

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)**

In The Matter Of:)
)
Elm Research Institute)
11 Kit Street)
Keene, NH 03431)
)
Respondent)
)

EPA Docket No. FIFRA-01-2009-0064

**CONSENT AGREEMENT and
FINAL ORDER**

RECEIVED
2009 SEP 18 P 5 07
EPA REGION 1
OFFICE OF
REGISTRAR AND CLERK

I. INTRODUCTION

The United States Environmental Protection Agency - Region 1 ("EPA"), as Complainant, and Elm Research Institute ("Elm Research"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Elm Research for alleged violations of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136j, and 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

1. Respondent is a corporation organized under the laws of New Hampshire, has its principal place of business at 11 Kit Street in Keene, New Hampshire ("the Facility"), and is a "person"

as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

2. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about October 8, 1991, Respondent registered the Facility as a pesticide-producing establishment. EPA's national office in Washington, D.C. ("EPA Headquarters") subsequently assigned the EPA Establishment Number 035936-NH-001 to the Facility.

3. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, which it produced during the past year, and which it sold or distributed during the past year.

4. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing, and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. This information must be submitted to EPA, on a form supplied by EPA Headquarters, on or before March 1 of the year following the calendar year which is the subject of the report.

5. Section 14(a) of FIFRA authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, and regulations promulgated at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring between March 15, 2004 and January 12, 2009. Violations that occur after January 12, 2009 are subject to penalties of up to \$7,500. *See* 69 Fed. Reg. 7121-7127 (Feb. 13, 2004) and 73 Fed. Reg. 75340-46

(Dec. 11, 2008).

6. On July 24, 2007, EPA issued a Notice of Warning (“NOW”) [No. FIFRA-NOW-07-12] to Respondent, pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j (a)(2)(L), for failure to file a complete annual pesticide production report for calendar year 2006 as required on or before the March 1, 2007 due date.

7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA’s factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

8. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

9. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA.

III. EPA FINDINGS

10. EPA finds, based on its investigation of facts and circumstances underlying Elm Research’s participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described herein.

11. During calendar year 2007, the Facility was registered with EPA as a pesticide-producing

establishment under Section 7(b) of FIFRA and 40 C.F.R. Part 167.

12. On or about December 14, 2007, EPA Headquarters mailed to Respondent at the Facility EPA Form No. 3540-16 (rev. 04-96), entitled the "Pesticide Report for Pesticide-Producing Establishments," as described at 40 C.F.R. § 167.85(c).

13. Notwithstanding the March 1, 2008 report due date and the notice from EPA Headquarters mailed to Respondent as described in paragraph 12, Respondent did not submit its pesticide production report for calendar year 2007 until March 12, 2008.

14. Respondent's failure to submit the required information to EPA for calendar year 2007 on or before March 1, 2008, constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

15. During calendar year 2008, the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA and 40 C.F.R. Part 167.

16. On or about January 9, 2009, EPA Headquarters mailed to Respondent at the Facility an EPA notice entitled the "Annual Reporting Notification, Reporting Year 2008."

17. Notwithstanding the March 1, 2009 report due date and the notice from EPA Headquarters mailed to Respondent as described in paragraph 16, Respondent did not submit its pesticide production report for calendar year 2008.

18. Respondent's failure to submit the required information to EPA for calendar year 2008 on or before March 1, 2009, constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167,

Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

IV. TERMS OF SETTLEMENT

19. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's June 2007 "Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement" (the "Penalty Policy"), the DCIA and such other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of seven thousand, six hundred and fifty dollars (\$7,650) in settlement of the violations alleged herein.

20. Respondent shall pay the penalty of \$7,650 within thirty (30) days of receipt of this CAFO signed by the Regional Judicial Officer.

21. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the amount of \$7,650 to:

U.S. EPA, Region 1
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code RAA)
One Congress Street, Suite 1100
Boston, MA 02114-2023

and

Kan Tham, FIFRA Enforcement Coordinator
U.S. Environmental Protection Agency
Region 1 (Mail Code SEP)
One Congress Street, Suite 1100
Boston, MA 02114-2023

Respondent shall include the case name and docket number (*In re: Elm Research Institute*, FIFRA-01-2009-0064) on the face of the check.

22. If Respondent fails to pay the civil penalty it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

23. The civil penalty due, and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. §

1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violations alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

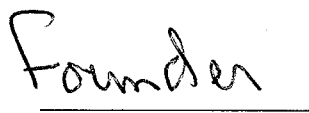
25. The Parties each shall bear its own costs and attorneys fees in the action resolved by this CAFO and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

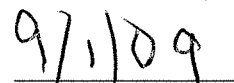
26. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:

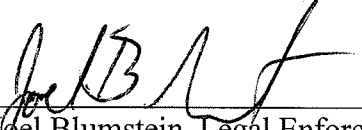


(Name)
Elm Research Institute
11 Kit Street
Keene, NH 03431


(Title)



(Date)

For EPA Region 1:


Joel Blumstein, Legal Enforcement Manager
Office of Environmental Stewardship
EPA Region 1

9/15/09
Date

and:


Kan Tham, FIFRA Enforcement Coordinator
Toxics and Pesticides Unit
Office of Environmental Stewardship
EPA Region 1

9/15/2009
Date

Of Counsel:
Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
EPA Region 1

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Elm Research Institute, is ordered to comply with the terms of the above Consent Agreement, effective upon filing.

Sept. 17, 2009
Date

Jill T. Metcalf
Jill T. Metcalf, Acting Regional Judicial Officer
EPA Region 1

In re: Elm Research Institute,
EPA Docket No. FIFRA-01-2009-0064

CERTIFICATE OF SERVICE

RECEIVED

I hereby certify that the foregoing Consent Agreement and Final Order and Cover letter to the Acting Regional Hearing Clerk were provided to the following persons and on the date noted below:

2009 SEP 18 P 5:07
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

*Original and one copy,
Hand-delivered:*

Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

*One copy, by Certified Mail,
Return Receipt Requested:*

Robert J. Kasper, Jr.
Kasper & Associates, PLLC
P.O. Box 574, 54 Main Street
Walpole, NH 03608

Dated: September 18, 2009



Kan S. Tham, FIFRA Enforcement Coordinator
Toxics and Pesticides Enforcement Unit
U. S. EPA, Region 1
One Congress Street, Suite 1100 (SEP)
Boston, MA 02114-2023
Phone: (617) 918 1872
Fax: (617) 918 0872
E-mail: tham.kan@epa.gov

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Judy Lao for Kan S. Tham
Name of Case Attorney

9/18/09
Date

in the ORC (RAA) at 918-1454
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2009-0064

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Elm Research Institute
11 Kit Street
Keene, NH 03431

Total Dollar Amount of Receivable \$ 7,650.00

Due Date: 10/19/09

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number