

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JAN 13 PM 12:44
REGIONAL HEARING
CLERK

-----X
In the Matter of :
 :
Diamond Chemical Company : **CONSENT AGREEMENT**
 : **AND FINAL ORDER**
Respondent :
 : Docket No. FIFRA-02-2008-5114
 :
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended. :
-----X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 136 l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq. ("FIFRA" or "the Act"). Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, Diamond Chemical Company, located at Union Avenue and Dubois Street, East Rutherford, N.J. 07073.

The Complainant charged Respondent with one (1) violation of 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167.85, the requirements under FIFRA governing the submission of an annual Pesticide Report for Pesticide-Producing Establishments ("Pesticide Report"). Said violation is unlawful under FIFRA §12(a)(2)(L), 7 U.S.C. § 136j (a)(2)(L).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read “In the Matter of Diamond Chemical Company”.
2. This Consent Agreement is being entered by Respondent on behalf of Diamond Chemical Company, and the Respondent is authorized for purposes of this Consent Agreement to bind Diamond Chemical Company.
3. Respondent’s establishment was registered under Section 7 of FIFRA, 7 U.S.C. § 136e. Its assigned EPA Establishment Numbers is 004238-NJ-001.
4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. § 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.
5. Title 40 C.F.R. § 167.85 provides that a producer operating an establishment must submit the annual pesticide production report (the “Report”) on or before March 1st of each year, even if the producer has produced no pesticidal product for that reporting year.
6. Respondent failed to submit an annual pesticide production report for 2006 for EPA Establishment Number 004238-NJ-001.
7. Therefore, Respondent violated Section 7(c)(1) of FIFRA, Section 12(a)(2)(L) of FIFRA, and 40 C.F.R. § 167.85.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections regarding proper service of the complaint and/or any other questions concerning acquisition of personal jurisdiction of the Diamond Chemical Company.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e and the applicable regulations.
4. Respondent admits the specific factual allegations set forth in the Findings of Fact and the Conclusions of Law in this Consent Agreement.
5. Respondent explicitly agrees to pay, by cashier's or certified check, a civil penalty in the total amount of One Thousand Six-Hundred Dollars (\$1600.00) to the "Treasurer, United States of America". The payment of One Thousand Six-Hundred Dollars (\$1600.00) is due within forty five (45) days after the date of signature of the final Order at the end of this document (the date by which the payment must be received shall hereafter be referred to as the "due date"). Such check shall be identified with a notation of the name and docket number of this case, set forth in the caption of the first page of this document. Such 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

Respondent shall also send copies of this payment to each of the following:

Michael Kramer, FIFRA Enforcement Coordinator
Pesticides Team
U.S. Environmental Protection Agency Region 2
2890 Woodbridge Ave. (MS-500)
Edison, New Jersey 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 2
290 Broadway, 16th floor
New York, New York 10007

a. Failure to pay the above amount in full according to the above provisions will result in referral of this matter to the United States Department of Justice for collection.

b. Furthermore, if a 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 31 U.S.C. § 3717 on the overdue amount from the effective date of payment.

c. In addition, a late payment handling charge of fifteen dollars (\$15.00) for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid will be assessed.

d. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date.

6. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.

7. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.

8. This Consent Agreement is being entered into by the parties in full settlement of all civil liabilities that might have attached as a result of the allegations in the Complaint.

Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

9. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

12. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.

13. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

14. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Diamond Chemical Company.
Docket No. FIFRA-02-2008-5114

RESPONDENT: Diamond Chemical Company

BY: 

Authorizing Signature
Harold Diamond

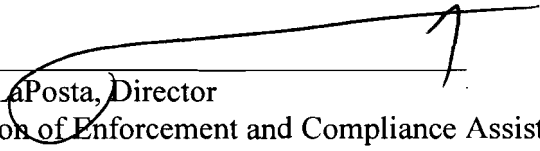
NAME: _____

(PLEASE PRINT)
President

TITLE: _____

DATE: 12/16/08

COMPLAINANT:



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

DATE: DECEMBER 24, 2008

In the Matter of Diamond Chemical Company
Docket No. FIFRA-02-2008-5114

FINAL ORDER

The Regional Administrator 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. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

DATE: _____

12-29-08

In the Matter of Diamond Chemical Company
Docket No. FIFRA-02-2008-5114

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the Consent Agreement, the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

USPS First Class Mail

Mr. Craig Decker
Lab Manager
Diamond Chemical Company
Union Avenue and Dubois Street
East Rutherford, N.J. 07073

Dated: _____

1/9/09
Edison, NJ

