

**\*\* FILED \*\***  
17SEP2015 - 03:13PM  
U.S.EPA - Region 09

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

_____	)	Docket No. FIFRA-09-2015- 0008
In the matter of:	)	
Washburn & Sons, Inc.,	)	
	)	
Respondent.	)	CONSENT AGREEMENT AND
_____	)	FINAL ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13(b) AND 22.18(b)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX and Washburn & Sons, Inc. ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 1361(a), against Respondent for failure to complete and submit an annual pesticide production report for the 2014 reporting year by March 1, 2015 for its pesticide production establishment, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.85

2. Complainant is the Assistant Director for the Water and Pesticides Branch, Enforcement Division, who has been duly delegated to commence and settle an enforcement action in this matter.

3. Respondent is a California corporation that owns, operates, controls and/or is otherwise responsible for a facility located at 807 Center St., Riverside, CA 92507.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

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

5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual pesticide production report to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

7. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

C. ALLEGED VIOLATIONS

8. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

9. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 807 Center St., Riverside, CA 92507 (hereinafter “Facility”).

10. Respondent has registered the Facility as a pesticide producing establishment in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 039352-CA-001.

11. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

12. Respondent failed to complete and submit an annual pesticide production report for the 2014 production year by March 1, 2015 for the Facility, as required by Section 7(c)(1) of

FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

13. Respondent previously failed to complete and submit an annual pesticide production report for the 2013 production year by March 1, 2014 for the Facility, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which constituted a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and was issued a Notice of Warning for that violation on June 6, 2014.

14. Consequently, Respondent's failure to complete and submit an annual pesticide production report for the 2014 production year by March 1, 2015 for the Facility constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), that is subject to a penalty under EPA's Enforcement Response Policy for FIFRA Section 7(c) dated May 2010.

#### D. RESPONDENT'S ADMISSIONS

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

#### E. CIVIL ADMINISTRATIVE PENALTY

16. In settlement of the violation specifically alleged in Section I.C. of this CAFO, Respondent shall pay a civil administrative penalty of EIGHT HUNDRED AND EIGHTY DOLLARS (\$880). Respondent shall pay the full amount of this penalty within thirty (30) calendar days after the effective date of this CAFO.

17. Payment shall be made by cashier's or certified check, including the name and docket number of this case, for the amount, payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

Regular Mail:

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

Certified Mail:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63197

Wire Transfers:

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

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

Overnight Mail:

U. S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 — checking  
Environmental Protection Agency  
Account 31006  
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "sfo1.1" in the search field  
Open form and complete required fields

**If clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091.**

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

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

Panah Stauffer  
Enforcement Division (ENF 3-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

19. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

20. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 16 by the date specified in Paragraph 16, then (i) the entire balance of the unpaid

penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty of \$220. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:

a.. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

21. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins, 40 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs, 40 C.F.R. § 13.12(b). In addition, if this matter is

referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

22. In executing this CAFO, Respondent certifies that it has submitted the annual pesticide production report for the 2014 production year for the Facility to the U.S. EPA Region IX Pesticides Office.

#### G. RETENTION OF RIGHTS

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

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

#### H. ATTORNEYS' FEES AND COSTS

25. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

#### I. EFFECTIVE DATE

26. 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

27. 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.

28. 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, WASHBURN & SONS, INC.:**

8/31/15  
DATE

  
Alan Washburn  
President  
Washburn & Sons, Inc.

**FOR COMPLAINANT, EPA REGION IX:**

9/11/15  
DATE

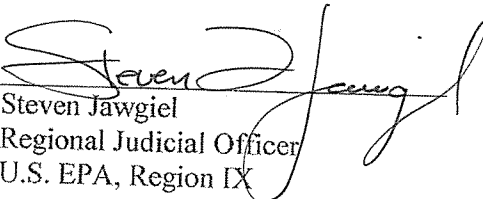
  
Claire Trombadore  
Assistant Director  
Water and Pesticides Branch, Enforcement Division  
U.S. Environmental Protection Agency, Region IX



II. FINAL ORDER

EPA Region IX and Respondent, having entered into the forgoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2015-0008 ) be  
entered, and Respondent shall pay a civil administrative penalty in the amount EIGHT  
HUNDRED AND EIGHTY DOLLARS (\$880) in accordance with the terms set forth in the  
Consent Agreement.

09/16/15  
DATE

  
Steven Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2015- 0008**) 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:

Alan Washburn  
President  
Washburn & Sons, Inc.  
807 Center St  
Riverside, CA 92507

**CERTIFIED MAIL NUMBER: 7014 1820 0000 4720 9911**

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

Carol Bussey, Esq  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Sept-17, 2015  
Date

Steven Ramsey  
Regional Hearing Clerk  
U.S. EPA, Region IX