

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen E. Woodward 4/12/19
Name of Case Attorney Date

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

Case Docket Number TSCA-01-2019-0010

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:

Houghton Chemical Corporation
52 Cambridge Street
P.O. Box 307
Allston, MA 02134

Total Dollar Amount of Receivable \$ 7,702 Due Date: 5/12/19

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ 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
REGION 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

BY HAND

April 12, 2017

RECEIVED
APR 12 2017
EPA ORC WS
Office of Regional Hearing Clerk

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In re: Houghton Chemical Corporation*
Docket No. TSCA-01-2019-0010

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: Bruce E. Houghton, President
Houghton Chemical Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

RECEIVED

APR 12 2019

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)

Houghton Chemical Corporation)
52 Cambridge Street)
P.O. Box 307)
Allston, Massachusetts,)

Respondent.)

Docket No. FIFRA-01-2019-0010

**CONSENT AGREEMENT
AND FINAL ORDER**

INTRODUCTION

1. Complainant, the United States Environmental Protection Agency (“EPA”), and Houghton Chemical Corporation (“Respondent” or “Houghton Chemical”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty for an alleged violation 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. Part 167, Subpart E. 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) 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.

PRELIMINARY STATEMENT

4. Respondent is a corporation organized under the laws of the Commonwealth of Massachusetts, has a principal place of business at 52 Cambridge Street, Allston, Massachusetts at which it operates a pesticide-producing establishment (the "Establishment"), and is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

5. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about July 18, 1991, Respondent registered its Allston, Massachusetts Establishment as a pesticide-producing establishment. EPA's national office in Washington, D.C. ("EPA Headquarters") assigned the Office of Pesticide Programs company number 065199. EPA Region 1 assigned the EPA Establishment Number 065199-MA-001 to the Establishment.

6. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, any producer operating a registered establishment is required to report to EPA the types and amounts of each pesticide product that the producer is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Pursuant to 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.

8. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant

thereto. Pursuant to 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 December 6, 2013. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, Pub. L. 114-74, Section 701 (Nov. 2, 2015), the \$7,500 maximum penalty was raised to \$19,936 for violations occurring after November 2, 2015 where penalties are assessed on or after February 6, 2019. *See* 84 Fed. Reg. 2056 (Feb. 6, 2019) and 84 Fed. Reg. 5955 (Feb. 25, 2019).

9. On or about July 24, 2013, EPA issued a Notice of Warning (“NOW”) to Houghton Chemical for failure to file its production report for calendar year 2012 on or before March 1, 2013. After receipt of the NOW, Respondent submitted that production report.

10. On or about June 30, 2014, EPA issued an Opportunity to Show Cause to Respondent for failure to file its production report for calendar year 2013 on or before March 1, 2014. Respondent thereafter filed its 2013 report and, under a Consent Agreement and Final Order (No. FIFRA-01-2014-0060) with EPA that was filed on or about September 17, 2014, agreed to resolve that violation and pay a civil monetary penalty of \$1,200.

11. EPA Headquarters sends annual reminder notices to registered pesticide-producing establishments, including the Establishment at issue here, of the FIFRA requirement to submit a production report. These reminders are provided at least two months in advance of the March 1 reporting deadline. The reminder notices are issued as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so.

12. Notwithstanding the March 1, 2015 due date, the reminder notices sent from EPA Headquarters, EPA's issuance of the prior NOW, and the previous enforcement action assessing penalties against Houghton Chemical, Respondent did not submit its annual pesticide production report for calendar year 2014 by the March 1, 2015 deadline. Respondent thereafter filed its 2014 report and, under a Consent Agreement and Final Order (No. FIFRA-01-2016-0013) with EPA that was filed on or about May 4, 2016, agreed to resolve that violation and pay a civil monetary penalty of \$6,750.

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

14. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to 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.

15. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and has fully addressed the violation alleged by EPA herein.

EPA FINDINGS

16. EPA finds, based on its investigation of facts and circumstances underlying Respondent's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

17. At all times relevant to this CAFO, including during calendar year 2017, the Establishment was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

18. Notwithstanding the March 1, 2018 due date, the reminder notices sent from EPA Headquarters, and the previous enforcement actions assessing penalties against Houghton Chemical, Respondent did not submit its annual pesticide production report for calendar year 2017 by the March 1, 2018 deadline.

19. Respondent's failure to submit the required information to EPA for calendar year 2017 on or before the March 1, 2018 deadlines constituted a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

TERMS OF SETTLEMENT

20. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements" (the "Penalty Policy"), the Monetary Penalty Inflation Adjustment 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 \$7,702 in settlement of the violation alleged herein.

21. Respondent shall pay the penalty of \$7,702 within thirty (30) days of the effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$7,702 within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or

federal holiday, then the due date is the next business day. The date the payment is made is considered to be the postmark date or the date processed by the appropriate bank, as described below (payment must be received by 11:00 A.M. Eastern Standard time to be considered as received that day).

- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall (i) reference “*In the Matter of Houghton Chemical Corporation*, Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (FIFRA-01-2019-0010), (ii) be in the amount stated above, and (iii) be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

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”

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency

Region 1 (Mail Code ORC 04-6)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Marianne Milette, FIFRA Enforcement Officer
U.S. Environmental Protection Agency
Region 1 (Mail Code OES 05-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

22. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, 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.

23. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for 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.

24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violation alleged herein. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.


25. This CAFO in no way relieves Respondent or its employees 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. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable laws.

26. Each Party shall bear its own costs and attorneys' fees in connection with 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. Section 504, or other applicable law.

27. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

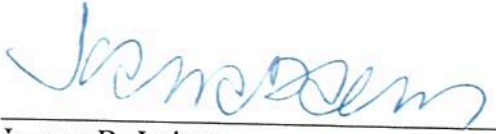
28. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which the fully executed CAFO is filed with the Regional Hearing Clerk.

For Respondent, Houghton Chemical Corporation:


Name: BRUCE G. HOUGHTON
Title: PRESIDENT
Houghton Chemical Corporation

4/3/19
Date

For Complainant, United States Environmental Protection Agency:



Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region 1

April 9, 2019
Date

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18 of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Houghton Chemical Corporation, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: 7/11/19



LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of: _____
Houghton Chemical Corporation _____
_____)
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Respondent. _____)
_____)

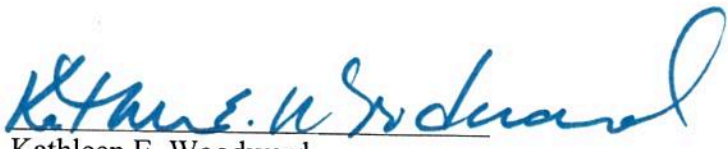
Docket No. FIFRA-01-2019-0010

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):
Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

Copy (Certified Mail, Return Receipt Requested):
Bruce E. Houghton, President
Houghton Chemical Corporation
52 Cambridge Street
Allston, Massachusetts 02134

Dated: 4/12/19

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912