

Sylvia Quast  
Regional Counsel

David H. Kim  
Assistant Regional Counsel (ORC-3)  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3882

**\*\* FILED \*\***  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

|                             |   |                                       |
|-----------------------------|---|---------------------------------------|
| In the Matter of:           | ) |                                       |
|                             | ) |                                       |
| Honolulu Wood Treating, LLC | ) | Docket No. FIFRA-09-2016- <u>0013</u> |
|                             | ) | CONSENT AGREEMENT AND FINAL           |
|                             | ) | ORDER PURSUANT TO                     |
| Respondent.                 | ) | 40 C.F.R. §§ 22.13 AND 22.18          |
| _____                       | ) |                                       |

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Honolulu Wood Treating, LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a Hawaii corporation whose principal offices are located at 91-291 Hanua Street in Kapolei, Hawaii.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Under section 2(s) of FIFRA, 7 U.S.C. § 136(s), a “person” is defined as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
5. Under section 2(t) of FIFRA, 7 U.S.C. § 136(t), a “pest” is defined as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).”
6. Under section 2(u) of FIFRA, 7 U.S.C. § 136(u), a “pesticide” is defined as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .”
7. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), “to distribute or sell” is defined as “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.”

8. Under section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if “its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.”
9. Under section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.”
10. 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 adulterated or misbranded.

### C. ALLEGATIONS

11. Respondent is a corporation and therefore, a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Respondent distributes or sells wood treatment and building products throughout the State of Hawaii.
13. On or about September 15, 2014 and February 2, 2015, an inspector from the Hawaii Department of Agriculture (“HDA”) performed a producer establishment inspection of Respondent’s facility (the “Facility”) at 91-291 Hanua Street in Kapolei, Hawaii.
14. During the September 15, 2014 and February 2, 2015 inspections of the Facility, the HDA inspector documented sales of “Clear-Bor F.T.,” a product designed to protect wood from termites and wood decay fungi.

15. Termites and fungi are “pests” within the meaning of section 2(t) of FIFRA, 7 U.S.C. § 136(t).
16. “Clear-Bor F.T.” is a “pesticide” within the meaning of section 2(u) of FIFRA, 7 U.S.C. § 136(u).
17. HDA performed a follow-up review of the label of “Clear-Bor F.T.” and determined that it bore an incorrect EPA producer establishment number. The label of “Clear-Bor F.T.” contained an EPA producer establishment number of “35035-HI-001”; the correct EPA producer establishment number was “35053-HI-001.”
18. EPA performed a follow-up review of the label of “Clear-Bor F.T.” and determined that it bore inaccurate directions for first aid. Specifically, the label of “Clear-Bor F.T.” instructed the user to “induce vomiting by touching back of throat with finger” in case of ingestion; through its Pesticide Registration Notice 2001-1, EPA has prohibited any such instructions.
19. At all times relevant to this action, “Clear-Bor F.T.” was “misbranded” within the meaning of section 2(q)(1)(D) and (F) of FIFRA, 7 U.S.C. § 136(q)(1)(D) and (F).
20. On or about October 17, 2013, Respondent distributed or sold “Clear-Bor F.T.” to Mendocino Forest Products Co., LLC of Kapolei, Hawaii.
21. Respondent’s distribution or sale of “Clear-Bor F.T.” to Mendocino Forest Products Co. on or about October 17, 2013 constitutes a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
22. On or about December 18, 2013, Respondent distributed or sold “Clear-Bor F.T.” to City Mill Co. of Honolulu, Hawaii.

