

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 1562 3457

Ranelle Leier
Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402-1609

Smead Manufacturing Company

FIFRA-05-2008-0008

Dear Ms. Leier

I have enclosed one original signed copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on February 8, 2008 with the Regional Hearing Clerk.

The civil penalty in the amount of \$53,165 is to be paid in the manner prescribed in paragraphs 103 to 105. Please be certain that the number **BD 2750845P009** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 9, 2008 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

R. Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer (w/Encl.)
Cynthia King ORC /C-14J (w/Encl.)
Erik Volck, Cincinnati Finance (w/Encl.)
James Riesterer, Smead Manufacturing

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Smead Manufacturing Company)
Hastings, Minnesota,)
)
Respondent.)
_____)

Docket No. FIFRA-05-2008-0008
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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REGIONAL HEARING CLERK
US EPA REGION 5
2008 FEB -8 PM 2:27

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 (U.S. EPA), Region 5.
3. Respondent is Smead Manufacturing Company (Respondent), a corporation doing business in the State of Minnesota.
4. Under 40 C.F.R. § 22.13(b), 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).
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.

Jurisdiction and Waiver of Right to Hearing

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 certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. 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.

11. 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).

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

13. 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. 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.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of U.S. EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$5,500 for each offense that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$6,500 for each offense that occurred after March 15, 2004, 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

16. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Respondent is a wholesaler, dealer, retailer, or other distributor.

18. Respondent owned or operated a place of business located at 600 East Smead Boulevard, Hastings, Minnesota during the calendar years 2006 and 2007.

19. On March 12 and 13, 2007, inspectors employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business in Hastings, Minnesota.

20. During the inspection, the inspector collected physical samples, advertising materials, and distribution records for the following products: Antimicrobial End Tab File Jackets (No. 75715); Antimicrobial End Tab File Folder with Pockets (No. 24116); Antimicrobial End Tab File Folders (No. 24113); Antimicrobial Top Tab Folders (No. 10388); Antimicrobial Colored Pocket Portfolios (No. 87924); Antimicrobial Pressboard End Tab Fastener Folders (No. 34720); Antimicrobial Manila Folder with Fastener (No. 34113); and

Antimicrobial Colored Expanding Wallet with Elastic Cord (No. 77927) which Respondent was holding for distribution or sale.

21. At the time of the inspections, Respondent's web site, www.smead.com, made the following claims regarding the products listed in Paragraph 20 above:

Diligence in the efforts to control the spread of microorganisms is critical in a wide variety of working environments. Preventive steps must be taken to reduce the risk of contamination by looking for ways to eliminate harmful organisms wherever they may exist.

Smead antimicrobial quality products guard against the growth of bacteria, odors, algae, mold, fungus and mildew.

22. In its advertising for filing supplies, Respondent stated:

Gesundheit! Some things should not be shared with your coworkers. What's been going around at your office lately? Smead offers a full line of antimicrobial products that stop the growth of bacteria, mold, fungus, and mildew. They're FDA-approved, acid-free, and the antimicrobial properties never wear out. Now that's something we can all feel better about.

Antimicrobial Products. Antimicrobial filing products effectively guard against the growth of microorganisms, mold and mildew.

- Antimicrobial treatment permeates the entire folder, protecting both inside and out.
- FDA approved treatment is friendly to the environment and safe for contact with food.
- Silver zeolite compounds used in treatment kills most bacteria.
- Antimicrobial treatment is inorganic and does not migrate out of the paper.

What types of organizations need to control bacteria growth?

- Hospitals and Clinics
- Dental Offices
- Schools
- Day Care Facilities
- Pharmacies
- Research Laboratories
- Pharmaceutical Companies
- Museums (Archivist)

23. Respondent's label for Antimicrobial End Tab File Jackets (No. 75715) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew," and "Antimicrobial End Tab Jackets."

24. Antimicrobial End Tab File Jackets (No. 75715) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. Respondent's label for Antimicrobial End Tab File Folders with Pockets (No. 24116) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew," and "Antimicrobial End Tab Pocket Folders."

