

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda L. Santiago for Maximilian Boal  
Name of Case Attorney

10/9/15  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number FIPRA-01-2015-0078

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Nutrico, Inc.  
92 Howard Avenue  
Bridgeport, CT 06605

Total Dollar Amount of Receivable \$ 400 Due Date: 11/8/15

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

RECEIVED

OCT 09 2015

EPA ORC WS  
Office of Regional Hearing Clerk

October 9, 2015

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

BY HAND


Re: *In the Matter of Nutrico, Inc.*  
Docket No. FIFRA-01-2015-0078

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

  
Maximilian Boal  
Enforcement Counsel

Enclosure

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)**

\_\_\_\_\_  
In The Matter Of: )  
 )  
Nutrico, Inc. )  
92 Howard Avenue )  
Bridgeport, CT 06605 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No. FIFRA-01-2015-0078**  
**CONSENT AGREEMENT and**  
**FINAL ORDER**

**INTRODUCTION**

1. The United States Environmental Protection Agency-Region 1 (“EPA”), as Complainant, and Nutrico, Inc. (“Nutrico” or “Respondent”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the “Parties”) 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.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

**RECEIVED**

**OCT 09 2015**

EPA ORC WS  
Office of Regional Hearing Clerk

**PRELIMINARY STATEMENT**

4. Respondent is a corporation organized under the laws of the State of Connecticut with a place of business at 92 Howard Avenue, Bridgeport, Connecticut (the “Establishment”). Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

5. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, in or about 2012, Respondent registered the Establishment as a pesticide-producing establishment. EPA Region 1 assigned the EPA Establishment Number 044561-CT-001 to the Establishment.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.

8. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by EPA’s Civil

Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

9. On or about July 24, 2013, EPA issued a Notice of Warning to Respondent in connection with the failure to file the Facility’s annual report for calendar year 2012 on or before March 1, 2013.

10. On or about July 21, 2015 EPA issued an Opportunity to Show Cause to Respondent in connection with the failure to file the Establishment’s 2014 annual report on or before March 1, 2015. By letter dated August 20, 2015, Respondent informed EPA that its business is closing in 2015.

11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA’s factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.

12. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

13. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and has fully addressed the violations alleged by EPA herein.

**EPA FINDINGS**

14. EPA finds, based on its investigation of facts and circumstances underlying Respondent's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

15. During calendar years 2012 and 2014, the Establishment was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

16. EPA Headquarters mails annual reminder notices to registered pesticide-producing establishments of the FIFRA requirement to submit a production report. These reminders are mailed at least two months in advance of the March 1 reporting deadline. The reminder notices are sent as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so.

17. Respondent failed to submit timely pesticide production reports for the Establishment for the calendar years 2012 and 2014.

18. Respondent's failure to submit timely pesticide production reports for calendar years 2012 and 2014 constitute two violations of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

**TERMS OF SETTLEMENT**

19. Respondent hereby agrees that, within thirty (30) days of the effective date of this CAFO, it will voluntarily cancel the FIFRA establishment registration for the Establishment at 92 Howard Avenue, Bridgeport, CT (previously assigned the pesticide-

producing establishment number 044561-CT-001). Respondent further agrees not to seek re-registration of the Establishment under Section 7 of FIFRA, for a period of at least five (5) years from the effective date of this CAFO.

20. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements" (the "Penalty Policy"), and other factors as justice may require, EPA has determined that it is fair and appropriate to mitigate the entire civil penalty in this case such that Respondent pays no civil penalty in resolving this enforcement action.

21. Notwithstanding the preceding Paragraph 20, in the event that within five (5) years of the effective date of this CAFO, Respondent violates Paragraph 19, above, by re-registering the Establishment as a pesticide-producing establishment under FIFRA, then a stipulated civil penalty of \$400, plus interest, shall immediately become due and owing from Respondent, without demand by EPA, within thirty (30) calendar days of notification of such violation by EPA. Interest on such stipulated penalty shall be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2), and shall accrue from the effective date of this CAFO until the date Respondent pays the stipulated penalty owed, in full, under this paragraph.

22. Respondent shall pay the \$400 civil penalty, plus all accrued interest, within thirty (30) days of the date of the triggering event, as specified in the preceding Paragraph 21, and shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America" in the amount of \$400, plus interest, to:

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

and shall provide copies of the check to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and:

Maximilian Boal, Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1 (Mail Code OES 04-2)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Respondent shall include the case name and docket number (*In the Matter of Nutrico, Inc.*, FIFRA-01-2015-0078) on the face of the check.

23. If Respondent fails to pay the stipulated penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the stipulated penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty



charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

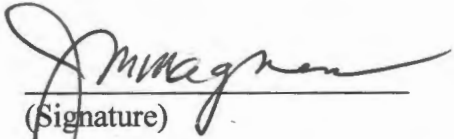
24. The stipulated penalty due and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

25. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violation alleged in this CAFO. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. In the event of a violation of FIFRA reporting requirements triggering payment of a stipulated penalty pursuant to paragraph 21 above, EPA specifically reserves all criminal and civil enforcement authorities related to such violation, including the ability to assess penalties in addition to the stipulated penalty. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

26. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

27. 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.

**For Respondent:**

  
\_\_\_\_\_  
(Signature)

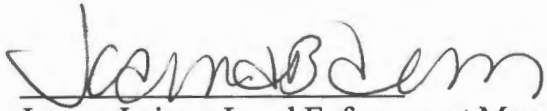
JOHN M. MAGNESS  
\_\_\_\_\_  
(Print Name)

Nutrico, Inc.

PRESIDENT  
\_\_\_\_\_  
Title)

10/1/15  
\_\_\_\_\_  
Date

**For U.S. EPA - Region 1:**



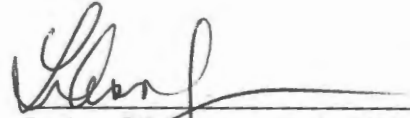
Joanna Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. EPA - Region 1

10/8/15  
Date

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Nutrico is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

10/8/15  
(Date)

  
\_\_\_\_\_  
LeAnn W. Jensen, Acting Regional Judicial Officer  
U.S. EPA - Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

In the Matter of: )  
)

Nutrico, Inc. )  
92 Howard Avenue )  
Bridgeport, CT 06605 )  
)  
)

Respondent. )  
)

Docket No. 1-FIFRA-01-2015-0078

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy,  
Hand Delivered:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100, Mail Code: ORA 18-1  
Boston, MA 02109-3912

Copy, Certified Mail, Return  
Return Receipt Requested:

John M. Magness, President  
Nutrico, Inc.  
92 Howard Avenue  
Bridgeport, CT 06605

Dated: October 9, 2015

Maximilian Boal  
Maximilian Boal  
Enforcement Counsel (OES)  
U.S. Environment Protection Agency, Region 1  
5 Post Office Square, Suite 100, Mail Code: OES04-2  
Boston, MA 02109-3912