

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

In the Matter of:

**AgroChem, Inc.
3 Duplainville Road
Saratoga Springs, NY 12866,**

and

**ChemGro Fertilizer Co., Inc.
1550 State Street
East Petersburg, PA 17520,**

Respondents.

EPA Docket No. FIFRA-03-2015-0260

CONSENT AGREEMENT

**Proceeding Under Section 14 of the
Federal Insecticide, Fungicide and
Rodenticide Act, as amended, 7 U.S.C.
§ 136l**

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CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”), and by AgroChem, Inc. (“AgroChem”) and ChemGro Fertilizer Co., Inc. (“ChemGro”) (together “Respondents”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a), and 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 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondents’ alleged failure to comply with certain requirements of FIFRA, as amended, 7 U.S.C. §§ 136 *et seq.*, and the Pesticide Programs Regulations promulgated at 40 C.F.R. Subchapter E.
2. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, above, the Respondents neither admit nor deny the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondents hereby expressly waive any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondents consent to the issuance of this CAFO and agree to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), authorizes EPA to prescribe regulations to carry out the provisions of FIFRA.
12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
13. Respondent AgroChem is a corporation, with a principal place of business located at 3 Duplainville Road in Saratoga Springs, New York.
14. Respondent ChemGro is a corporation, with a principal place of business located at 1550 State Street in East Petersburg, Pennsylvania.

15. Respondents are “persons” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
16. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to “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.
17. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” means, in part, any insect rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism.
18. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” means, in part any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
19. Pursuant to 40 C.F.R. § 152.132, a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.
20. On or about January 10, 2014, Respondents entered into a Supplemental Distribution Agreement whereby ChemGro would sell or distribute AgroChem’s pesticide “Hay Fresh” (EPA Reg. No. 82808-2) under the name “Bale-Guard.”
21. Hay Fresh (EPA Reg. No. 82808-2) contains the active ingredient propionic acid, which was determined in EPA’s 1991 Reregistration Eligibility Decision to be Toxicity Category I for acute eye and dermal irritation effects.
22. On 29 separate occasions between February 13, 2014 and July 21, 2014, ChemGro sold the pesticide Bale-Guard.
23. On July 21, 2014, EPA conducted a For Cause FIFRA marketplace inspection at ChemGro’s retail store, located at 1550 State Road in East Petersburg, Pennsylvania.

V. VIOLATIONS ALLEGED

Counts 1 – 29

24. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
25. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

26. FIFRA § 2(q), 7 U.S.C. § 136a(q) provides that a pesticide is misbranded, in part, if:

the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health and the environment; or

the label does not contain a warning or caution statement which may be necessary and if complied with . . . is adequate to protect health and the environment.

Directions for Use

27. Pursuant to 40 C.F.R. § 156.10(a)(1)(viii), every pesticide product must bear a label containing the directions for use as prescribed in 40 C.F.R. § 156.10(i).
28. 40 C.F.R. § 156.10(i)(2) states that directions for use must include, among other things: the site(s) of application; the method of application; worker protection statements meeting the requirements of 40 C.F.R. Part 156, Subpart K; and the specific directions concerning the storage, residue removal, and disposal of the pesticide and its container.
29. 40 C.F.R. Part 156, Subpart K states at 40 C.F.R. § 156.206(e) that the label must contain a warning statement in Spanish where a pesticide is classified as toxicity Category I or toxicity Category II according to the criteria in 40 C.F.R. § 156.62.
30. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014 contained unapproved use sites, in violation of 40 C.F.R. § 156.10(i)(2).
31. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014 did not have complete application directions, in violation of 40 C.F.R. § 156.10(i)(2).
32. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014, did not have the warning statement in Spanish as required by 40 C.F.R. § 156.206(e), in violation of 40 C.F.R. § 156.10(i)(2).
33. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014 did not have all required pesticide storage, residue removal, and disposal instructions, in violation of 40 C.F.R. § 156.10(i)(2).

Warning or Precaution Statements

34. Pursuant to 40 C.F.R. § 156.10(a)(1)(vii), every pesticide product shall bear a label containing hazard and precautionary statements as prescribed in 40 C.F.R. Part 156, Subpart D for human and domestic animal hazards and Subpart E for environmental hazards.

