



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
December 4, 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL: No.7009 1680 0000 7675 0066
RETURN RECEIPT REQUESTED

Ms. Cynthia L. Taub
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036

Consent Agreement and Final Order In the Matter of
Plaston International Corp. Docket No. FIFRA-05-2014-0004

Ms. Taub:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on December 4, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$66,000 is to be paid in the manner described in paragraphs 74 and 75. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by January 4, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

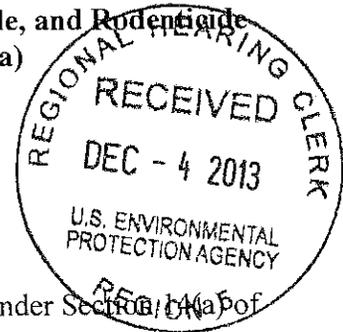
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Plaston International Corporation)
Naperville, Illinois)
Respondent.)
_____)
)

Docket No. FIFRA-05-2014-0004
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Plaston International Corporation (Respondent or Plaston), a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

A handwritten signature in cursive script, appearing to be "li".

Jurisdiction and Waivers

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under 7 U.S.C. § 7136n or 5 U.S.C. §§ 702, 704.

10. Based on an inquiry of those individuals with the primary responsibility for ensuring Plaston's environmental compliance, Respondent certifies that to the best of its knowledge and belief it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is 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.

12. 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).

13. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See* 7 U.S.C. § 136(u).



14. A "pest" is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. *See* 7 U.S.C. § 136(t).

15. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. *See* 40 C.F.R. § 152.15(a)(1).

16. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder.

18. Respondent is a company that distributes or sells air treatment appliances, including air humidifiers in the United States and Canada.

19. Respondent is a "distributor" as defined at Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

20. Respondent owned or operated a website located at www.airoswiss.net during the calendar year 2010.

21. On July 27, 2010, an inspector employed by EPA, and authorized to conduct inspections under FIFRA, examined Respondent's website located at www.airoswiss.net.

22. On July 27, 2010, EPA's inspector printed true and accurate copies from Respondent's website of "screen shots" for the following 11 air humidifier products (the 11 products) which Respondent was offering for distribution or sale:

- a. AOS 7131 Cool Mist Ultrasonic;
- b. AOS 7133 Warm & Cool Mist Ultrasonic;
- c. AOS 7135 Warm & Cool Mist Ultrasonic;
- d. AOS 7142 Warm & Cool Mist Ultrasonic;
- e. AOS 7144 Warm & Cool Mist Ultrasonic;
- f. AOS 7145 Cool Mist Ultrasonic;
- g. AOS 1355N Air Washer;
- h. AOS 2055 Air Washer;
- i. AOS 2055D Digital Air Washer;
- j. AOS E2441 Evaporator; and
- k. AOS 7017 Ionic Silver Stick.

23. On July 27, 2010, Respondent's website made the following claims for the AOS 7131 Cool Mist Ultrasonic, the AOS 7133 Warm & Cool Mist Ultrasonic, the AOS 7135 Warm & Cool Mist Ultrasonic, the AOS 7142 Warm & Cool Mist Ultrasonic, the AOS 7144 Warm & Cool Mist Ultrasonic, and the AOS 7145 Cool Mist Ultrasonic:

- a. The AIR-O-SWISS tri-band microbial protection system helps prevent microbial growth in the water base, which is particularly important when the humidifier is not used for some time with water remaining in the base;
- b. Water and Hygiene / Tri-band water quality protection;
- c. The Ionic Silver Stick®, the cornerstone of our protection system, uses the anti-microbial effect of silver to prevent the growth of microbes in the water base for up to one year of continuous use;
- d. The plastic housing of the demineralization cartridge is treated with silver Ag+ Ionic Silver Technology inhibiting microbial growth on its surface; and
- e. ...the AIR-O-SWISS quad-band water protection system inhibits microbial growth in the water of your humidifier.

24. On July 27, 2010, Respondent's website made the following claims for the AOS

1355N Air Washer, the AOS 205 Air Washer, and the AOS 2055D Digital Air Washer:

- a. Unlike our competitors, AIR-O-SWISS air washers come equipped with a chemical-free anti-microbial protection system: the Ionic Silver Stick®;
- b. The Air Washer is equipped with the Ionic Silver Stick® (ISS) anti-microbial protection system that helps prevent microbial growth in the water base. Microbial protection is particularly needed when the humidifier is not used for some time with water remaining in the base; and
- c. Water and Hygiene / The Ionic Silver Stick® uses the anti-microbial effect of silver to prevent the growth of microbes in the water base for up to one year of continuous use.

25. On July 27, 2010, Respondent's website made the following claims for the AOS

E2441 Evaporator:

- a. Water and Hygiene / The Ionic Silver Stick® uses the anti-microbial effect of silver to prevent the growth of microbes in the water base for up to one year; and
- b. The included Ionic Silver Stick® uses the anti-microbial effect of silver to prevent the growth of microbes in the water base for up to one year of continuous use.