23. Respondent's distribution or sale of "Clear-Bor F.T." to City Mill Co. on or about December 18, 2013 constitutes a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
24. On or about February 11, 2014, Respondent distributed or sold "Clear-Bor F.T." to Yamashiro Building Supply of Kanehohe, Hawaii.
25. Respondent's distribution or sale of "Clear-Bor F.T." to Yamashiro Building Supply on or about February 11, 2014 constitutes a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
26. On or about April 10, 2014, Respondent distributed or sold "Clear-Bor F.T." to City Mill Co. of Honolulu, Hawaii.
27. Respondent's distribution or sale of "Clear-Bor F.T." to City Mill Co. on or about April 10, 2014 constitutes a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
28. On or about August 6, 2014, Respondent distributed or sold "Clear-Bor F.T." to Honsador Lumber of Kapolei, Hawaii.
29. Respondent's distribution or sale of "Clear-Bor F.T." to Honsador Lumber on or about August 6, 2014 constitutes a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### D. RESPONDENT'S ADMISSIONS

30. 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 specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the

assessment of the civil administrative penalty under Section I.E of this CAFO;

(iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and

(v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

31. Respondent agrees to the assessment of a penalty in the amount of THIRTY-THREE THOUSAND AND SEVEN HUNDRED AND FIFTY DOLLARS (\$33,750) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of the CAFO.

32. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular Mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York

City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary = US Environmental Protection Agency

c. Certified or Overnight Mail:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

d. Automated Clearinghouse (ACH) (also known as REX or Remittance Express):

Automated Clearinghouse (ACH) payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account Number = 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking

Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX) = 1-866-234-5681

e. On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)  
Enter "SFO 1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. 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 or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, 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

Scott McWhorter  
Enforcement Division (ENF-3-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

33. 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.
34. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 32, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 32 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; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 32. 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.

#### F. CERTIFICATION OF COMPLIANCE

35. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

#### G. RETENTION OF RIGHTS

36. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the 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 Section I.C of the CAFO; or (ii) any criminal liability. 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 Section I.C of the CAFO.
37. 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.

#### H. ATTORNEYS' FEES AND COSTS

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

#### I. EFFECTIVE DATE

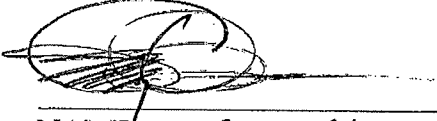
39. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

40. 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.
41. 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.

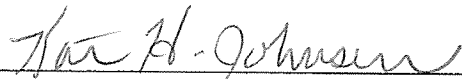
FOR RESPONDENT, HONOLULU WOOD TREATING, LLC

4-5-2016  
DATE

  
NAME: GARY OKIMOTO  
TITLE: SR. VP  
HONOLULU WOOD TREATING, LLC

FOR COMPLAINANT, EPA REGION IX:

4/19/16  
DATE

  
Kathleen H. Johnson  
Director  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

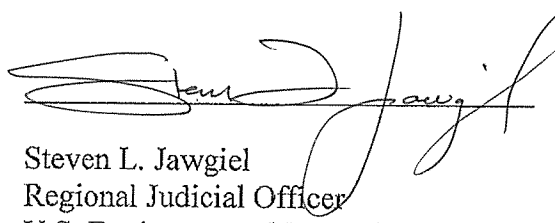
II. FINAL ORDER

Complainant and Respondent, Honolulu Wood Treating, LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0013) be entered, and that Respondent shall pay a civil administrative penalty in the amount of THIRTY-THREE THOUSAND AND SEVEN HUNDRED AND FIFTY DOLLARS (\$33,750) and comply with the terms and conditions set forth in the Consent Agreement.

04/22/16

DATE



Steven L. Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0013 ) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

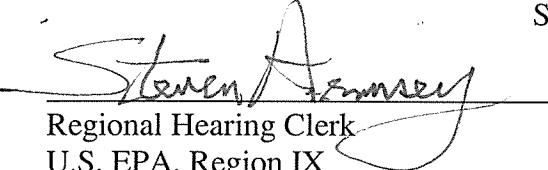
A copy was mailed via CERTIFIED MAIL to:

Hap Person, Owner  
Honolulu Wood Treating, LLC.  
91-291 Hanua St # 1  
Kapolei, HI 96707

CERTIFIED MAIL NUMBER: 7015 1520 0000 9141 7623

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

April 25, 2016  
Date