

FILED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 Elm Street, Suite 500
Dallas, Texas 75270

21 MAY -3 PM 1:08

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of	§	
	§	
Performance Chemical Company	§	Docket No. FIFRA-06-2021-0315
9105 W. Interstate 20	§	
Midland, Texas 79706	§	
	§	
Respondent.	§	

EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”) alleges that **Performance Chemical Company** (“Respondent”) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c).

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under Section 7 of FIFRA, 7 U.S.C. § 136e(c), to inform the EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, which the producer has produced during the past year, and which the producer has sold or distributed during the past year. The information required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), must be kept current and submitted to the EPA annually as required under any regulation issued pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

3. The regulations at 40 C.F.R. Part 167 set out the registration and reporting requirements for pesticide and active ingredient producing establishments. Pursuant to 40 C.F.R. § 167.85(d), a producer operating an establishment must submit an initial report no later than 30 days after the first registration of each establishment the producer operates. Thereafter, the

producer must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

4. Respondent operates the establishment assigned Establishment No. 89000-TX-1 located in Midland, Texas.

5. Respondent failed to timely submit an annual pesticide production report on or before March 1, 2020 for Establishment No. 89000-TX-1.

6. Respondent's failure to timely submit an annual pesticide production report on or before March 1, 2020 for Establishment No. 89000-TX-1 is a violation of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

7. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order ("Agreement"), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.13(b).

8. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements set forth above; (b) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

9. By signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation, and has submitted true and accurate documentation of such correction along with this Agreement; (b) has provided a deposit for payment of the civil penalty

as set forth below; (c) has submitted a true and accurate proof of deposit for payment of the civil penalty along with this Agreement; and (d) agrees to release the deposit for payment to EPA upon entry of the Final Order attached hereto.

10. The EPA and Respondent agree that settlement of this matter for a civil penalty in the amount of five hundred dollars (\$500.00) is in the public interest. Respondent certifies that it has provided a deposit for payment for the full civil penalty amount, and that such payment identified Respondent by name and docket number, was made by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent certifies that the original Agreement and a true and accurate copy of the deposit for payment was submitted to:

Blake Sieminski
Enforcement and Compliance Assurance Division
Waste Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDST)
Dallas, Texas 75270-2101
Sieminski.Blake@epa.gov

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

11. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. The EPA reserves the right to take any enforcement action with respect to any other past, present, or future violations of FIFRA or any other applicable law.

12. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

13. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to FIFRA.

14. Each party shall bear its own costs and fees, if any.

15. This Agreement authorized by the EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

16. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

17. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Agreement by email to the following:

To EPA: sieminski.blake@epa.gov

To Respondent: tim.hernandez@perf-chem.com

RESPONDENT:
Performance Chemical Company

Date: 4-15-2021


Signature

Tim HERNANDEZ
Name

Safety MANAGER
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

STEPHEN GILREIN

Digitally signed by STEPHEN GILREIN
DN: cn=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=STEPHEN GILREIN,
0.9.2342.19200300.100.1.1=68001003651794
Date: 2021.04.26 10:05:10 -0500

Cheryl T. Seager
Director
Enforcement and
Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Expedited Settlement Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Expedited Settlement Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Expedited Settlement Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

Rucki, Thomas

Digitally signed by Rucki, Thomas
DN: cn=Rucki, Thomas,
email=Rucki.Thomas@epa.gov
Date: 2021.05.03 10:10:19 -05'00'

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270-2102, and that a true and correct copy was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

sicminski.blake@epa.gov

Copy via Email to Respondent:

tim.hernandez@perf-chem.com

**BLAKE
SIEMINSKI**

Digitally signed by BLAKE SIEMINSKI
DN: c=US, o=U.S. Government,
ou=Environmental Protection
Agency, cn=BLAKE SIEMINSKI,
0.9.2342.19200300.100.1.1=6800100
3655816
Date: 2021.05.03 14:16:34 -05'00'

Signed
Enforcement and Compliance Assurance Division
U.S. EPA, Region 6