26. Antimicrobial End Tab File Folders with Pockets (No. 24116) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. Respondent's label for Antimicrobial End Tab File Folders (No. 24113) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew," and "Antimicrobial End Tab File Folders."

28. Antimicrobial End Tab File Folders (No. 24113) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

29. Respondent's label for Antimicrobial Top Tab File Folders (No. 10388) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew," and "Antimicrobial File Folders."

30. Antimicrobial Top Tab File Folders (No. 10388) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. Respondent's label for Antimicrobial Colored Pocket Portfolios (No. 87924) collected on March 12, 2007 states, "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew" and "Antimicrobial Pocket Portfolios."

32. Antimicrobial Colored Pocket Portfolios (No. 87924) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. Respondent's label for Antimicrobial End Tab Fastener Folders (No. 34720) collected on March 12, 2007 states: "Antimicrobial End Tab Fastener Folders."

34. Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. Respondent's label for Antimicrobial Manila Folders with Fasteners (No. 34113) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew."

36. Antimicrobial Manila Folders with Fasteners (No. 34113) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

37. Respondent's label for Antimicrobial Colored Expanding Wallet with Elastic Cord (No. 77927) collected on March 12, 2007 states: "Antimicrobial Products by Smead inhibits the growth of damaging bacteria, algae, mold, fungus, and mildew," and "Antimicrobial Expanding Wallets\Red."

38. Antimicrobial Colored Expanding Wallet with Elastic Cords (No. 77927) are a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

39. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Office Depot in Carol Stream, Illinois on August 21, 2006.

40. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Quill Corporation on September 20, 2006.
41. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Corporate Express in Joliet, Illinois on August 29, 2006.
42. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Staples National Advantage, in Beloit, Wisconsin on September 7, 2006
43. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Office Depot, in Carol Stream, Illinois on September 11, 2006.
44. Respondent sold Antimicrobial End Tab File Jackets (No. 75715) to Positive Marketing Association in Roselle, Illinois on August 22, 2006.
45. Antimicrobial End Tab File Jackets (No. 75715) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from August 29, 2006 to September 11, 2006.
46. Respondent's distribution or sale of the unregistered pesticide Antimicrobial End Tab File Jackets (No. 75715) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
47. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to Corporate Express in Joliet, Illinois on September 21, 2006.
48. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to Staples National Advantage, in Beloit, Wisconsin on September 7, 2006
49. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to Office Depot, in Carol Stream, Illinois on September 6, 2006.

50. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to United Stationers in Eagen, Minnesota on September 17, 2006.

51. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to United Stationers in Carol Stream, Illinois on September 20, 2006.

52. Respondent sold Antimicrobial End Tab File Folders with Pockets (No. 24116) to United Stationers in Carol Stream, Illinois on October 4, 2006.

53. Antimicrobial End Tab File Folders with Pockets (No. 24116) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from September 6, 2006 to October 4, 2006.

54. Respondent's distribution or sale of the unregistered pesticide Antimicrobial End Tab Folders with Pockets (No. 24116) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

55. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Office Depot in Carol Stream, Illinois on September 6, 2006.

56. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Staples National Advantage, in Beloit, Wisconsin on September 7, 2006

57. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Office Depot, in Carol Stream, Illinois on September 11, 2006.

58. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Office Depot, in Carol Stream, Illinois on September 18, 2006.

59. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Staples National Advantage in Beloit, Wisconsin on September 20, 2006.

60. Respondent sold Antimicrobial End Tab File Folders (No. 24113) to Corporate Express in Joliet, Illinois on September 29, 2006

61. Antimicrobial End Tab File Folders (No. 24113) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from September 6, 2006 to September 29, 2006.

62. Respondent's distribution or sale of the unregistered pesticide Antimicrobial End Tab File Folders (No. 24113) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

63. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Corporate Express in Joliet, Illinois on August 15, 2006.

64. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Staples National Advantage, in Addison, Illinois on August 16, 2006

65. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Office Depot, in Carol Stream, Illinois on August 14, 2006.

66. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Office Depot, in Plymouth, Minnesota on August 15, 2006.

67. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Corporate Express in Joliet, Illinois on August 14, 2006.

68. Respondent sold Antimicrobial Top Tab File Folders (No. 10388) to Office Depot, in Carol Stream, Illinois on August 18, 2006.

69. Antimicrobial Top Tab File Folders (No. 10388) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from August 14, 2006 to August 18, 2006.

70. Respondent's distribution or sale of the unregistered pesticide Antimicrobial End Tab Folders (No. 10388) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

71. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to United Stationers in Carol Stream, Illinois on September 27, 2006.

72. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to United Stationers in Carol Stream, Illinois on October 18, 2006.

73. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to United Stationers in Carol Stream, Illinois on November 27, 2006.

74. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to SP Richards Co. in Elk Grove Village, Illinois on December 11, 2006.

75. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to SP Richards Co. in Maryland Heights, Missouri on December 21, 2006.

76. Respondent sold Antimicrobial Colored Pocket Portfolios (No. 87924) to United Stationers in Carol Stream, Illinois on November 1, 2006.

77. Antimicrobial Colored Pocket Portfolios (No. 87924) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from September 27, 2006 to December 21, 2006.

78. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Colored Pocket Portfolios (No. 87924) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

79. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to SP Richards Co. in Kansas City, Kansas on February 2, 2007.

80. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to Quill/Medical Arts Press in Minneapolis, Minnesota on November 2, 2006.

81. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to SP Richards Co. in Elk Grove Village, Illinois on October 2, 2006.

82. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to SP Richards in Richmond, Virginia on December 18, 2006.

83. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to SP Richards in Birmingham, Alabama on December 21, 2006.

84. Respondent sold Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) to SP Richards in Charlotte, North Carolina on December 16, 2006.

85. Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from October 2, 2006 to February 2, 2007.

86. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Pressboard End Tab Fastener Folders (No. 34720) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

87. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to SP Richards Co. in Kansas City, Kansas on September 14, 2006.

88. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to SP Richards Co. in St. Paul, Minnesota on September 20, 2006.

89. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to Office Depot in Plymouth, Minnesota on September 19, 2006.

90. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to SP Richards in St. Paul, Minnesota on October 4, 2006.

91. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to Corporate Express in Joliet, Illinois on September 29, 2006.

92. Respondent sold Antimicrobial Manila Folder with Fastener (No. 34113) to Corporate Express in Joliet, Illinois on October 3, 2006.

93. Antimicrobial Manila Folder with Fastener (No. 34113) was not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from September 14, 2006 to October 3, 2006.

94. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Manila Folder with Fastener (No. 34113) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

95. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to SP Richards Co. in Elk Grove Village, Illinois on October 2, 2006.

96. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to SP Richards Co. in St. Paul, Minnesota on October 4, 2006.

97. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to SP Richards Co. in St. Paul, Minnesota on October 11, 2006.

98. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to Corporate Express in Wauwatosa, Wisconsin on January 26, 2007.

99. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to SP Richards Co. in Elk Grove Village, Illinois on October 9, 2006.

100. Respondent sold Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) to SP Richards Co. in Kansas City, Missouri on December 21, 2006.

101. Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) were not registered as a pesticide with U.S. EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, from October 2, 2006 to January 26, 2007.

102. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Colored Expanding Wallets with Elastic Cords (No. 77927) constitutes unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

103. 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 \$53,165. 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 and Respondent's agreement to perform a supplemental environmental project. Complainant also considered U.S. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

104. Within 30 days after the effective date of this CAFO, Respondent must pay a \$53,165 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:
[for checks sent by regular U.S. Postal Service mail]

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

[for checks sent by express mail]

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must note the case name, the docket number of this CAFO and the billing document number.

Respondent may pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

105. If paying by check, a transmittal letter, stating, Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cynthia A. King (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604]

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

107. If Respondent does not pay the civil penalty timely, or any stipulated penalties due under paragraph 119, below, U.S. 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.

108. 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.

Supplemental Environmental Project

109. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment and public health by reducing the amount of chlorofluorocarbons (CFCs) that may be released into the environment.

