

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of: ) DOCKET NO: FIFRA-03-2015-0248  
)  
FMC Corporation, )  
)  
Respondent )

**COMPLAINANT’S REPLY TO RESPONDENT FMC CORPORATION’S OPPOSITION TO  
COMPLAINANT’S MOTION *IN LIMINAE***

Complainant’s motion *in liminae* sets forth the applicable standards, Environmental Appeals Board (“EAB”) and other legal precedent, and arguments why Respondent’s exhibit Rx068 (“Rx068”) and related testimony attempting to draw in the “penalty calculations, legal arguments, or holdings from previous cases” are inadmissible for any purpose, and therefore should be excluded. Respondent asserts that because Rx068 and the expert opinion testimony of Debra F. Edwards, Former Director, EPA Office of Pesticide Programs, about the alleged violations in this matter “in context with EPA’s history of FIFRA enforcement” (“related contextual testimony”) are being offered “solely to provide context for the Complainant’s proposed penalty,” their introduction does not “run afoul of the EAB’s common-sense admonition ‘that the resolution of one case cannot determine the fate of another.’ ” Respondent’s Opposition at 4-6. This assertion is paradoxical both facially and in consideration of the EAB’s three stated principles for rejecting case comparisons.

Though seemingly acknowledging as “common-sense” the notion that resolutions of prior cases cannot determine the outcome of others, Respondent’s *very purpose* for introducing Rx068 and related contextual testimony is to influence the Tribunal’s penalty determination in this matter. Additionally, the EAB’s first principle for rejecting case comparisons is that no “meaningful conclusions” of “proportionality,” “uniformity” or “fairness” can be “reasonably drawn” from comparing penalties involving “violators of *the same* statutory or regulatory provision . . . in the abstract simply as dollar figures without any (or even with bits and pieces) of the unique record information (emphasis added).” *In re Chem Lab Products*, 10 E.A.D. 711, 728 (EAB 2002). It is therefore illogical for Respondent to suggest that meaningful conclusions about the proportionality, uniformity or fairness of Complainant’s proposed penalty can be drawn from the ‘bits and pieces’ of respective record information in Rx068 and related contextual testimony, where the cases being compared largely involve violators of *vastly different* statutory and regulatory provisions<sup>1</sup>. See Respondent’s Opposition at 6-7.

---

<sup>1</sup> Complainant notes that the “Liphatech, Inc.” case in the twelfth entry of Rx068 is the only case that involves violations of Section 12(a)(2)(L) of FIFRA, the type of ‘advertising’ violations at issue in this matter. Though some of the other cases in Rx068 appear to involve misbranding violations, it is not clear - based on the characterizations

Respondent's assertion that the introduction of Rx068 and related contextual testimony will not offend the principles of judicial economy is not based in reality. As an initial matter, Complainant notes that Rx068 does not include case names, docket numbers or other case identifiers - only company names and dates, and that simply locating the underlying enforcement documents for the twelve cases is not straightforward task. Respondent's stated purpose in introducing Rx068 is to *inter alia* "summarize[] the twelve largest civil and criminal FIFRA enforcement cases and settlements" and "demonstrate[] how drastically different this case is from those cases." Respondent's Opposition at 7-8. If admitted, both the accuracy and sufficiency of the characterizations under the "Type of Allegations" column of Rx068<sup>2</sup> as well as the underlying factual differences between the case at bar and each of the twelve cases included in Rx068<sup>3</sup> will inevitably become subject to considerable debate. This is precisely the "sea of minutiae" the EAB warned against as its second principle for rejecting case comparisons. *Chem Lab Products* at 729.

