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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2020-00 12
11)
12 Wilbur-Ellis Company LLC,)
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14 Respondent.)
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CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

21 I. CONSENT AGREEMENT

22 The United States Environmental Protection Agency (“EPA”), Region IX, and Wilbur-
23 Ellis Company LLC (“Respondent”) agree to settle this matter and consent to the entry of this
24 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
25 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
26

27 A. AUTHORITY AND PARTIES

28 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
of a civil administrative penalty against Respondent for violations of Sections 12(a)(1)(E),
12(a)(2)(B)(i), and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E), 136j(a)(2)(B)(i), and
136j(a)(2)(S).

2. Complainant is the Manager of the Toxics Section in the Enforcement and
Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
bring this action and to sign a consent agreement settling this action.

1 3. Respondent is Wilbur-Ellis Company LLC, a California limited liability company
2 with headquarter offices located at 345 California Street in San Francisco, California, 94104.

3 **B. STATUTORY AND REGULATORY BASIS**

4 4. Under Section 2(s) of FIFRA, 7 U.S.C. §136(s), the term “person” means “any
5 individual, partnership, association, corporation, or any organized group of persons whether
6 incorporated or not.”

7 5. Under Section 2(u) of FIFRA, 7 U.S.C. §136(u), the term “pesticide” is, among other
8 things, any substance or mixture of substances intended for preventing, destroying, repelling, or
9 mitigating any pest.

10 6. Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is
11 “misbranded” if the labeling accompanying it does not contain directions for use which are
12 necessary for effecting the purpose for which the product is intended and if complied with,
13 together with any requirements imposed under Section 3(d) of this Act, are adequate to protect
14 health and the environment.

15 7. Under Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), a pesticide is
16 “misbranded” if there is not affixed to its container, and to the outside container or wrapper of
17 the retail package, if there be one, through which the required information on the immediate
18 container cannot be clearly read, a label bearing the net weight or measure of the content.

19 8. Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term “label” means the
20 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its
21 containers or wrappers.

22 9. Under Section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term “labeling”
23 means all labels and all other written, printed or graphic matter accompanying the pesticide or
24 device at any time.

25 10. Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “to distribute or sell”
26 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
27 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
28 offer to deliver.

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

4 12. Under Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), it is unlawful for
5 any person to refuse to prepare, maintain, or submit any records required by or under Sections 5,
6 7, 8, 11, or 19 of FIFRA, 7 U.S.C. §§ 136c, 136e, 136f, 136i or 136q.

7 13. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any
8 person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a)
9 and 136q.

10 14. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
11 regulations governing the labeling requirements for pesticides and devices, which are codified at
12 40 C.F.R. Part 156.

13 15. Pursuant to Sections 8 and 25 of FIFRA, 7 U.S.C. §§ 136f and 136w, the EPA
14 Administrator promulgated regulations governing the record-keeping requirements for pesticide
15 production and distribution, which are codified at 40 C.F.R. Part 169.

16 16. Pursuant to Sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
17 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
18 containers and pesticide containment structures (“the Container/Containment regulations”),
19 which are codified at 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140-156.159.

20 17. “Agricultural pesticide” means any pesticide product labelled for use in or on a farm,
21 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

22 18. “Appurtenance” means any equipment or device which is used for the purpose of
23 transferring a pesticide from a stationary pesticide container or to any refillable container,
24 including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering
25 devices. 40 C.F.R. § 165.3.

26 19. “Containment pad” means any structure that is designed and constructed to intercept
27 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40
28 C.F.R. § 165.3.

1 20. "Containment structure" means either a secondary containment unit or a containment
2 pad. 40 C.F.R. § 165.3.

3 21. "Establishment" means any site where a pesticidal product, active ingredient, or
4 device is produced, regardless of whether such site is independently owned or operated, and
5 regardless of whether such site is domestic and producing a pesticidal product for export only, or
6 whether the site is foreign and producing any pesticidal product for import into the United States.
7 40 C.F.R. § 165.3.

8 22. "Facility" means all buildings, equipment, structures, and other stationary items
9 which are located on a single site or on contiguous or adjacent sites and which are owned or
10 operated by the same person (or by any person who controls, who is controlled by, or who is
11 under common control with such person). 40 C.F.R. § 165.3.

12 23. "Operator" means any person in control of, or having responsibility for, the daily
13 operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

14 24. "Owner" means any person who owns a facility at which a containment structure is
15 required. 40 C.F.R. § 165.3.

