products identified in Subparagraphs 7(a) through 7(k), except 7(f) and 7(g), is or was such a “distributor product.” *See* 40 C.F.R. § 152.132.

10. On April 17, 2019, under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, a duly-authorized EPA inspector conducted a FIFRA compliance inspection at the Container Drive Establishment (the “Inspection”).

11. During the Inspection, a duly-authorized EPA inspector collected documentary samples (e.g., photographs and or photocopies) of documents, including bin labels of the Products identified in Subparagraphs 7(a) through 7(k).

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

13. The FIFRA prohibition against the distribution or sale of misbranded pesticides is important because it helps ensure that end users and members of the public have access to fully compliant and effective pesticides and that, for each, end users will have the most accurate, up-to-date, and compliant information available about pesticides in the marketplace as well as the establishments where they are produced.

14. Under FIFRA, a registrant may distribute or sell its registered product under another person's name and address instead of (or in addition to) its own. Under 40 C.F.R. § 152.132(a), supplemental distribution is permitted provided upon notification to the Agency the registrant has submitted to the Agency for each distributor product a

statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product; and provided that all the conditions in 40 C.F.R. § 152.132(a)–(e) are met by both the registrant and the distributor.

15. Under 40 C.F.R. § 156.10(b)(1), FIFRA Labeling Requirements, the name, brand, or trademark under which the pesticide product is sold shall appear on the front panel of the label.

16. Under 40 C.F.R. § 156.10(e), FIFRA Labeling Requirements, the registration number assigned to the pesticide product at the time of registration shall appear on the label, preceded by the phrase “EPA Registration No.,” or the phrase “EPA Reg. No.”

17. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and the FIFRA Regulations promulgated under FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“Penalty Inflation Act”), Pub. L. 114-74, Section 701 (Nov. 2, 2015), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (“Penalty Inflation Rule”), the statutory maximum penalty amount in FIFRA Section 14(a) was increased to \$20,528 for violations occurring after November 2, 2015 where penalties are assessed on or after December 23, 2020. *See* 85 Fed. Reg. 83818 (December 23, 2020).

18. Respondent stipulates that EPA has jurisdiction over the subject matter

alleged in this CAFO. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's findings or allegations of violation herein, consents to the terms of this CAFO.

19. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

20. By signing this CAFO, Respondent certifies that, to the best of its knowledge and belief, it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder, that it has fully addressed the violations alleged by EPA herein, and that the information it has provided to EPA during the course of the EPA investigation of this matter is true and complete.

III. EPA FINDINGS

21. As set out in Paragraph 7, at all times relevant to the violations alleged in Section IV of this CAFO, below, Respondent sought status as a supplemental registrant and contract manufacturer to produce, distribute, or sell as "distributor products" within the meaning of 40 C.F.R. § 152.132, each of the pesticide products listed below, except 7(f) and 7(g), identified by the supplemental registration numbers assigned thereto:

- a. St. Cyr's Spa Granular Dichlor (EPA Reg. No. 48520-23-71325);
- b. Teddy Bear Pools Bear Shock- 56 (EPA Reg. No. 48520-23-51009);
- c. Spa Ease chlorinating granules (EPA Reg. No. 48520-23-81649);
- d. Distinctive Swimming Pools, Inc. Giant Tabs (EPA Reg. No. 48520-10-79410);
- e. Softcare Chlorinating Granules (EPA Reg. No. 48520-23-62852);
- f. Sundance Spas: Spa Concentrated Chlorinating Granules (EPA Reg. No. 48520-23);
- g. Paradise by Superior Chlorination Granules (EPA Reg. No. 48520-23);

- h. Oxygen Pools Granular Shock (EPA Reg. No. 48520-23-92654);
- i. Kenwood Pools Granular Dichlor, 5 lb. (EPA Reg. No. is 48520-23-57586);
- j. Kenwood Pools Granular Dichlor, 10 lb (EPA Reg. No. is 48520-23-57586); and,
- k. Kenwood Pools Granular Dichlor, 25 lb (EPA Reg. No. is 48520-23-57586).

