

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

IN RE:)	DOCKET NO. FIFRA-03-2017-0033
)	
HORST SEEDS & CHEMICALS)	CONSENT AGREEMENT
819 NEW FRANKLIN ROAD)	NOTABLY LATE OR NON REPORTING
CHAMBERSBURG, PA 17202)	
)	
Respondent)	

EXPEDITED CONSENT 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 Horst Seeds & Chemicals ("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 ("CA") 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. The EPA is authorized to enter into this CAFO, pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), 40 C.F.R. § 167.85 and 40 C.F.R. § 22.13(b) and in accordance with the July 22, 2014 *FIFRA Section 7 Expedited Settlement Agreement Pilot Program*, which has been extended by the EPA until January 22, 2017.

4. 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 819 New Franklin Road, Chambersburg, Pennsylvania 17202. This Establishment is registered with EPA under Establishment Number 66146-PA-001.

5. 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 2015 annual pesticides report for the above facility by March 1, 2016, as required.

6. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

7. Except as provided in Paragraph 6 herein, for purposes of this proceeding, Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of this CAFO.

9. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CA and any right to appeal the attached Final Order.

10. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

11. Each Party to this CAFO shall bear its own costs and attorney's fees.

12. 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.

13. Under EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010, EPA may reduce a civil penalty to zero when a producer who has failed to submit a timely production report under Section 7(c)(1) of FIFRA reports no pesticide production and requests termination of the establishment's registration number within 20 days after receiving written notification of the violation by EPA.

14. In correspondence provided within 20 days of receiving EPA's notice of the violation alleged herein, Respondent reported that it produced no pesticides at the establishment located at 819 New Franklin Road, Chambersburg, Pennsylvania in calendar year 2015, and requested that the establishment registration number EPA Est. No.: 66146-PA-001 be terminated.

15. The parties enter into this Consent Agreement in order to settle the civil violation(s) alleged above. Pursuant to the Consolidated Rules of Practice, and in consideration of the

statutory factors set forth in FIFRA Section 14(a)(4), 7 U.S.C. Section 136l(a)(4), EPA's *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements* ("ERP"), updated May 2010, 40 C.F.R. Part 19, and the July 22, 2014 *FIFRA Section 7 Expedited Settlement Agreement Pilot Program*, extended until January 22, 2017, EPA has determined that an appropriate civil penalty to settle this action is **\$0**.

16. This CAFO 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.

17. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve, any criminal liability of Respondent, and nothing in this CAFO 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.

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

19. The undersigned representative certifies that he is fully authorized to execute this Consent Agreement and to legally bind Horst Seeds & Chemicals to this CAFO.

APPROVED BY:

Name (Print): Dennis S. Horst

Title (Print): Owner

Signature: Dennis S. Horst Date: 12/29/16

FOR COMPLAINANT:

Holly D. Ragusa Date: 1/5/2017
Holly Ragusa
Pesticides Enforcement Officer
U.S. EPA Region III

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.

1.13.17
Date

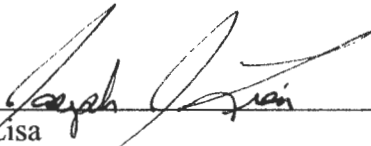
John A. Armstead
John A. Armstead, Director
Land and Chemicals Division

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) of 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 **ZERO DOLLARS (\$0.00)**, 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.

Jan. 18, 2017
Date



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

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CHAMBERSBURG, PA 17202 :
: :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Expedited Consent Agreement and Final Order for the above-referenced matter were hand-delivered to the Regional Hearing Clerk, EPA Region III, and that true and correct copies were mailed via certified mail to the following person(s):

Dennis F. Horst, Owner
Horst Seeds & Chemicals
819 New Franklin Road
Chambersburg, PA 17202

1/20/2017
Date

Holly D. Ragusa
Holly Ragusa
Enforcement Officer
U.S. Environmental Protection Agency, Region III