16 25. "Pesticide dispensing area" means an area in which pesticide is transferred out of or
17 into a container. 40 C.F.R. § 165.3.

18 26. "Produce" means to manufacture, prepare, propagate, compound, or process any
19 pesticide, including any pesticide produced pursuant to Section 5 of the Act, and any active
20 ingredient or device, or to package, repack, label, relabel, or otherwise change the container
21 of any pesticide or device. 40 C.F.R. § 165.3.

22 27. "Producer" means any person, as defined by the Act, who produces any pesticide,
23 active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40
24 C.F.R. § 165.3.

25 28. "Refilling establishment" means an establishment where the activity of repackaging
26 pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

27 29. "Refillable container" means a container that is intended to be filled with pesticide
28 more than once for sale or distribution. 40 C.F.R. § 165.3.

1 c. Roundup PowerMax (EPA Reg. No. 524-579), Syngenta Dual Magnum
2 (EPA Reg. No. 100-816), Syngenta Bicep II Magnum (EPA Reg. No. 100-817), and BASF
3 Outlook (EPA Reg. No. 7969-156) at the Farmington Establishment.

4 As such, the Four Establishments and the agricultural pesticides they repackaged are subject to
5 the Container/Containment regulations.

6 37. At all times relevant to this CAFO, Respondent was not a “registrant” as that term is
7 defined by 40 C.F.R. § 165.3.

8 38. At all times relevant to this CAFO, the Willows, El Nido, and Farmington
9 Establishments included areas used to fill containers with agricultural pesticides and/or areas
10 used to refill stationary tanks with these pesticides. Each of these areas is both a “pesticide
11 dispensing area” and a “containment pad,” as those terms are defined by 40 C.F.R. § 165.3.

12 39. At all times relevant to this CAFO, the Willows, El Nido, and Farmington
13 Establishments included “stationary pesticide containers” with agricultural pesticides and
14 associated “secondary containment units,” as those terms are defined by 40 C.F.R. § 165.3.

15 40. Owners or operators of refilling establishments who repackaged agricultural pesticides
16 and whose principal business is retail sale and that have a stationary pesticide container or a
17 pesticide dispensing (including container refilling) area must comply with the secondary
18 containment requirements of the Container/Containment regulations. 40 C.F.R. § 165.80(b)(1).

19 41. The containment pads in the pesticide dispensing areas and the secondary
20 containment units at the Willows, El Nido, and Farmington Establishments were constructed on
21 or before November 16, 2006 and are each “existing containment structures,” as that term is
22 defined by 40 C.F.R. § 165.83(b).

23 42. Inspections were conducted by a California Department of Pesticide Regulation
24 (“CDPR”) inspector on or about: (1) May 24, 2017 at the Willows Establishment; (2) June 15,
25 2017 at the El Nido Establishment; and (3) January 16, 2018 at the Helm Establishment. In
26 addition, an inspection was conducted by a Navajo Nation Environmental Protection Agency
27 inspector on or about September 28, 2016 at the Farmington Establishment.

1 WILLOWS ESTABLISHMENT

2 COUNT 1: Distribution or Sale of a Misbranded Pesticide (Directions for Use)

3 43. When pesticide products are stored in bulk containers, whether mobile or stationary,
4 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
5 directions for use, must be securely attached to the container in the immediate vicinity of the
6 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a
7 label containing, inter alia, the directions for use as prescribed in paragraph (i) of this section. 40
8 C.F.R. § 156.10(a)(1)(viii).

9 44. On or about May 24, 2017, Respondent “distributed or sold” the pesticide, 415
10 Superior Spray Oil, in a bulk stationary pesticide container at the Willows Establishment, as that
11 term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for
12 distribution, sale, or shipment.

13 45. On or about May 24, 2017, Respondent failed to have a label attached to the bulk
14 stationary pesticide container containing 415 Superior Spray Oil at the Willows Establishment
15 that included the directions for use, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and
16 156.10(a)(1)(viii).

17 46. Respondent’s failure to include the directions for use on the labels attached to the
18 bulk stationary pesticide container containing 415 Superior Spray Oil at the Willows
19 Establishment, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(a)(1)(viii), constitutes
20 “misbranding,” as that term is defined by Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

21 47. Consequently, on or about May 24, 2017, Respondent’s distribution or sale of the
22 pesticide, 415 Superior Spray Oil, in a bulk stationary pesticide container at the Willows
23 Establishment constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §
24 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded pesticide.

