



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 16 2007

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8139

Mark Henderson, President  
NuWool Company  
2472 Port Sheldon Road  
Jenison, Michigan 49428

Consent Agreement and Final Order, Docket No. FIFRA-05-2008-0003

Dear Mr. Henderson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on October 16, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,280 is to be paid in the manner prescribed in paragraphs 37 through 41. Please be certain that the number **BD 2750845P003** and the docket number are written on both the transmittal letter and on the check. Payment is due by November 15, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess  
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Susan Perdomo, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	
	)	
	)	
<b>NuWool Company</b>	)	<b>CONSENT AGREEMENT</b>
<b>2472 Port Sheldon Road</b>	)	<b>AND FINAL ORDER</b>
<b>Jenison, Michigan 49428</b>	)	
	)	
<b>Respondent.</b>	)	<b>Docket No. FIFRA-05-2008-0003</b>
<hr/>	)	

**CONSENT AGREEMENT**

The parties agree that settlement of this action without further delay is in their best interest, and having consented to the entry of this Consent Agreement and the attached Final Order (CAFO) before taking testimony and without adjudication of any issue of law or fact herein, Respondent agrees to comply with the terms of this CAFO.

**I. Preliminary Statements**

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

2. Complainant is, by lawful delegation, the Chief of the Chemicals Management Branch, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, and is authorized to institute and settle civil administrative actions brought pursuant to Section 14(a) of FIFRA.

3. Respondent is NuWool Company, a corporation organized under the laws of the State of Michigan with a place of business at 2472 Port Sheldon Road, Jenison, Michigan 49428.

## **II. Jurisdiction/Waiver of Right to Hearing**

4. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO. 40 C.F.R. § 22.13(b).

5. Respondent agrees not to contest U.S. EPA's jurisdiction with respect to the execution of this Consent Agreement, issuance of the attached Final Order, or the enforcement thereof. 40 C.F.R. § 22.18(b)(2).

6. For purposes of this Consent Agreement and the enforcement thereof, Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement. Respondent waives its right to appeal the proposed Final Order attached to this Consent Agreement. 40 C.F.R. § 22.18(b)(2).

## **III. General Allegations**

7. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "pest" as 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.

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

11. Respondent is a “distributor” of “Energy Care Cellulose Insulation” and “NuWool Wallseal Cellulose Insulation,” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

12. On August 24, 2005, August 31, 2005 and September 16, 2005, Jennifer Reay, an inspector employed by the Michigan Department of Agriculture and authorized to conduct inspections under FIFRA, conducted inspections under Section 9 of FIFRA, 7 U.S.C. § 136g, at Respondent’s place of business to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

13. During the August 24, 2005 inspection, the inspector collected samples of the labels for the products “Energy Care Cellulose Insulation” and “NuWool Wallseal Cellulose Insulation.”

14. The labels for “Energy Care Cellulose Insulation” and “NuWool Wallseal Cellulose Insulation” bear the statement “MOLD FIGHTING FORMULA! This product contains an E.P.A. registered fungicide making is resistant to the growth of mold.”

15. 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 pesticide, 40 C.F.R. § 152.15(a)(1).

16. The products “Energy Care Cellulose Insulation” and “NuWool Wallseal Cellulose Insulation” are “pesticides” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

17. Respondent “distributed or sold,” as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the products “Energy Care Cellulose Insulation” and “NuWool Wallseal Cellulose Insulation.”

## **IV. Violations**

### **Count I**

18. Complainant incorporates paragraphs 7 through 17 of this complaint, as if set forth in this paragraph.

19. At the time of the inspections, Respondent had not registered “Energy Care Cellulose Insulation” with the U.S. EPA, as required by Section 3 of FIFRA, 7 U.S.C. § 136a.

20. Respondent’s distribution or sale of the unregistered pesticide “Energy Care Cellulose Insulation” constitutes an unlawful action pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### **Count II**

21. Complainant incorporates paragraphs 7 through 17 of this complaint, as if set forth in this paragraph.

22. At the time of the inspections, Respondent had not registered “NuWool Wallseal Cellulose Insulation” with the U.S. EPA, as required by Section 3 of FIFRA, 7 U.S.C. § 136a.

23. Respondent’s distribution or sale of the unregistered pesticide “NuWool Wallseal Cellulose Insulation” constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### **Settlement of Claims/Reservation of Rights**

24. Complainant and Respondent, having sought to informally settle this matter, have agreed to the terms of this Consent Agreement in order to resolve this action without trial or other litigation. 40 C.F.R. § 22.18 (b) and (c).

25. Respondent neither admits nor denies the factual allegations contained in this Consent Agreement, 40 C.F.R. § 22.18(b), and nothing herein shall be construed as an admission

of liability by Respondent.

26. The terms of this CAFO constitute a settlement by Complainant of the civil penalties sought under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the alleged violations of FIFRA specified in Section IV of this Consent Agreement.

