

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2
2014 SEP 26 AM 8:57
REGIONAL HEARING
CLERK

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In the Matter of :
 :
 :
 AgroChem, Inc. : **CONSENT AGREEMENT**
 : **AND FINAL ORDER**
 :
 Respondent :
 : Docket No. FIFRA-02-2014-5207
 :
 Proceeding under the Federal :
 Insecticide, Fungicide, and :
 Rodenticide Act, as amended :
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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 Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“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.

The Environmental Protection Agency (“EPA” or “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 litigation.

EPA’s FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is AgroChem, Inc., a domestic business corporation organized and doing business under and by virtue of the laws of the State of New York, located at 3 Duplainville Road, Saratoga Springs, New York 12866 (“AgroChem” or “Respondent”).
2. Respondent purchased Oxysan Acid Sanitizer product (EPA Pesticide Registration #63638-1) (“Oxysan”) from Mann Chemical, LLC, a registered supplemental distributor for Oxysan.
3. Respondent did not have a supplemental distribution agreement with Enviro Tech Chemical Services Inc., the primary pesticide registrant for Oxysan.
4. Respondent relabeled the Oxysan with the EPA Registration number 63838-1-82808 which was an invalid number as Respondent did not have a supplemental distribution agreement with the primary registrant.
5. Respondent’s relabeling of the Product with an invalid EPA Registration number constitutes misbranding as defined by FIFRA Section 2(q), 7 U.S.C. § 136 (q).
6. In September and October of 2012, Respondent distributed or sold the Oxysan on three occasions without a valid supplemental distribution agreement with the primary registrant and with an invalid EPA Registration number.

7. EPA has determined that Respondent violated Section 12(a)(1)(e) of FIFRA, 7 U.S.C. § 136j (a)(1)(e), which prohibits the distribution or sale of any pesticide that is misbranded.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice, 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 ensure its compliance with the applicable requirements of FIFRA, including but not limited to supplemental registration requirements.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Six Thousand Two Hundred Dollars (\$6,200)**, 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) **AgroChem, Inc.**
- 7) Docket Number FIFRA-02-2014-5207

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, NY.
- 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 paragraph 6 of 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, on the terms of the Consent Agreement, 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 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: **AgroChem, Inc.**

BY: John P. DeMarco
(Signature)

NAME: John P. DeMarco
(PLEASE PRINT)

TITLE: Vice President

DATE: 9/11/14

COMPLAINANT:

Dore LaPosta

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

DATE: SEPTEMBER 23, 2014

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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, NY.

Helen Ferrara

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: *September 25, 2014*

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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:

Mr. Robert DeMarco, President
AgroChem, Inc.
3 Duplainville Road
Saratoga Springs, New York 12866

Dated: _____

New York, NY

Yours truly _____ 9/25/14