



3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
6. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant are false or, in any material respect, inaccurate.
7. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CA/FO.
8. Respondent shall bear its own costs and attorney's fees.
9. Respondent certifies to EPA by his signature herein that he is presently in compliance with the provisions of FIFRA referenced herein.

#### **Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this statute, except in certain circumstances which are not relevant to this case.
11. Section 12(a)(1)(E) of FIFRA 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to sell or distribute to any person any pesticide that is misbranded.
12. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is "misbranded" if the label, does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e to each establishment in which it was produced. A pesticide is also "misbranded" if any word, statement, or other information required by or under the authority of FIFRA to appear on the label or labeling is not prominently placed thereon... Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).
13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), provides, in pertinent part, that it shall be unlawful for any person to violate any regulation issued under Section 19 of FIFRA, 7 U.S.C. § 136q(a).
14. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), provides that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA.

15. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
16. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to distribute or sell” as “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. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” to include “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,” and “any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.”
18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].” *See also* 40 C.F.R. § 152.5.
19. 40 C.F.R. § 165.3 defines “containment pad” as any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.
20. 40 C.F.R. § 165.3 defines “containment structure” as either a secondary containment unit or containment pad.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

21. Respondent, Carolina Eastern, Inc., is a corporation established under the laws of the State of South Carolina.
22. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.
23. At all times relevant to the violations alleged herein, Respondent “owned” and “operated” an “establishment” located at 22187 High Street, Courtland, Virginia (EPA Establishment No. 53656-VA-001) as these terms are defined in 40 C.F.R. § 165.3.

24. On August 16, 2012, a representative of the Virginia Department of Agriculture and Consumer Services (“VDACS”) performed a “for cause” inspection of Respondent’s establishment concerning Respondent’s suspected failure to meet pesticide containment standards set forth in 40 C.F.R. Part 165, Subpart E.
25. On August 16, 2012, the VDACS representative obtained copies of the label for the pesticide “Roundup PowerMax (EPA Reg. No. 524-549) and copies of the label for the pesticide “Gramoxone” (EPA Reg. No. 100-1431). The representative also obtained photographs of refillable containers (“CES 6000” and “CES 6006”) of “Roundup PowerMax (EPA Reg. No. 524-549) and “Gramoxone” (EPA Reg. No. 100-1431) to demonstrate the labels affixed to the containers.
26. On August 16, 2012, the VDACS representative obtained photographs of the Respondent’s pesticide “containment structure” located at Respondent’s establishment.

### COUNTS I

27. The allegations contained in Paragraphs 1 through 26 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
28. Respondent’s products “PowerMax” and “Gramoxone” are “pesticides” as this term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
34. During the August 16, 2012 VDACS establishment inspection, VDACS representatives observed that Respondent’s labels located on the refillable containers for its pesticide products, “PowerMax” (containers CES 6000 and CES 6006) and “Gramoxone,” did not bear the EPA Establishment registration number assigned under 7 U.S.C. § 136(e) to the establishment in which the pesticides were produced as required by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).
35. During the August 16, 2012 VDACS establishment inspection, VDACS representatives observed that Respondent’s labels for its pesticide products, “PowerMax” (containers CES 6000 and CES 6006) did not contain information such as the net contents of each pesticide container as required by or under the authority of FIFRA to appear on the label or labeling as required by Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).
36. During the August 16, 2012 VDACS establishment inspection, VDACS representatives observed that Respondent’s label for “Gramoxone” and “PowerMax” (container CES 6000) did not include the label booklet. The label booklet is considered “labelling” as defined in Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) and such label is “misbranded” as set forth in Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).
37. On at least August 16, 2012, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the misbranded pesticides “PowerMax” and “Gramoxone.”

38. Respondent's distribution or sale, held for distribution or sale, or offering for sale or distribution of the misbranded pesticides described in paragraphs 28-36 constitutes 2 violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

**COUNT II**

39. The allegations contained in Paragraphs 1 through 38 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.

40. 40 C.F.R. § 165.87(a) provides, in pertinent part, the material specifications for an existing structure as follows:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides... The structure must be liquid tight with cracks, seams, and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen materials, unfired clay, or asphalt.