Respondent further argues that the case at bar compels the introduction of Rx068 and related contextual testimony notwithstanding the EAB's third principle that "unequal treatment is not available as a basis for challenging agency law enforcement proceedings." Respondent's Opposition at 8-10; *In re Spang & Co.*, 6 E.A.D. 226, 242 (EAB 1995) (citation omitted). Specifically, Respondent asserts that 'fairness and equity' require the Tribunal to consider its overall ranking in the context of previous cases in order to determine an appropriate penalty in this matter. Respondent's Opposition at 8-10. The EAB has made clear, however, that the proper focus of the Tribunal is to ensure that "penalty is appropriate in relation to the facts and circumstances of the case at hand." *In re FRM Chem, Inc.*, 12 E.A.D. 739, 750 (EAB 2006). Consequently, Respondent's arguments as to the appropriateness of Complainant's proposed penalty, including those that it is not "fair and equitable" under the FIFRA ERP, ought to be confined to the facts and circumstances of the case at bar. Moreover, "[t]he phrase 'probative value' denotes the tendency of a piece of information to prove a fact that is of consequence in the case." *Chautauqua Hardware Corp.*, 3 E.A.D. 616, 622 (E.P.A 1991) (Order on Interlocutory

---

under the "Type of Allegations" column alone - that the same statutory misbranding provisions under Section 2(q) of FIFRA (i.e., the same type of "advertising") are implicated.

<sup>2</sup> Complainant notes that the accuracy and sufficiency of Respondent's characterizations under the "Type of allegation" column are not easily verified given that Rx068 provides no source citations for the information included. For example, the "DuPont" case in the sixth entry of RX068 describes a settlement of \$1.853 million for *inter alia* selling or distributing a misbranded pesticide product "resulting in death of many large old growth trees." As the Consent Agreement and Final Order itself does not include such a description (*see* Attachment 1), the basis for the characterization is unclear and issues of reliability are called into question. For this reason and others, Complainant takes issue with Respondent's assertion that Rx068 represents facts "that [are] not subject to reasonable dispute" or "that can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned" such that judicial notice could be taken under the standard set forth in Fed. R. Evid. 201(b)(2).

<sup>3</sup> These differences include not only general facts such as whether the matter was disposed of via a settlement versus litigation, the applicable statutory maximum penalty amount at the time of the disposition, the version of the FIFRA Enforcement Response Policy that was in place at the time of the disposition, whether the disposition involved a self-disclosure, or whether the case was disposed of civilly or criminally; but also more detailed case-specific facts such as the violator's size of the business, the number of violations, the toxicity of the pesticide, the potential harm to human health or the environment, and the violator's culpability and compliance history.

Review). As neither the information in RX068 nor the related contextual testimony tend to prove a fact that is of consequence in this case, such information has no probative value. Despite the nefarious motives attributed to Complainant to “hide the fact, “suppress” and “obscure,” Complainant’s objective in filing its motion *in liminae* is to ensure that the Tribunal’s determination of an appropriate penalty be based on the facts in the record for the case at bar without undue influence by, or wasting judicial resources presenting evidence of, information that has consistently been found to irrelevant, without probative value and inadmissible. See Respondent’s Opposition at 1,2, and 6.

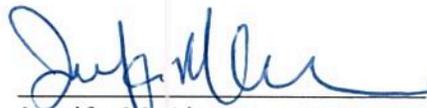
Complainant submits that the facts and arguments set forth in the motion, response and reply documents filed on this issue are sufficient for the Presiding Officer to rule and that holding oral argument would be an inefficient use of judicial resources. For these reasons, Complainant requests that Respondent’s request for oral argument be denied. Notwithstanding, if the Presiding Officer determines that oral argument would be of assistance in ruling on Complainant’s motion *in liminae*, Complainant will make itself available to participate at a location and via a format to be determined.

WHEREFORE, for the foregoing reasons, Complainant has met its burden of showing that Rx068 as well as any related testimony that attempts either to draw in the penalty calculations, legal arguments, or holdings from previous cases; or to opine on the context of Complainant’s proposed penalty in this matter with previous cases would be irrelevant, immaterial, and of little or no probative value to the Presiding Judge for any purpose related to her adjudication of this matter, and respectfully requests that this Court issue an Order granting Complainant’s motion *in liminae*.