110. By May 31, 2008, at its Hastings Minnesota facility, Respondent must replace its existing air handler and R-12 heating and cooling system with four new units that use a non-ozone depleting refrigerant. Also, by May 31, 2008, Respondent will reclaim and properly dispose of 200 pounds of CFCs from its existing system.

111. Respondent must spend at least \$95,077.00 to complete this SEP.

112. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

113. The U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

114. Respondent must submit a SEP completion report to U.S. EPA by July 31, 2008.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Manifests and certificate of disposal for destruction of Freon (CFC);
- e. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- f. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

115. Respondent must submit all notices and reports required by this CAFO by first class mail to Terence Bonace of the Pesticides and Toxics Compliance Section.

116. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that,

based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

117. Following receipt of the SEP completion report described in paragraph 114, above, U.S. EPA must notify Respondent in writing that:

- a. Respondent has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 119.

118. If U.S. EPA exercises option b, above, Respondent may object in writing to the deficiency notice within ten days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 119, below.

119. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 111, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 111.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$20,000, in addition to any penalty required under subparagraph a, above.
- c. If the SEP is not completed satisfactorily, but the Respondent: i) made good faith and timely efforts to complete the project; and ii) certifies, with supporting documentation, that at least 90% of the amount of money which was required to

be spent was expended on the SEP, no stipulated penalty is necessary.

- d. If the SEP is satisfactorily completed, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, a stipulated penalty of \$7,136.50 must be paid.
- e. If Respondent fails to comply with the schedule in paragraph 110 for implementing the SEP or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$500	1 st through 14 th day
\$1,000	15 through 30 th day
\$2,500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

120. The U.S. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

121. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 104, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

122. Any public statement that Respondent makes referring to the SEP must include the following language, "Smead Manufacturing Company undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Smead Manufacturing Company for violations of FIFRA."

123. Nothing in this CAFO is intended to, nor will be construed to, constitute U.S. EPA approval of the equipment or technology installed by the Respondent in connection with the SEP under the terms of this CAFO.

124. The costs of the SEP are not deductible for federal income tax purposes.

General Provisions

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

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

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

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

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

130. 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.

131. Each party agrees to bear its own costs and attorney's fees, in this action.

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

Smead Manufacturing Company, Respondent

Date 1/14/08



Robert E. Karrick, Chief Operating Officer
Smead Manufacturing Company

FIFRA-05-2008-0008

In the Matter of:
Smead Manufacturing Company, Hastings, Minnesota
Docket No.

FIFRA-05-2008-0008

United States Environmental Protection Agency, Complainant

February 4, 2008
Date



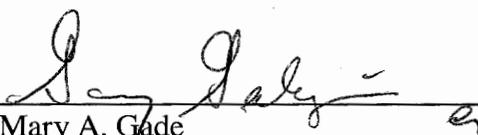
Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of:
Smead Manufacturing Company, Hastings, Minnesota
Docket No.
FIFRA-05-2008-0008

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.

2/6/08
Date


Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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2008 FEB -8 PM 2: 27

2008 FEB -8 PM 2:26

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US EPA REGION 5

CERTIFICATION OF SERVICE

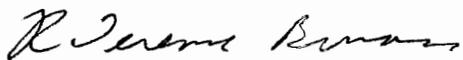
I hereby certify that the original, signed copy of the Consent Agreement and Final Order, in resolution of the civil administrative action involving Smead Manufacturing Company was filed on February 8, 2008 with the Region Hearing Clerk, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (E-13J), Chicago, Illinois 60604, and I mailed by certified mail, Receipt No. 7001 0320 0006 1562 3457, a copy of the original to Respondent's attorney:

Ranelle Leier
Oppenheimer Wolff & Donnelly LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, Minnesota 55402-1609

And forwarded copies, via intra-office mail, to:

Marcy Toney, Regional Judicial Officer (C-14J)
Cynthia King, Associate Regional Counsel (C-14J)
Erik Volck, Cincinnati Finance (MWD)

On the 8 day of February, 2008.



R. Terence Bonace
U.S. Environmental Protection Agency
Region 5

FIFRA-05-2008-0008