



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

FEB 26 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stanley H. Abramson
Partner
Arent Fox LLP
Attorney for Respondent
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Re: In the Matter of Pioneer Hi-Bred International, Inc.
Docket No. FIFRA-02-2013-5104

Dear Mr. Abramson:

Enclosed is a fully executed Consent Agreement and Final Order ("CA/FO") that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the terms of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "K. L. Taylor".

Karen L. Taylor, Esq.
Office of Regional Counsel
Waste and Toxic Substance Branch

Enclosure

cc: Karen Maples, Regional Hearing Clerk

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 FEB 26 P 3:36
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of	:	
	:	
Pioneer Hi-Bred International, Inc.,	:	<u>CONSENT AGREEMENT</u>
	:	<u>AND FINAL ORDER</u>
Respondent	:	
	:	Docket No. FIFRA-02-2013-5104
Proceeding under the Federal	:	
Insecticide, Fungicide, and	:	
Rodenticide Act, as amended	:	
-----X	:	

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 FEB 26 P 3:36
REGIONAL HEARING
CLERK**

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is being initiated pursuant to Title 7 of the United States Code (“U.S.C.”) Section 136l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* (“FIFRA” or “the Act”). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations (“C.F.R.”) of the Consolidated Rules of Practice, where the parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to Sections 22.18(b)(2) and 22.18(b)(3). This administrative proceeding constitutes one that is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Pioneer Hi-Bred International, Inc., a corporation organized and doing business under and by virtue of the laws of the State of Iowa, located at 7100 NW 62nd Avenue, Johnston, IA 50131.
2. On March 27, 2012, EPA Region 2 received six (6) Form 3540-1 Notices of Arrival of Pesticides and Devices ("NOAs") from the broker for the importer Pioneer Hi-Bred International, Inc. ("Pioneer"), a wholly-owned subsidiary of E. I. Du Pont De Nemours and Company.
3. The NOAs pertained to the importation of approximately 740 metric tons of Pioneer Brand Seed w/Herculex (EPA Reg. No. 29964-3), Pioneer Brand Corn Hybrids (EPA Reg. No. 29964-5), Pioneer Brand Seed w/Herculex RW Insect Protection (EPA Reg. No. 29964-7), and Pioneer Brand Seed w/Herculex RW Insect Protection (EPA Reg. No. 29964-8), which had shipment entry dates of March 20 and 24, 2012. Respondent subsequently indicated that three product descriptions on the NOAs were incorrect due to a clerical error and the correct designations are Pioneer Brand Seed w/Herculex Xtra (EPA Reg. No. 29964-5), Pioneer Brand Seed w/Optimum Intrasect (EPA Reg. No. 29964-7), and Pioneer Brand Seed w/Optimum Intrasect Xtra (EPA Reg. No. 29964-8).
4. The shipment entry dates preceded the dates the NOAs were submitted to the EPA.
5. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for a registrant, dealer, or other distributor to fail to file reports required by FIFRA. Title 19 C.F.R. Section 12.112, promulgated under the authority of Section 17 of FIFRA, 7 U.S.C. § 136o, requires an importer desiring to import pesticides into the United

States to submit NOAs to the EPA prior to the arrival of the shipment in the United States.

6. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j (a)(2)(N), by failing to submit NOAs to the EPA prior to the arrival of the aforementioned shipments in the United States.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed, and accepted by Respondent that it shall after the date of execution of this Consent Agreement comply with the following terms:

1. For purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations described in EPA's Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law.

2. Respondent shall take steps to ensure compliance with the applicable importation requirements of FIFRA.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Thirty Four Thousand Dollars (\$34,000)**, payable to the "**Treasurer, United States of America.**" The check shall be identified with a notation of the name and docket number of this case as follows:

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The check shall be mailed to:

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

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve

Bank of New York. 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: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"
- 6) **Pioneer Hi-Bred International, Inc.**
- 7) Docket Number FIFRA-02-2013-5104

Respondent shall also send a copy of the payment to each of the following:

Karen L. Taylor, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

and

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

The payment must be received at the above address (or account of EPA) on or before 45 calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.

(The date by which the payment must be received shall hereinafter be referred to as the "due date".)

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if the 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 the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of the payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
- e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. Section 162(f).

4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law section above. Nothing herein shall be read to preclude the EPA or the United States, however, from

pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on any of the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

9. The provisions of this CA/FO shall be binding upon both EPA and Respondent, its agents, servants, authorized representatives and successors or assigns.

10. Respondent waives any right it may have pursuant to 40 C.F.R. Section 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This CA/FO and any provision herein shall not be construed as an admission of liability in any judicial or administrative proceeding, except in a proceeding to enforce or seek compliance with this CA/FO.

12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

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RESPONDENT: **Pioneer Hi-Bred International, Inc.**

BY: Michael A. Guming
(Signature)

NAME: Michael A. Guming
(PLEASE PRINT)

TITLE: Vice President Pioneer Production

DATE: 02/14/2013

COMPLAINANT:

[Signature]
Dore LaPosta, Director
Division of Environmental Compliance and Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: FEBRUARY 19 2013

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FINAL ORDER

The Regional Judicial Officer 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 pursuant to Section 14 of FIFRA and 40 C.F.R. Section 22.18(b)(3). 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, NY 10007-1866

DATE: February 26, 2013

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CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

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

Certified Mail
Return Receipt Requested

Stanley H. Abramson
Partner
Arent Fox LLP
Attorney for Respondent
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Dated: FEB 26 2013
New York, NY

Mildred H. Baer