26. On July 27, 2010, Respondent's website made the following claims for the AOS

7017 Ionic Silver Stick:

- a. Proper use of the Ionic Silver Stick® helps prevent microbial growth in your humidifier;
- b. The Ionic Silver Stick uses the anti-microbial effect of silver to prevent the growth of microbes in the water base;
- c. The Ionic Silver Stick begins to function as soon as it comes into contact with water, even if the unit is switched off. When it is in contact with water the silver ions dissolve until the required concentration is reached in the water;.
- d. The Ionic Silver Stick ensures a controlled release of silver ions, allowing for anti-microbial function in the humidifier base for the lifetime of the Ionic Silver Stick; and



e. The Ionic Silver Stick... should be exchanged after one year to guarantee optimal microbial protection.

27. "Microbes" are a pest under Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

28. Based on Respondent's claims made in or as part of the distribution or sale on July 27, 2010, the 11 products were intended to prevent, destroy, repel, or mitigate a pest.

29. Each of the 11 products is therefore a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and is not otherwise exempt from regulation under FIFRA.

Count I-AOS 7131

30. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

31. Respondent offered the AOS 7131 Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

32. The AOS 7131 Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

33. Respondent's distribution or sale of the unregistered pesticide the AOS 7131 Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count II-AOS 7133

34. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

35. Respondent offered the AOS 7133 Warm & Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

36. The AOS 7133 Warm & Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

37. Respondent's distribution or sale of the unregistered pesticide the AOS 7133 Warm & Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count III-AOS 7135

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

39. Respondent offered the AOS 7135 Warm & Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

40. The AOS 7135 Warm & Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

41. Respondent's distribution or sale of the unregistered pesticide the AOS 7135 Warm & Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count IV-AOS 7142

42. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

43. Respondent offered the AOS 7142 Warm & Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

44. The AOS 7142 Warm & Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

45. Respondent's distribution or sale of the unregistered pesticide the AOS 7142 Warm & Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).



Count V-AOS 7144

46. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

47. Respondent offered the AOS 7144 Warm & Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

48. The AOS 7144 Warm & Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

49. Respondent's distribution or sale of the unregistered pesticide the AOS 7144 Warm & Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count VI-AOS 7145

50. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

51. Respondent offered the AOS 7145 Cool Mist Ultrasonic for distribution or sale on July 27, 2010.

52. The AOS 7145 Cool Mist Ultrasonic was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

53. Respondent's distribution or sale of the unregistered pesticide the AOS 7145 Cool Mist Ultrasonic constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count VII-AOS 1355N

54. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

55. Respondent offered the AOS 1355N Air Washer for distribution or sale on July 27, 2010.

56. The AOS 1355N Air Washer was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

57. Respondent's distribution or sale of the unregistered pesticide the AOS 1355N Air Washer constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count VIII-AOS 2055

58. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

59. Respondent offered the AOS 2055 Air Washer for distribution or sale on July 27, 2010.

60. The AOS 2055 Air Washer was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

61. Respondent's distribution or sale of the unregistered pesticide the AOS 2055 Air Washer constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count IX-AOS 2055D

62. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

63. Respondent offered the AOS 2055D Digital Air Washer for distribution or sale on July 27, 2010.

64. The AOS 2055D Digital Air Washer was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

65. Respondent's distribution or sale of the unregistered pesticide the AOS 2055D Digital Air Washer constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count X-AOS E2441

66. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

67. Respondent offered AOS E2441 Evaporator for distribution or sale on July 27, 2010.

68. The AOS E2441 Evaporator was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

69. Respondent's distribution or sale of the unregistered pesticide the AOS E2441 Evaporator constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count XI-AOS 7017

70. Complainant incorporates by reference the allegations contained in paragraphs 1 through 29 of this CAFO.

71. Respondent offered the AOS 7017 Ionic Silver Stick for distribution or sale on July 27, 2010.

72. The AOS 7017 Ionic Silver Stick was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on July 27, 2010.

73. Respondent's distribution or sale of the unregistered pesticide the AOS 7017 Ionic Silver Stick constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

74. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$66,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009. Within 30 days after the effective date of this CAFO, Respondent must pay a \$66,000 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

75. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

John Matson (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

76. This civil penalty is not deductible for federal tax purposes.

77. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

78. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

79. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

80. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

81. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

82. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

83. The terms of this CAFO bind Respondent, its successors and assigns.

84. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

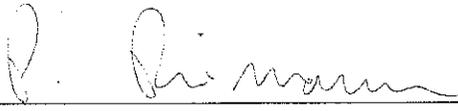
85. Each party agrees to bear its own costs and attorneys fees, in this action.

86. This CAFO constitutes the entire agreement between the parties.

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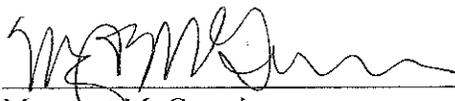
Plaston International Corporation, Respondent

11/5/2013
Date


Pavel Reimann
Corporate Secretary

United States Environmental Protection Agency, Complainant

11/22/2013
Date

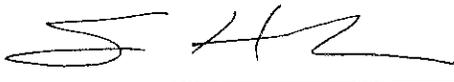

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Plaston International Corporation
Docket No. FIFRA-05-2014-0004

Final Order

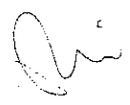
This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/29/13
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5





CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Plaston International Corp., was filed on December 4, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7675 0066, and a copy of the original to the Respondent:

Ms. Cynthia L. Taub
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
John Matson, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0004

