

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

<b>IN RE:</b>	)	
	)	
<b>Lebanon Seaboard Corporation</b>	)	<b>DOCKET NO: FIFRA-03-2010-0008</b>
<b>1600 East Cumberland Street</b>	)	
<b>Lebanon, Pennsylvania 17042</b>	)	
	)	
<b>Respondent</b>	)	

**CONSENT AGREEMENT**

**Preliminary Statement**

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Lebanon Seaboard Corporation (“Respondent”) pursuant to Section 12(a)(1)(E) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. §136j(a)(1)(E), Section 14(a) of FIFRA, 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”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This CA and the accompanying Final Order (“FO”; collectively “CAFO”) address the alleged sale or distribution of a “misbranded” pesticide within the meaning of Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

U.S. Environmental Protection Agency  
Region III  
Philadelphia, PA 19103-2029

### **General Provisions**

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. Respondent certifies to EPA by its signature herein that it is presently in compliance with the provisions of FIFRA referenced herein.

### **EPA's Findings of Fact and Conclusions of Law**

9. In accordance with 40 C.F.R. § 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
10. Respondent is a Pennsylvania Corporation, and is and was, at all times relevant hereto, a "person" doing business in the Commonwealth of Pennsylvania within the meaning of 2(s) of FIFRA, 7 U.S.C. § 136(s).

11. Respondent owns and operates a lawn and garden care production and distribution facility at 1600 East Cumberland Street, Lebanon, Pennsylvania (the “Facility”). Respondent manufactures lawn and garden products, including pesticides, at this facility. Respondent sells and/or distributes such pesticides from this facility as part of its wholesale, retail and/or distribution business.
12. Section 2(u) of FIFRA, 7 U.S.C. §136(u), provides that the term “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
13. Pursuant to 40 C.F.R. § 152.3, the term “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
14. 40 C.F.R. § 152.3 provides, in pertinent part, that the term “pesticide product” means “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.”
15. 40 C.F.R. § 152.15 further provides, in pertinent part, that:  

A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

  - (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):
    - (1) That the substance . . . can or should be used as a pesticide; or

\* \* \*

  - (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.
16. Pursuant to 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term to “distribute or sell” means, with exceptions not relevant to these proceedings, “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.”

**COUNT I: SALE/DISTRIBUTION OF A MISBRANDED PESTICIDE  
(Lebanon Proscap Homogenous Fertilizer with Dimension 0.13% )**

17. Paragraphs 1 through 16 of this CA are incorporated by reference.
18. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.
19. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines “person” as any individual, partnership, association, corporation or any other organized group of persons whether incorporated or not.
20. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is “misbranded” if any word, statement or other information required by FIFRA, 7 U.S.C. §§ 136-136y, to appear on the label is not prominently placed there with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary consumer.
21. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is “misbranded” if its label does not bear, *inter alia*, the registration number assigned to the establishment pesticide pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.
22. Pursuant to Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), a pesticide is “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on

- the immediate container or wrapper cannot clearly be read, a label bearing, *inter alia*, the registration number assigned to the pesticide pursuant to FIFRA, 7 U.S.C. §§ 136-136y.
23. Pursuant to 40 C.F.R. § 156.10(a)(1), every pesticide product must bear a label containing the information specified by FIFRA and its implementing regulations. The contents of the label must show clearly and prominently, *inter alia*, the product registration number as prescribed by 40 C.F.R. § 156.10(e) and the pesticide producing establishment number by 40 C.F.R. § 156.10(f).
  24. On or about January 18, 2008, Respondent sold or distributed a product, “Lebanon Proscap Dimension 0.13% Homogenous Fertilizer with Dimension 0.13%” (“Proscap Dimension 0.13%”), to a customer named “Fischer & Son Company” from Respondent’s Facility.
  25. Fischer & Son Company is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
  26. By using the phrase, “Pre & Postmergence Annual Grassy Weed Control” on its label, the Proscap Dimension 0.13% product identified above in Paragraph 24 makes a pesticidal claim.
  27. The Proscap Dimension 0.13% product identified above in Paragraph 24 is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 and a “pesticide product” as defined at 40 C.F.R. § 152.3.
  28. At all times relevant to the violations alleged in this Count, the establishment at which the Proscap Dimension 0.13% product identified above in Paragraph 24 was produced has been assigned EPA Pesticide Producing Establishment Number 961-PA-01 under Section 7 of FIFRA, 7 U.S.C. § 136e.
  29. At all times relevant to the violations alleged in this Count, the Proscap Dimension 0.13%

