

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7**

**901 NORTH 5<sup>th</sup> STREET**

**KANSAS CITY, KANSAS 66101**

09 MAY 22 PM 12:55

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

**In the Matter of**

**Docket No. FIFRA-07-2009-0014**

**2thePoint Innovation, Inc.  
d/b/a CleenFreek Sports Hygiene  
Chesterfield, Missouri**

**Respondent**

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and 2thePoint Innovation, Inc. (Respondent) has agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is 2thePoint Innovation, Inc. d/b/a CleenFreek Sports Hygiene (Respondent).

## Section III

### Statutory and Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (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-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

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

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading.

#### **Section IV**

##### **General Factual Allegations**

13. Respondent is a "person" within the meaning of FIFRA, Section 2(s), 7 U.S.C. § 136(s).

##### **Violations**

14. The Complainant hereby states and alleges that Respondent violated FIFRA and federal regulations promulgated thereunder, as follows:

15. On November 14, 2007, the Missouri Department of Agriculture conducted an inspection at Respondent's facility. The purpose of the inspection was to determine Respondent's compliance with FIFRA.

##### **Count 1**

16. The facts stated in paragraphs 13 through 15 are fully incorporated herein.

17. The inspection, described in paragraph 15 above, revealed that Respondent was selling, and/or offering for sale and distribution, pesticide products known as CleenFreek Sports Hygiene Wristbands, Headbands, Yoga and Pilates Mats, Towels, and Sports Sandals and that CleenFreek's website and product catalog contained pesticidal claims for these products. Additionally, the inspection revealed that Respondent had not registered these products with EPA.

18. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

##### **Count 2**

19. On or about February 20, 2009, EPA personnel identified that Respondent was offering for sale and distribution, through Respondent's website, a pesticide product, CleenFreek Bioshield 75. Respondent had not registered this product with EPA and the product's label contained a false EPA Registration Number.

20. Respondent violated Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and 136j(a)(1)(E), by offering for sale and distribution a misbranded pesticide which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

## Section V

### Consent Agreement

21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

22. Respondent neither admits nor denies the factual allegations set forth above.

23. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

24. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

25. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

26. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

27. Respondent certifies that by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

28. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

29. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

## Section VI

### Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$500 plus interest of \$3.72 over a period of six months for a total payment of \$503.72. The total civil penalty of \$503.72 shall be paid in two installments. The first payment of \$251.86 is due within thirty (30) days of the effective date of this CAFO. Respondent shall pay the second payment of \$251.86 no later than October 15, 2009. Such payments shall identify Respondent by name and include docket number FIFRA-07-2009-0014. The payment shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

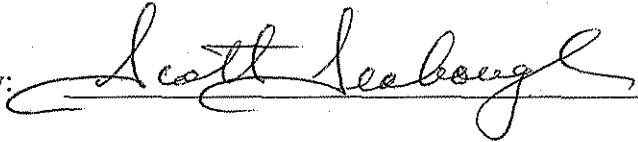
and

Chris Muehlberger, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**FOR RESPONDENT:**

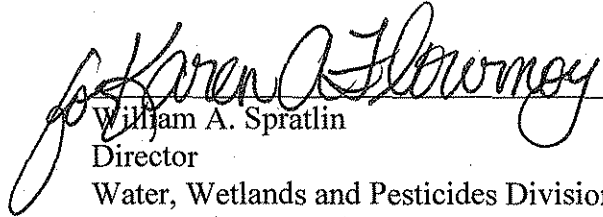
Date: 4/24/09

By: 

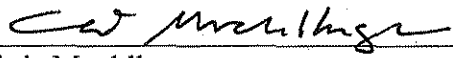
Scott Seabough President  
Print Name Title

**FOR COMPLAINANT:  
U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 5-4-09

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date: 5.4.09

  
\_\_\_\_\_  
Chris Muehlberger  
Office of Regional Counsel

IN THE MATTER of 2thePoint Innovation, Inc.  
Docket No. FIFRA-07-2009-0014

**IT IS SO ORDERED.** This Order shall become effective immediately.



Robert L. Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

May 22, 2009

Date

IN THE MATTER OF 2thePoint Innovation, Inc. d/b/a CleenFreeK Sorts Hygiene, Respondent  
Docket No. FIFRA-07-2009-0014

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Christopher Muehlberger  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Scott Seabaugh, President  
2thePoint Innovation, Inc.  
1248 Ticonderoga  
Chesterfield, Missouri 63017

Dated: 5/22/09

  
Kathy Robinson  
Hearing Clerk, Region 7