25 COUNT 2: Failure to Meet Capacity Requirements for an Existing Secondary Containment Unit

26 48. Existing secondary containment units for stationary containers of liquid pesticides
27 must meet the capacity requirements set forth at 40 C.F.R. § 165.87(c). In particular, existing
28 secondary containment units for stationary containers of liquid pesticides must have a capacity of

1 at least 100% of the volume of the largest stationary pesticide container plus the volume
2 displaced by other containers and appurtenances within the unit. 40 C.F.R. § 165.87(c)(1).

3 49. On or about May 24, 2017, a CDPR inspector observed an existing secondary
4 containment unit for a 7,800-gallon stationary container of liquid 415 Superior Spray Oil at the
5 Willows Establishment that had a capacity (including other containers and appurtenances) of
6 approximately 5,281 gallons. The 415 Superior Spray Oil secondary containment unit at the
7 Willows Establishment needed to have a holding capacity (including other containers and
8 appurtenances) of 8,072 gallons.

9 50. On or about May 24, 2017, Respondent's existing 415 Superior Spray Oil secondary
10 containment unit at the Willows Establishment failed to have a holding capacity of at least 100%
11 of the volume of the largest stationary pesticide container plus the volume displaced by other
12 containers and appurtenances within the unit, as required by 40 C.F.R. § 165.87(c)(1).

13 51. On or about May 24, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
14 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 100% of the volume of
15 the largest stationary pesticide container plus the volume displaced by other containers and
16 appurtenances within the unit for its existing 415 Superior Spray Oil secondary containment unit
17 at the Willows Establishment, as required by 40 C.F.R. § 165.87(c)(1).

18 **COUNT 3: Failure to Meet Capacity Requirements for an Existing Containment Pad**

19 52. Existing containment pads in pesticide dispensing areas must meet the capacity
20 requirements set forth at 40 C.F.R. § 165.87(c). In particular, existing containment pads in
21 pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with
22 a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons. 40
23 C.F.R. § 165.87(c)(2).

24 53. On or about May 24, 2017, a CDPR inspector observed an existing containment pad
25 located in the 415 Superior Spray Oil pesticide dispensing area at the Willows Establishment that
26 had pesticide-holding equipment with a volume of 750 gallons or greater. The 415 Superior
27 Spray Oil containment pad at the Willows Establishment had a holding capacity of
28 approximately 402 gallons.

1 54. On or about May 24, 2017, Respondent's existing 415 Superior Spray Oil
2 containment pad at the Willows Establishment failed to have a holding capacity of at least 750
3 gallons, as required by 40 C.F.R. § 165.87(c)(2).

4 55. On or about May 24, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
5 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 750 gallons for its
6 existing 415 Superior Spray Oil containment pad at the Willows Establishment, as required by 40
7 C.F.R. § 165.87(c)(2).

8 EL NIDO ESTABLISHMENT

9 COUNT 4: Failure to Maintain Records

10 56. At all times relevant to this CAFO, Respondent is a "producer" of the pesticides, 415
11 Superior Spray Oil and 470 Supreme Spray Oil, as that term is defined by 40 C.F.R. § 165.3.

12 57. Producers must comply with, among other things, the records maintenance
13 requirements of 40 C.F.R. Part 169.

14 58. Producers of pesticides shall maintain inventory records (retained until a more
15 current inventory record is prepared) with respect to the types and amounts of pesticides or
16 pesticide active ingredients, or quantities of devices in stock which he has produced. 40 C.F.R. §
17 169.2(e).

18 59. On or about June 15, 2017, Respondent's records pertaining to its repackaging of the
19 pesticides, 415 Superior Spray Oil and 470 Supreme Spray Oil, at the El Nido Establishment
20 failed to include any inventory records.

21 60. On or about June 15, 2017, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7
22 U.S.C. § 136j(a)(2)(B)(i), by failing to maintain inventory records regarding its repackaging of
23 the pesticides, 415 Superior Spray Oil and 470 Supreme Spray Oil, at the El Nido Establishment,
24 as required by 40 C.F.R. § 169.2(e).

25 COUNT 5: Distribution or Sale of a Misbranded Pesticide (Directions for Use)

26 61. On or about June 15, 2017, Respondent "distributed or sold" the pesticide, 470
27 Supreme Spray Oil, in a bulk stationary pesticide container at the El Nido Establishment, as that
28

1 term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for
2 distribution, sale, or shipment.

