

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

10 JUN -7 PM 1:51  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of )  
Docket No. FIFRA-07-2010-0029 )  
Douglas Products and Packaging )  
Kansas City, Missouri )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Douglas Products and Packaging have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## **Section II**

### **Parties**

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

4. The Respondent is Douglas Products and Packaging, a pesticide producer with a facility located at 1550 East Old 210 Highway, Kansas City, Missouri 64068.

## **Section III**

### **Statutory and Regulatory Background**

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. 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.

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

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), states that it shall be unlawful for a pesticide distributor to advertise a product registered as a restricted use pesticide without stating the restricted use classification in the advertisement.

#### **Section IV**

##### **General Factual Allegations**

13. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

14. Respondent is the registrant for the pesticide Sanafoam Vaporooter II, EPA Reg. No. 1015-70.

15. On September 24 and 25, 2008, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection of Respondent's facility located in Liberty, Missouri, and collected evidence that Douglas was holding for sale or distribution multiple containers of Sanafoam Vaporooter. Labels and documentation pertaining to the product were collected by MDA.

### Violations

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

### Count 1

17. The facts stated in paragraphs 13 through 16 are realleged and incorporated as if fully stated herein.

18. On or about September 25, 2008, Respondent held for sale or distribution a quantity of Sanafoam Vaporooter II, EPA Reg. No. 1015-70.

19. The pesticide product Sanafoam Vaporooter II, EPA Reg. No. 1015-70, was misbranded in that the label was missing required language from the EPA-accepted label addressing hazards to humans and domestic animals, environmental hazards, environmental use precautions, and protective clothing/equipment requirements.

20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

21. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 17 through 20, it is proposed that a civil penalty of \$5,200 be assessed against Respondent.

**Count 2**

22. The facts stated in paragraphs 13 through 16 are realleged and incorporated as if fully stated herein.

23. In the August 2009 and February 2010 issues of Municipal Sewer & Water Magazine and in the August 2009 issue of Trenchless Technology Magazine, Respondent ran advertisements for its product Sanafoam Vaporooter II, EPA Reg. No. 1015-70.

24. The advertisements referenced in the preceding paragraph failed to identify Sanafoam Vaporooter II, EPA Reg. No. 1015-70, as a Restricted Use Pesticide.

25. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by failing to identify a Restricted Use Pesticide as such in an advertisement of the product.

26. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 22 through 25, it is proposed that a civil penalty of \$4,536.00 be assessed against Respondent.

**Count 3**

27. The facts stated in paragraphs 13 through 16 are realleged and incorporated as if fully stated herein.

28. On or about February 25, 2010, Respondent had posted on its website, [www.douglasproducts.com](http://www.douglasproducts.com), a brochure advertising its product Sanafoam Vaporooter II, EPA Reg. No. 1015-70.

29. The advertisement referenced in the preceding paragraph failed to identify Sanafoam Vaporooter II, EPA Reg. No. 1015-70, as a Restricted Use Pesticide.

30. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by failing to identify a Restricted Use Pesticide as such in an advertisement of the product.

31. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in Paragraphs 27 through 30, it is proposed that a civil penalty of \$4,536.00 be assessed against Respondent.

## Section V

### Consent Agreement

32. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

33. Respondent neither admits nor denies the factual allegations set forth above.

34. Respondent waives its right to contest any issue of fact or law set forth above and its/their right to appeal the Final Order accompanying this Consent Agreement.

35. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

36. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

37. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

38. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

39. The effect of settlement described in Paragraph 40 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 38 above.

40. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

41. In settlement of this matter, Respondent agrees to complete an Environmental Compliance Audit Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits, to be performed by Pyxis Regulatory Consulting, Inc. (Pyxis), a third-party consultant, in accordance with the "Supplemental Environmental Project Proposal" dated April 22, 2010, which is attached to this CAFO and incorporated by reference.

