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**U.S. EPA REGION 5
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

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| In the Matter of: |) | Docket No. FIFRA-05-2025-0006 |
| |) | |
| West Marine Products, Inc. |) | Proceeding to Assess a Civil Penalty |
| Troy, Michigan |) | Under Section 14(a) of the Federal |
| |) | Insecticide, Fungicide, and Rodenticide |
| Respondent. |) | Act, 7 U.S.C. § 136/(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. § 136/(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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is West Marine Products, Inc. (West Marine), a corporation organized under the laws of the State of Florida and doing business in the State of Michigan.

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.

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. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y, and the regulations at 40 C.F.R. § 156.

Statutory and Regulatory Background

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “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.

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

13. Section 2(s) of FIFRA, 7 U.S.C. § 1326(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” 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 [of EPA] declares to be a pest under section [25(c)(1), 7 U.S.C. § 136w(c)(1), of FIFRA].” See also 40 C.F.R. § 152.5.

15. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

16. 40 C.F.R § 152.3 defines “pesticide product” as “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.”

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “distribute or sell” as “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.”

18. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device of any of its containers or wrappers.”

19. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

20. The Administrator of 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 \$24,255 for each offense that occurred after November 2, 2015, and assessed on or after December 27, 2023, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136/(a)(l), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. At all times relevant to this CAFO, West Marine owned or operated a place of business located at 789 East Big Beaver Road, Troy, Michigan (the establishment).

23. On or about August 17, 2022, two inspectors employed with the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection at the West Marine establishment (the Inspection).

24. During the Inspection, the MDARD inspectors collected photos of labels for the product Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021), which the inspectors found in 2-oz containers.

25. Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) is a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. EPA accepted the master label for Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) on June 14, 1991.

27. The most recent label amendment for the basic product, EPA Reg. No. 9339-19 was accepted by EPA on December 04, 2003.

28. The most recent label amendment for the basic product, EPA Reg. No. 9339-19 accepted by EPA on December 04, 2003, contained more detailed precautionary statements, directions for use, and storage and disposal instructions than what was photographed on labels of Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) during the inspection. Information on the December 4, 2003 master label amendment that was not printed on the photographed label of Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) during the Inspection include:

A. Hazards to Humans and Domestic Animals: "IF SWALLOWED: ... Drink promptly a large quantity of water. Do not induce vomiting. Call a physician immediately. IF INHALED: ... Do not breathe vapor or spray mist while spraying paint or sanding of boat surface. Wear a mask or respirator jointly approved by the Mining Enforcement and Safety Administration and the National Institute of Occupational Safety and Health. Remove victim to fresh air if not breathing, give artificial respiration, preferably mouth-to-mouth. Get Medical Attention. IF ON SKIN: ... Wash with plenty of soap and water. Get Medical Attention ... Wash thoroughly with soap and water after handling. IF IN EYES: Flush with plenty of water. Get Medical Attention."

B. Environmental Hazards: "Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. 'Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility'."

C. Directions for Use: FOR NON-COMMERCIAL USE: "New Fiberglass requires Aquagard 180 Solvent Wash and Aquagard 181 Fiberglass Solvent Based Primer... The theoretical coverage of this product is at least 400 square feet per gallon when applied to the recommended dry film thickness. To prepare the surface for coating remove all old coating and fouling residue by either washing with high pressure water, scraping or by disc sanding. Be sure to use the proper protective equipment to prevent inhalation or ingestion of the paint dust generated. A clean dry surface, free of scale, corrosion, dirt, grease, oil, marine, fouling, or other foreign matter will provide the optimum performance of this coating or for touch-up. Inadequate surface preparation will result in unsatisfactory performance. Be sure to remove all dust, debris and other surface contaminations that are generated by the cleaning process prior to painting. Mix the coating with either a high-speed mixer, or a paint shaker for minimum of five (5) minutes to insure complete pigment reincorporation. Thin in the event that the coating is too thick to apply easily. Thin with water. Clean up with water when finished. Apply by either brush, roller or spray. Be sure to follow mixing instructions and apply the correct thickness..."

D. Storage and Disposal: "...Store in cool dry area away from heat or open flame."

29. On or about April 30, 2020 (Transaction Number 00106971) and June 15, 2021

(Transaction Number 00102493) Respondent sold or distributed the pesticide product Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) from their Troy, Michigan store.

30. Respondent distributed or sold Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021), a “pesticide” as that term is defined under FIFRA, which was not labeled in accordance with the most recently accepted master label amendment for the basic registered product (EPA Reg. No. 9339-19) accepted by EPA on December 4, 2003, on at least 2 separate occasions on or about April 30, 2020 and June 15, 2021.

31. Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021), as referenced in paragraphs 24 - 29 above, was misbranded as that term is defined by Sections 2(q)(1)(F) and 2(q)(1)(G) of FIFRA.

32. Respondent’s distribution or sale of the misbranded pesticide Waterbase Anti-Fouling Transducer Paint (EPA Reg. No.: 9339-19-15021) on a total of 2 separate occasions constitutes 2 separate unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. Respondent’s violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136/(a).

Civil Penalty

34. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$13,600. 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.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,600 civil penalty for the FIFRA violations by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

The check must note West Marine Products, Inc. and the docket number of this CAFO.

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

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
R5lecab@epa.gov

Cynthia King (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
king.cynthia@epa.gov

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

38. 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. § 136(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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.

40. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (IRS) annually, a completed IRS Form 1098-F (Fines, Penalties, and Other Amounts) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (TIN), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (Request for Taxpayer Identification Number and Certification), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA's Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

General Provisions

41. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and PauleeD@Westmarine.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.
42. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.
43. 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.
44. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.
45. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.
46. The terms of this CAFO bind Respondent, its successors and assigns.
47. 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.
48. Each party agrees to bear its own costs and attorney's fees, in this action.
49. This CAFO constitutes the entire agreement between the parties.

West Marine Products, Inc., Respondent

10/10/2024
Date

Paulee Day
Paulee Day
Chief Administrative Officer
West Marine Products, Inc.

In the Matter of:
West Marine Products, Inc.
Docket No.: FIFRA-05-2025-0006

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2024.10.22
15:05:08 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
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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.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5