22. Based on the Inspection and further investigation by EPA, at no time prior to April 17, 2019 (date of Inspection) did Respondent submit to the Agency for each distributor products listed below a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product, as required under 40 C.F.R. § 152.132(a) for supplemental distribution of pesticide products:

- a. St. Cyr's Spa Granular Dichlor (EPA Reg. No. 48520-23-71325);
- b. Teddy Bear Pools Bear Shock- 56 (EPA Reg. No. 48520-23-51009);
- c. Spa Ease chlorinating granules (EPA Reg. No. 48520-23-81649); and
- d. Distinctive Swimming Pools, Inc. Giant Tabs (EPA Reg. No. 48520-10-79410).

23. Based on the Inspection and further investigation by EPA, Respondent produced, distributed, or sold as “distributor products” the following pesticide product: *Softcare Chlorinating Granules* under the supplemental registration number “EPA Reg. No. 48520-23-62852” – also listed in Subparagraph 21(e) above – when the label and/or labeling for the product bore an incorrect product name. In particular, the product name on the bin label for EPA Reg. No. 48520-23-62852 was incorrectly listed as *Mineral Harmony Sanitizer Chlorinating Granules* when that brand name was invalid in that it had not been submitted to EPA in a statement from the registrant and distributor listing the name, as required by 40 C.F.R. § 152.132(a).

24. Based on the Inspection and further investigation by EPA, Respondent produced, distributed, or sold as “products” the following pesticide products: Sundance Spas Spa Concentrated Chlorinating Granules and Paradise by Superior Chlorinating Granules (both products with the registration number “EPA Reg. No. 48520-23”) – also listed in the Subparagraphs 21(f) and 21(g) above – when the label and/or labeling for each product bore an incorrect product name.

25. Based on the Inspection and further investigation by EPA, Respondent produced, distributed, or sold as a “distributor product” the following pesticide product: *Oxygen Pools Granular Shock* under the supplemental registration number “EPA Reg. No. 48520-23-92654” - also listed in Subparagraph 21(h) above - when the label and/or labeling for the product bore a false or misleading signal word which was not approved by the Agency. The approved signal word for the Product under the supplemental registration number “EPA Reg. No. 48520-23-92654” is “Danger.” The bin label incorrectly lists the word “Caution.”

26. Based on the Inspection and further investigation by EPA, Respondent produced, distributed, or sold as a “distributor product” the following pesticide product: Kenwood Pools Granular Dichlor five (5) pound size under the supplemental registration number “EPA Reg. No. 48520-23-57586” – also listed in Subparagraph 21(i) above – when the label and/or labeling for the product bore an inaccurate supplemental registration number. The supplemental registration number on the bin label is incorrectly listed as “EPA Reg. No. 48520-10-57586.”

27. Based on the Inspection and further investigation by EPA, Respondent, as required under 40 CFR § 156.10(e), FIFRA Labeling Requirements, failed to include on

the product bin label the EPA registration number assigned to the following pesticide products, also listed in Subparagraphs 21(j) and (k) above: Kenwood Pools Granular Dichlor ten (10) pound and twenty-five (25) pound sizes (EPA Reg. No. 48520-23-57586).

28. Based on the Inspection and further investigation by EPA, Respondent failed to include on the product bin label for Kenwood Pools Granular Dichlor ten (10) pound and twenty-five (25) pound sizes – also listed in Subparagraphs 21(j) and (k) – the following assigned EPA establishment number: “EPA Est. No. is 48520-CT-002.”

IV. ALLEGATIONS OF VIOLATION

COUNT 1

Distribution or Sale of Misbranded Pesticides in that it is an imitation of, or is Offered for Sale Under the Name of, Another Pesticide

29. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold each of the pesticide products listed below, identified by the supplemental registration numbers assigned thereto:

- a. St. Cyr’s Spa Granular Dichlor (EPA Reg. No. 48520-23-71325);
- b. Teddy Bear Pools Bear Shock- 56 (EPA Reg. No. 48520-23-51009);
- c. Spa Ease chlorinating granules (EPA Reg. No. 48520-23-81649); and
- d. Distinctive Swimming Pools, Inc Giant Tabs (EPA Reg. No. 48520-10-79410).

