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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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REGIONAL CLERK

In the matter of:)	Docket No. FIFRA- 9 -2008-0019
)	
Thermwell Products Co. Inc.)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	pursuant to 40 C.F.R. §§ 22.13(b),
)	22.18(b)(2), and 22.18(b)(3)
_____)	

I. COMPLAINT/CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA") and Thermwell Products Co. 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 Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. § 22.13(b).

A. AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the sale and distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A).

Complainant is the Associate Director of Agriculture of the Communities and Ecosystems Division of EPA Region IX. The Administrator of EPA has delegated to the Regional Administrator of EPA Region IX the authority to issue complaints, and the Regional Administrator, in turn, has re-delegated that authority to the Complainant.



B. APPLICABLE STATUTES AND REGULATIONS

1. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
2. The term "pest" means "any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro organism. . . ." 7 U.S.C. § 136(t).
3. The term "distribute or sell" means 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." 7 U.S.C. § 136(gg).
4. Section 3(c) of FIFRA, 7 U.S.C. § 136a(c), sets forth the basic requirements and procedures for registering a pesticide with EPA.
5. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

C. GENERAL ALLEGATIONS

6. Respondent, Thermwell Products Co., Inc., is a hardware merchant wholesaler, which includes the sale of cleaning products, and is incorporated in the state of Nevada.
7. Respondent owns, operates and is wholly responsible for a place of business with an address at 465 E. Glendale Ave, Sparks, Nevada.
8. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), since it is a corporation.

D. ALLEGED VIOLATIONS

Count 1

9. Paragraphs 1 through 8 above are hereby incorporated in this Count 1 by reference as if the same were set forth herein in full.
10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
11. On or about March 21, 2006, Respondent distributed or sold the pesticide product Frost King Double Strength Pan-Tablets to Lowes.
12. The Frost King Double Strength Pan-Tablets product sold to Lowes contained the following pesticidal claims on its label: “eliminates bacteria” and “remove common bacteria.”
13. Based on these claims, Frost King Double Strength Pan-Tablets destroy “bacteria” which are “pests” as defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
14. Frost King Double Strength Pan-Tablets is a “pesticide” as defined by Section 2(u), 7 U.S.C. § 136(u), in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating “pests.”
15. At the time Respondent distributed or sold Frost King Double Strength Pan-Tablets, the product was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.
16. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling the pesticide product Frost King Double Strength Pan-Tablets on or about March 21, 2006, an unregistered pesticide.

E. RESPONDENT'S ADMISSIONS

17. 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 factual allegations contained in this CAFO; (iii) consents to the terms of penalty under Section F of this CAFO; (iv) waives any rights to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

F. CIVIL ADMINISTRATIVE PENALTY

18. Section 14 of FIFRA, 7 U.S.C. §136I, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, provide that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil administrative penalty by the EPA Administrator in an amount not to exceed \$6,500 for each offense. After consideration of (1) the size of Respondent's business, (2) Respondent's ability to continue in business, and (3) the gravity of Respondent's violations, EPA proposed the assessment of \$5,200 in civil penalties for the alleged violation described in Section D.

In settlement of the violations specifically alleged in Section D of this CAFO, Respondent shall pay a civil administrative penalty of FIVE THOUSAND, TWO HUNDRED DOLLARS (\$5,200) within 30 days of the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested to the following address:

U.S. Environmental Protection Agency, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