41. 40 C.F.R. § 165.87(b)(2) provides, in pertinent part, that the owner or operator of an existing structure must seal all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure with an exception not relevant hereto.

42. At all times relevant to the violations alleged herein, Respondent "owned" and "operated" an existing "containment structure" at Respondent's establishment as these terms are defined in 40 C.F.R. § 165.3.

43. During the August 16, 2012 VDACS establishment inspection, VDACS representatives observed that Respondent's existing "containment structure" was made of permeable concrete block with cracked walls and mortar joints that were not sealed as required by 40 C.F.R. § 165.87(a).

44. During the August 16, 2012 VDACS establishment inspection, VDACS representatives observed that Respondent's existing "containment structure" had a discharge pipe that was not sealed as required by 40 C.F.R. § 165.87(b)(2).

45. Respondent's acts or omissions as described in Paragraphs 43 and 44, above, constitutes a violation of Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), by failing to comply with 40 C.F.R. § 165.87(a) and (b)(2).

46. Respondent's acts or omissions as described in Paragraphs 43 and 44, above, is an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

### COUNT III

47. The allegations contained in Paragraphs 1 through 46 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
48. Pursuant to 40 C.F.R. § 165.90(b)(2), the owner or operator of a new or existing pesticide containment structure must initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the pesticide containment structure or appurtenances with material compatible with the pesticide being stored or dispenses no later than the end of the day on which damaged is noticed and complete repairs within a time frame that is reasonable, taking into account factors such as weather, and availability of cleanup materials, trained staff, and equipment.
49. On December 5, 2008, representatives of the VDACS conducted an inspection of the Respondent's establishment and Respondent's existing pesticide containment structure.
50. During the August 16, 2012 VDACS establishment inspection, VDACS inspectors observed the same cracked walls and mortar joints as described in paragraph 43, above.
51. Respondent's acts or omissions as described in Paragraphs 49 and 50, above, constitutes a violation of Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), by failing to comply with 40 C.F.R. § 165.90(b)(2).
52. Respondent's acts or omissions as described in Paragraphs 49 and 50, above, is an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

### COUNT IV

53. The allegations contained in Paragraphs 1 through 52 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
54. 40 C.F.R. § 165.82(a)(2) provides, in pertinent part, that a pesticide dispensing area is subject to the containment regulations under 40 C.F.R. Part 165, Subpart E and must have a containment pad that complies with the requirements of 40 C.F.R. Part 165, Subpart E, if agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning, are dispensed from the stationary pesticide container into a vessel, including, but not limited to: (i) refillable containers; (ii) service stations; (iii) transport vehicles, or (iv) application equipment.
55. Respondent owns and operates a stationary agricultural pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide.

56. During the August 16, 2012 VDACS establishment inspection, Respondent admitted to bulk repackaging and refilling of agricultural pesticides from its stationary pesticide container into a vessel such as refillable containers; service stations; transport vehicles, or other application equipment.
57. During the August 16, 2012 VDACS establishment inspection, VDACS inspectors observed that Respondent's pesticide dispensing area did not have a containment pad that complies with the requirements of 40 C.F.R. Part 165, Subpart E.
58. Respondent's acts or omissions as described in Paragraphs 55 through 57, above, constitutes a violation of Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), by failing to comply with 40 C.F.R. § 165.82(a)(2).
59. Respondent's acts or omissions as described in Paragraphs 55 through 57, above, is an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

#### **COUNT V**

60. The allegations contained in Paragraphs 1 through 59 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
61. 40 C.F.R. § 165.95(a) provides, in pertinent part, that owners or operators of new and existing containment structures must maintain records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances for a period of 3 years.
62. During the August 16, 2012 VDACS establishment inspection, Respondent did not have complete inspection and maintenance records of its existing containment structure.
63. Respondent's acts or omissions as described in Paragraph 62, above, constitutes a violation of Section 19(e) of FIFRA, 7 U.S.C. § 136q(e), by failing to comply with 40 C.F.R. § 165.95(a).
64. Respondent's acts or omissions as described in Paragraph 62, above, is an unlawful act pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

