

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY
JAN 20 11 21 AM '09
REGIONAL HEARINGS
OFFICE

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In the Matter of :
 :
Marietta Corporation : **CONSENT AGREEMENT**
 : **AND FINAL ORDER**
Respondent :
 : Docket No. FIFRA-02-2010-5201
 :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 (a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, Marietta Corporation, located at 37 Huntington Street, Cortland, New York 13045.

The Complainant charged Respondent with one (1) violation of 7 U.S.C. § 136g(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of an annual Pesticide

Report for Pesticide-Producing Establishments. Said violation is unlawful under FIFRA §12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read “In the Matter of Marietta Corporation”.

2. This Consent Agreement is being entered by Respondent on behalf of Marietta Corporation, and the Respondent is authorized for purposes of this Consent Agreement to bind Marietta Corporation.

3. Respondent’s establishment is registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Number is 046229-NY-001.

4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA, the types and amounts of pesticides produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

5. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit an annual pesticide production report (the “Report”) on or before March 1st of each year, even if the producer has produced no pesticidal product for that reporting year.

6. Respondent failed to submit annual pesticide production reports for 2006, 2007 and 2008.

7. Therefore, Respondent violated Section 7(c)(1) of FIFRA, Section 12(a)(2)(L) of FIFRA, and 40 C.F.R. § 167.85.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections regarding proper service of the Complaint and/or any other questions concerning acquisition of personal jurisdiction of Marietta Corporation.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations.
4. Respondent admits the specific factual allegations set forth in the Findings of Fact and the Conclusions of Law in this Consent Agreement.
5. Respondent explicitly agrees to pay, by cashier's or certified check, or by electronic fund transfer (EFT), a civil penalty in the total amount of Four-Thousand-Five-Hundred Dollars (\$4,500) to the "Treasurer, United States of America". The payment of Four Thousand Five Hundred Dollars (\$4,500.00) is due within forty-five (45) days after the date of signature of the Final Order at the end of this document (the date by which the payment must be received shall hereafter be referred to as the "due date"). Such check shall be identified with a notation of the name and docket number of this case, set forth in the caption of the first page of this document. Such check shall be mailed to:

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

If Respondent chooses to make payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment

- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 02130004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent: Marietta Corporation
- 7) Case Number: FIFRA-02-2010-5201

Respondent shall also send copies of this payment to each of the following:

Michael Kramer, FIFRA Enforcement Coordinator
Pesticides Team
U.S. Environmental Protection Agency Region 2
2890 Woodbridge Avenue (MS-500)
Edison, New Jersey 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th floor
New York, New York 10007

a. Failure to pay the above amount in full according to the above provisions will result in referral of this matter to the United States Department of Justice for collection.

b. Furthermore, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 on the overdue amount from the effective date of payment.

c. In addition, a late payment handling charge of fifteen dollars (\$15) for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid will be assessed.

d. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date.

6. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.

7. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.

8. This Consent Agreement is being entered into by the parties in full settlement of all civil liabilities. Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

9. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

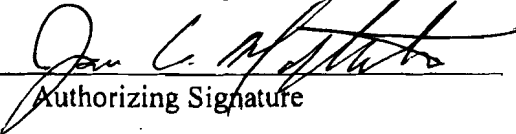
10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

12. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

13. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

RESPONDENT: Marietta Corporation

BY: 
Authorizing Signature

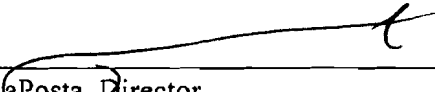
NAME: JAMES E. MATTHEWS

(PLEASE PRINT)

TITLE: ASSISTANT CORPORATE SECRETARY

DATE: APRIL 22, 2010

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: May 5, 2010

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FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: May 10, 2010

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Docket No. FIFRA-02-2010-5201

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Notice of Opportunity and Consent Agreement the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

USPS First Class Mail

Allen Schaar, CEO
Marietta Corporation
P.O. Box 5250
37 Huntington Street
Cortland, NY 13045

Dated: _____

5/18/10

Edison, NJ

