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ENVIRONMENTAL PROTECTION AGENCY REGION VII  
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF: )

Woodstream Corporation )

2307 Alabama Street )  
St. Joseph, Missouri 64504 )

Respondent. )

Docket No. FIFRA 07-2009-0037

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA) Region 7 and Woodstream Corporation ("Woodstream" or "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).

ALLEGATIONS

1. This 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. § 136f.
2. This Consent Agreement and Final Order (CAFO) serves as notice that the U.S. Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 12 and 17 of FIFRA, 7 U.S.C. §§ 136 and 136o.

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA Region 7, is the Director of Water, Wetlands and Pesticides Division (WWPD), EPA Region 7.

4. The Respondent is Woodstream Corporation, a pesticide distributor located at 2307 Alabama Street, St. Joseph, Missouri 64504. 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). Respondent

is incorporated and authorized to do business in the State of Missouri. Respondent's headquarters are located in Pennsylvania.

### Statutory and Regulatory Background

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

6. Section 2(q)(1)(A) of FIFRA, states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular. 7 U.S.C. § 136(q)(1)(A).

7. Section 2(q)(1)(F) of FIFRA, states a pesticide is misbranded if the labeling does not contain directions for use which are necessary and if complied with are adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(F).

8. Section 2(q)(1)(G) of FIFRA, states a pesticide is misbranded if the label does not contain a warning or caution statement which is necessary and if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).

9. Section 17(a)(1) of FIFRA, states that no pesticide intended solely for export to any foreign country shall be deemed in violation of this subchapter when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides shall be subject to sections 136(p), (q)(1)(A), (C), (D), (E), (G), and (H), (q)(2)(A), (B), (C)(i) and (iii), and (D), 136e and 136f of FIFRA. 7 U.S.C. § 136o(a)(1).

10. 40 C.F.R. § 168.65 describes how EPA interprets and enforces the requirements of Section 17(a)(1) of FIFRA, 7 U.S.C. § 136o(a)(1). 40 C.F.R. § 168.65(b) details the specific requirements for any exported pesticide regarding label and labeling content, correct representation, and understandability.

### Factual Allegations

11. Respondent, at all times relevant, operated as a warehouse and distribution center in St. Joseph, Missouri.

12. On August 15, 2007, a representative of Missouri Department of Agriculture (MDA) conducted a routine inspection at Respondent's facility in St. Joseph, Missouri for the purpose of determining Respondent's compliance with FIFRA.

13. On August 13, 2007, a representative of MDA conducted a routine inspection at R&L Industries, Inc. d/b/a RitePak Inc. (RitePak) located at 902 Lafayette Street, St. Joseph, Missouri 64503. RitePak is a pesticide contract manufacturer and distributor for the Respondent.

14. At all times relevant to this CAFO, RitePak produced and distributed, as those terms are defined in FIFRA, the pesticides Safer Sulphur Dust, Canadian Reg. No. 19703-P.C.P.A.C.T. and Concern Diatomaceous Earth Crawling Insect Killer, EPA Reg. No. 79729-1-50932 for Woodstream. Woodstream held and shipped these products from its warehouse in St. Joseph, Missouri.

15. During the inspection of RitePak, a representative of MDA collected a copy of a Safer Sulphur Dust bin label. During the inspection at Woodstream, a representative of MDA collected a copy of the shipping documents for Safer Sulphur Dust. At all times relevant to this CAFO, Woodstream shipped Safer Sulphur Dust to Woodstream's Canadian warehouse.

16. Safer Sulphur Dust is a Canadian Registered Pesticide under Reg. No. 19703-P.C.P.A.C.T. Safer Sulphur Dust is not registered for use in the United States.

17. The bin label for the Safer Sulphur Dust did not contain all the required language of 40 C.F.R. § 168.65.

18. During the inspection of RitePak, a representative of MDA collected a label for Concern Diatomaceous Earth Crawling Insect Killer. During the inspection at Woodstream, a representative of MDA, collected samples of the inventory of Concern Diatomaceous Earth Crawling Insect Killer held for shipment.

19. Concern Diatomaceous Earth Crawling Insect Killer is an EPA Registered Product registered to Celite Corporation (Celite Corp) under EPA Reg. No. 73729-1. Woodstream has an agreement with Celite Corp to produce Concern Diatomaceous Earth Crawling Insect Killer as EPA Reg. No. 73729-1-50932.

20. The label for Concern Diatomaceous Earth Crawling Insect Killer collected during the inspection did not bear the updated first aid statement as required by 40 C.F.R. § 152.132(d). See also EPA Product Registration Notices 2001-1 and 2001-6.

### VIOLATIONS

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

#### Count I

22. Complainant hereby incorporates the allegations contained in Paragraphs 1-17 as if fully set forth herein.

23. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), and Section 17(a)(1) of FIFRA, 7 U.S.C. § 136o(a)(1) by distributing a misbranded pesticide for export.

24. Respondent violated 40 C.F.R. § 168.65 by exporting and distributing a pesticide product whose label did not contain all the labeling requirements.

Count II

25. Complainant hereby incorporates the allegations contained in Paragraphs 1-14 and 18-21 as if fully set forth herein.

26. Respondent violated Sections 12(a)(1)(A) and (E) of FIFRA 7 U.S.C. §§ 136j(a)(1)(A) and (E) by distributing or selling a misbranded pesticide.

27. Respondent violated 40 C.F.R. § 152.132(d) by selling or distributing a pesticide product that did not bear the required updated first aid statement.

CONSENT AGREEMENT

It is hereby AGREED and ACCEPTED by Respondent that:

28. 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.

29. Respondent admits the jurisdictional allegations of this CAFO 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.

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

31. 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.

32. 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 attorneys' fees.

33. 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.

34. 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.

35. The undersigned representative 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.

36. Respondent certifies that 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.

37. The effect of settlement described in Paragraph 33 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 36.

38. Respondent agrees that in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Three Thousand Six Hundred and Forty Dollars (\$3,640.00) as set forth in Paragraph 1 of the Final Order.

39. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of the debt collection including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

40. Nothing in this CAFO shall be construed as a release from any other action under any law and/or regulation administered by 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.

41. Failure to pay the assessed penalty may result in the referral of this matter to the United States 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.

#### FINAL ORDER

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

1. Respondent, in settlement of the allegations set forth above, shall pay by cashier or certified check, a civil penalty for the violations cited herein, in the amount of Three Thousand Six Hundred and Forty Dollars (\$3,640.00), on or before thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA 07-2009-0037, 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. A copy of the check shall simultaneously be sent to the following:

Sara Hertz Wu  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
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. This CAFO shall not relieve the 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.

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

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2-17-10

By:

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

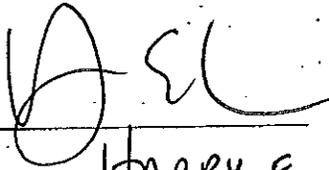
By:

  
Sara S. Hertz Wu  
Assistant Regional Counsel

RESPONDENT:

Woodstream Corporation

Date: February 12, 2010

By: 

Printed Name: HARRY E. WHALEY

Title: CEO

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

Date: Feb. 19, 2010

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

IN THE MATTER OF Woodstream Corporation, Respondent  
Docket No. FIFRA-07-2009-0037

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:

Sara Hertz Wu  
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:

Harry E. Whaley, CEO  
Woodstream Corporation  
2307 Alabama Street  
St. Joseph, Missouri 64504

Dated: 2/23/10

  
Kathy Robinson  
Hearing Clerk, Region 7