**Except as it relates to those matters resolved by this CAFO:**

27. Compliance with this CAFO shall not be a defense to any other actions commenced pursuant to federal, state and local environmental laws and it is the Respondent's responsibility to comply with all applicable provisions of FIFRA and any other federal, state or local laws and regulations.

28. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability.

29. Complainant hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable. This CAFO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, which Complainant has under FIFRA or any other statutory, regulatory or common law enforcement authority of the United States.

30. Respondent reserves all rights it may have under federal, state or local statute, regulation or common law, except those rights it has expressly waived under paragraphs 5 and 6 this CAFO.

31. The entry of this CAFO and Respondent's consent to comply shall not limit or otherwise preclude Complainant from taking additional enforcement action should Complainant determine that such actions are warranted, except as it relates to those matters resolved by this CAFO.

32. This CAFO constitutes the entire agreement between Complainant and Respondent.

**Payment Provisions**

33. Section 14(a) of FIFRA, 7 U.S.C. § 1361, authorizes a civil penalty of up to \$5,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Part 19 and 27, see 61 Fed. Reg. 13514-13517 (March 20, 1997), this amount was increased to \$5,500 on or after January 31, 1997 and to \$6,500 for each offense of FIFRA that occurred after March 15, 2004.

34. Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent’s business and Respondent’s ability to continue in business in light of the proposed penalty, Complainant proposes that Respondent be assessed the following civil penalty for the violations alleged in Section IV:

**Count I**

Distribution/Sale of Unregistered Pesticide Product.....	\$4,550
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**Count II**

Distribution/Sale of Unregistered Pesticide Product.....	\$4,550
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<b>Total Proposed Civil Penalty .....</b>	<b>\$9,100</b>
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35. Respondent certifies that it eliminated pesticidal claims made on the label of its products NuWool Wallseal Cellulose and Energy Care Cellulose Insulation and accordingly is currently in compliance with FIFRA and the regulations promulgated thereunder.

36. Consistent with the provisions of the FIFRA Enforcement Response Policy, Complainant agrees to mitigate the proposed civil penalty from \$9,100 to \$7,280.

37. The Respondent shall pay the civil penalty of \$7,280.

38. The Respondent shall pay this penalty by certified or cashier's check payable to the "Treasurer of the United States of America," and remit the check to:

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

39. The Respondent shall provide a transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number with the payment.

40. The Respondent must write the case docket number and the billing document number of the face of the check.

41. The Respondent shall also provide copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA-Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Claudia Niess (LC-8J)  
U.S. EPA-Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Susan Perdomo (C-14J)  
U.S. EPA-Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

42. Respondent shall pay interest that accrues on any amount overdue under the terms of the Consent Agreement and attached Final Order at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The Respondent shall pay a late payment handling



charge of \$15 which will be imposed after 30 days, with an additional charge of \$15 for each subsequent 30-day period over which an unpaid balance remains.

43. In addition, the Respondent shall pay a 6 percent per annum penalty assessed on any principal amount not paid within 90 days of the date of the attached Final Order is filed with the Regional Hearing Clerk.

44. The Respondent's failure to comply with the provisions of paragraphs 37, 38, 42 and 43 shall result in the referral of this matter to the United States Department of Justice for collection.

45. The Respondent shall not deduct any penalty payment made pursuant to the provisions of this CAFO under any federal, state or local tax law.

46. The Respondent consents to the issuance of the attached Final Order without further notice.

47. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and attached Final Order.

48. This Consent Agreement and attached Final Order shall become effective on the date that it is filed with the Regional Hearing Clerk, as required by 40 C.F.R. § 22.18(b)(3).

49. The foregoing Consent Agreement is hereby stipulated, agreed and approved for entry.

**NuWool Company, Respondent**

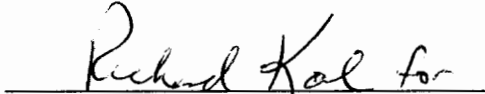


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Mark Henderson, President  
NuWool Company

9-28-07  
Date

**United States Environmental Protection Agency, Complainant**



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Margaret M. Guerriero, Director  
Land and Chemicals Division

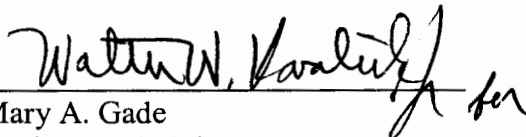
10/10/07  
Date

**FIFRA-05-2008-0003**

**In the Matter of:**  
**NuWool Company**  
**Docket No.**            **FIFRA-05-2008-0003**

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing with the Regional Hearing Clerk.

  
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Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

10/11/07  
Date

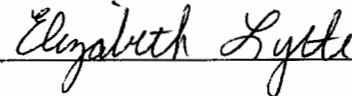
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving NuWool Company, was filed on October 16, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8139, a copy of the original to the Respondents:

Mark Henderson, President  
NuWool Company  
2472 Port Sheldon Road  
Jenison, Michigan 49428

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



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Elizabeth Lytle  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2008-0003**