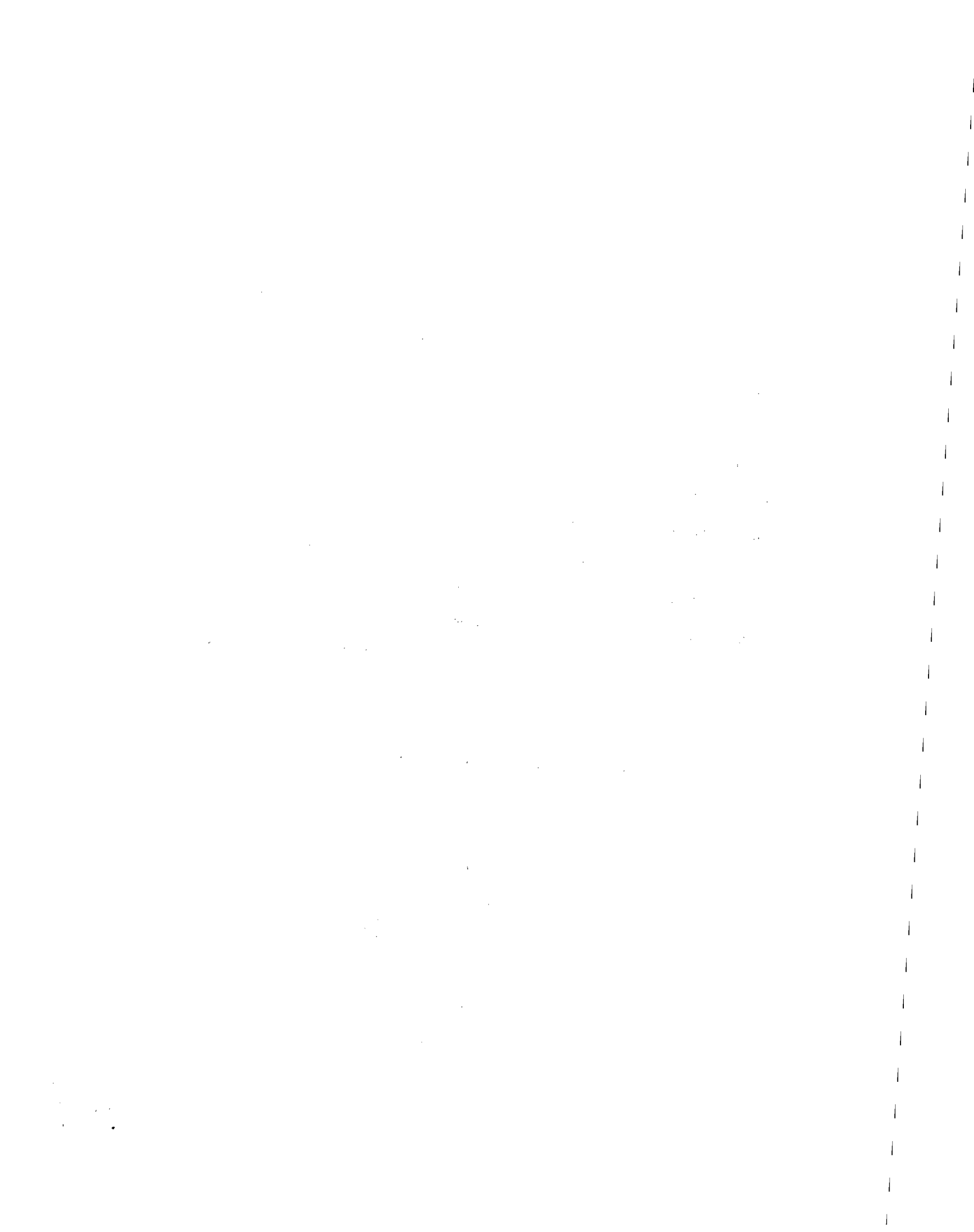
The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

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

AND

Julie Jordan
Pesticides Program
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 by its due date, then (i) the entire balance of the unpaid penalty amount shall become due immediately. Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will be ONE HUNDRED DOLLARS (\$100) for each day that the payment is late, up to and including the 15th day; TWO HUNDRED DOLLARS (\$200) for each subsequent day that the payment is late, starting with the 16th day and continuing up to and including the 30th day; and THREE HUNDRED DOLLARS (\$300) for each subsequent day that the payment is late after the 30th day. Upon Complainant's written demand, payment of the stipulated penalty shall immediately become due and payable. In addition, failure to pay the civil administrative penalty by the 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. § 13.17.

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. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.11(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. § 13.11(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.

G. CERTIFICATION AND COMPLIANCE

22. In executing this CAFO, Respondent certifies that (1) it is no longer selling or distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities that it owns or operates.

H. RETENTION OF RIGHTS

23. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections I.C and I.D of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Sections I.C and I.D of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, 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 Sections I.C and I.D 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.

