



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

**MAY 23 2016**

REPLY TO THE ATTENTION OF  
LC-8J

VIA EMAIL

Ms. Amy Stewart  
Willowood USA, LLC  
1600 Northwest Garden Valley Boulevard  
Suite 120  
Roseburg, Oregon 97471

amys@willowoodusa.com

Consent Agreement and Final Order In the Matter of Willowood USA, LLC  
Docket Number FIFRA-05-2016-0010

Ms. Stewart:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on 5/23/2016 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 49-50. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abigail Wesley".

Abigail Wesley  
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Willowood USA, LLC  
Roseburg, Oregon

Respondent.



Docket No. FIFRA-05-2016-0010

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

**Consent Agreement and Final Order  
Commencing and Concluding a Proceeding**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Willowood USA, LLC (Willowood), doing business in Roseburg, Oregon.
4. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

6. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

7. Respondent waives its rights to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its rights to appeal this CAFO.

8. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

### **Statutory and Regulatory Background**

9. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

10. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. § 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.

11. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (EPA Form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states, in pertinent part, no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

14. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), states, in pertinent part, each applicant for registration of a pesticide shall file with the Administrator a statement which includes...(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for use.

15. Section 19 of FIFRA, 7 U.S.C. § 136q(a)(3), states, in pertinent part, the Administrator may require under section 3 or 6 of FIFRA that... (B) the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of the pesticide, any container of the pesticide, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide.

16. 40 C.F.R. § 156.10(a) states, every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part. The contents of a label must show clearly and prominently, in pertinent part, the directions for use as prescribed in 40 C.F.R. § 156.10(i).

17. 40 C.F.R. § 156.10(i)(2) states, in pertinent part, the directions for use shall include the following, under the headings "Directions for Use"... (ix) Specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with subpart H of 40 C.F.R. Part 156 for Container Labeling. These instructions must be grouped and appear under the heading "Storage and Disposal."

18. 40 C.F.R. § 156.140, states, in pertinent part, that for products other than plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container:

(a) *Nonrefillable container.* For non-refillable containers, the statements in paragraphs (a)(1) through (a)(4) of 40 C.F.R. § 156.140 are required.

(a)(1) *Statement identifying a nonrefillable container.* The following phrase is required: “Nonrefillable container.”

(a)(2) *Reuse statement.* One of the following statements is required.

(a)(2)(i) “Do not use or refill this container.”

(a)(2)(ii) “Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.”

(a)(2)(iii) The following statement may be used if a product is “ready to use” and its directions for use allow a different product (that is a similar, but concentrated formulation) to be poured into the container and diluted by the end user: “Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.”

(a)(3) *Recycling or reconditioning statement.* One of the following statements is required:

(a)(3)(i) “Offer for recycling if available.”

(a)(3)(ii) “Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or

contact [a pesticide container recycling organization] at [phone number] or [web site].”

(a)(3)(iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.

(a)(3)(iv) An alternative recycling statement that has been reviewed and approved by EPA.

(a)(3)(v) “Offer for reconditioning if appropriate.”

(a)(4) *Batch Code*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

(b) *Refillable container*. For refillable containers, one of the following statements is required.

(b)(1) “Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.

(b)(2) “Refillable Container. Refill this container with [*common chemical name*] only. Do not reuse this container for any other purpose.”

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

20. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “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.

21. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as

“misbranded” if its labeling does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA , are adequate to protect health and the environment.

22. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

23. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

24. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

25. 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 microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

26. 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.

27. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

28. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after December 6, 2013 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

**Factual Allegations and Alleged Violation**

29. Respondent is, and was at all times relevant to this Complaint, a Limited Liability Company and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

30. On or about April 19, 2016, Hughes Shipping, Incorporated (Hughes), located at 77 Bryant Avenue, Suite 310, Clark, New Jersey 07066, was a broker/agent for Respondent.

31. On or about April 19, 2016, Respondent submitted a Notice of Arrival of Pesticides or Devices (NOA or EPA Form 3540-1) to EPA, Region 5 through the port of Chicago, Illinois, for the import shipment of the pesticide “Willowood Imidacloprid Technical,” EPA Registration Number (EPA Reg. No.) 88544-2 from China under entry number 9YU-1002697-9.

32. The Notice of Arrival identified Willowood as the importer of record for the shipment of “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2.

33. On or about April 19, 2016, Respondent “distributed or sold” the pesticide product “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 from Hong Kong, China, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

34. Respondent, as importer of “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.



35. "Willowood Imidacloprid Technical," EPA Reg. No. 88544-2 is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

36. On or about March 20, 2013, the EPA, Office of Chemical Safety and Pollution Prevention (OSCPP), accepted the amended label for "Willowood Imidacloprid Technical," EPA Reg. No. 88544-2 to add additional formulating directions.

37. The EPA accepted label for "Willowood Imidacloprid Technical," EPA Reg. No. 88544-2, dated March 20, 2013, states, among other things, under the Directions for Use "Willowood Imidicloprid Technical is intended for formulation into end use products for:

Terrestrial Non-food Crop, Indoor: Poultry facilities."

