

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh Martinez  
Name of Case Attorney

5/24/17  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2017-0051

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt \_\_\_\_\_ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Shaun O'Hearn, President

Bolger + O'Hearn, Inc

PO Box 250

Fall River, MA 02724

Total Dollar Amount of Receivable \$ 59,545.00

Due Date: 6/23/17

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA REGION 1 - NEW ENGLAND  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP

MAY 24 2017

**BY HAND**

May 24, 2017

EPA ORC  
Office of Regional Hearing Clerk

Wanda I. Santiago, Regional Hearing Clerk  
EPA Region 1 – New England  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

Re: In Re: Bolger & O'Hearn, Inc., Docket No. FIFRA-01-2017-0051; Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) to initiate and resolving the above-referenced pre-filing enforcement case. Also enclosed are the original and one copy of a Certificate of Service documenting that, on this date, a copy of the CAFO and this cover letter were sent to Alexandra Callam at Hinckley Allen, Attorneys for Bolger & O'Hearn, Inc.

Thank you for your assistance in this matter.

Sincerely,

  
Hugh W. Martinez, Counsel for Complainant

Enclosures

cc: Alexandra K. Callam, Esquire  
Respondent's Counsel

Kan S. Tham, FIFRA Enforcement Coordinator (electronically)  
EPA Region 1

Lee Corte-Real, Director, Division of Crop Inspectional Services and Pest  
Management Massachusetts Department of Agricultural Resources

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)

In the Matter of: )

Bolger & O’Hearn, Inc. )  
P.O. Box 250 )  
47 Slade Street )  
Fall River, MA 01821 )

Respondent. )

Proceedings under Section 14(a) )  
of the Federal Insecticide, Fungicide, )  
and Rodenticide Act, as amended, )  
7 U.S.C. Section 136l(a). )

RECEIVED

MAY 24 2017

EPA ORC  
Office of Regional Hearing Clerk

) Docket No. FIFRA-01-2017-0051

) **CONSENT AGREEMENT**  
) **and**  
) **FINAL ORDER**

**I. INTRODUCTION**

1. The United States Environmental Protection Agency-Region 1 (“EPA”), as Complainant, and Bolger & O’Hearn, Inc. as Respondent (hereinafter “Bolger” or “Respondent”), enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Bolger for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 and at 19 C.F.R. §§ 12.110 – 12.117 (collectively, “FIFRA Regulations”). The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), at 40 C.F.R. Part 22, and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent

(collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

## II. PRELIMINARY STATEMENT

4. Bolger is a company incorporated under the laws of the Commonwealth of Massachusetts with its principal place of business located at 47 Slade Street in Fall River, MA (“Establishment” or “Fall River Establishment”).

5. Respondent *produces*,<sup>1</sup> imports, repackages, *distributes or sells* a variety of specialty chemicals. Bolger’s product line includes *pesticide* products such as silver nanoparticle antimicrobial additives intended for commercial and industrial use in manufacturing, formulating, and fabricating treated articles such as textiles.

6. Bolger is a *person* as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and is also a *producer* as defined by Section 2(w) of FIFRA, 7 U.S.C § 136(w), and 40 C.F.R. § 167.3.

7. Respondent operates the Fall River Establishment as a pesticide-producing *establishment* under Section 7 of FIRA, 7 U.S.C. § 136e.

8. Under Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and

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<sup>1</sup> Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

40 C.F.R. § 167.20, on or about March 21, 2014, Bolger registered the Fall River Establishment for the first time as a pesticide-producing establishment to which EPA's national office in Washington, D.C. ("EPA Headquarters") assigned the EPA Establishment Number (EPA Est. No.) "90595-MA-001." Bolger certifies that it did not produce any pesticides at the Fall River Establishment in 2014 or 2015. On April 17, 2017, Bolger withdrew its registration of the Establishment under FIFRA Section 7.

9. Bolger was, until approximately November 2013, the exclusive United States importer and distributor of silver nanoparticle antimicrobial additives for HeiQ Materials AG ("HeiQ"), a Swiss specialty chemistry company headquartered in Bad Zurzach, Switzerland.

10. Among the silver nanoparticle antimicrobial additives that Respondent was authorized by HeiQ to distribute and sell is the following substance, a pesticide within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u):

- a. A HeiQ pesticide registered pursuant to FIFRA Section 3, 7 U.S.C. § 136a, under the name "HeiQ<sup>®</sup> AGS-20" and the alternate name "HeiQ<sup>®</sup> AGS-20 WP," both with 19.3% *active ingredient* (silver nanoparticles) and associated with EPA Registration Number ("EPA Reg. No.") 85249-1.

11. On November 7, 2013, under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA conducted a compliance inspection at the Fall River Establishment (the "Inspection").