Respectfully submitted,

**APR 27 2017**

\_\_\_\_\_  
Date



Jennifer M. Abramson  
Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street (3RC50)  
Philadelphia PA 19103-2029

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

IN THE MATTER OF )

E. I. du Pont de Nemours and Company )  
1007 Market Street )  
Wilmington, DE 19898 )

Respondent )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2014-0217

CONSENT AGREEMENT

REGIONAL HEARING OFFICE  
EPA REGION III, PHILA.

2014 SEP 15 AM 10:44

RECEIVED

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and E. I. du Pont de Nemours and Company (“Respondent”), 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.

Pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), this Consent Agreement and the attached Final Order (collectively, “CAFO,”) resolve Complainant’s claims for civil penalties against Respondent for the violations of FIFRA alleged herein.

General Provisions

1. Complainant and Respondent 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. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1 herein, Respondent neither admits nor denies the specific factual allegations set forth in this CAFO. Nothing in this CAFO shall be construed as an admission of liability on the part of Respondent nor shall this CAFO be used as evidence in any other proceeding, except any proceeding to which the U.S. Environmental Protection Agency (“EPA”) is a party, including any proceeding to enforce this CAFO.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, and the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives 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.
5. Without adjudication of any issue of fact or law herein except to the extent provided in paragraph 1 above, Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

#### EPA's Allegations

8. In accordance with Section 22.18(b)(2) of the *Consolidated Rules of Practice*, Complainant alleges the following findings of fact and conclusions of law:
9. Respondent is, and was at all times relevant to the violations alleged herein, a Delaware corporation with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19898.
10. 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.
11. Respondent is, and was at all times relevant to the violations alleged herein, a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Respondent is, and was at all times relevant to the violations alleged herein, a "registrant" within the meaning of Section 2(y) of FIFRA, 7 U.S.C. § 136(y), and subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for any violation of FIFRA.
13. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest," with exceptions not relevant to this matter.
14. On or about September 29, 2008, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent submitted applications to EPA to register numerous pesticide products that contained the active ingredient "aminocyclopyrachlor." Included among these was the application for "DuPont Imprelis™ Herbicide" ("Imprelis").
15. On August 31, 2010, EPA conditionally registered Imprelis as a selective broadleaf weed herbicide (EPA Reg. No. 352-793).
16. At all times relevant to the violations alleged herein, Respondent's product Imprelis was a "pesticide" within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
17. In late May and June 2011, Respondent and EPA began receiving numerous reports claiming adverse incidents related to the use of Imprelis. On June 15, 2011, Respondent verbally informed EPA of the allegations it had received.

18. By letter dated July 18, 2011, EPA reminded Respondent of its reporting obligations under Section 6(a)(2) of FIFRA, 7 U.S.C. § 136d(a)(2), and required Respondent to report to EPA, *inter alia*, information about adverse incidents, studies and data pertaining to the toxicity of Imprelis' active ingredient aminocyclopyrachlor to plants and any other information that would fall within the scope of 40 C.F.R. § 159.195(a) that was in Respondent's possession and not previously submitted to EPA.

19. In response to EPA's July 18, 2011 letter, identified in paragraph 18 herein and enclosed with letters dated July 28, 2011 and August 31, 2011, Respondent submitted, *inter alia*, the following reports of field trial studies, which had not been previously submitted to EPA:

