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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2008-0103
)	
WILCO-WINFIELD, LLC)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136/(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Wilco-Winfield, LLC ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
3 commences this proceeding which will conclude when the Final Order contained in Part V of
4 this CAFO becomes effective.

5 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
6 basis for the alleged violations of FIFRA.

7 **III. ALLEGATIONS**

8 3.1. Respondent owns and manages a facility located at 13007 Downs Road in
9 Mt. Angel, Oregon. Respondent did not register this facility with EPA as a pesticide-producing
10 establishment until 2008, yet repackaged (i.e. produced) two separate pesticides each year since
11 2000.

12 3.2. Prior to registering the Mt. Angel facility as a pesticide-producing establishment,
13 the Respondent used an incorrect, inactive establishment number (EPA establishment number
14 035499-OR-004) on the products they repackaged. This number was associated with a different
15 facility owned by the Respondent and had been inactivated in 2000.

16 3.3. Respondent repackaged ROUNDUP WEATHERMAX HERBICIDE (EPA Reg.
17 No. 524-537) and ROUNDUP ORIGINAL 2K HERBICIDE (EPA Reg. No. 524-539) at this
18 unregistered facility. Respondent committed two violations of Section 12(a)(1)(L) of FIFRA,
19 7 U.S.C. § 136j(a)(1)(L), by producing two separate pesticides in an unregistered facility.

20 3.4. On at least one occasion in 2005, 2006, and 2007, Respondent produced, sold, and
21 distributed ROUNDUP WEATHERMAX HERBICIDE and ROUNDUP ORIGINAL 2K
22 HERBICIDE with labels which bore an incorrect, inactive EPA Establishment Number.
23 Respondent committed six violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),
24 by selling and distributing pesticides which were misbranded in that the labels did not bear the

1 registration number assigned under Section 7. These violations subject Respondent to the
2 payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

3 3.5. Pursuant FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA
4 may assess a civil penalty of not more than \$6,500 for each offense against any registrant,
5 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
6 provision of Section 12 of FIFRA.

7 **IV. CONSENT AGREEMENT**

8 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional
9 allegations contained herein, but neither admits nor denies the specific factual allegations put
10 forth by EPA. Respondent waives any right to contest these allegations as well as the right to
11 appeal the accompanying Final Order. Respondent also consents to payment of the penalty as
12 stated below.

13 4.2. Respondent consents to the assessment of a civil penalty in the amount of
14 EIGHTEEN-THOUSAND, FOUR-HUNDRED DOLLARS and no cents (\$18,400.00).
15 Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay
16 the total civil penalty set forth in this paragraph within thirty (30) days of the effective date of
17 this Final Order.

18 4.3. Payment under this CAFO shall be made by cashier's check or certified check,
19 payable to the order of "Treasurer, United States of America" and delivered to the following
20 address:

21 US Bank - USEPA - Region 10
22 Fines and Penalties
23 Cincinnati Finance Center
24 PO Box 979077
25 St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this action.

1 4.4. Respondent shall serve photocopies of the check described in Paragraph 4.3,
2 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
3 Enforcement at the following addresses:

4 Regional Hearing Clerk
5 U.S. Environmental Protection Agency
6 Region 10, Office of Regional Counsel
7 1200 Sixth Avenue, Suite 900, ORC-158
8 Seattle, WA 98101

9 Attn: Erin Halbert
10 U.S. Environmental Protection Agency
11 Region 10, Pesticides and Toxics Unit
12 1200 Sixth Avenue, Suite 900, OCE-084
13 Seattle, WA 98101

14 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,
15 the entire unpaid balance of penalty and accrued interest shall become immediately due and
16 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under
17 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with
18 interest, handling charges, and nonpayment penalties, as set forth below.

19 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by
20 its due date, Respondent shall also be responsible for payment of the following amounts:

- 21 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate
22 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)
23 from the effective date of the accompanying Final Order, provided, however, that
24 no interest shall be payable on any portion of the assessed penalty that is paid
25 within 30 days of the effective date of the Final Order.
- b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge
of \$15 shall be paid if any portion of the assessed penalty is more than 30 days
past due.

1 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty
2 of 6% per annum shall be paid on any portion of the assessed penalty that is more
3 than 90 days past due, which nonpayment penalty shall be calculated as of the
4 date the underlying penalty first becomes past due.

5 4.7. The penalty described in Paragraph 4.2, above, including any additional costs
6 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA
7 and shall not be deductible for purposes of federal taxes.

8 4.8. The undersigned representative of Respondent certifies that he is fully authorized
9 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

10 4.9. Respondent shall bear its own costs and attorneys fees in connection with this
11 matter.

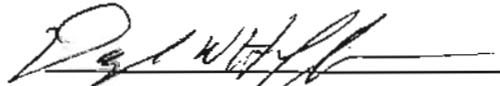
12 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants,
13 employees, successors, and assigns.

14 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent
15 and EPA.

16 DATED:

WILCO-WINFIELD, LLC:

17 8-13-08

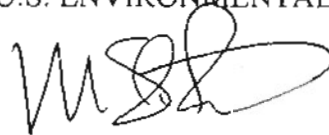


18 DOUGLAS HOFFMAN
19 President
For Respondent

20 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

21 8/18/08



22
23 MERCER ST. PETER
24 Assistant Regional Counsel
For Complainant

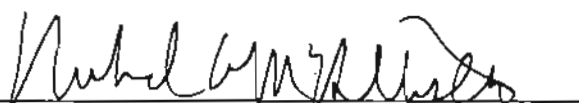
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2 **V. FINAL ORDER**

3 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by
4 reference into this Final Order. Respondent is hereby ordered to comply with the foregoing
5 terms of the settlement.

6 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
7 pursuant to FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a),
8 nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate
9 injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO
10 does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all
11 applicable provisions of FIFRA and regulations promulgated thereunder.

12 5.3. This Final Order shall become effective upon filing.

13
14 SO ORDERED this 18th day of August, 2008.

15
16 
17 RICHARD G. McALLISTER
18 Regional Judicial Officer
19 U.S. Environmental Protection Agency
20 Region 10
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Wilco-Winfield, LLC, DOCKET NO.: FIFRA-10-2008-0103** was filed with the Regional Hearing Clerk on August 19, 2008.

On August 19, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on August 19, 2008, to:

Douglas Hoffman, President
Wilco-Winfield, LLC
P.O. Box 258
Mount Angel, OR 97362

DATED this 19th day of August 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10