35. 40 C.F.R. § 156.68(a) states that each product must bear a first aid statement if the product has systemic effects in Category I, II, or III, or skin or eye irritation effects in Category I or II.
36. 40 C.F.R. § 156.70(b) states that when data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure, and the precautions to be taken to avoid accident, injury, or toxic effect or to mitigate the effect.
37. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014 did not have all first aid statements required by 40 C.F.R. § 156.68, in violation of 40 C.F.R. § 156.10(a)(1)(vii).
38. The label affixed to the containers of the pesticide Bale-Guard sold by ChemGro between February 13, 2014 and July 21, 2014 did not have all hazard and precautionary statements required by 40 C.F.R. § 156.70(b), in violation of 40 C.F.R. § 156.10(a)(1)(vii).
39. Each of the 29 sales of the pesticide Bale-Guard, with a label that violates 40 C.F.R. § 156.10, is a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
40. Each of the 29 sales of the pesticide Bale-Guard, with a label that violates Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondents to a separate penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

VI. CIVIL PENALTY

41. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty of forty one thousand seven hundred dollars (\$41,700.00), which Respondents agree to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondents of a true and correct copy of the fully executed and filed CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not recover interest where the debt is paid within thirty (30) days of the effective date of this CAFO.
42. The Parties represent that the settlement terms are reasonable and are 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 Respondents' businesses, the effect of the penalty on Respondents' ability to continue in business, the gravity of the violation, and the Respondents' good faith efforts. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy*, as revised December 2009, and 40 C.F.R. Part 19.

43. Payment of the civil penalty amount shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, *i.e.*, **FIFRA-03-2015-0260**;
- b. All checks shall be made payable to **"United States Treasury"**;
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen (513) 487-2091
Secondary Contact: Molly Williams (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1818

- e. All payments 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

44. Respondents may also pay the amount described in Paragraph 41, above, electronically or on-line as follows:

a. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Remittance Express (REX): 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

d. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

A copy of Respondents' check or a copy of Respondents' electronic transfer shall be sent simultaneously to:

Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

45. 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 a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
46. The costs of the EPA'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.
47. A late penalty payment of six percent (6%) 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).
48. The Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

49. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under FIFRA for the specific violations alleged in Section V ("Violations Alleged"), above. 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.

VIII. OTHER APPLICABLE LAWS

50. Nothing in this CAFO shall relieve Respondents of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

51. Respondents certify to EPA, upon personal investigation and to the best of their knowledge and belief that they currently are complying with applicable provisions of FIFRA, 7 U.S.C. § 136 *et seq.*

X. RESERVATION OF RIGHTS

52. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondents in Section V, above. EPA reserves the right to commence action against any person, including Respondents, in response to any condition that 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under FIFRA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

53. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondents, and the Respondents' successors, agents and assigns.

XII. EFFECTIVE DATE

54. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

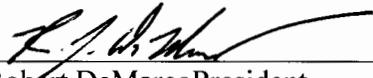
55. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

56. The persons signing this Consent Agreement on behalf of the Respondents acknowledge and certify by their signature that they are fully authorized to enter into this Consent Agreement and to legally bind Respondents to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondents:

Date: 9/24/2015

By: 
Robert DeMarco President
AgroChem, Inc.



Date: 9/18/15

By: Carl E Funk
Carl E. Funk, President
ChemGro Fertilizer Co., Inc.

For Complainant:

Date: 9/21/2015

By: Jennifer J. Nearhood
Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator, or his designee the Regional Judicial Officer, issue the Final Order attached hereto.

Date: 9.24.15

By: John A. Armstead
John A. Armstead
Director, Land and Chemicals Division
U.S. EPA, Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

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CONSENT AGREEMENT

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§ 136l

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FINAL ORDER

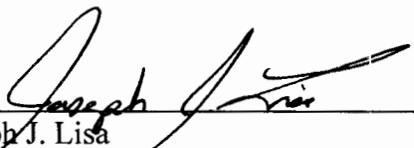
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondents, AgroChem, Inc. and ChemGro Fertilizer Co., Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated 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 22.13(b) and 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 set forth at length.

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 *FIFRA Enforcement Response Policy*, as revised December 2009, 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 ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of forty one thousand seven hundred dollars (\$41,700.00), 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.

Date: Sept. 29, 2015



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

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

AgroChem, Inc.
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EPA Docket No. FIFRA-03-2015-0269

CONSENT AGREEMENT

Proceeding Under Section 14 of the
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Rodenticide Act, as amended, 7 U.S.C.
§ 136f

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

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

Copy by UPS Overnight:

Joseph Kakesh
Wiley Rein LLP
1776 K St. NW
Washington, DC 20006

9/29/2015
Date

Jennifer J. Nearhood
Jennifer J. Nearhood (3RC50)
Assistant Regional Counsel
U.S. EPA, Region III

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