

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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REGIONAL HEARING CLERK  
EPA REGION III, PHILA, PA

IN THE MATTER OF:

Meherrin Agricultural & Chem Co Inc.  
PO Box 200  
Severn, NC 27877

RESPONDENT,

Meherrin Harbor View  
5380 Eastern Neck Rd.  
Rockhall, MD 21661

FACILITY.

CONSENT AGREEMENT AND FINAL  
ORDER

DOCKET NO.: FIFRA-03-2012-0019

NOTABLY LATE OR NON  
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**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 Meherrin Agricultural & Chem Co Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 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.
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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:
8. 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. § 136l(a)(1).
9. 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 5380 Eastern Neck Rd. in Rockhall, MD 21661. This establishment is registered with EPA under Establishment Number 004139-MD -001.
10. 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.
11. 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.
12. 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.
13. 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.
14. Respondent was required to submit to EPA by March 1, 2011, a pesticide production report (EPA Form 3540-16) concerning its production, sales, and distribution of pesticides during calendar year 2010.
15. Respondent failed to submit its pesticide production report for calendar year 2010 on or before March 1, 2011.

16. Respondent's failure to timely submit its pesticide production report for calendar year 2010 on or before March 1, 2011 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).
17. 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).

### Settlement

18. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of four thousand dollars (\$4,000), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully-executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
19. 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) Establishment Reporting Requirements*, updated May 2010, and 40 C.F.R. Part 19.
20. Respondent must pay the civil penalty in the way described in Appendix A. Additional payment guidance is available at:  

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)
21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
  - A. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

- B. The cost of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
- C. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
22. Respondent agrees not to take a tax deduction for this civil penalty.

#### **Certification**

23. 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**

24. Nothing in this CAFO relieves Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

#### **Reservation of Rights**

25. 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**

26. 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. § 136l(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**

27. 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**

28. 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**

29. This CAFO is the entire understanding between the Parties regarding EPA's assessment of civil penalties for the specific violations described herein.

## Appendix A - Payment Methods

Payment of the civil penalty described above must be in the following manner:

All payments by Respondent shall reference its name and address, and the Docket Number of this action, i.e., FIFRA-03-2012-0019

Checks must be made payable to "United States Treasury";

All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking  
Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

On-Line Payment Option:

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described above shall be sent simultaneously to:

Wojciech Jankowski  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

SIGNATURES

For Respondent:

10/12/11  
Date

William E. McKeown  
Signature

William E. McKeown  
Signatory's Name

Vice President  
Signatory's Title  
Meherrin Agricultural & Chem Co Inc.



For Complainant:

10/13/2011  
Date

Kyla L. Townsend-McIntyre  
Kyla L. Townsend-McIntyre  
Pesticides and Asbestos Programs Branch  
U.S. Environmental Protection Agency, Region III

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

11/2/11  
Date

Abraham Ferdas  
Abraham Ferdas, Director  
Land and Chemicals Division

**CERTIFICATE OF SERVICE**

RECEIVED

I certify that on the date provided below, I hand-delivered the ~~original~~ <sup>original</sup> and one copy of the Consent Agreement and Final Order in the case captioned *In re Meherrin Agricultural & Chem Co Inc.*, Docket No. FIFRA-03-2012-0019) to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by UPS Overnight with delivery confirmation—signature required to William E. Mc.Keown, Vice President, at PO Box 200, Severn, NC 27877.

Dated: 11/16/11



Wojciech Jankowski  
Assistant Regional Counsel  
U.S. EPA Region 3

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

IN RE:

Meherrin Agricultural & Chem Co Inc.  
PO Box 200  
Severn, NC 27877

RESPONDENT,

Meherrin Harbor View  
5380 Eastern Neck Rd.  
Rockhall, MD 21661

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**FINAL ORDER**

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Meherrin Agricultural & Chem Co 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, 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 Respondent pay a penalty of four thousand dollars (\$4,000), and comply with the terms and conditions of the Consent Agreement.

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.

11/15/11  
Date



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