

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

IN THE MATTER OF)

Shore Corporation)
2917 Spruce Way)
Pittsburgh, PA 15201)

Respondent)
_____)

DOCKET NO: FIFRA-03-2015-0259

CONSENT AGREEMENT

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 by Shore Corporation ("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 Respondent under FIFRA arising from the violations 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.

2015 SEP 29 AM 11:47
REGIONAL HEARING CLERK
EPA REGION III, PHIL.A. PA

RECEIVED

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.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Factual and Legal Background

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. Shore Corporation is a Pennsylvania corporation, with a principal place of business located at 2917 Spruce Way in Pittsburgh, Pennsylvania, that produces custom formulated and blended chemical products.
10. Shore Corporation is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant, with exceptions not relevant to this case.
12. Pursuant to 40 C.F.R. § 152.3, the term "pesticide product" means, in pertinent part, a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be distributed or sold.
13. In 2011, Respondent produced the EPA registered products AMAZING NOK OUT ODOR ELIMINATOR (EPA Reg No. 71700-2) and SNIPER (EPA Reg. No. 71700-2-82482).
14. The EPA registered products AMAZING NOK OUT ODOR ELIMINATOR (EPA REG. NO. 71700-2) and SNIPER (EPA REG. NO. 71700-2-82482) are each "pesticide[s]" and "pesticide product[s]" as those terms are defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

Alleged Violations

COUNT I – VIOLATIONS OF SECTION 12(a)(1)(C) OF FIFRA

15. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

16. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to “distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

17. In 2011, Respondent produced The AMAZING NOK OUT ODOR ELIMINATOR (EPA REG. NO. 71700-2) and SNIPER (EPA REG. NO. 71700-2-82482) using sources of active ingredients that were not listed in the Confidential Statement of Formula (EPA Form 8570-4) submitted in connection with the registration of the applicable registered product. As a result, AMAZING NOK OUT ODOR ELIMINATOR (EPA REG. NO. 71700-2) and SNIPER (EPA REG. NO. 71700-2-82482) differed in composition from the composition represented in the applicable statement for such products.

18. On or about October 12, 2011, Respondent sold one or more units of AMAZING NOK OUT ODOR ELIMINATOR (EPA REG. NO. 71700-2) to an individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. On or about May 6, 2011, Respondent sold one or more units of SNIPER (EPA REG. NO. 71700-2-82482) to an individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

20. Each occasion that Respondent sold one or more units of either AMAZING NOK OUT ODOR ELIMINATOR (EPA REG. NO. 71700-2) or SNIPER (EPA REG. NO. 71700-2-82482) constituted a “distribution or sale” of a “pesticide” and “pesticide product” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3; and a separate unlawful act under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136l(a)(1)(C), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

21. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

22. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount

of four thousand five hundred and thirty six dollars (\$4,536), which Respondent shall be liable to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this signed and executed CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which a true and correct copy of the signed and executed CAFO is mailed or hand-delivered to Respondent.

23. The Parties represent that the settlement terms are based upon EPA's consideration of a number of factors, including the penalty criteria 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 December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

24. Payment of the civil penalty amount required under the terms of paragraph 22 shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.

Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

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

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

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045
(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 - checking

Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

Each payment shall also reference the above case caption and docket number (Docket No.: FIFRA-03-2015-0259). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Jennifer M. Abramson (3RC50)
Senior Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

25. 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.

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).

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.

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).

Certifications

26. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

27. 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

28. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA 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 there under, 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

29. 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 violations 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

30. This CAFO shall apply to and be binding upon EPA, Respondent, and the 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

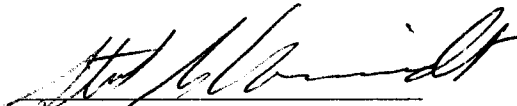
31. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

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

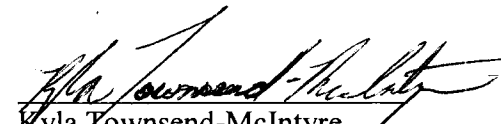
For Respondent:

9/14/15
Date


Stuart Hammerschmidt, President
Shore Corporation


For Complainant:

09/22/2015
Date


Kyla Townsend-McIntyre
U.S. EPA, Region III

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

9.23.15
Date


John A. Armstead, Director
Land and Chemicals Division

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

IN THE MATTER OF)	
)	
Shore Corporation)	DOCKET NO: FIFRA-03-2015-0259
2917 Spruce Way)	
Pittsburgh, PA 15201)	FINAL ORDER
)	
Respondent)	
_____)	

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Shore Corporation ("Respondent") 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 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

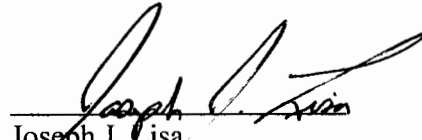
NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136a(d)(4),

RECEIVED
15 SEP 29 AM 11:47
REGIONAL HEARINGS CLERK
EPA REGION III, PHILA. PA

§ 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of four thousand five hundred and thirty six dollars (\$4,536), in accordance with the payment provisions set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: Sept. 29, 2015



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III

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

IN THE MATTER OF)

Shore Corporation)
2917 Spruce Way)
Pittsburgh, PA 15201)

Respondent)

DOCKET NO: FIFRA-03-2015-0259

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and one copy by hand-delivery:

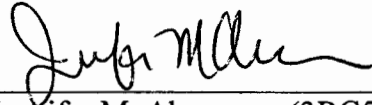
Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

Stuart Hammerschmidt, President
Shore Corporation
2917 Spruce Way
Pittsburgh, PA 15201

SEP 29 2015

Date



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III

RECEIVED
2015 SEP 29 AM 11:47
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA



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

MEMORANDUM

SUBJECT: Consent Agreement and Final Order
Docket No.: FIFRA-03-2015-0259

FROM: Mary B. Coe *[Signature]* 9/23/15
Acting Regional Counsel (3RC00)

John A. Armstead, Director *[Signature]* 9.23.15
Land and Chemicals Division (3LC00)

TO: Joseph J. Lisa *[Signature]* 9-29-2015
Regional Judicial Officer (3RC00)

The attached Consent Agreement and Final Order ("CAFO") have been negotiated with Shore Corporation ("Respondent") in settlement of actionable Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") violations. The compliance issues addressed in the CAFO involve distributing or selling pesticides that differ in composition from what was identified in the applicable confidential statement of formula submitted in connection with their registration, which constitute unlawful acts under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

The litigation team calculated a civil penalty of four thousand five hundred and thirty six dollars (\$4,536) in accordance with 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 violations. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *Enforcement Response Policy for Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA)*.

We recommend that you sign the attached Final Order assessing four thousand five hundred and thirty six dollars (\$4,536) in civil penalties against Respondent. After you execute the Final Order, please return the documents to Jennifer M. Abramson of the Land and Chemicals Division for further processing.

Respondent's Contact Information:

Stuart Hammerschmidt, President
Shore Corporation
2917 Spruce Way
Pittsburgh, PA 15201
(412) 471 - 3330
shammerschmidt@shorecorporation.com

cc: Stuart Hammerschmidt

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2015 SEP 29 AM 11:47

RECEIVED

*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