3 62. On or about June 15, 2017, Respondent failed to have a label attached to the bulk
4 stationary pesticide container containing 470 Supreme Spray Oil at the El Nido Establishment
5 that included the directions for use, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and
6 156.10(a)(1)(viii).

7 63. Respondent's failure to include the directions for use on the labels attached to the
8 bulk stationary pesticide container containing 470 Supreme Spray Oil at the El Nido
9 Establishment, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(a)(1)(viii), constitutes
10 "misbranding," as that term is defined by Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

11 64. Consequently, on or about June 15, 2017, Respondent's distribution or sale of the
12 pesticide, 470 Supreme Spray Oil, in a bulk stationary pesticide container at the El Nido
13 Establishment constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §
14 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded pesticide.

15 **COUNTS 6 AND 7: Failure to Anchor or Elevate a Stationary Container of Liquid Pesticides**

16 65. One of the specific design requirements for existing secondary containment units is
17 that the owner or operator must either anchor or elevate each stationary container of liquid
18 pesticide protected by an existing secondary containment unit to prevent flotation in the event
19 that the secondary containment unit fills with liquid. 40 C.F.R. § 165.87(d).

20 66. On or about June 15, 2017, two bulk stationary pesticide containers (one containing
21 415 Superior Spray Oil and the other 470 Supreme Spray Oil) at the El Nido Establishment were
22 in an existing secondary containment unit but were neither anchored nor elevated.

23 67. On or about June 15, 2017, Respondent failed to either anchor or elevate the two
24 bulk stationary pesticide containers (one containing 415 Superior Spray Oil and the other 470
25 Supreme Spray Oil) at the El Nido Establishment, as required by 40 C.F.R. § 165.87(d).

26 68. On or about June 15, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
27 U.S.C. § 136j(a)(2)(S), on two occasions by failing to either anchor or elevate the two bulk
28

1 stationary pesticide containers (one containing 415 Superior Spray Oil and the other 470
2 Supreme Spray Oil) at the El Nido Establishment, as required by 40 C.F.R. § 165.87(d).

3 HELM ESTABLISHMENT

4 COUNT 8: Distribution or Sale of a Misbranded Pesticide (Net Contents)

5 69. When pesticide products are stored in bulk containers, whether mobile or stationary,
6 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
7 directions for use, must be securely attached to the container in the immediate vicinity of the
8 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a
9 label containing, inter alia, the net contents as prescribed in paragraph (d) of this section. 40
10 C.F.R. § 156.10(a)(1)(iii). If the pesticide is a liquid, the net content statement shall be in terms
11 of liquid measure at 68° F (20° C) and shall be expressed in conventional American units of
12 fluid ounces, pints, quarts, and gallons. 40 C.F.R. § 156.10(d)(2).

13 70. On or about January 16, 2018, Respondent “distributed or sold” the pesticide, 470
14 Supreme Spray Oil, in a bulk stationary pesticide container at the Helm Establishment, as that
15 term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for
16 distribution, sale, or shipment.

17 71. On or about January 16, 2018, Respondent failed to have a label attached to the bulk
18 stationary pesticide container containing 470 Supreme Spray Oil at the Helm Establishment that
19 marked or identified the net contents in terms of liquid measure, as required by 40 C.F.R. §§
20 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2).

21 72. Respondent’s failure to mark or identify the net contents in terms of liquid measure
22 on the labels attached to the bulk stationary pesticide container containing 470 Supreme Spray
23 Oil at the Helm Establishment, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii),
24 and 156.10(d)(2), constitutes “misbranding,” as that term is defined by Section 2(q)(2)(C)(iii) of
25 FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

26 73. Consequently, on or about January 16, 2018, Respondent’s distribution or sale of the
27 pesticide, 470 Supreme Spray Oil, in a bulk stationary pesticide container at the Helm
28

1 Establishment constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §
2 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded pesticide.

3 FARMINGTON ESTABLISHMENT

4 COUNTS 9-12: Distribution or Sale of a Misbranded Pesticide (Net Contents)

5 74. On or about September 28, 2016, Respondent “distributed or sold” the pesticides,
6 Roundup PowerMax, Dual Magnum, Bicep II Magnum, and Outlook, in four separate bulk
7 stationary pesticide containers at the Farmington Establishment, as that term is defined by
8 Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticides for distribution, sale, or
9 shipment.