- a. **Preliminary Results of KJM44 and MAT28 at 15 DAT Paulinia**
- b. **KJM44 Stage C Herbicide Candidate Profile**
- c. **WEN-05-711, All Inclusive Report, DPX-KJM44: Forestry Site Prep Brush Control**
- d. **MWH-07-416, All-Inclusive Report, KJM44: Brush Control — Black Spruce/Balsam Fir**
- e. **WEN-08-005, All-Inclusive Report, Matrix/KJM/MAT: Fruit Marking Studies**
- f. **FMA-08-003, KJM: Crop Tolerance Study CTRC year 1**
- g. **PRO9-21-1511, PRO9-22-1411**
- h. **PRO9-21-1411, DPX-MAT28 Woody Ornamental Tolerance**
- i. **FMA-09-076, MAT28: Citrus Tolerance Study — Madera**
- j. **Response of 14 Ornamental plants to Aminocyclopyrachlor (MAT28) Applied Postemergence and Post-directed at Stine-Haskell Farm**
- k. **SOF-08-061, DPX-KJM44: Forestry Site Prep Brush Control — Northampton, NC**
- l. **All-Inclusive Report, Matrix/KJM/MAT: Fruit Marking Studies:**
  - i. **FMA-08-012 —apple,**
  - ii. **FMA-08-014—nectarine,**
  - iii. **FMA-08-015 — peach, and**
  - iv. **FMA-08-016 — plum**
- m. **SOP-05-001, DPX-KJM44: Forestry Site Prep Brush Control**
- n. **PR10-21-1411, Evaluation of DPX-MAT28 Woody Plant Tolerance: Conifers**
- o. **PR10-21-1913, PR10-22-1513, Imprelis Ornamental Tolerance — Hydrangea-Long Term**
- p. **WEN-10-12, MAT28: Fertilizer Impregnation Forestry**
- q. **WEN-10-11, MAT28: Fertilizer Impregnation Forestry**
- r. **Aminocyclopyrachlor — Tree and Shrub — Soil Application- Summary Table**

20. On August 11, 2011, EPA, Region III issued a Stop Sale, Use, or Removal Order to Respondent regarding Imprelis, under the authority of Section 13(a) of FIFRA, 7 U.S.C. § 136k(a).

21. On September 8, 2011, the registration of Imprelis was amended, with the consent of Respondent, to impose additional terms and conditions, including a prohibition on the sale, distribution or marketing of Imprelis by Respondent absent further action by EPA.

### Count I

22. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

23. Pursuant to Section 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(ii), it is unlawful for any person to refuse to submit any reports required by or under, *inter alia*, Section 6 of FIFRA, 7 U.S.C. § 136d.

24. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file reports required by FIFRA.

25. Pursuant to Section 6(a)(2) of FIFRA, 7 U.S.C. § 136d(a)(2), “[i]f at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator.”

26. Pursuant to 40 C.F.R. § 152.50(f)(3), “[a]n applicant shall furnish with his application for registration any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA sec. 6(a)(2) if the product were registered.”

27. EPA’s “Reporting Requirements for Risk/Benefit Information” set forth at 40 C.F.R. Part 159, Subpart D, provide that “[c]ompliance with this part will satisfy a registrant’s obligations to submit additional information pursuant to section 6(a)(2) [of FIFRA] and will satisfy an applicant’s obligation to submit additional information pursuant to § 152.50(f)(3) of this chapter.” 40 C.F.R. § 159.152(c).

28. EPA’s regulations provide further that a registrant is required to report to EPA “adverse effects” information that includes: toxicological and ecological studies; discontinued studies; human epidemiological and exposure studies; information on pesticides in or on food, feed or water; metabolites, degradates, contaminants, and impurities; toxic or adverse effect incident reports; and failure of performance information, as described in 40 C.F.R. § 159.165 through 159.188.

29. Pursuant to 40 C.F.R. § 159.195(a), a registrant is required to report to EPA information other than that described in 40 C.F.R. §§ 159.165 through 159.188 “if the registrant knows, or reasonably should know, that if the information should prove to be correct, EPA might regard the information alone or in conjunction with other information about the pesticide as raising concerns about the continued registration of a product or about the appropriate terms and conditions of the registration of a product.”

30. Pursuant to 40 C.F.R. § 159.155, the information described in 40 C.F.R. §159.195 must be received by EPA not later than the 30<sup>th</sup> calendar day after the registrant first possesses or knows of the information.

