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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)	EPA RO	REGIO	ر 1102
New Dawn Manufacturing Company 16001 Trade Zone Avenue Upper Marlboro, MD 20774)))	DOCKET NO: FIFRA-03-2014-0045 CONSENT AGREEMENT		1 9 I MAI
Respondent)		AND CLER	84 : H4

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and by New Dawn Manufacturing Company ("Respondent"), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .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 of Practice"), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement ("CA") and the attached Final Order (collectively, "CAFO") resolve Complainant's civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA alleged herein.

General Provisions

- 1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
- 2. Except as provided in paragraph 1 herein, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
- 3. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency ("EPA") with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of this CAFO.

- 4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
- 5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
- 6. Respondent shall bear its own costs and attorney's fees.
- 7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA's Findings of Fact and Conclusions of Law

- 8. In accordance with Sections 22.13(b) and .18 (b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges the following findings of fact and conclusions of law:
- 9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
- 10. Respondent is a Maryland corporation with a principal place of business located at 16001 Trade Zone Avenue, Upper Marlboro, Maryland 20774.
- 11. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- 12. Respondent is a "wholesaler, dealer, retailer or other distributor" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1).

Count I

- 13. The allegations of preceding paragraphs are incorporated by reference as though fully set forth herein.
- 14. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), 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, or whose registration has been canceled or suspended unless otherwise authorized by EPA under FIFRA.
- 15. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), no person in any state may distribute or sell to any person any pesticide that is not registered under FIFRA.

- 16. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term "pesticide" means, *inter alia*, "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
- 17. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and other microorganisms.
- 18. Pursuant to 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, 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.
- 19. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), to "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.
- 20. On at least two occasions in May and June 2012, Respondent distributed and/or sold SaniQuest Biological Restroom Cleaner ("SaniQuest") to other "persons" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- 21. At all times relevant to the violations alleged herein, the label on SaniQuest bore the following language:
 - "designed to remove ... mold, mildew...."

 "contains... beneficial bacteria to degrade odor producing organics, plus a bio-controlling agent that reduces the proliferation of pathogens."
- 22. The language described in paragraph 21 herein claims, states or implies that SaniQuest can or should be used as a pesticide within the meaning of 40 C.F.R. § 152.15.
- 23. At all times relevant to the violations alleged herein, Respondent's SaniQuest was a "pesticide" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
- 24. At all times relevant to the violations alleged herein, Respondent's SaniQuest was not registered with EPA under Section 3of FIFRA, 7 U.S.C. § 136a.
- 25. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing and/or selling the unregistered pesticide product SaniQuest to other persons on at least two separate occasions in May and June 2012.

26. Respondent's distributions and/or sales of the unregistered pesticide product SaniQuest on at least two occasions constitute two separate unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count II

- 27. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
- 28. Section 12(a)(1)(E) of FIFRA 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.
- 29. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is "misbranded" if, *inter alia*, the label or labeling accompanying the pesticide bears words, statements, or other information required by FIFRA that are not prominently placed on the label or labeling in such a way as to make it readable or understandable.
- 30. Respondent is the supplemental distributor of the pesticide product "Spectra System 3 1:256 Neutral Disinfectant" (EPA Reg. No. 1839-167-12228) ("Spectra System 3").
- 31. On June 13, 2011, Respondent distributed and/or sold Spectra System 3 to a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- 32. At all times relevant to the violation alleged herein, the label on Spectra System 3 bore a signal word and child hazard warning that was less than the minimum point size required by 40 C.F.R. § 156.60(b)(1).
- 33. At all times relevant to the violation alleged herein, Spectra System 3 was misbranded within the meaning of Section 2(q) of FIFRA, 7 U.S.C. § 136(q).
- 34. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and/or selling the misbranded pesticide product Spectra System 3 to a person on June 13, 2011.
- 35. Respondent's distribution and/or sale of the misbranded pesticide product Spectra System 3 constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

- 36. In settlement of the above-captioned action including Counts I and II, Respondent consents to the assessment of a civil penalty of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
- 37. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), i.e., the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, and Rodenticide Act and 40 C.F.R. Part 19.
- 38. Payment of the civil penalty amount required under the terms of Paragraph 36, above, shall be made as follows:
 - a. Mailing (via first class U.S. Postal Service Mail) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Craig Steffen 513-487-2091 Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028

c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance US EPA, MS-NWD 26 W. M.L. King Drive Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York ABA 021030004 Account No. 68010727 SWIFT Address FRNYUS33 33 Liberty Street NY, NY 10045

(Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver ABA 051036706 Account No. 310006 Environmental Protection Agency CTX Format Transaction Code 22 - checking

Contact: John Schmid 202-874-7026

- f. Online payments can be made at <u>WWW.PAY.GOV</u> by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.
- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

All payments shall also reference the above case caption and EPA Docket No. FIFRA-03-2014-0045. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy Regional Hearing Clerk (3RC00) U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029 Janet E. Sharke Sr. Asst. Regional Counsel (3RC50) U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

40. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

Other Applicable Laws

41. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

42. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

43. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

44. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

45. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator, EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

46. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:	
12 23 2013 Date	Name & Title JOHN C. POOLE TO, SECRETARY New Dawn Manufacturing Company
For Complainant:	
Date	Janet E. Sharke Senior Assistant Regional Counsel U.S. EPA, Region III
Accordingly, I hereby recommend the Final Order attached hereto.	I that the Regional Administrator or his designee issue
Date	John A. Armstead, Director Land and Chemicals Division, U.S. EPA, Region III



Entire Agreement

46. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

roi Respondent.	
Date	Name & Title New Dawn Manufacturing Company
For Complainant:	

12/24/2013 Date

Janet E. Sharke Senior Assistant Regional Counsel U.S. EPA, Region III

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Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

12/27/13 Date

John A. Armstead, Director Land and Chemicals Division, U.S. EPA, Region III



BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

1650 Arch Street Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)	
New Dawn Manufacturing Company)	DOCKET NO: FIFRA-03-2014-0045
16001 Trade Zone Avenue)	
Upper Marlboro, MD 20774)	FINAL ORDER
)	
Respondent)	
)	

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and New Dawn Manufacturing Company ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement. The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Renée Sarajian

Regional Judicial Officer U.S. EPA, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO"), Docket No. FIFRA-03-2014-0045, further certify that I caused true and correct copies of the foregoing CAFO to be transmitted via Certified Mail, Return Receipt Requested, to the following addressees:

John Poole Corporate Secretary New Dawn Manufacturing Company 16001 Trade Zone Avenue Upper Marlboro, MD 20774

Steven M. Wishnow, Esq. Kanter & Wishnow, Chartered Two Wisconsin Circle, Suite 610 Chevy Chase, MD 20815

1/16/2014 Date

Janet E. Sharke

Senior Assistant Regional Counsel

U.S. EPA, Region III

Office of Regional Counsel (3RC50)

1650 Arch Street

Philadelphia, PA 19103-2029