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**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	
	)	<b>Docket No. FIFRA-07-2014-0002</b>
<b>FMC Corporation</b>	)	
	)	
<b>Respondent</b>	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and FMC Corporation have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## **Section II**

### **Parties**

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is FMC Corporation, a pesticide registrant and distributor with its corporate headquarters located at 1735 Market Street in Philadelphia, Pennsylvania.

## **Section III**

### **Statutory and Regulatory Background**

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), states that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under FIFRA for restricted use without giving the classification of the product assigned to it under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. 40 C.F.R. § 152.168 states in pertinent part, as follows:

- (a) Any product classified for restricted use shall not be advertised unless the advertisement contains a statement of its restricted use classification.
- (b) The requirement in paragraph (a) applies to all advertisements of the product, including, but not limited, to:
  - (1) Brochures, pamphlets, circulars and similar material offered to purchasers at the point of sale or by direct mail.
  - (2) Newspapers, magazines, newsletters and other material in circulation or available to the public.
  - (3) Broadcast media such as radio and television.
  - (4) Telephone advertising.

(5) Billboards and posters.

- (c) The requirement may be satisfied with respect to broadcast or telephone advertising by inclusion in the broadcast of the spoken words “Restricted use pesticide” or a statement of the terms of restriction.

12. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Section IV**

##### **General Factual Allegations and Violations**

13. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

14. Respondent is the registrant for the pesticide Capture LFR Insecticide, EPA Reg. No. 279-3302.

15. The pesticide Capture LFR Insecticide, EPA Reg. No. 279-3302, is classified as a restricted use pesticide.

16. In December 2012, Respondent contracted with five Nebraska radio stations and one radio network to air an advertisement for the pesticide Capture LFR Insecticide, EPA Reg. No. 279-3302, twelve (12) times during each of the weeks of December 3 and 10, for a total of 144 broadcasts.

17. The radio advertisement utilized by Respondent in the broadcasts referenced in the preceding paragraph did not identify the pesticide Capture LFR Insecticide, EPA Reg. No. 279-3302, as a restricted use pesticide.

18. For each of the 144 broadcasts referenced in Paragraph 16 above, Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), by failing to identify the product's classification as a restricted use pesticide in the advertisement of the product.

### **Section V**

#### **Consent Agreement**

19. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

20. Respondent neither admits nor denies the factual allegations or conclusions of law set forth above.

21. Respondent waives its right to contest any allegation forth above and its right to appeal the Final Order accompanying this Consent Agreement.

22. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

23. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

24. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

25. Respondent certifies that by signing this CAFO that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

26. The effect of settlement described in the following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

27. Respondent agrees that in settlement of the claims alleged in this CAFO, it shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

28. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

29. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, the 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day

period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## Section VI

### Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of One Hundred Seventeen Thousand Two Hundred Sixteen Dollars (\$117,216.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street

New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
“D 68010727 Environmental Protection Agency”

If by electronic payment, payment may be submitted on-line at [www.pay.gov](http://www.pay.gov) by entering “SFO 1.1” in the “Search Public Forms” field. Open the on-line form and complete the required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to the contacts listed below

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;

and

Elizabeth Murtagh-Yaw  
Toxics and Pesticides Enforcement Branch, WWPD  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

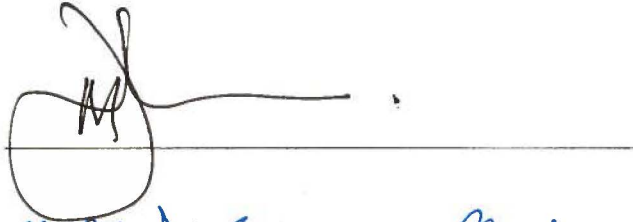
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.



5. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
**FMC CORPORATION**

Date: August 1, 2014 By:

A handwritten signature in blue ink, appearing to read 'MARK DOUGLAS', written over a horizontal line.

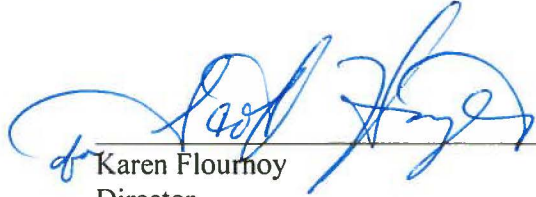
MARK DOUGLAS

Print Name

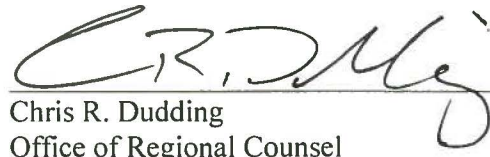
PRESIDENT,  
Title FMC AGRICULTURAL  
SOLUTIONS

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/7/14

  
\_\_\_\_\_  
Karen Flournoy  
Director  
Water, Wetlands and Pesticides Division

Date: 8/7/14

  
\_\_\_\_\_  
Chris R. Dudding  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: 8-11-14

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF FMC Corporation, Respondent  
Docket No. FIFRA-07-2014-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

[dudding.chris@epa.gov](mailto:dudding.chris@epa.gov)

Copy by First Class Mail to:

Steven A. Herman  
Beveridge & Diamond, P.C.  
1350 I Street, NW Suite 700  
Washington, DC 20005

Dated: 8/11/14



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7