

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Marianne Milette  
Name of Case Attorney

1/18/17  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2017-0017

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:

George A. Kirby IV, President  
George Kirby Jr, Taint Co. Inc.  
163 MT. VERNON Way  
New Bedford, MA 02740

Total Dollar Amount of Receivable \$ 300.00

Due Date: 2/17/17

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>ST</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ 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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1 – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

**BY HAND**

January 17, 2017

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: *In the Matter of George Kirby Jr. Paint Co., Inc.*  
Docket No. FIFRA-01-2017-0017

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Expedited Settlement Agreement and Final Order settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and a certificate of service.

Please contact me at (617) 918-1854 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Milette".

Marianne Milette, FIFRA Enforcement Officer  
U.S. Environmental Protection Agency  
Region 1 (Mail Code OES05-4)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Enclosures

cc: George A. Kirby IV, George Kirby Jr. Paint Co., Inc.  
Hugh Martinez, Senior Enforcement Counsel, U. S. EPA Region 1  
Sharon Hayes, Manager, Toxics and Pesticides Enforcement Office, U. S. EPA, Region 1  
Taryn LaScola, Lead Inspector, Massachusetts Department of Agricultural Resources





**U. S. ENVIRONMENTAL PROTECTION AGENCY – Region 1 (New England)**

5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

RECEIVED

JAN 18 2017

EPA ORC  
Office of Regional Hearing Clerk

Expedited Settlement Agreement and Final Order, Docket Number FIFRA-01-2017-0017

Issued under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), and 40 C.F.R. §§ 22.13(b) and 22.18(b)

1. The U.S. Environmental Protection Agency (“EPA”) finds that George Kirby Jr. Paint Co., Inc., (“Respondent”), failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136e(c).
2. Under FIFRA Section 7(c) and 40 C.F.R. Part 167, Respondent was required to file, on or before the March 1<sup>st</sup> deadline, an annual pesticide production report concerning Respondent’s registered pesticide-producing establishment located at 163 Mt. Vernon Street, New Bedford, Massachusetts (“the Establishment”).
3. EPA finds that Respondent failed to file its annual pesticide production report concerning the Establishment on or before the March 1, 2016 deadline, which failure is unlawful under FIFRA Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L).
4. EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (“Agreement”) and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), and 40 C.F.R. § 22.13(b).
5. Pursuant to FIFRA and the Consolidated Rules of Practice at 40 C.F.R. Part 22, based on the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$ 300 (three hundred dollars). Respondent consents to the issuance of this Agreement and consents to the payment of such penalty.
6. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraph 2 above; (b) admits that EPA has jurisdiction over Respondent and Respondent’s conduct alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of the penalty in Paragraph 5 above; and, (e) waives any right to contest the allegations contained herein and its right to appeal the proposed Final Order herein.
7. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the alleged violations.
8. Respondent agrees that, within 30 days of the effective date of this Agreement (the effective date meaning the date it is filed with the Regional Hearing Clerk), Respondent shall submit a check, with case name and docket number noted (“In the Matter of George Kirby Jr. Paint Co., Inc. Docket No FIFRA-01-2017-0017”), for the amount specified above, payable to “Treasurer, United States of America,” to: U.S. EPA, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000. Respondent shall also submit a copy of the check to: EPA Regional Hearing Clerk, U.S. EPA - Region 1 (New England), 5 Post Office Square, Suite 100 (Mail Code ORA 18-1), Boston, MA 02109-3912 and to Marianne Milette, FIFRA Enforcement Officer, U.S. EPA - Region 1 (New England), 5 Post Office Square, Suite 100 (OES05-4), Boston, MA 02109-3912.

9. Upon the effective date of this Agreement, payment of the civil penalty shall resolve only Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

10. 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. Each party shall bear its own costs and fees, if any. Respondent specifically waives any right to recover costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504.

11. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

12. 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. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, 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).

13. 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.

APPROVED BY GEORGE KIRBY JR. PAINT CO., INC.:

Signature: Shari Kirby Date: 1/5/2017  
Name and Title (print): Operations mgr. Shari Kirby, Operations Manager

APPROVED BY EPA:

Signature: Joanna B. Jerison Date: 1/17/17  
Joanna B. Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship, U.S. EPA - Region I (New England)

IT IS SO ORDERED:

Signature: LeAnn W. Jensen Date: 1/17/17  
LeAnn W. Jensen, Acting Regional Judicial Officer  
U.S. EPA - Region I (New England)

In the matter of George Kirby Jr. Paint Co., Inc., Docket No. FIFRA-01-2017- 0017