

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Copper Care Wood Preservatives, Inc.	)	Docket No. FIFRA-07-2007-0005
4307 23 <sup>rd</sup> Street	)	
Columbus, Nebraska 68602	)	CONSENT AGREEMENT AND
Respondent	)	FINAL ORDER
	)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Copper Care Wood Preservatives, Inc. (Respondent) 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 Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

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. § 136j.

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

Parties

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

4. The Respondent, Copper Care Wood Preservatives, Inc., is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is and was at all times referred to in this Complaint, a corporation qualified to do business in the state of Nebraska.

Alleged Violations

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

6. Respondent's facility (EPA Establishment No. 54471-NE-1), located in Columbus, Nebraska, is a registered pesticides producing establishment.

7. 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.

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

9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is 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.

10. 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 to appear on the label is not prominently placed thereon with conspicuousness so as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it 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 this Act, are adequate to protect health and environment.

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

13. Respondent produces and sells or distributes the following pesticide: 10-9-0 Green F.O. Wood Preservative, EPA Registration Number 10465-34-54471.

14. The pesticide, 10-9-0 Green F.O. Wood Preservative, which was packaged, labeled, and released for distribution or sale, was misbranded in that:

a. The label failed to bear the following required statements, under “Precautionary Statements”, “Wear a NIOSH/MHSA-approved mist/vapor respirator when spraying for continued or prolonged use of this product or for frequent use of this product.”

b. The label failed to bear the following required “Storage” directions, under “Storage and Disposal”, “...remove the source of the spill or leak. Recover free liquid. . .

wash area with detergent and water. . . Do not store with fertilizers, food and feed. Keep container closed when not in use.”

c. The label failed to bear the following required “Pesticide Disposal: directions, under “Storage and Disposal”, “Wastes resulting form the use of this product may be disposed of on site or at an approved waste disposal facility in accordance with appropriate Federal, State, and local regulations.”

15. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(a)(1)(E), by distribution or sale of a misbranded pesticide.

#### CONSENT AGREEMENT

It is hereby agreed and accepted by Respondent that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable and consents to it’s issuance.

2. Respondent admits the jurisdictional allegations set forth above.

3. Respondent neither admits nor denies the violation of FIFRA as set forth above.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that to its knowledge it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. Seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in paragraph 2 of the Final Order.

#### **FINAL ORDER**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136j, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Complaint, shall pay by cashier's or certified checks, a civil penalty, for the violations cited herein, in the amount of Three Thousand Eighty Dollars (\$3,080.00), on or before thirty (30) days of the effective date this Final Order, payable to the "Treasurer, United States of America".

In the Matter of Copper Care Wood Preservative, Inc.  
Docket No. FIFRA-07-2007-0005

Such check shall be mailed to: **U.S. EPA-Region VII, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251**. The payment shall be identified as **In the Matter of Copper Care Wood Preservatives, Inc.** Copies of the check shall be forwarded to Rupert G. Thomas, Office of Regional Counsel, Region VII, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101, and Kathy Robinson, Regional Hearing Clerk, Region VII, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.


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

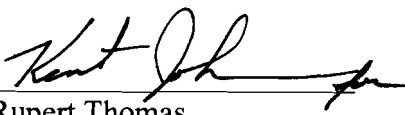
3. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

4. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:   
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division  
Date: 3/8/07

By:   
Rupert Thomas  
Attorney  
Office of Regional Counsel  
Date: 3/8/07

In the Matter of Copper Care Wood Preservative, Inc.  
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RESPONDENT:


Copper Care Wood Preservatives, Inc.

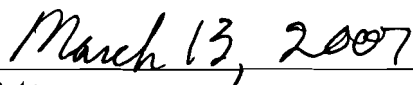
By: W Abbott

Title: PRESIDENT

Date: 7 MARCH 2007

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

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

  
\_\_\_\_\_  
Date



IN THE MATTER OF Copper Care Wood Preservatives, Inc., Respondent  
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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:

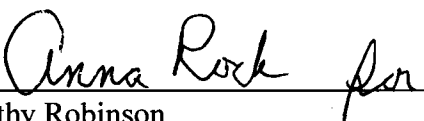
Copy hand delivered to:

Rupert Thomas  
Senior Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William Abbott  
President  
Copper Care Wood Preservatives, Inc.  
4307 23<sup>rd</sup> Street  
Columbus, Nebraska 68602

March 13, 2007  
Dated

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7