12. During the Inspection, a duly-authorized EPA inspector collected documentary samples of the following two silver nanoparticle antimicrobial substances:

- a. A pesticide product labeled "HeiQ Pure TF" bearing EPA Registration Number "85249-1" (the "Pure TF-1 Pesticide"); and,
- b. A pesticide product labeled "HeiQ Pure TF" bearing EPA Registration

Number “83587-3” (the “Pure TF-3 Pesticide”).

13. Each of the above-referenced products, namely, the Pure TF-1 Pesticide and the Pure TF-3 Pesticide (collectively, the “Pure TF Products”), is a “pesticide,” as defined by Section 2(u) of FIFRA.

14. At the time of the Inspection, the Pure TF Products sampled at the Establishment were packaged, labeled, and released for shipment.

15. Based on the Inspection and subsequent EPA investigation, on March 9, 2015, under a cover letter to Bolger dated March 10, 2015, EPA issued a Stop Sale, Use, or Removal Order (“SSURO”) to Respondent, pursuant to Section 13 of FIFRA, 7 U.S.C. § 136k, based on the illegal production, importation, distribution, and sale of the Pure TF Products.

16. On or about October 2, 2015, EPA issued a Notice of Warning (“NOW”) to Bolger under Sections 9(c)(3) and 14(a)(4) of FIFRA, 7 U.S.C. §§ 136g(c)(3) and 136l(a)(4), for failure to submit its annual production report for the 2014 calendar year, on or before March 1, 2015, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Part 167, Subpart E.

17. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any *State* to distribute or sell to any person any pesticide which is *adulterated* or *misbranded*.

18. Under FIFRA Section 2(q)(1), 7 U.S.C. § 136(q), a pesticide is “misbranded” if: (a) its *labeling* bears any statement, design, or graphic representation relative to the pesticide or its ingredients which is false or misleading in any particular

[Sec. 2(q)(1)(A)]; (b) it is an imitation of, or is offered for sale under the name of, another pesticide [Sec. 2(q)(1)(C)]; (c) its *label* does not bear the registration number assigned under FIFRA Section 7, 7 U.S.C. § 136e, to each establishment in which it was produced [Sec. 2(q)(1)(D)]; (d) any word, statement, or other information required by FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use [Sec. 2(q)(1)(E)]; (e) the labeling accompanying the pesticide 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 required use classification(s) under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)), are adequate to *protect health and the environment* [Sec. 2(q)(1)(F)]; (f) the label does not bear an ingredient statement on the part of the container which is presented or displayed under customary conditions of purchase [Sec. 2(q)(2)(A)]; or, (g) there is not affixed to its container a label bearing information that includes, among other things, the name, brand, or trademark under which the pesticide is sold and the registration number assigned to the pesticide and required by the FIFRA Regulations [Sec. 2(q)(2)(C)].

19. The FIFRA prohibition against the distribution or sale of adulterated or misbranded pesticides is important because it helps ensure that end users and members of the public have the most accurate, up-to-date, and compliant information available about pesticides in the marketplace and about the establishments in which they are produced.

20. Under FIFRA Section 17, 7 U.S.C. § 136o, and the FIFRA Regulations at

19 C.F.R §§ 12.110 -12.117, an importer desiring to import pesticides or *devices* into the United States must submit to EPA a Notice of Arrival of Pesticides and Devices [EPA Form 3540-1] (“NOA”), prior to the arrival of the shipment into the United States.

21. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for any person who is a *registrant*, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA. Such reports include, but are not limited to, the NOAs that must be submitted to EPA for each shipment of pesticides (or devices) that are imported into the United States under Section 17 of FIFRA and 19 C.F.R. § 12.112(a).

22. The FIFRA requirement to submit NOAs prior to importing a pesticide or device into the United States protects against unreasonable risks to human health or the *environment* by providing EPA with vital information about such products before their arrival into the United States for distribution or sale. NOAs provide information — including active ingredients, quantities, countries of origin, identity of producing establishments, carriers, and ports of entry— that enables EPA to make informed decisions about whether importation will pose unreasonable adverse risks to public health or the environment and, also, provides critical contact information in the event of an emergency related to the movement of potentially harmful pesticides or devices.

23. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136(a)(2)(L), provides that it is unlawful for any producer to violate any provision of FIFRA Section 7, including the requirement to produce pesticides or devices subject to FIFRA only in an establishment which has been registered with EPA as a producing establishment as well as the requirement to submit timely and accurate reports to EPA concerning annual production



and sales of pesticides and devices.

24. The FIFRA requirement to register establishments at which pesticides or devices are produced is important because it helps maintain the integrity of the federal pesticide program EPA implements, a primary purpose of which is to ensure that no pesticide or device is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The requirements to properly register pesticide-producing establishments and for registered establishments to report production and sales information help EPA carry out compliance, risk assessment, and risk reduction functions important for protecting human health and the environment because without proper establishment registration and reporting, EPA cannot determine where and in what manner pesticides and devices are being produced, sold, and distributed.

25. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after January 12, 2009. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 (“2015 Penalty Inflation Act”), effective August 1, 2016, the \$7,500 maximum penalty was raised to \$18,750 for violations occurring after November 2, 2015 and, then, to \$19,057 for such violations where the penalties are assessed on or after January 15, 2017. *See* 28

U.S.C. § 2461 note; Pub. L. 114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016); 82 Fed. Reg. 3633 (January 12, 2017).

26. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's findings or allegations of violation herein, consents to the terms of this CAFO.

27. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

28. By signing this CAFO, Respondent certifies that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder, that it has fully addressed the violations alleged by EPA herein, and that the information it has provided to EPA during the course of the EPA investigation of this matter is true and complete, to the best of its knowledge and belief.

### **III. EPA FINDINGS**

29. At all times relevant to the violations alleged in Section IV of this CAFO, below, Respondent produced, imported into the United States, distributed, sold, offered for sale, shipped, and/or delivered for shipment one or more of the Pure TF Products.

30. At all times relevant to the violations alleged herein, Bolger did not have on file with EPA any Notice of Supplemental Distribution form(s) [EPA Form 8570-5] indicating Respondent was acting as a supplemental distributor for any registrant or other party under the FIFRA Regulations, at 40 C.F.R. § 152.132.

31. At the time of the Inspection, the bin labels for the Pure TF-1 Pesticide that were collected did not comport with the latest, EPA-accepted label for the pesticide registered under FIFRA and identified by EPA Reg. No. 85249-1. The bin label for the Pure TF-1 Pesticide differed from the accepted label in that, among other things, the product name on the EPA-accepted label for the EPA Reg. No. 85249-1 is "HeiQ AGS 20" (alternate name "HeiQ AGS 20 WP") while the bin label name was "HeiQ Pure TF."

32. At the time of the Inspection, the bin label for the Pure TF-3 Pesticide did not comport with the latest, EPA-accepted label for the pesticide registered under FIFRA and identified by EPA Reg. No. 83587-3. The bin label for the Pure TF-3 Pesticide differed from the accepted label in that, among other things, the product name on the EPA-accepted label for the EPA Reg. No. 83587-3 is "Additive SSB" while the bin label name was "HeiQ Pure TF."

33. The pesticide associated with EPA Reg. No. 83587-3 is a silver antimicrobial additive registered pursuant to Section 3 of FIFRA by NanoHorizons, Inc. of Bellefonte, Pennsylvania under the name "Additive SSB" with 99.9% active ingredient (silver).

34. At the time of the Inspection, the Fall River Establishment was not registered as a pesticide-producing establishment under FIFRA Section 7 and, until March 21, 2014, had not previously been registered under Section 7.

#### **IV. ALLEGATIONS OF VIOLATION**

##### **Count 1 – Distributing or Selling Misbranded Pesticides**

35. Upon information and belief, on at least 42 occasions between July 2012 and November 2013, Respondent distributed or sold, or imported into the United States

for distribution or sale, one or more of the Pure TF Products when the Pure TF Products were misbranded in one or more of the ways referenced in Paragraph 18 and as further described under FIFRA Section 2(q), 7 U.S.C. § 136(q) and 40 C.F.R. § 156.10.

36. Accordingly, on at least 42 occasions, Respondent violated FIFRA Section 12(a)(1)(E) and 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

**Count 2 – Failing to Submit Reports of Pesticide Imports (Notices of Arrival)**

37. Upon information and belief, on at least 4 occasions between May 2012 and April 2013, Respondent imported into the United States for distribution or sale one or more of the Pure TF Products without submitting a report (i.e., NOA) with EPA, as required by Section 17 of FIFRA and 19 C.F.R. § 12.112(a).

38. Accordingly, on at least 4 occasions, Respondent violated Section 12(a)(2)(N) of FIFRA and the FIFRA Regulations at 19 C.F.R. §§ 12.110 – 12.117, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

**Count 3 – Producing Pesticides in an Unregistered Establishment**

39. Upon information and belief, on at least one occasion in each of the years 2012 and 2013, Respondent produced one or more of the Pure TF Products in the Fall River Establishment before the Establishment had been registered as a producing establishment under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20.

40. Accordingly, by producing one or more of the Pure TF Products in the Fall River Establishment on at least 2 occasions (i.e., at least once per year) when the Establishment was not registered as a producing establishment under Section 7(a) of

FIFRA, Respondent violated FIFRA Section 12(a)(2)(L) and the FIFRA Regulations at 40 C.F.R. Part 167, Subpart E on each such occasion, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

**Count 4 – Failing to Submit Pesticide Production Report**

41. Upon information and belief, during calendar years 2014 and 2015, the Fall River Establishment was registered with EPA as a producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

42. Upon information and belief, during the calendar year 2015, Respondent operated the Fall River Establishment and failed to submit an annual report to EPA, by March 1, 2016, as required by FIFRA Section 7(c)(1) and 40 C.F.R. Part 167, Subpart E.

