



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

February 26, 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0183 0203

Mr. Mark VanMeter  
Coltène/Whaledent, Inc.  
235 Ascot Parkway  
Cuyahoga Falls, Ohio 44223

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0002

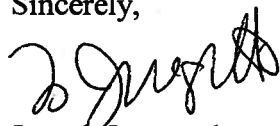
Dear Mr. VanMeter:

Enclosed is a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 26, 2009, with the Regional Hearing Clerk.

The civil penalty in the amount of \$14,960 is to be paid in the manner described in paragraphs 10 and 11. Please be certain that the number BD 2750945P006 and the docket number are written on both the transmittal letter and on the face of the check. Payment is due by March 28, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

 for J.L.

Joseph Lucascyk  
Pesticides and Toxics Compliance Section

Enclosures

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FEB 26 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of:	)	Docket No.: FIFRA-05-2009-0002
	)	
Coltène/Whaledent, Inc.,	)	Proceeding to Assess a Civil
Cuyahoga Falls, Ohio,	)	Penalty under Section 14(a)
	)	of the Federal Insecticide,
and	)	Fungicide and Rodenticide
	)	Act, 7 U.S.C. § 136l(a)
Ultronics, Inc.,	)	
Cuyahoga Falls, Ohio,	)	
	)	
Respondents.	)	

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Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency, Region 5, brought this administrative action seeking a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. On January 6, 2009, EPA filed the Complaint in this action against Respondents Coltène/Whaledent, Inc., and Ultronics, Inc. The Complaint alleges that Respondent Coltène/Whaledent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in one instance by holding for sale a misbranded pesticide and Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), for failing to keep proper records at its facility in Cuyahoga Falls, Ohio. The Complaint further alleges that Respondent Ultronics violated Section 12(a)(1)(E) in two instances by holding for sale two misbranded pesticides.

3. Respondents have not filed an Answer or requested a hearing under Section

14 of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. § 22.15.

**Stipulations**

4. Respondents admit the jurisdictional allegations in the Complaint and neither admit nor deny the factual allegations in the Complaint.
5. Respondents waive any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
6. Respondents certify that they are fully complying with FIFRA, 7 U.S.C. §§ 136 -136y.
7. Respondents consent to the terms of this CAFO and to the assessment of the civil penalty as stated herein.
8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

**Civil Penalty**

9. In consideration of Respondents' good faith in expeditiously resolving this matter, Complainant agrees to mitigate the proposed penalty of \$18,700 to \$14,960.
10. Within 30 days after the effective date of this CAFO, Respondents must pay the \$14,960 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must state the case title, the docket number of this CAFO and the billing document number.

11. A transmittal letter stating Respondents' name, complete address, the case docket number and the billing document number must accompany the payment.

Respondents must send a copy of the check and transmittal letter to:

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

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

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

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

13. If Respondents do not timely pay the civil penalty, EPA may refer this 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.

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

**General Provisions**

15. This CAFO resolves only Respondents' liability for federal civil penalties for the violations alleged in the Complaint.
16. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
17. This CAFO does not affect Respondents' responsibility to comply with FIFRA and other applicable federal, state and local laws.
18. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.
19. The terms of this CAFO bind Respondents, their successors, and assigns.
20. 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.
21. Each party agrees to bear its own costs and attorney's fees in this action.
22. This CAFO constitutes the entire agreement between the parties.

**Coltène/Whaledent, Inc., and Ultronics, Inc., Respondents**

2/5/09  
Date

Eric Schriver  
Eric Schriver  
President

**United States Environmental Protection Agency, Complainant**

2/20/09  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Coltène/Whaledent, Inc., and Ultronics, Inc.**  
**Docket No.: FIFRA-05-2009-0002**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, will 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.

2/29/09  
Date

Walter W. Kovalyck  
Bharat Mathur  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY

**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 Coltène/Whaledent, Inc., 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. 7001 0320 0006 0183 0103, a copy of the original to the Respondent:

Mr. Mark VanMeter  
Coltène/Whaledent, Inc.  
235 Ascot Parkway  
Cuyahoga Falls, Ohio 44223

and forwarded intra-Agency copies to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Robert Guenther, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

*Marlene Bronson*

Marlene Bronson (LC-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2009-0002 <sup>25</sup>

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