product identified above in Paragraph 24 has been a registered pesticide under Section 3 of FIFRA, 7 U.S.C. §136a, and has been assigned EPA Product Registration Number 961-360.

30. At the time of the sale or distribution of the Proscap Dimension 0.13% pesticide product identified above in Paragraph 24, labels were superimposed upon the original labels on at least nineteen (19) containers of the Proscap Dimension 0.13% pesticide product subject to such sale or distribution. The new labels covered up the EPA Pesticide Establishment Number and the EPA Product Registration Number on such pesticide products.
31. Respondent's sale or distribution of the Proscap Dimension 0.13% pesticide product identified above in Paragraph 30 at its Facility to Fischer & Son Company on or about January 18, 2008 was a sale or distribution of a misbranded pesticide product as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136(q), to a person and therefore was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which a penalty may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### **CIVIL PENALTY**

32. In settlement of the above-captioned action, Respondent agrees to pay a civil penalty in the amount of Four Thousand and Seven Hundred Dollars (\$4,700.00). This civil penalty is due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO.
33. The above settlement amount was 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) and in accordance with EPA's FIFRA Enforcement Response Policy ("ERP") dated July

2, 1990.

34. Payment of the civil penalty amount required under the terms of Paragraph 32, above, and any interest, administrative fees or late payment penalties, in accordance with paragraphs 35 through 38, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. RCRA-03-2010-0008);
- b. All checks shall be made payable to “**United States Treasury**”;
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Contact: 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Bank  
Government Lockbox 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: 314-418-1028

- e. All payments 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 45268-0000

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”.

- g. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

[www.pay.gov](http://www.pay.gov)

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- j. Payment by Respondent shall reference Respondent’s name and address and the EPA Docket Number (Docket No. RCRA-03-2010-0008). A copy of Respondent’s check or a copy of Respondent’s electronic fund transfer shall be sent simultaneously to:

James Heenehan  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC30)  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III (Mail Code 3RC00)  
1650 Arch Street  
Philadelphia, PA 19103-2029

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and 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 of this CAFO shall result in the assessment of late penalty charges, including interest, penalties, and/or administrative costs of handling delinquent dates.
36. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such 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).

37. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a 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.
38. A late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a 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 a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### **RESERVATION OF RIGHTS**

39. This CAFO resolve only those civil claims for penalties based on the specific violations of FIFRA alleged herein. 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 RCRA, 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 EPA Regional Hearing Clerk.

**OTHER APPLICABLE LAW**

40. Nothing in this CAFO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law, regulation and/or ordinance.

**FULL AND FINAL SATISFACTION**

41. The settlement set forth in this CA shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have for the violations of FIFRA alleged herein.

**PARTIES BOUND**

42. This CAFO shall apply to and be binding upon the parties hereto, their officers, directors, employees, agents, successors, and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into this agreement and to bind Respondent to the terms and conditions of this Consent Agreement and the Final Order.

**EFFECTIVE DATE**

43. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk.

**For the Respondent:**

**Lebanon Seaboard Corporation**

Date 10/16/09

  
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**For the Complainant:**

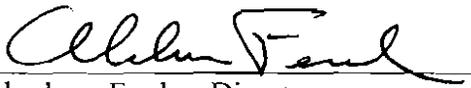
**United States Environmental Protection Agency  
Region III**

Date: 10/20/09

  
James Heenehan  
Senior Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency - Region III, recommends that the Regional Administrator of U.S. EPA Region III or his designee issue the accompanying Final Order.

Date: 11/9/09

  
Abraham Ferdas, Director  
Land and Chemicals Division  
U.S. Environmental Protection Agency, Region III