42. The total expenditure for the SEP, in accordance with the "Supplemental Environmental Project Proposal" incorporated by reference in the preceding paragraph shall be not less than \$25,000 and the SEP shall be completed as referenced therein, with semi-annual summary audit reports to be provided to Respondent by Pyxis by January 31, 2011, July 31, 2011, January 31, 2012, and July 31, 2012. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

43. By the following schedule, Respondent shall submit Interim SEP Reports to EPA: February 15, 2011; August 15, 2011; and February 15, 2012. The Interim SEP Reports shall

include a copy of the most recent semi-annual summary audit report produced by Pyxis as referenced in the preceding paragraph, and shall also clearly specify each violation of environmental requirements identified in the audit and document how each such violation has been remedied or is to be remedied by Respondent, specifying the date by which it was or will be remedied. In addition, the Interim SEP Report shall include documentation of SEP expenditures (e.g., by copies of purchase orders, receipts, or canceled checks). Where an Interim SEP Report indicates a violation to be remedied at a future date, the subsequent report shall indicate the completion status of that remedy. The Interim SEP Reports shall be sent to the EPA contact listed in the following paragraph.

44. By no later than August 31, 2012, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) A description of each violation of environmental requirements identified in the most recent semi-annual audit and documentation of how each such violation has been remedied or is to be remedied, and the date by which it has been or will be remedied; and
- (iv) The following certification signed by Respondent or, if Respondent is a corporation, an officer of the corporation:

**I certify under penalty of law** that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information,



the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

Elizabeth Murtagh-Yaw  
WWPD/TOPE  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

45. In itemizing its costs in the Interim SEP Report (if applicable) and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

46. Respondent agrees that failure to submit any of the Interim SEP Report and/or the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable to stipulated penalties pursuant to Paragraph 47, below.

47. In the event the Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in Paragraphs 41-43 of this CAFO and/or to the extent that the actual expenditures of the SEP do not equal or

exceed the \$25,000 cost of the SEP described in Paragraph 41 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) and (iii) of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in Paragraph 41 of this CAFO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of 120 percent of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP.

(ii) If the SEP is not completed in accordance with Paragraph 41 of this CAFO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with Paragraph 41, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of 90 percent of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP.

(iv) If the SEP is completed in accordance with Paragraph 41, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit any of the Interim SEP Report and/or the SEP

Completion Report required by Paragraphs 43 and 44 of the CAFO, Respondent shall pay a stipulated penalty in the amount of Fifty Dollars (\$50.00) for each day after the due date of the required report, until the report is submitted. This penalty will begin to accrue on the day after performance is due, and shall continue to accrue until the final day of the completion of the activity.

48. Any changes or modifications to the SEP as described in Paragraph 41 above must be reviewed and approved by EPA prior to being implemented by Respondent.

49. The determination of whether the SEP has been satisfactorily completed and whether the Respondent made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

50. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

51. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 1 of the Final Order portion of this CAFO.

52. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

53. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

54. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

55. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

56. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 47 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

#### Section VI

#### Final Order

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

1. Respondent shall pay a civil penalty of Three Thousand Five Hundred and Sixty Eight Dollars (\$3,568.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

2. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

3. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101;

and

Chris R. Dudding,  
Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street

Kansas City, Kansas 66101.

4. Respondent shall complete the SEP in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

5. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.


6. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

7. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
**DOUGLAS PRODUCTS AND PACKAGING**

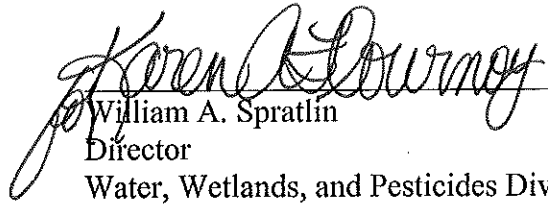
Date: May 27/2010

By:

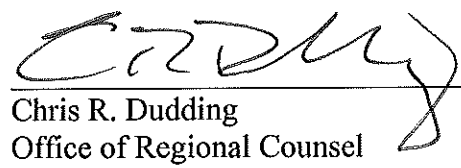
  
\_\_\_\_\_  
Wes Long                      COO  
Print Name                      Title

**COMPLAINANT  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 6/1/10

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date: 6/1/10

  
\_\_\_\_\_  
Chris R. Dudding  
Office of Regional Counsel



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

Date: June 7, 2010



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

PYXIS REGULATORY CONSULTING, INC.

