

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

8:59 A.M.  
20  
~~1:51~~ L. Guy

IN RE: ) DOCKET NO. FIFRA-03-2010-0046  
)  
Penmar Solutions, Inc. ) CONSENT AGREEMENT-  
2115 Market Square Blvd. ) TERMINATION OF ESTABLISHMENT  
Waynesboro, PA 17268 ) REGISTRATION NUMBER  
)  
Respondent )

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and Penmar Solutions, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .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 of Practice"), 40 C.F.R. § 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against the Respondent under FIFRA arising from the violation of FIFRA alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.

6. Respondent shall bear its own costs and attorney's fees.

EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
- a. Respondent is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).
  - b. At all times relevant to the violation alleged herein, Respondent operated a registered pesticide producing "establishment" as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 2115 Market Square Blvd., in Waynesboro, PA. This establishment is registered with EPA under Establishment Number 08400-PA-001.
  - c. At all times relevant to the violation alleged herein, Respondent was a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.
  - d. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), provides, *inter alia*, that a producer operating a registered establishment is required to submit annually a pesticide production report to EPA stating the types and amounts of pesticides: (A) which the producer is currently producing; (B) which the producer has produced during the past year; and (C) which the producer has sold or distributed during the past year.
  - e. 40 C.F.R. § 167.85(d) requires that a producer operating a registered establishment submit its pesticide production report (EPA Form 3540-16) annually for the preceding calendar year on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.
  - f. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
  - g. Respondent was required to submit to EPA by March 1, 2009, a pesticide production report (EPA Form 3540-16) concerning its production, sales, and distribution of pesticides during calendar year 2008.
  - h. Respondent failed to submit its pesticide production report for calendar year 2008 on or before March 1, 2009.
  - i. Respondent's failure to timely submit its pesticide production report for calendar year 2008 on or before March 1, 2009 constitutes a violation of Section 7 of

FIFRA, 7 U.S.C. § 136e, and therefore, an unlawful act under Section 12 (a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

- j. Respondent is a “distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. 136l(a)(1).
- k. Under EPA’s *EPA’s Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement*, dated June 2007, EPA may reduce a civil penalty to zero when a producer who has produced no pesticides in a given calendar year makes a timely request for termination of its establishment’s registration number.
- l. In correspondence provided prior to the issuance of this CAFO, Respondent reported zero production for the calendar year 2008 and requested that its establishment’s registration number be terminated.

#### Settlement

- 8. In settlement of the above-captioned action, the parties hereto have agreed to the assessment of a civil penalty in the amount of \$ 0.00
- 9. The aforesaid settlement amount is based upon Complainant’s consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent’s business, the effect of the penalty on Respondent’s ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s *Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement*, dated June 2007, *Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Adjustment Rule (Effective January 12, 2009)*, dated December 29, 2008, and 40 C.F.R. Part 19.

#### Certification

- 10. Respondent certifies by its signature herein that it is currently in compliance with all applicable requirements of FIFRA § 7, 7 U.S.C. § 136e.

#### Other Applicable Laws

- 11. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

### Reservation of Rights

12. This CAFO resolves only EPA's civil claims for penalties for the specific violation alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

### Full and Final Satisfaction

13. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the specific violation alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

### Parties Bound

14. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

### Effective Date


15. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

### Entire Agreement

16. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

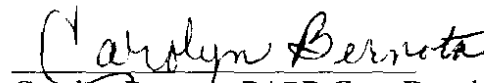
For Respondent:

3/16/2010  
Date

  
Mr. Steve Reed, President  
Penmar Solutions, Inc.

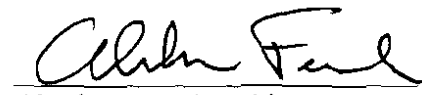
For Complainant:

3/23/2010  
Date

  
Carolyn Bernota, PAPB Case Development Officer  
Pesticides and Asbestos Programs Branch

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

3/26/10  
Date

  
Abraham Ferdas, Director  
Land and Chemicals Division

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1650 Arch Street  
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	)	
Respondent	)	

FINAL ORDER

Complainant, the Director of the Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Penmar Solutions, Inc., have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with 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 ("Consolidated Rules of Practice"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined based on the parties' representation in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that a \$ 0.00 penalty be assessed against Respondent.

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The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

3/29/10  
Date

  
Renée Sarajian

Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

8:59 AM  
~~3/24~~  
L. Guy

IN RE:

Penmar Solutions, Inc.  
2115 Market Square Blvd.  
Waynesboro, PA 17268

: Docket No. FIFRA-03-2010-0046  
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Respondent  
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**CERTIFICATE OF SERVICE**

I hereby certify that the original of the foregoing Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person:

Mr. Steve Reed, President  
Penmar Solutions, Inc.  
2115 Market Square Blvd.  
Waynesboro, PA 17268

3/29/2010  
Date

Carolyn Bernota  
Carolyn Bernota  
Enforcement Officer  
U.S. Environmental Protection Agency, Region III