10 75. On or about September 28, 2016, Respondent failed to have a label attached to any of
11 the four bulk stationary pesticide containers containing Roundup PowerMax, Dual Magnum,
12 Bicep II Magnum, and Outlook at the Farmington Establishment that marked or identified the net
13 contents in terms of liquid measure, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B),
14 156.10(a)(1)(iii), and 156.10(d)(2).

15 76. Respondent’s failure to mark or identify the net contents in terms of liquid measure
16 on the labels attached to the four bulk stationary pesticide containers containing Roundup
17 PowerMax, Dual Magnum, Bicep II Magnum, and Outlook at the Farmington Establishment, as
18 required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2), constitutes
19 “misbranding,” as that term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. §
20 136(q)(2)(C)(iii).

21 77. Consequently, on or about September 28, 2016, Respondent’s distribution or sale of
22 the pesticides, Roundup PowerMax, Dual Magnum, Bicep II Magnum, and Outlook, in four
23 separate bulk stationary pesticide containers at the Farmington Establishment constitutes four
24 violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person
25 from distributing or selling a misbranded pesticide.

26 COUNTS 13 and 14: Failure to Keep a Containment Structure Liquid Tight

27 78. One of the material specifications for all existing containment structures (including
28 containment pads) is that the structures must be liquid-tight with cracks, seams and joints

1 appropriately sealed. 40 C.F.R. § 165.87(a)(1).

2 79. On or about September 28, 2016, the containment wall and containment pad located
3 in the pesticide containment and loading areas at the Farmington Establishment each had
4 unsealed cracks and seams.

5 80. On or about September 28, 2016, Respondent failed to keep the containment wall
6 and containment pad located in the pesticide containment and loading areas at the Farmington
7 Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40
8 C.F.R. § 165.87(a)(1).

9 81. On or about September 28, 2016, Respondent violated Section 12(a)(2)(S) of FIFRA,
10 7 U.S.C. § 136j(a)(2)(S), on two occasions by failing to keep the containment wall and
11 containment pad located in the pesticide containment and loading areas at the Farmington
12 Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40
13 C.F.R. § 165.87(a)(1).

14 D. RESPONDENT'S ADMISSIONS

15 82. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
16 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
17 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
18 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
19 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
20 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
21 proposed Final Order contained in this CAFO.

22 E. CIVIL ADMINISTRATIVE PENALTY

23 83. In final settlement of the violations of FIFRA specifically alleged in Section I.C of
24 this CAFO, Respondent shall pay a civil administrative penalty of SEVENTY-THREE
25 THOUSAND, THREE HUNDRED, AND SEVENTY-TWO DOLLARS (\$73,372). Respondent
26 shall pay this civil penalty no later than thirty (30) calendar days from the effective date of this
27 CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the
28 name and docket number of this case, for the amount, payable to "Treasurer, United States of

1 America," (or be paid by one of the other methods listed below) and sent as follows:

2 Regular Mail:

3 U.S. Environmental Protection Agency
4 Fines and Penalties
5 Cincinnati Finance Center
6 PO Box 979077
7 St. Louis, MO 63197-9000

8 Wire Transfers:

9 Wire transfers must be sent directly to the Federal Reserve Bank in New
10 York City with the following information:

11 Federal Reserve Bank of New York
12 ABA = 021030004
13 Account = 68010727
14 SWIFT address = FRNYUS33
15 33 Liberty Street
16 New York, NY 10045
17 Beneficiary = U.S. Environmental Protection Agency

18 Certified or Overnight Mail:

19 U.S. Environmental Protection Agency
20 1005 Convention Plaza
21 Mail Station SL-MO-C2-GL
22 ATTN Box 979077
23 St. Louis, MO 63101

24 ACH (also known as Remittance Express or REX):

25 Automated Clearinghouse (ACH) payments to EPA can be made through
26 the U.S. Treasury using the following information:

27 U.S. Treasury REX/Cashlink ACH Receiver
28 ABA = 051036706
Account = 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical Location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

1 If clarification regarding a particular method of payment remittance is
2 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

3 Concurrently, a copy of each check, or notification that the payment has been made by one of the
4 other methods listed above, including proof of the date payment was made, shall be sent with a
5 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
6 following addresses:

7 Regional Hearing Clerk
8 Office of Regional Counsel (ORC-1)
9 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

10 Jennifer MacArthur
11 Hazardous Waste and Chemical Section
12 Enforcement and Compliance Assurance Division (ENF-2-2)
13 U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

14 84. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
15 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
16 use such payment as a tax deduction.

