



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**AUG 16 2012**

CERTIFIED MAIL  
RETURNED RECEIPT REQUESTED

Mr. Jeffrey Kyle  
President  
K-Chemicals, Inc.  
301 Industrial Drive  
Bean Station, Tennessee 37708

Re: Docket No. FIFRA-04-2012-3129(b); K-Chemicals, Inc.

Dear Mr. Kyle:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section IV of the CAFO, the assessed penalty of \$1100 is to be paid within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at (513) 487-2125 or by written correspondence to his attention at the U.S. Environmental Protection Agency's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Mary Summers at (404) 562-8997.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2012 AUG 16 AM 8:44  
HEARING CLERK

IN THE MATTER OF: )  
 )  
K-Chemicals, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: FIFRA-04-2012-31290

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is K-Chemicals, Inc.

**II. Preliminary Statements**

2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and

Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Mary Summers  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8997.

5. Respondent is K-Chemicals, Inc., a Tennessee corporation, located at 301 Industrial Drive, Bean Station, Tennessee 37708.
6. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 C.F.R. § 167.3.

8. Respondent's establishment located at 301 Industrial Drive, Bean Station, Tennessee 37708, is registered with EPA as a pesticide-producing establishment.
9. Respondent's EPA Establishment Number is 65934-TN-001.

### **III. EPA's Statement of Facts and Allegations of Violation**

10. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136(e)(c)(1), and the regulations promulgated at 40 C.F.R. § 167.85, producers operating an establishment registered with EPA are required to submit to the Administrator of EPA an annual report which indicates the types and amounts of pesticides or active ingredients which they are currently producing, which they produced during the past year, and which they sold or distributed during the past year.
11. Submittal of the annual reports of pesticide-production for calendar years 2010 and 2011 were due on or before March 1, 2011, and March 1, 2012, respectively.
12. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA. Because Respondent failed to submit the annual reports for calendar years 2010 and 2011 on or before March 1, 2011, and March 1, 2012, respectively, as required by Section 7 of FIFRA, Respondent violated Section 12(a)(2)(L) of FIFRA.
13. On June 13, 2012, Respondent filed its Annual Production reports for calendar years 2010 and 2011.

14. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty for violations of sections 7 and 12 of FIFRA.
15. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation. EPA proposes to assess a total civil penalty of (\$1100) against the Respondent for the above-described violation(s). Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above, and neither admits nor denies the factual allegations set forth above.
17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
20. Respondent agrees to submit to EPA all future annual pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. § 136(e), on or before the March 1<sup>st</sup> due

21. date. Respondent shall send the reports by means of certified mail, return receipt requested, to the following address:

U.S. EPA – Region 4  
Atlanta Federal Center  
Chemical Products & Asbestos Section  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

22. Compliance with this CAFO shall resolve the allegation of the violation contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

#### V. Final Order

23. Respondent shall pay a civil penalty of **ELEVEN HUNDRED DOLLARS DOLLARS (\$1100)** for the violations alleged in Section III of this CAFO. Payment shall be made within 30 days from the effective date of this CAFO.
24. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**The check shall reference on its face the name of the  
Respondent and Docket Number of this CAFO.**

25. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Mary Summers  
Chemical Product and Asbestos Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

26. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

27. 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 from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
28. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
29. This CAFO shall be binding upon the Respondent, its successors and assigns.
30. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

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**VI. Effective Date**

31. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent:** K-Chemicals, Inc.  
**Docket No:** FIFRA-04-2012-3129(b)

By: *Jeffrey Kyle* Date: 7-24-12  
Name: *Jeffrey Kyle*  
Title: President

**Complainant:** U.S. Environmental Protection Agency

By: *Douglas Neely Jr* Date: 8/6/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 15 of August, 2012.

*Susan B. Schub*  
Susan B. Schub  
Regional Judicial Officer


**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of K-Chemicals, Inc., FIFRA-04-2012-3129(b), to the addressees listed below

Mr. Jeffrey Kyle (via Certified Mail, Return Receipt Requested)  
President  
K-Chemicals, Inc.  
301 Industrial Drive  
Bean Station, Tennessee 37708

Mary Summers (via EPA's internal mail)  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan , Senior Attorney (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

By:   
Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511

Date: 8-16-12