

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

**In the Matter of:** ) **DOCKET NO: FIFRA-03-2015-0248**  
 )  
**FMC Corporation,** ) **CONSENT AGREEMENT**  
 )  
**Respondent.** )

REGIONAL HEARINGS CLERK  
EPA REGION III, PHILA. PA

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**CONSENT AGREEMENT**

I. PRELIMINARY STATEMENT

1. 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), the Director of the Land and Chemicals Division for the United States Environmental Protection Agency, Region III (“Complainant”), initiated this administrative proceeding for the assessment of civil penalties against FMC Corporation (“Respondent”), by issuance of a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) filed with the Regional Hearing Clerk on September 24, 2015. The Complaint, incorporated herein by reference, alleges that Respondent violated Section 12 of FIFRA, 7 U.S.C. § 136j, and associated regulations promulgated at 40 C.F.R. §§ 150-189, Subchapter E, in connection with the advertisement, distribution or sales of its F9047-2 EC Insecticide, EPA Reg. No. 279-9545 product in 2011 and 2012. This Consent Agreement and the accompanying Final Order (“CAFO”) resolve the violations alleged in the Complaint.
2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint and herein.
3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations contained in the Complaint and herein.
4. For the purpose of this proceeding, Respondent consents to the assessment and payment of a civil penalty in the amount and in the manner set forth in this CAFO.
5. For the purpose of this proceeding, Respondent agrees to comply with the conditions of this CAFO.
6. For the purpose of this proceeding, Respondent waives its right to contest the allegations in the Complaint and herein, and its right to appeal the Final Order accompanying this Consent Agreement.
7. Respondent shall bear its own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. 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 of ONE MILLION DOLLARS (\$1,000,000) 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.

11. 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 December 2009 *FIFRA Enforcement Response Policy* and 40 C.F.R. Part 19.

12. Payment of the civil penalty amount required under the terms of paragraph 10 herein 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  
Heather Russell 513-487-2044

- 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  
Phone contact: 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  
REX 866-234-5681

- 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>

All payments shall also reference the above case caption and docket number (Docket No. FIFRA-03-2015-0248). 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:

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

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

13. 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 fully-executed and filed 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).

#### Certification

14. The undersigned certifies, to the best of his knowledge, that Respondent is currently in compliance with all applicable requirements of FIFRA referenced herein.

#### Other Applicable Laws

15. 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

16. 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 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

17. This settlement shall constitute full and final satisfaction of all claims for civil 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

18. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. 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


19. 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

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


For Respondent:

12/12/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark Douglas  
President, FMC Agricultural Solutions  
FMC Corporation

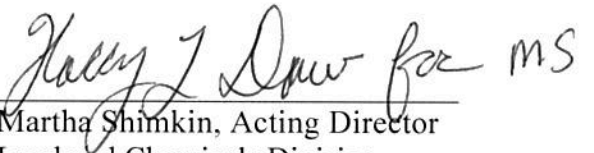
For Complainant:

12/14/17  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jennifer M. Abramson  
Janet E. Sharke  
Counsel for Complainant  
U.S. EPA, Region III

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

12/14/2017  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Martha Shimkin, Acting Director  
Land and Chemicals Division  
U.S. EPA, Region III

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

**In the Matter of:**

**FMC Corporation,**

**Respondent.**

**EPA DOCKET NO. FIFRA-03-2015-0248**

**FINAL ORDER**

**Proceeding under Section 14(a) of the Federal  
Insecticide, Fungicide and Rodenticide Act,  
7 U.S.C. § 136l(a)**

**FINAL ORDER**

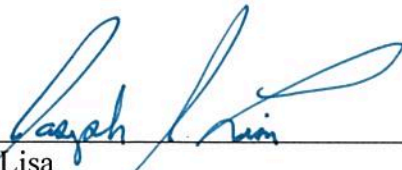
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, FMC Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing 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 Sections 22.18(b)(2) and (3)). 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.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

**NOW, THEREFORE, PURSUANT TO** Section 14(a) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE MILLION DOLLARS (\$1,000,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

12-19-2017  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III