31. Prior to June 28, 2011, Respondent possessed or knew of each of the reports described in paragraph 19 herein and knew, or reasonably should have known, that if the information in those reports should prove to be correct, EPA might regard such information alone or in conjunction with other information about Imprelis, including the claims of adverse incidents referenced in paragraph 17 herein, as raising concerns about the continued registration of Imprelis or about the appropriate terms and conditions of the registration of Imprelis.

32. Respondent failed to timely submit the eighteen (18) reports described in paragraph 19 herein to EPA as required by 40 C.F.R. Part 159, Subpart D.

33. Respondent's acts or omissions described in paragraph 32 herein constitute eighteen (18) separate unlawful acts under Sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B)(ii) and 136j(a)(2)(N), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### **Count II**

34. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

35. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is, *inter alia*, misbranded.

36. 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.

37. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is "misbranded" if the labeling accompanying the pesticide "does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements under section [3(d) of FIFRA], are adequate to protect health and the environment."

38. Pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is "misbranded" if its "label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section [3(d) of FIFRA], is adequate to protect health and the environment."

39. The August 31, 2010, approved label for Imprelis bears the following language:

Product Information

This product can affect susceptible broadleaf plants directly through application to the foliage, stems and trunks as well as indirectly by root uptake from treated soils. Do not apply this product directly to, or allow spray drift to come in contact with, ornamental groundcovers, foliage plants, flowers, trees, shrubs, nearby crop plants or other desirable plants; or to the soil where potentially sensitive plants will be planted during the same season. Do not exceed specified application rates for any area and particular care must be taken within the dripline of trees and shrubs or other ornamental plants.

\* \* \*

Application for Lawns, Golf Courses and Other Turfgrass Areas

On cool season turfgrasses . . .when applications will not be made within 5 feet of ornamental groundcovers, foliage plants, flowers, trees, shrubs or other desirable plants, IMPRELIS™ herbicide may be applied at 6 fluid ounces of product per acre.”

\* \* \*

Restrictions

Do not apply this product to exposed roots of trees and shrubs ... Do not exceed specified application rates for any area and particular care must be taken within the dripline of trees and shrubs or other ornamental plants.

40. The August 31, 2010, Imprelis label did not contain directions for use and/or warning or caution statements which were adequate to protect non-target terrestrial plants when used in accordance with the approved label.
41. On September 22, 2011, EPA, Region III, issued a request for information to Respondent, pursuant to Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), seeking, *inter alia*, records of Respondent’s distributions and/or sales of Imprelis.
42. On November 8, 2011, Respondent submitted its response to the information request, including records of distributions and/or sales of Imprelis.
43. Respondent’s records identified in paragraph 42 herein indicate that from October 2010 through June 2011, Respondent distributed and/or sold the pesticide product Imprelis bearing the label described in paragraph 39 herein on 320 separate occasions to various “persons” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
44. Respondent’s pesticide product Imprelis was “misbranded” within the meaning of Sections 2(q)(1)(F) and 2(q)(1)(G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and 136(q)(1)(G), at the time of each distribution and/or sale identified in paragraph 43 herein.
45. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and/or selling the misbranded pesticide product Imprelis to other persons on 320 separate occasions from October 2010 through June 2011.
46. Respondent’s acts or omissions as described in paragraph 45 herein constitute 320 separate unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

47. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of one million eight hundred fifty-three thousand dollars (\$1,853,000) which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

48. The aforesaid settlement amount is 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 Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy* and 40 C.F.R. Part 19.

49. Payment of the civil penalty amount required under the terms of paragraph 47 herein shall be made as follows:

- a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO, 63197-9000.  
Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

- b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

- c. All payment 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

- d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045

(Field tag 4200 of Fedwire message should read “D 68010727  
Environmental Protection Agency”)

- e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 – checking

Contact: John Schmid  
202-874-7026

- f. Online payments can be made at [WWW.PAY.GOV](http://WWW.PAY.GOV) by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

- g. Additional payment guidance is available at:

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

All payments shall also reference the above case caption and docket number (Docket No. FIFRA-03-2014-0217). At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

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

Janet E. Sharke (3RC50)  
Senior Asst. Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

50. 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 also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully-executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30)

calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency'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.