43. Accordingly, by failing to submit a production report by March 1, 2016 for the reporting year 2015, Respondent violated Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E which, under FIFRA Section 12(a)(2)(L), is unlawful and a violation for which penalties may be assessed pursuant to FIFRA Section 14(a)(1).

**V. TERMS OF SETTLEMENT**

44. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy and the May 2010 Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements, both issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA and Penalty Inflation Rule, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of fifty-nine thousand, five hundred and forty-five dollars

(\$59,545) in settlement of the violations alleged herein.

45. Respondent shall pay the penalty of \$59,545 within thirty (30) days of the effective date<sup>2</sup> of this CAFO.

46. Respondent shall make the penalty payment due under this CAFO by any one of the electronic payment options listed below. Payment shall be made in the amount specified herein and payable to "Treasurer, United States of America." Payment shall be remitted as follows:

- a. **If remitted by wire transfer**, any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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"

**If remitted through the Automated Clearing House (ACH) for receiving US currency**, use this information:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737

Contact: REX (Remittance Express)  
800-234-5681

**If remitted on-line with a debit card, credit card, or bank account transfer**, use this information:

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<sup>2</sup> The term "effective date" refers to the date that EPA files the final CAFO, signed by the Parties and the Regional Judicial Officer, with the Regional Hearing Clerk.

No user name, password, or account number is necessary for this option. On-line payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information

- b. At the time of each payment, Respondent shall provide notice and a copy of the confirmation of wire transfer or other electronic payment, by mail, to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code: ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and, either by mail or by e-mail, to:

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1 (Mail Code: OES 04-3)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
[Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov)

- c. Respondent shall reference the case name and docket number (*In the Matter of Bolger & O'Hearn, Inc.*, FIFRA-01-2017-0051) with its payment and payment confirmation.

47. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the

United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

48. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

49. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the violations alleged in Section IV of this CAFO.

50. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the



responsibility of Respondent to comply with said laws and regulations.

51. Each of the Parties shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

52. The terms and conditions of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

53. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent, Bolger & O'Hearn, Inc.:



(Signature)  
Shaun O'Hearn, President  
Bolger & O'Hearn, Inc  
PO Box 250  
Fall River, MA 02724

5-11-17

(Date)

\_\_\_\_\_  
(Signature)  
[Print Name, Title]  
[Address]

\_\_\_\_\_  
(Date)

For U.S. EPA - Region 1:

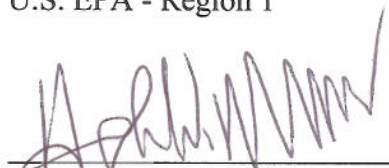


(Signature)

Joanna B. Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA - Region 1

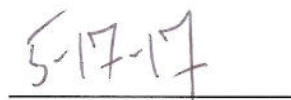


(Date)



(Signature)

Hugh W. Martinez, Senior Enforcement Counsel  
Regulatory Legal Office  
Office of Environmental Stewardship  
U.S. EPA - Region 1



(Date)

**VI. FINAL ORDER**

Pursuant to 40 C.F. R. § 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Bolger & O'Hearn, Inc., is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

5/23/17

(Date)

*Sharon Wells*

Sharon Wells, Regional Judicial Officer  
U.S. EPA – Region 1

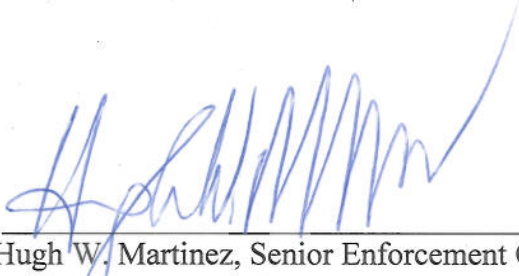
**CERTIFICATE OF SERVICE**

I hereby certify that this Certificate of Service and the foregoing Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were delivered in the following manner to the addressees listed below:

Originals and One Copy by Hand Delivery to: Wanda I. Santiago  
Regional Hearing Clerk  
Environmental Protection Agency  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

One Copy by Certified Mail – Return Receipt Requested to: Alexandra K. Callam, Esquire  
Hinckley Allen  
100 Westminister Street, Suite 1500  
Providence, RI 02903-2319

Date: 5-24-17

Signed:   
Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1 (Mail Code: OES 04-3)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Phone (617) 918-1867  
Fax (617) 918-0867  
[martinez.hugh@epa.gov](mailto:martinez.hugh@epa.gov)