



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

July 20, 2022

VIA EMAIL ONLY

Mr. Dave Warner
Vice President
Jay-Mar Inc.
P.O. Box 429
Plover, Wisconsin 54467

davew@jay-mar.com

Re: Expedited Settlement Agreement and Final Order In the Matter of Jay-Mar Inc.
Docket Number **FIFRA-05-2022-0017**

Mr. Warner:

Enclosed please find a copy of a fully executed Expedited Settlement Agreement and Final Order in resolution of the above case. This document was filed on July 20, 2022 with the Regional Hearing Clerk. ``

The civil penalty in the amount of \$2,000 is to be paid in the manner described in paragraphs 12-13. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

**ANNA
NGUYEN**

Digitally signed by ANNA
NGUYEN
Date: 2022.06.28
10:26:48 -05'00'

Anna Nguyen
Pesticides and Toxics Compliance Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	
)	Docket No. FIFRA-05-2022-0017
Jay-Mar Inc.)	
Plover, Wisconsin)	EXPEDITED SETTLEMENT
)	AGREEMENT AND
Respondent.)	FINAL ORDER
_____)	

EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER

1. The U.S. Environmental Protection Agency alleges that Jay-Mar Inc. (Respondent) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c), for its facility, EPA Establishment Number 55220-WI-1, located at 3000 Walnut Drive, Plover, Wisconsin 54467.

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides: which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year. In addition, § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

3. 40 C.F.R. § 167.85(a) and (b) adds requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

4. 40 C.F.R. § 167.85(c) requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, “EPA Form 3540-16,

Pesticide Report for Pesticide-Producing and Device-Producing Establishments,” requires, among other things: identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the documents “*Instructions for Completing EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year January 1, 2020 through December 31, 2020*” and “*Instructions for Completing EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year January 1, 2021 through December 31, 2021*” provide additional detail regarding information required on the forms.

5. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

6. On December 10, 2020, Respondent submitted an incomplete pesticide-production report for the 2020 calendar year by failing to complete page 1 of the pesticide-production report, failing to list the product code and EPA Production Registration Number.

7. On January 14, 2022, Respondent submitted an incomplete pesticide-production report for the 2021 calendar year by failing to complete page 1 of the pesticide-production report, failing to list the product code and EPA Production Registration Number.

8. Respondent’s two failures to comply with Section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitute two separate violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

9. EPA and Respondent agree to settle this matter for a civil penalty of \$2,000 (two

thousand dollars and zero cents). EPA and Respondent agree that settlement of this matter is in the public interest.

10. EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (Agreement) pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

11. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraphs 2 through 5 above; (b) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

12. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$2,000 (two thousand dollars and zero cents) for the FIFRA violations identified in this Agreement by sending a cashier's or certified check, payable to "Treasurer, United States of America" via either:

- U.S. Mail to:

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

- Or overnight/common carrier (*i.e.*, FedEx, DHL, UPS) to:

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

Alternatively, the penalty payment to "Treasurer, United States of America" may be made via:

- Electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

The check or electronic funds transfer instrument must state the case title (“In the Matter of: Jay-Mar Inc.”), and the docket number of this Agreement.

13. When it pays the penalty, Respondent must send a notice of payment that states Respondent’s name, complete address, and the case docket number (along with a photocopy of the check or a statement of affirmation or receipt of an electronic funds transfer) either via electronic mail to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Anna Nguyen
Pesticides and Toxics Compliance Section (ECP-17J)
U.S. EPA, Region 5
Nguyen.anna@epa.gov

14. Payment of the civil penalty shall resolve only Respondent’s liability for federal civil penalties for the violations and facts alleged herein.

15. The civil penalty is not deductible for federal tax purposes.

16. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States’ enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalties are not reviewable in a collection action.

17. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this

Agreement.

18. Respondent certifies that it is complying with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and its implementing regulations at 40 C.F.R. § 167.85.

19. Upon signing and returning this Agreement to EPA, Respondent waives any and all remedies, claims for relief and other available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Expedited Settlement Agreement, including the opportunity for a hearing or appeal pursuant to FIFRA and 40 C.F.R. Part 22 and any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

20. Each party shall bear its own costs and fees, if any.

21. The Agreement authorized by EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

22. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order.

23. The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: nguyen.anna@epa.gov (for Complainant), and _____ (for Respondent).

Respondent to print its email on blank line above

IT IS SO AGREED,

FOR RESPONDENT:

Name (print): DAVE WARDER

Title (print): VP

Signature: Dave Warder


Date 6/13/22

APPROVED BY EPA:

MICHAEL
HARRIS

Digitally signed by MICHAEL
HARRIS
Date: 2022.06.30 12:54:38
-05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency
Region 5

HAPPY NOW 

Expedited Settlement Agreement and Final Order

In the Matter of: Jay-Mar Inc.

Docket No. FIFRA-05-2022-0017

FINAL ORDER

Pursuant to authority of Section 14(a) of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. § 22.13(b), and according to the terms of this Agreement, IT IS HEREBY ORDERED THAT:

This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Expedited Settlement Agreement and Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED:

ANN COYLE Digitally signed by ANN
COYLE
Date: 2022.07.07
16:51:20 -05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Date

In the Matter of: Jay-Mar Inc.
Docket Number: **FIFRA-05-2022-0017**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Expedited Settlement Agreement**, which was filed on, July 20, 2022 this day in the following manner to the addressees:

Copy by E-mail to
Respondent:

Mr. Dave Warner
Vice President
P.O. Box 429
Plover, Wisconsin 54467
davew@jay-mar.com

Copy by E-mail to
Complainant:

Anna Nguyen
nguyen.anna@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: _____

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5