

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

2015 SEP 11 PM 3:38
 REGION III ADMINISTRATOR
 EPA REGION III, PHILADELPHIA, PA

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|--|---|-------------------------------|
| IN RE: |) | DOCKET NO. FIFRA-03-2015-0208 |
| |) | |
| MILLER CHEMICAL AND FERTILIZER CORPORATION |) | CONSENT AGREEMENT |
| 120 RADIO ROAD |) | NOTABLY LATE OR NON REPORTING |
| HANOVER, PA 17331-1139 |) | |
| |) | |
| Respondent |) | |

EXPEDITED SETTLEMENT AGREEMENT

1. This Expedited 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 Miller Chemical and Fertilizer 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 the Respondent under FIFRA arising from the violation of FIFRA alleged herein.

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticides-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

3. EPA finds that Respondent is a “person,” a “producer” and operates an “establishment”, as those terms are defined in Sections 2(s), (w), and (dd) of FIFRA, 7 U.S.C. §§ 136(s), (w), and (dd), and 40 C.F.R. § 167.3, at 120 Radio Road, Hanover, Pennsylvania. This Establishment is registered with EPA under Establishment Number 000072-PA-001.

4. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and with the regulations found at 40 C.F.R. § 167.85(d) in that it did not file the 2013 annual

pesticides report for the above facility by March 1 of 2014, as required.

5. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Expedited Consent Agreement and the attached Final Order, (hereinafter "this Agreement").
6. Except as provided in Paragraph 5 of this Agreement, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Expedited Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement of this Agreement.
8. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Agreement and any right to appeal the attached Final Order.
9. Respondent consents to the issuance of this Agreement and agrees to comply with its terms and conditions.
10. Each Party to this Agreement shall bear its own costs and attorney's fees.
11. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that to the best of Respondent's knowledge, it is presently in compliance with all requirements of FIFRA, 7. U.S.C. *et seq.*, and all regulations promulgated thereunder.
12. The parties enter into this Agreement in order to settle the civil violation(s) alleged above. Pursuant to FIFRA and the Consolidated Rules of Practice, based on the nature of the violations, and other relevant factors, EPA has determined an appropriate civil penalty to settle this action is **\$800**.
13. Respondent agrees that within 30 days of the effective date of this Agreement (the date it is filed with the Regional Hearing Clerk), Respondent shall submit a check with the case name, address and docket number of this Agreement (FIFRA-03-2015-0208), for the amount specified above, payable to "**United States Treasury**," U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. Copies of the check shall be sent simultaneously to:

Ms. Christine Convery, Enforcement Officer
U.S. Environmental Protection Agency
Region III (Mail Code 3LC62)
1650 Arch Street
Philadelphia, PA 19103

and

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

14. This Agreement settles EPA's civil penalty claims against Respondent for the violations specified above. EPA does not waive its right to take enforcement action against Respondent for any other past, present, or future violations of FIFRA or any other federal statute or regulation.

15. Nothing in this Agreement is intended to, nor shall be construed to operate in any way to resolve, any criminal liability of Respondent, and nothing in this Agreement shall be construed to limit EPA's authority to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment.

16. This Agreement is binding on the parties signing below. Upon signature of the parties and approval by the Regional Judicial Officer, this Agreement shall be filed with the Regional Hearing Clerk. In accordance with 40 C.F.R. 22.31(b), this Agreement is effective upon filing with the Regional Hearing Clerk.

17. The undersigned representative certifies that he is fully authorized to execute this Agreement and to legally bind Miller Chemical and Fertilizer Corporation to this Agreement.

APPROVED BY:

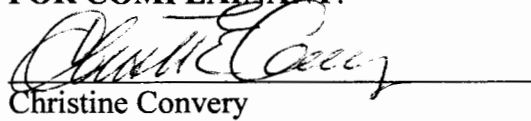
Name (print): Charles H. Svec

Title (Print): President

Signature: 

Date: 8/19/2015

FOR COMPLAINANT:

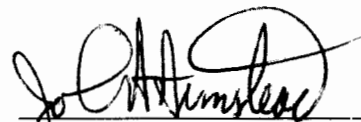


Christine Convery
Pesticides Enforcement Officer
EPA Region III

Date: 8/31/15

Accordingly, the Land and Chemicals Division, United States Environmental Protection Agency, Region III, recommends that the Regional Administrator, or his designee, issue the Final Order set forth below.

9.8.15
Date


John A. Armstead, Director
Land and Chemicals Division

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| Respondent |) | |

FINAL ORDER

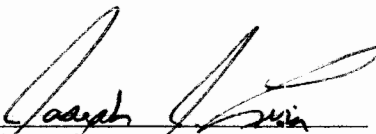
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and the above-captioned Respondent have executed a document entitled "Expedited Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of 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. 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, *as amended*, 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 eight hundred dollars (\$800), 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.

Sept 9, 2015
Date



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