30. At the time of the distributions and sales referenced in the preceding Paragraph 29 and at all times relevant to the violations alleged by EPA, Respondent failed to submit to the Agency for each distributor products listed Paragraph 29 a signed Registrant – Distributor Supplemental Agreement, as required under 40 C.F.R. § 152.132(a) for supplemental distribution of pesticide products.

31. Accordingly, on at least one (1) occasion with respect to each of the four (4) pesticide products listed Paragraph 29, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and the FIFRA Regulations at 40 C.F.R. Part 152.132(a), each of which is a separate violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 2

*Distribution or Sale of Misbranded Pesticides Pesticides
(Label with Incorrect Product Name)*

32. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold the following pesticide product: *Softcare Chlorinating Granules* under the supplemental registration number “EPA Reg. No. 48520-23-62852” when the label and/or labeling for the product bore an incorrect product name. In particular, the product name on the bin label for EPA Reg. No. 48520-23-62852 was incorrectly listed as *Mineral Harmony Sanitizer Chlorinating Granules* when that brand name was invalid in that it had not been submitted to EPA in a statement from the registrant and distributor listing the name, as required by 40 C.F.R. § 152.132(a).

33. Accordingly, on at least one (1) occasion with respect to *Softcare Chlorinating Granules*, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and the FIFRA Regulations at 40 C.F.R. Part 156.10(b)(1), which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 3

*Distribution or Sale of Misbranded Pesticides
(Label with the Wrong Alternative Brand Name)*

34. Based on the Inspection and EPA’s subsequent investigation, Respondent

on at least one (1) occasion between January 2018 and April 2019 distributed or sold the following pesticide products: Sundance Spas: Spa Concentrated Chlorinating Granules and Paradise by Superior Chlorinating Granules both under the EPA Reg. No. 48520-23 when the labels and/or labeling for each of the products bore an incorrect product name.

35. Accordingly, on at least one (1) occasion with respect to Sundance Spas: Spa Concentrated Chlorinating Granules and Paradise by Superior Chlorinating Granules, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §136j(a)(1)(E), and the FIFRA Regulations at 40 C.F.R Part 156.10(b)(1), which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 4

*Distribution or Sale of Misbranded Pesticides
(Label with False or Misleading Signal Word)*

36. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold the following pesticide product: Oxygen Pools Granular Shock under the supplemental registration number “EPA Reg. No. 48520-23-92654” with a bin label that did not include the correct EPA approved precautionary signal word “Danger.” The bin label incorrectly lists the word “Caution.”

37. Accordingly, on at least one (1) occasion with respect to Oxygen Pools Granular Shock, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 5

*Distribution or Sale of Misbranded Pesticides
(Label with Wrong Supplemental Registration Number)*

38. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold the following pesticide product: Kenwood Pools Granular Dichlor five (5) pound size under the supplemental registration number “EPA Reg. No. 48520-23-57586” with a bin label that did not bear the correct the EPA approved supplemental registration number on the bin label as required under 40 C.F.R. Part 156.10(e). The supplemental registration number on the bin label was incorrectly listed as EPA Reg. No. 48520-10-57586.

39. Accordingly, on at least one (1) occasion with respect to Kenwood Pools Granular Dichlor five (5) pound size, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and the FIFRA Regulations at 40 C.F.R. Part 156.10(e), which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 6

*Distribution or Sale of Misbranded Pesticides
(Label with Missing Supplemental Registration Number)*

40. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold each of the following pesticide products: Kenwood Pools Granular Dichlor ten (10) pound and twenty-five (25) pound sizes under the supplemental registration number “EPA Reg. No. 48520-23-57586” with the bin label missing the EPA approved supplemental registration number on the label as required under 40 C.F.R. Part 156.10(e).