## CIVIL PENALTY

65. In settlement of Complainant's claims for civil penalties for the violations alleged in the Complaint, Respondent agrees to pay a civil penalty of Twenty Three Thousand Five Hundred Seventy Two Dollars (\$23,572). The civil penalty is due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. If Respondent pays the entire civil penalty within 30 calendar days of the date on which this CA/FO is mailed to Respondent, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
66. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
67. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 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).
68. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.
69. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than 90 calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
70. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Complainant also took into account the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated December 2009 ("ERP").
71. Respondent shall pay the civil penalty set forth in Paragraph 65, above, by electronic funds transfer ("EFT"), as described below, or by sending a cashier's check or certified check, made payable to the order of "**United States Treasury.**"



- a. Checks sent by regular US Postal Service mail delivery must be addressed to:

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

- b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. EPA, Fines and Penalties  
U.S. Bank, Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

- c. Any EFT shall be transmitted to:

Wire Transfer

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 wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or Remittance Express)

U.S 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

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open the form and complete required fields.

72. All payments by Respondent shall reference its name and address and the Docket Number of this case (FIFRA-03-2015-0172). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and

Louis F. Ramalho (3RC30)  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

#### **FULL AND FINAL SATISFACTION**

73. This CA/FO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 14(a)(1) of FIFRA , 7 U.S.C. § 136l(a)(1), for the violations alleged herein.

#### **RESERVATION OF RIGHTS**

74. 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 CA/FO, following its filing with the Regional Hearing Clerk.

#### **OTHER APPLICABLE LAWS**

75. Nothing in this CA/FO relieves Respondent of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

**AUTHORITY TO BIND THE PARTIES**

76. Each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind themselves hereto.

**ENTIRE AGREEMENT**


77. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

**EFFECTIVE DATE**

78. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.


For Respondent:

Carolina Eastern, Inc.

  
\_\_\_\_\_  
Samuel A. Rodgers  
Executive Vice-President

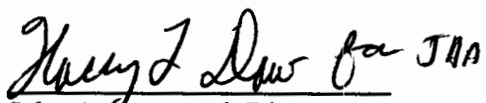
For Complainant:

U.S. Environmental Protection Agency

  
\_\_\_\_\_  
Louis F. Ramalho  
Sr. Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 6/24/2015

By:   
\_\_\_\_\_  
John A. Armstead, Director  
Land and Chemicals Division,  
U.S. EPA, Region III

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

IN RE:

Carolina Eastern, Inc.  
1830 Savannah Highway, Suite G1  
Charleston, SC 29407

Docket No. FIFRA-03-2015-0172

RESPONDENT.

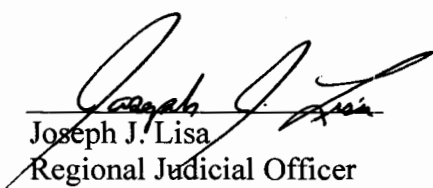
**FINAL ORDER**

Complainant and Respondent have executed a document entitled "Consent Agreement" which I ratify as a Final Order in accordance with Section 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. § 22.18(b)(3).

**NOW, THEREFORE, PURSUANT TO** Section 22.18(b)(3) of the Consolidated Rules, and having determined, based on the representations in the Consent Agreement, that the penalty agreed to in the Consent Agreement is based on the consideration of the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), it is hereby ordered that Respondent pay Twenty Three Thousand Five Hundred Seventy Two Dollars (\$23,572), in accordance with the foregoing Consent Agreement, and otherwise comply with the terms and conditions of the Consent Agreement and this Final Order.

This Final Order shall become effective immediately upon filing with the Regional Hearing Clerk.

Date: June 29, 2015

  
Joseph J. Lisa  
Regional Judicial Officer

REGIONAL HEARINGS CLERK  
EPA REGION III, PHILA. PA

2015 JUN 30 AM 10:43

RECEIVED