17 85. If Respondent fails to pay the assessed civil administrative penalty of SEVENTY-
18 THREE THOUSAND, THREE HUNDRED, AND SEVENTY-TWO DOLLARS (\$73,372) as
19 identified in Paragraph 83 by the deadline specified in that Paragraph, then Respondent shall also
20 pay a stipulated penalty to EPA upon EPA's written request. The amount of the stipulated
21 penalty will be EIGHTEEN THOUSAND, THREE HUNDRED, AND FORTY-THREE
22 DOLLARS (\$18,343) and will be immediately due and payable upon EPA's written request,
23 together with the initially assessed civil administrative penalty of SEVENTY-THREE
24 THOUSAND, THREE HUNDRED, AND SEVENTY-TWO DOLLARS (\$73,372), resulting in
25 a total penalty due of NINETY-ONE THOUSAND, SEVEN HUNDRED, AND FIFTEEN
26 DOLLARS (\$91,715). Failure to pay the civil administrative penalty specified in Paragraph 83
27 by the deadline specified in that Paragraph may also lead to any or all of the following actions:
28

1 (1) EPA may refer the debt to a credit reporting agency, a collection
2 agency, or to the Department of Justice for filing of a collection action in the appropriate United
3 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
4 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
5 collection proceeding.

6 (2) The U.S. Government may collect the debt by administrative offset
7 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
8 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
9 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
10 C.F.R. Part 13, Subparts C and H.

11 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
12 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
13 business with EPA or engaging in programs EPA sponsors or funds.

14 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
15 Government may assess interest, administrative handling charges, and nonpayment penalties
16 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
17 civil administrative penalty specified in Paragraph 83 by the deadline specified in that Paragraph.

18 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
19 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
20 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
21 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
22 (30) days of the effective date of this CAFO.

23 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
24 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
25 either actual or average cost incurred (including both direct and indirect costs), for every month
26 in which any portion of the assessed penalty is more than thirty (30) days past due.
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1 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
2 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
3 may be assessed on all debts more than ninety (90) days delinquent.

4 F. CERTIFICATION OF COMPLIANCE

5 86. In executing this CAFO, Respondent certifies that the information it has supplied
6 concerning this matter was at the time of submission, and is at the time of signature to this
7 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
8 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading
9 information can result in significant penalties, including the possibility of fines and
10 imprisonment for knowing submission of such information.

11 G. RETENTION OF RIGHTS

12 87. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
13 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
14 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
15 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
16 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
17 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
18 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
19 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

20 88. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
21 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 H. ATTORNEYS' FEES AND COSTS

24 89. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
25 this proceeding.
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I. EFFECTIVE DATE

90. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

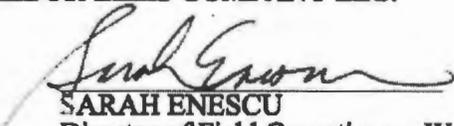
J. BINDING EFFECT

91. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

92. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT WILBUR-ELLIS COMPANY LLC:

12/23/19
DATE


SARAH ENESCU
Director of Field Operations – Western South
Wilbur-Ellis Company LLC
2400 Del Paso Road, Suite 150
Sacramento, CA 95834

FOR COMPLAINANT EPA:

1.15.2020
DATE


MATT SALAZAR, PE
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and Wilbur-Ellis Company LLC having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2020- 0012) be entered, and Respondent shall pay a civil administrative penalty in the amount of SEVENTY-THREE THOUSAND, THREE HUNDRED, AND SEVENTY-TWO DOLLARS (\$73,372), and comply with the terms and conditions set forth in the Consent Agreement.

02/03/20
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2020-0012) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

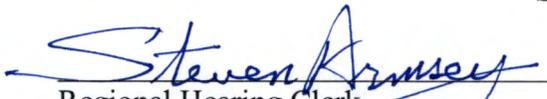
A copy was mailed via CERTIFIED MAIL to:

Sarah Enescu
Director of Field Operations – Western South
Wilbur-Ellis Company LLC
2400 Del Paso Road, Suite 150
Sacramento, CA 95834

CERTIFIED MAIL NUMBER: 7018 0680 0000 3319 8833

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX

Feb. 4, 2020
Date