

ERA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: JANET SHARPE 8/12/2010
Name of Contact person Date

in the ORC Office at 215-814-2689
Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/Consent Agreement FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Person and/or Company/Municipality making the payment
NOBLE FIBER TECHNOLOGIES LLC

The Total Dollar Amount of Receivable \$10,832
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number FIFRA 03-2010-0075

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 3. Regional Counsel

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Noble Fiber Technologies LLC,

Respondent

Noble Fiber Technologies LLC
300 Palm Street
Scranton, Pennsylvania 18505,

Facility.

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: Docket No. FIFRA-03-2010-0075
:
:
: **CONSENT AGREEMENT**
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: Proceeding under FIFRA § 14, 7 U.S.C. § 136l
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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division (formerly known as Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III (“Complainant”) and Noble Fiber Technologies LLC (“Respondent”), pursuant to Section 14 of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“*Consolidated Rules*”), 40 C.F.R. Part 22.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the *Consolidated Rules*, this Consent Agreement and attached Final Order (collectively “CAFO”) resolve Complainant’s claims for civil penalties against Respondent arising from the violations of FIFRA and EPA’s regulations promulgated thereunder alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CAFO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies that it has corrected the violations alleged in this CAFO.
10. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, for the specific violations alleged herein and as more fully set forth in Paragraph 16 of this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules*.
12. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
13. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

14. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
15. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNT I

- a. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to include any corporation.
- b. Respondent is a Pennsylvania corporation.
- c. Respondent is, and was at all times relevant to this CAFO, a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- d. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest", with exceptions not relevant to this matter.
- e. Pursuant to 40 C.F.R. § 152.15, "a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose . . .".
- f. Pursuant to 40 C.F.R. § 152.15(c), a substance is considered to be intended for a pesticidal purpose, and thus a pesticide, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide" or if the person who distributes or sells the substance "has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose."
- g. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and other microorganisms.

- h. On or about May 15, 1998, EPA approved the registration submitted by Respondent or its corporate predecessor for the product, *X-Static The Silver Fiber 30, 40, 70 Denier Filament* (EPA Registration No. 70927-1) ("*X-Static*").
- i. Respondent's product, "*X-Static*," is a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 and .15, and has been registered as such with EPA since May 15, 1998.
- j. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is misbranded.
- k. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "distribute or sell" means "to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver."
- l. Pursuant to Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), a pesticide is "misbranded" if, *inter alia*, there is not affixed to its container a label bearing the name and address of the producer, registrant, or person for whom produced; the name, brand or trademark under which the pesticide is sold; the net weight or measure of the content (with exceptions not relevant to this matter); and the registration number and use classification of such pesticide.
- m. On November 21, 2006, an inspector from the Pennsylvania Department of Agriculture, duly authorized to conduct inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, conducted an inspection of an establishment located at 300 Palm Street, Scranton, Pennsylvania, 18505 ("Establishment").
- n. During the inspection referenced above, the inspector collected a physical sample of the labeling, promotional and sales information for the product owned, controlled, and/or in the custody of Respondent, *X-Static*.
- o. Respondent sold and/or distributed to other persons the pesticide, "*X-Static*," without a label affixed to the pesticide on the following dates: December 22, 2005, December 30, 2005, July 12, 2006, November 10, 2006, and November 15, 2006.
- p. The pesticide "*X-Static*" referred to in Paragraph 16.o., above, was "misbranded" at the time that it was sold and/or distributed.
- q. On the five dates identified in Paragraph 16.o., above, Respondent sold and/or distributed to other persons the misbranded pesticide, "*X-Static*," in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

- r. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense.
- s. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of FIFRA occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$6,500 per violation.

Civil Penalty

- 17. Respondent agrees to pay a civil penalty of Ten Thousand Eight Hundred Thirty Two Dollars (\$10,832.00) in full satisfaction of EPA's claims for civil penalties based upon the violations alleged in Paragraph 16 of this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO.
- 18. The aforesaid settlement is based upon a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990.
- 19. Respondent shall remit the full civil penalty described in Paragraph 17. above, by either cashier's or certified check payable to the "United States Treasury" or electronic wire transfer, automated clearinghouse or other means as specified below:
 - a. Check payments sent via regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-2105
 - b. Check payments sent via overnight delivery shall be addressed and sent to:

U.S. Bank
Government Lockbox
U.S. Environmental Protection Agency—Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-1028

- c. Electronic wire transfer payments shall be directed to:

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"

Customer service: 212-720-5000 \

- d. Automated clearinghouse (ACH) (or Remittance Express (REX)) payments shall be directed to:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 050136706
Account No.: 31006, Environmental Protection Agency
CTX Forma Transaction Code 22 – Checking

Physical location of U.S. Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- e. Online payment option: WWW.Pay.Gov/paygov/

Enter sfo 1.1 in the search field. Open and complete the form.

Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

- f. All payments made by check in any currency drawn on banks with no U.S. branches shall be addressed for delivery to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 W. Martin Luther King Drive
Cincinnati, OH 45268-0001

- g. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (FIFRA-03-2010-0075). A paper copy of

Respondent's payment (whether by check, EFT, ACH or other means) shall be sent simultaneously to:

Janet E. Sharke (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

20. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

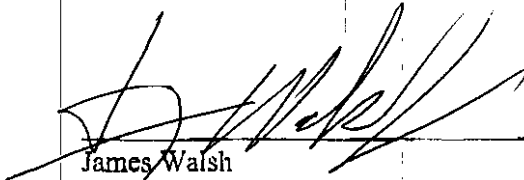
A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

21. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the factors set forth in Section

14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990, the parties hereto agree that payment of the civil penalty shall be in full and final satisfaction of EPA's claims for civil penalties arising from the violations alleged in this Consent Agreement.


For Respondent

8/16/10
Date


James Walsh
General Manager
Noble Fiber Technologies LLC

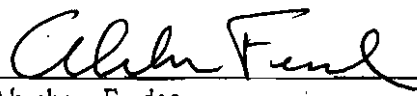
For Complainant

8/12/2010
Date


Janet E. Sharke
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

8/30/10
Date


Abraham Ferdas
Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

:
: Docket No. FIFRA-03-2010-0075

Noble Fiber Technologies LLC

Respondent

:
:
:
: **FINAL ORDER**

Noble Fiber Technologies LLC
300 Palm Street
Scranton, Pennsylvania 18505

Facility.

:
:
: Proceeding under FIFRA § 14, 7 U.S.C. § 136l

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division (formerly known as Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III, and Respondent, Noble Fiber Technologies LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, which authorizes the assessment of a civil penalty for violations of FIFRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in FIFRA § 14(a)(4), 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Ten Thousand Eight Hundred Thirty Two Dollars (\$10,832.00), as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

9/2/10
Date



Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

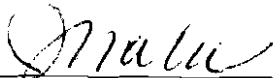
I hereby certify that on the date set forth below, I hand-delivered to the Regional Hearing Clerk of the U.S. Environmental Protection Agency, Region III, the original and one copy of the foregoing Consent Agreement and Final Order (Docket No. FIFRA-03-2010-0075).

I further certify that on the date set forth below, I caused a true and correct copy of the Consent Agreement and Final Order to be transmitted via facsimile and registered mail, return receipt requested, to the following addressees:

James Walsh
General Manager
Noble Fiber Technologies LLC
300 Palm Street
Scranton, PA 18505

Robert E. Fabricant, Esq.
Akerman Senterfitt LLP
335 Madison Avenue, Suite 2600
New York NY 10017

9/8/2010
Date



Janet E. Sharke
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029