

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2015 JUL 16 AM 10:22

BEFORE THE ADMINISTRATOR

In the Matter of

Wellmark International, Inc.

Respondent

Docket No. FIFRA-07-2015-0028

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Wellmark International, Inc. (Respondent) have agreed to a settlement of this action before the 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 Revocation, 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 Wellmark International, Inc. (“Wellmark”) located at 1501 E. Woodfield Road, Suite 200 West, Schaumburg, Illinois 60173. Respondent is a corporation in good standing in the state of Illinois.

## **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 animals) 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. Pursuant to 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. One condition which must be met in order for supplemental distribution to be permitted is that the label of the distributor product must be the same as that of the registered product except for the following:

- (i) The product name of the distributor product may be different (but may not be misleading);
- (ii) The name and address of the distributor may appear instead of that of the registrant;
- (iii) The registration number of the registered product must be followed by a dash, followed by the distributor’s company number;

(iv) The establishment number must be that of the final establishment at which the product was produced; and

(v) Specific claims may be deleted, provided that no other changes are necessary.

11. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states that it is unlawful to distribute or sell any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 136a of this title.

#### **Section IV**

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

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

13. Respondent is the registrant of the pesticide product Altosid 0.01% RF 9904 Granular, EPA Reg. No. 2724-494.

14. On or about September 24, 2007, Respondent entered into a supplemental distribution agreement with Kent Nutrition Group, Inc. (“Kent Nutrition”). That agreement authorized Kent Nutrition to produce Framework 365 Mineral Breeder NS AFC, EPA Reg. No. 2724-494-7696 (“Framework 365”) for repackaging as a supplemental distributor.

15. On or about February 26, 2014, a representative of the Nebraska Department of Agriculture (NDA) conducted an inspection at the sub-registrant, Kent Nutrition’s, facility located at 5445 East 23<sup>rd</sup> Street, Columbus, Nebraska.

16. During the Inspection, the NDA representative collected supplemental distribution agreements between Respondent and Kent Nutrition which allowed Kent Nutrition to manufacture Framework 365.

17. During the Inspection, the NDA representative collected photographs of a label of Altosid 2% Custom Blend Kent Nutrition had on hand and which was used to create the product Framework 365.

18. Mixing schedules provided by Kent Nutrition show that it used Respondent's Altosid 2% Custom Blend product to produce Framework 365.

19. Respondent's product "Altosid IGR Custom 2%" carries the EPA Reg. No. 2724-503.

20. The Manufacturing agreements between Respondent and Kent Nutrition, as well as EPA's registration, state that Framework 365 shall be produced with Altosid product carrying EPA Reg. No. 2724-367 or with Altosid product carrying EPA Reg. No. 2724-502.

#### **Violations**

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

#### **Counts 1 and 2**

22. The facts stated in Paragraphs 12 through 20 are realleged and incorporated as if fully stated herein.

23. Invoices collected as a result of the NDA inspection reveal that on or about March 25, 2013, and March 18, 2013, Kent Nutrition sold a quantity of the distributor product Framework 365 with the wrong composition.

24. Pursuant to 40 C.F.R. § 152.132, Respondent, as the registrant of the pesticide product Altosid 0.01% RF 9904 Granular, violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), when, on two occasions, Kent Nutrition sold the distributor product Framework 365 created with the incorrect Altosid product.

## **Section V**

### **Consent Agreement**

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

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

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

28. 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.

29. 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.

30. 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.

31. 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.

32. The effect of settlement as described in Paragraph 33 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 31 above.

33. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of nine thousand one hundred fifty-two dollars (\$9,152.00) as set forth in Paragraph 1 of the Final Order. 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 and/or regulation administered by the EPA.

34. 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.

35. 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 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 nine thousand one hundred fifty-two dollars (\$9,152.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

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

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

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"

2. 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  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Brandon Boatman  
Case Officer, WWPD, TOPE  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. 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.

4. 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**

Wellmark International, Inc.

Date: July 7, 2015

By:   
Frank Jusich, COO  
Wellmark International, Inc.

**COMPLAINANT**

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 7-14-15

By: Karen Flournoy  
Karen Flournoy  
Director  
Water, Wetlands, and Pesticides Division

Date: 7/15/15

By: Lucretia Myers  
Lucretia Myers  
Office of Regional Counsel

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

Date: July 16, 2015

By: Karina Borromeo

Karina Borromeo

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Wellmark International, Inc., Respondent  
Docket No. FIFRA-07-2015-0028

CERTIFICATE OF SERVICE

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

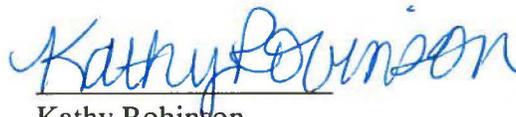
Copy by email to Attorney for Complainant:

myers.lucetia@epa.gov

Copy by First Class Mail to:

Frank Jusich, COO  
Wellmark International, Inc.  
1501 E. Woodfield Road  
Suite 200 West  
Schaumburg, Illinois 60173

Dated: 7/16/15



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7