38. Labels affixed to the 55 pound bags of "Willowood Imidacloprid Technical," EPA Reg. No. 88544-2 that were distributed or sold on or about April 19, 2016, contained, among other statements, under the Directions for Use, "Willowood Imidicloprid Technical is intended for formulation into end use products for:

Terrestrial Non-food Crop, Indoor and Outdoor Use: Darkling beetle and Hide beetle in and around poultry facilities."

39. The EPA accepted label for "Willowood Imidacloprid Technical," EPA Reg. No. 88544-2, dated March 20, 2013, states, among other things, under the Directions for Use "Willowood Imidicloprid Technical is intended for formulation into end use products for:

Terrestrial Food Crops: Bananas and Plantains, Bulb Vegetable Crop Group, Bushberry Crop Group, Brassica (Cole) Vegetable Crop Group, Caneberry, Canola, Cereal Grain Crop Group (Barley, Oat, Rye, Sorghum, wheat (excluding rice), Coffee, Corn Vegetable Group, Cotton, Cranberry, Cucurbit Vegetables Crop Group, Fruiting Vegetables Crop Group, Globe Artichoke, Grapes, Greenhouse Vegetables, Herb Crop Group, Hops, Leafy Vegetables Crop Subgroup, Leafy Petiole Vegetables Crop Subgroup, Legume Vegetables Crop Group (except soybean), Peanuts, Pome Fruit Crop Group, Pomegranate, Potatoes (including seed piece treatment), Root and Tuber Vegetables Crop Group, Soybeans, Sugarbeets, Strawberry, Stone Fruit Crop Group, Tobacco, Tree Nut Crop Group (excluding almonds), and Tropical Fruit (Acerola, Atemoya, Avocado, Black sapote, Camstel, Chenmoya, Custard apple, Feijoa,

Jaboticaba, Guava, Llama, Longan, Lychee, Mamey sapote, Mango, Papaya, Passionfruit, Persimmon, Pulasan, Rambutan, Sapodilla, Soursop, Spanish lime, Star apple, Starfruit, Sugar apple, and Waxjambu).”

40. Labels affixed to the 55 pound bags of “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 that were distributed or sold on or about April 19, 2016, contained, among other statements, under the Directions for Use, “Willowood Imidicloprid Technical is intended for formulation into end use products for:

Terrestrial Food Crop: Apple...”

41. The labels affixed to the 55 pound bags of “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 that entered into the United States on or about April 19, 2016 did not identify the container as “Refillable” or “Nonrefillable” and did not contain the required statements for “Refillable” or “Nonrefillable” containers.

42. 40 C.F.R. § 156.140 requires container labeling statements to be placed on the label or container as applicable.

43. Labels affixed to the 55 pound bags of “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 that entered into the United States on or about April 19, 2016 were false or misleading as they substantially and materially differed from the EPA accepted label dated March 20, 2013.

### **Specific Allegations**

#### **Count 1**

44. Complainant incorporates by reference the allegations contained in paragraphs 1 through 43 of this Complaint.

45. On or about April 19, 2016, Respondent distributed or sold the misbranded pesticide “Willowood Imidacloprid Technical,” EPA Reg. No. 88544-2 under entry number 9YU-

1002697-9 with a label bearing a statement, design, or graphic representation relative thereto or to its directions for use which was false or misleading; that did not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), was adequate to protect health and the environment; and that did not contain the applicable container labeling statements as required by 40 C.F.R. § 156.140, which constitute unlawful acts in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), respectively.

46. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### **Civil Penalty**

47. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

48. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

49. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

50. The check must note "In the Matter of Willowood USA, LLC" and the docket number of this CAFO.

51. A transmittal letter stating Respondent's name, complete address, the case title and the case docket number must accompany the payment. Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Abigail Wesley (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Mary McAuliffe (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

52. This civil penalty is not deductible for federal tax purposes.

53. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and

appropriateness of the civil penalty are not reviewable in a collection action.

54. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

55. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

56. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

#### **General Provisions**

57. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: mcauliffe.mary@epa.gov (for Complainant), and amys@willowoodusa.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

58. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

59. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

60. This CAFO does not affect Respondent's responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

61. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

62. The terms of this CAFO bind Respondent, its successors, and assigns.

63. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

64. Each party agrees to bear its own costs and attorney fees in this action.

65. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:  
Willowood USA, LLC**

**Willowood USA, LLC, Respondent**


5/10/16  
Date

Brian Heinze  
Brian Heinze  
President  
Willowood USA, LLC

**In the Matter of:  
Willowood USA, LLC**

**United States Environmental Protection Agency, Complainant**

5/18/2014  
Date

  
Margaret M. Guerriero  
Director  
Land and Chemicals Division



**In the Matter of:**  
**Willowood USA, LLC**  
**Docket No. FIFRA-05-2016-0010**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5/20/16

\_\_\_\_\_  
Date



\_\_\_\_\_  
Robert Kaplan  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

In the matter of: Willowood USA, LLC

Docket Number: FIFRA-05-2016-0010

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on May 23, 2016, in the following manner to the addressees:

Copy by E-mail to  
Respondent:

Amy Stewart  
amys@willowoodusa.com

Copy by E-mail to  
Attorney for Complainant:

Mary McAuliffe  
mcauliffe.mary@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: May 23, 2016

LaDawn Whitehead  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5