



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

January 16, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8067

Bergeson & Campbell PC  
ATTN: Ms. Lynn L. Bergeson  
2200 Pennsylvania Ave. NW, Suite 100 W  
Washington, D.C. 20037-1701

Consent Agreement and Final Order In the Matter of  
Maxicrop USA Docket No. **FIFRA-05-2015-0022**

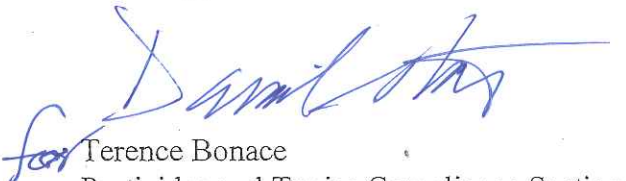
Dear Ms. Bergeson,

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on January 16, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$29,172 is to be paid in the manner described in paragraph 30. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 17, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

  
Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2015-0022</b>
	)	
<b>Maxicrop USA, Inc.,</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Elk Grove Village, Illinois,</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Maxicrop USA, Inc., a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that within thirty (30) days of the effective date of this CAFO it will be complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. 7 U.S.C. § 136(u).

13. A “plant regulator” is any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof. 7 U.S.C. § 136(v).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

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. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

17. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent owned or operated a place of business located at 900 Lively Boulevard, Elk Grove Village, Illinois 60007 during the calendar years 2012 and 2013.

19. On October 30, 2012 and November 2, 2012, an inspector employed by EPA and authorized to conduct inspections under FIFRA visited Respondent’s website at [www.maxicrop.com](http://www.maxicrop.com).

20. On October 30, 2012 and November 2, 2012, Respondent’s website made the following claims about its seaweed products, including “Maxicrop Liquid Seaweed” and “Maxicrop Liquid Seaweed Plus Iron”:

- a. “We help you grow healthy plants and strong root systems with organic plant stimulants. Maxicrop products benefit plant growth, improve soil conditions, enhance natural development and increase resistance to stresses.”
- b. “Our super concentrated seaweed extract’s natural growth stimulants initiate cell growth and cause vigorous growth of both root and stem. The trace

elements that Maxicrop Liquid Seaweed contains are important at this stage – in enzymes, as activators of enzyme systems, and as stimulants.”

- c. “How Maxicrop Seaweed works... It also contains important biogrowth stimulants, which have a tremendous effect on seed germination, root development, and general growth.”
- d. “What is Maxicrop Seaweed used for? Maxicrop seaweed is a natural fertilizer that goes right to the heart of the plant, encouraging natural growth processes and boosting health. When sprayed onto plant leaves, or used to drench roots, it produces more roots...”
- e. “What makes Maxicrop Seaweed work so well? All plants produce growth stimulants to improve their growth.... Maxicrop Seaweed works so effectively because it contains these types of growth stimulants.”
- f. “Where can I use Maxicrop Seaweed? It can be used by itself, or with fertilizers: on all plants as a natural stimulant; on seedlings to encourage strong, early growth; as a supplement to fertilizer to encourage fruit set and better yields; as a ‘pick-me-up’ for unhealthy plants; to encourage growth and greening of lawns (turf); on all greenhouse and nursery plants (weekly).”
- g. “What results can I expect? Research has shown that Maxicrop Seaweed increases root growth by 60%...”

21. On May 1, 2013, inspectors employed by EPA and authorized to conduct inspections under FIFRA conducted an inspection at Maxicrop USA, Inc., located at 900 Lively Boulevard, Elk Grove Village, Illinois 60007.

22. During and subsequent to the May 1, 2013 inspection, the EPA inspectors collected copies of labels, brochures, and distribution records for “Maxicrop Liquid Seaweed” and “Maxicrop Liquid Seaweed Plus Iron.”