4110 136<sup>th</sup> St. NW  
Gig Harbor, WA 98332

Phone: 253-853-7369  
Fax: 253-853-5516  
www.PyxisRC.com

April 22, 2010

Wes Long  
Douglas Products and Packaging Company  
1550 E. Old 210 Highway  
Liberty, MO 64068

RE: Supplemental Environmental Project Proposal

Dear Mr. Long,

Thank you for considering Pyxis Regulatory Consulting, Inc. (Pyxis) to implement a Supplemental Environmental Project (SEP) on behalf of Douglas Products and Packaging Company (Douglas Products).

Pyxis is a consulting firm, founded in 1999, specializing in the registration of pesticide products with the US Environmental Protection Agency (EPA). Pyxis has extensive experience in EPA FIFRA regulations pertaining to registrations, compliance and labeling and believes it would be an excellent candidate for conducting the proposed SEP. I've attached résumés of three key Pyxis employees for your review.

Based on our conversations, I understand that you are interested in an audit of all of Douglas Products advertising and labeling in 2010 and 2011. As a part of the audit process, we would provide audit reports to Douglas Products, which would then be provided to EPA. Below is a proposed scope of work for the audit as well as an estimated cost for conducting the audit and reports.

The products that would be subject to the audit would include the following federal registrations:

EPA Reg. No.	EPA Registration Name
1015-16	Douglas Special Mill Spray
1015-67	Douglas Pyrethrin 5
1015-68	Max Kill Vapo-Cide
1015-69	Max Kill Dusta-Cide 6
1015-70	Sanafoam Vaporooter II
1015-72	Roo-Pru Super Tri Pak
1015-73	Sanafoam Roo-Pru

For each of these products, Pyxis would review the final labeling (or printer's proof of such labeling) for compliance to the following regulations and guidance:

- FIFRA Section 12
- 40 CFR Part 156
- 40 CFR Part 152.166 – 152.168

- Reregistration Eligibility Decision label language
- Most recent approved label on file with EPA
- PR Notice 2008-1
- PR Notice 2007-4
- PR Notice 2007-1
- PR Notice 2000-5
- PR Notice 98-10
- Other pertinent requirements, guidance or regulations not listed above
- New pertinent requirements, guidance or regulations

We will assume, for purposes of defining the scope of work and cost estimates, that *all* labels will be reviewed for the initial audit to be commenced on July 1, 2010. Pyxis also assumes that for each registration, a total of two (2) final printed labels would be reviewed (accounting for different container sizes). After the initial semi-annual audit, Pyxis assumes that no more than seven (7) labels will be modified during each subsequent semi-annual period.

In addition, Pyxis will audit all advertising and brochures, including Internet websites, for compliance to the regulations listed above. Pyxis assumes that Douglas Products' will change its website no more than once in any semi-annual period and no more than two (2) ads per product will be prepared in any semi-annual period. If any corrective action is needed to labeling or advertising, Pyxis will review the revised document.


As a part of the audit, Pyxis will provide Douglas Products written correspondence, including via e-mail, within 2 weeks of receipt of the label or advertising (4 weeks for the initial audit), a review of changes that need to be made to the document. Pyxis will also provide a written summary report of documents audited, the findings, and corrective actions taken by Douglas Products prior to distribution or sale one month at the end of every semi-annual period. For example, summary audit reports will be provided by January 31, 2011; July 31, 2011; January 31, 2012 and July 31, 2012.

We estimate semi-annual charges for the above described scope of work as follows:

- July 1 – Dec. 31, 2010: \$10,000
- Jan. 1 – June 30, 2010: \$5,000
- July 1 – Dec. 31, 2011: \$5,000
- Jan. 1 – June 30, 2012: \$5,000

Thank you again for the opportunity to bid on a SEP for Douglas Products. We trust you will find the above scope of work sufficient for your purposes; however, please don't hesitate to contact me if you have any questions or need any additional information.

Regards,



Janelle Kay  
President

Enclosures

IN THE MATTER OF Douglas Products and Packaging, Respondent  
Docket No. FIFRA-07-2010-0029

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris R. Dudding  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Wes W. Long, COO  
Douglas Products and Packaging  
1550 East Old 210 Highway  
Kansas City, Missouri 64068

Dated: 6/7/10



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7