A penalty charge of six percent 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).

#### Certification

51. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

#### Other Applicable Laws

52. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

#### Reservation of Rights

53. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which 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*. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

#### Full and Final Satisfaction

54. This settlement shall constitute full and final satisfaction of all claims for civil penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), for the specific violations alleged in this CAFO. 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.

#### Parties Bound

55. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

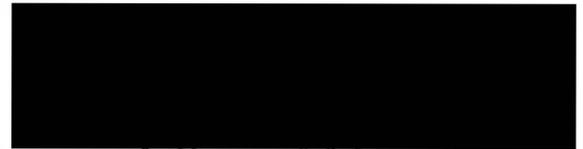
56. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

57. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

For Respondent:

08/28/2014  
Date



Jean Pougner  
Strategic Planning and Business  
Development Director  
E. I. du Pont de Nemours and Company

For Complainant:

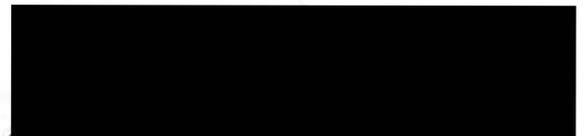
9/8/2014  
Date



Janet E. Sharke  
Jennifer M. Abramson  
Counsel for Complainant  
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/11/2014  
Date



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

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

**IN THE MATTER OF** )

E. I. du Pont de Nemours and Company )  
1007 Market Street )  
Wilmington, DE 19898 )

Respondent )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2014-0217

FINAL ORDER

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”), and E. I. du Pont de Nemours and Company (“Respondent”) 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*, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

**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 based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of one million eight hundred fifty-three thousand dollars (\$1,853,000), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 9-15-14

  
Heather Gray  
Regional Judicial Officer  
U.S. EPA, Region III

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I hand-delivered the original and one copy of the Consent Agreement and Final Order, Docket No. FIFRA-03-2014-0217, to:

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

I further certify that on the same date, I sent via email and via certified mail – return receipt requested, a true and correct copy of the aforesaid Consent Agreement and Final Order to:

Karl Sherman, Esq.  
Corporate Counsel, DuPont Legal  
E. I. du Pont de Nemours and Company  
974 Centre Road  
CRP721/2118  
Wilmington, DE 19805

Warren U. Lehrenbaum, Esq.  
Crowell & Moring  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004-2595

9/15/2014  
Date



Janet E. Sharke  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
Office of Regional Counsel (3RC50)  
1650 Arch Street  
Philadelphia, PA 19103-2029

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of: ) Docket No.: FIFRA-03-2015-0248  
 )  
FMC Corporation, )  
 )  
Respondent. )

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, copies of COMPLAINANT'S REPLY TO RESPONDENT FMC CORPORATION'S OPPOSITION TO COMPLAINANT'S MOTION IN LIMINAE were served upon the persons listed in the manner indicated.

**Original and one copy of Complainant's Reply to Respondent FMC Corporation's Opposition to Complainant's Motion in Liminae via the OALJ E-filing System**

Sybil Anderson, Headquarters Hearing Clerk

**One copy of Complainant's Reply to Respondent FMC Corporation's Opposition to Complainant's Motion in Liminae via the OALJ E-filing System**

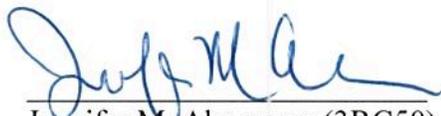
Christine Coughlin, Administrative Law Judge

**One copy of Complainant's Reply to Respondent FMC Corporation's Opposition to Complainant's Motion in Liminae via UPS Next Day Air**

Kathryn E. Szmuszkovicz  
Daniel B. Schulson  
Beveridge & Diamond PC  
1350 I Street, N.W., Suite 700  
Washington, DC 20005-3311

**APR 27 2017**

\_\_\_\_\_  
Date



Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III