I. ATTORNEYS' FEES AND COSTS

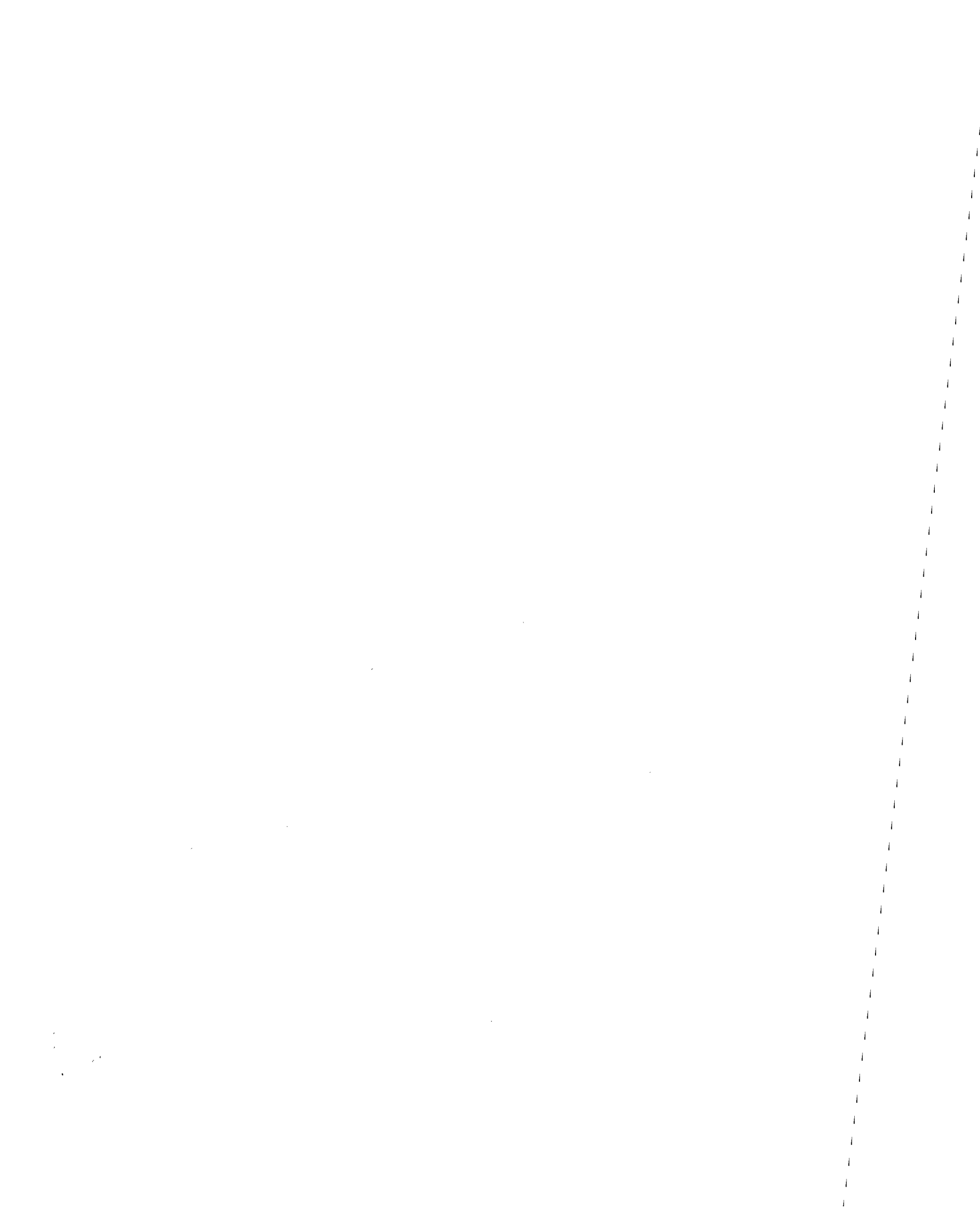
25. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

J. 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.

K. 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 THERMWELL PRODUCTS CO. INC.

7/18/2008
DATE:

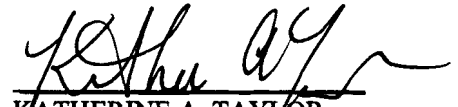
BY:
TITLE:


VINCENT C. AGRAMON
EX. V. P.

Thermwell Products Co. Inc.

FOR COMPLAINANT EPA REGION IX:

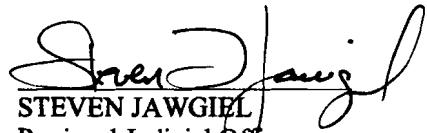
9/18/08
DATE


KATHERINE A. TAYLOR
Associate Director for Agriculture,
Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA and Thermwell Products Co. Inc. having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2008-____) be entered, and Respondent shall pay a civil administrative penalty in the amount of FIVE THOUSAND, TWO HUNDRED DOLLARS (\$5,200), and comply with the terms and conditions set forth in the Consent Agreement.

09/23/08
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

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FOR RESPONDENT THERMWELL PRODUCTS CO. INC.

DATE:

BY:
TITLE:

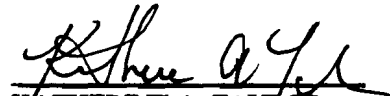


VINCENT CIARRATTON
Executive Vice President
Thermwell Products Co. Inc.

FOR COMPLAINANT EPA REGION IX:

DATE

9/18/08



KATHERINE A. TAYLOR
Associate Director for Agriculture,
Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX
75 Hawthorne Street
San Francisco, California 94105



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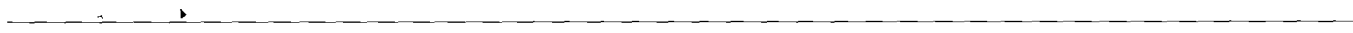
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CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2008- , was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7005 3110 0002 8247 2831), return receipt requested, addressed to the following address:

Robert S. Raymar, Esq.
Helling Lindeman Goldstein & Siegal LLP
One Gateway Center
Newark, N.J. 07102

SEP 24 2008
Date: / / 2008

By Danielle E. Carr

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143

