

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 :  
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 :  
 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