23. The brochures collected by EPA during the May 1, 2013 inspection contain the following claims regarding “Maxicrop Liquid Seaweed” and “Maxicrop Liquid Seaweed Plus Iron”:

- a. “It creates an extended root system giving your plants greater access to nutrients and water in the soil and thus to long term health.”
- b. “By increasing the levels of your plants’ chlorophyll production, Maxicrop stimulates their natural development and growth.”
- c. “Independent research, funded by Maxicrop International, shows that our products have five principle effects on plant growth. All of them remove or reduce the influence of a number of growth constraints with the result that treated plants function better and produce higher yields and better quality crops.”
- d. “Research has shown that plants that are regularly exposed to low levels of our seaweed extracts establish bigger and deeper roots and are faster growing.”
- e. “Researchers have attributed the following benefits to the use of Maxicrop seaweed products: increases germination, boosts root and shoot development with better use of water and nutrients...”

24. The distribution records provided to EPA by Respondent subsequent to the May 1, 2013 inspection identified 62 occasions on which Respondent distributed or sold “Maxicrop Liquid Seaweed.”

25. The distribution records provided to EPA by Respondent subsequent to the May 1, 2013 inspection identified 83 occasions on which Respondent distributed or sold “Maxicrop Liquid Seaweed Plus Iron.”

26. At all times relevant to the violations alleged in this CAFO, "Maxicrop Liquid Seaweed" was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. At all times relevant to the violations alleged in this CAFO, "Maxicrop Liquid Seaweed Plus Iron" was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. Between approximately May 1, 2012 and April 26, 2013, Respondent distributed or sold the unregistered pesticides “Maxicrop Liquid Seaweed” and “Maxicrop Liquid Seaweed Plus Iron” upon approximately one hundred and forty-five occasions; each of which occasion constitutes a separate unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **Civil Penalty**

29. **Penalty**: Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$29,172. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$29,172 civil penalty for the FIFRA violations by sending a cashier’s or certified check, payable to “Treasurer, United States of America,” to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

The check must note Respondent's name and the docket number of this CAFO.

31. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Mony Chabria (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15



handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

35. Respondent has asserted that the above referenced products, “Maxicrop Liquid Seaweed” and “Maxicrop Liquid Seaweed Plus Iron,” meet the vitamin –hormone exception for distribution or sale of unregistered pesticides identified at 40 C.F.R. § 152.6(f)(1). In support thereof, Respondent has supplied the Material Safety Data Sheets for the previously mentioned products attached to this CAFO as Attachment A. And, Respondent attests that the previously mentioned products meet the Toxicity Category III or IV standards of the appropriate Hazard Indicators at 40 C.F.R. § 156.62.

36. Respondent shall, within thirty (30) days of the Effective Date of this CAFO, relabel or sticker all existing inventory of the previously mentioned products with the following information: “This product is not intended for agricultural use on any food crop.”

37. Failure of Respondent to timely and properly execute the relabeling or stickering described in Paragraph 36 above may subject Respondent to a Stipulated Penalty of \$5,000 per day for each day of noncompliance, as well as any other enforcement options available to EPA under FIFRA.

#### **General Provisions**

38. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations and facts alleged in the CAFO.

39. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondent’s responsibility to comply with FIFRA and

other applicable federal, state and local laws.

41. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

42. The terms of this CAFO bind Respondent, its successors and assigns.


43. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

44. Each party agrees to bear its own costs and attorney’s fees, in this action.

45. This CAFO constitutes the entire agreement between the parties.


**Maxicrop USA, Inc., Respondent**

December 22, 2014  
Date

  
Name: Lars Ohrstrom  
Title: Pres.

**United States Environmental Protection Agency, Complainant**

1/7/2015  
Date


  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Maxicrop USA, Inc.**  
**Docket No. FIFRA-05-2015-0022**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

1/12/2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Maxicrop USA, was filed on January 16, 2015, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8067, a copy of the original to the Respondent:

Bergeson & Campbell PC  
ATTN: Ms. Lynn L. Bergeson  
2200 Pennsylvania Ave. NW, Suite 100 W  
Washington, D.C. 20037-1701

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Mony Chabria, Assistant Regional Counsel, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. **FIFRA-05-2015-0022**