41. Accordingly, on at least one (1) occasion with respect to each of the following products: Kenwood Pools Granular Dichlor ten (10) pound and twenty (25) pound sizes, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §

136j(a)(1)(E), and the FIFRA Regulations at 40 C.F.R. Part 156.10(e), each of which is a separate violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 7

*Distribution or Sale of Misbranded Pesticides
(Label with Missing Establishment Number)*

42. Based on the Inspection and EPA’s subsequent investigation, Respondent on at least one (1) occasion between January 2018 and April 2019 distributed or sold each of the following pesticide products: Kenwood Pools Granular Dichlor ten (10) pound and twenty-five (25) pound sizes under the supplemental registration number “EPA Reg. No. 48520-23-57586” with the bin label missing the establishment number on the label. The establishment number required to be on the bin label for these Products is the Napco Establishment number: EPA Est. No. is 48520-CT-002.

43. Accordingly, on at least one (1) occasion with respect to each of the following products: Kenwood Pools Granular Dichlor ten (10) pound and twenty-five (25) pound sizes, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), each of which is a separate violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

V. TERMS OF SETTLEMENT

44. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the Penalty Inflation Act and Penalty Inflation Rule, and other factors as justice may require, including

Respondent's ability to pay the penalty and EPA findings under 40 C.F.R. § 13.18(a). EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of thirty- three thousand eighty dollars (\$33,080) in settlement of the violations alleged herein.

45. Respondent consents to the issuance of this CAFO and consents to the payment of a civil penalty of \$33,080, which shall be due in two (2) installments over two months. The payments shall be made as follows in the following manner:

- a. The first payment shall be in the amount of \$16,540 and shall be made within thirty (30) days of the effective date of this CAFO.
- b. The second payment shall be made within sixty (60) days of the effective date of this CAFO in the amount of \$ 16,622.70 (consisting of \$16,540 in principal plus \$82.70 in interest).
- c. If Respondent fails to make any payment by its due date, the full remaining amount plus interest from the effective date, shall be due immediately. Respondent shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

46. Each payment, in the amounts stated above in paragraph 45, shall be made by remitting a check or making an electronic payment, as described below:

- a. Respondent may make each payment by a company, bank, cashier's or certified check, payable to "Treasurer, United States of America." Such payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

- b. Respondent may make each payment by electronic funds transfer instead of check. Such payment shall include the case name and docket number with the transfer and shall be remitted as follows:

If remitted by wire transfer, any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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

If remitted through the Automated Clearing House (ACH) for receiving US currency, use the following information:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

- c. Respondent shall include the case name and docket number (“*In Re: Phoenix*”

Products Company, Docket No. FIFRA-01-2021-0030”) on the face of any check or wire transfer confirmation and, in addition, within 24 hours of payment, Respondent shall forward notice of payment as well as a copy of the payment check or payment receipt, by e-mail and first class mail or commercial delivery service, to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: 04-6)
Boston, MA 02109-3912
santiago.wanda@epa.gov

and

Peter DeCambre, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: 04-3)
Boston, MA 02109-3912
decambre.peter@epa.gov

47. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this

CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

48. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

49. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the violations alleged in Section IV of this CAFO.

50. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

51. Complainant and Respondent, by entering into this CAFO, each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following address: johnh@phoenixproductsco.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and


uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's June 19, 2020 Standing Order, entitled Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents. Electronic signatures shall comply with, and be maintained in accordance with, that Order.

52. Each of the Parties shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

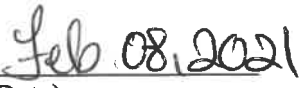
53. The terms and conditions of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

54. The undersigned representative(s) 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.

For Respondent, Phoenix Products Company:



(Signature)
[Print Name, Title]
[Address]



(Date)

John Haase
President
Phoenix Products Co
55 cantaine Dr
Terryville, CT 06786

For U.S. EPA - Region 1:

(Electronic Signature)

James Chow, Deputy Director for Karen McGuire, Director
Enforcement and Compliance Assurance Division

(Date)

FINAL ORDER

Pursuant to 40 C.F. R. § 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Phoenix Products Company, is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

Sharon Wells
Acting Regional Judicial Officer
EPA Region 1

Date