



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

APR 23 2019

Mr. Matthew Dellinger  
Cherryville Distributing Company, Inc.  
322 East Main Street  
Cherryville, North Carolina 28021

Re: Cherryville Distributing Company, Inc., EPA Est. No. 12598-NC-1  
Ratified Section 7 Expedited Settlement Agreement and Final Order  
Docket No. FIFRA-04-2019-3014(b)

Dear: Mr. Dellinger:

Enclosed is a copy of the ratified Expedited Settlement Agreement and Final Order (ESA) in the above-referenced matter. The original ESA 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.

Please refer to Paragraph 12 of the ESA for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the ESA, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Patricia Livingston of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-9171.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosure

cc: Patrick Jones, NCDACS

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

2019 APR 23 PM 9:01

<b>IN THE MATTER OF:</b>	)	<b>Docket No.: FIFRA-04-2019-3014(b)</b>
	)	
Cherryville Distributing Company, Inc.	)	<b>EXPEDITED SETTLEMENT</b>
	)	<b>AGREEMENT AND</b>
Respondent	)	<b>FINAL ORDER</b>
_____	)	

**EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER**

**Introduction**

1. This Expedited Settlement Agreement and Final Order “ESA” is entered into between the U.S. Environmental Protection Agency “EPA” and Cherryville Distributing Company, Inc., (“Respondent”) to resolve the EPA’s allegations that Respondent has violated Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c).
2. The EPA is authorized to enter into this ESA proceeding for the assessment of a civil penalty pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136f and 40 C.F.R. § 22.13(b).
3. Respondent is a “person” and a “producer” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136.
4. Respondent is Cherryville Distributing Company, Inc., located at 322 E. Main Street, Cherryville, North Carolina 28021. Respondent’s EPA Establishment Number is 12598-NC-1.

**Alleged Violation**

5. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, any producer of pesticides at a registered pesticide producing establishment must submit to the Administrator of the EPA an annual report which indicates the types and amounts of pesticides or active ingredients which were produced during the past year, which were sold or distributed during the past year, and which are estimated to be produced during the current year.
6. Respondent’s annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments for calendar year 2017 was due on or before March 1, 2018.
7. Respondent failed to submit its annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments for calendar year 2017 by the March 1, 2018, due date. Therefore, Respondent violated Section 7(c)(1) of FIFRA.

8. 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 of pesticides to violate any of the provisions of Section 7 of FIFRA. By failing to submit the annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments as required by the due date, Respondent violated Section 12(a)(2)(L) of FIFRA.

9. Complainant and Respondent desire to settle the allegation of violation 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) and 22.18(b), this ESA will simultaneously commence and conclude this matter. The EPA and Respondent agree that settlement of this matter is in the public interest.

### **Terms of Settlement**

10. Respondent is assessed a civil penalty of EIGHT HUNDRED DOLLARS (\$800) which shall be paid within 15 days from the effective date of this ESA.

11. In signing this ESA, Respondent: (a) admits that Respondent is subject to the requirement(s) in Paragraph 5 above; (b) admits that the 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, and agrees to pay the penalty set forth in paragraph 10 herein within fifteen (15) days after the effective date of this ESA; (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto; and (f) certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent has corrected the alleged violation(s) and has submitted true and accurate documentation of such correction along with this ESA.

12. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the penalty payment by one of the methods below. **The check shall reference on its face the name of the Respondent and Docket Number of this ESA.**

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819.

13. 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 ESA, to the following persons at the following addresses:

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

Patricia Livingston  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960.

14. 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 ESA. Any attempt by Respondent to deduct any such payments shall constitute a violation of this ESA.

15. 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. Interest will therefore begin to accrue on the civil penalty from the effective date of this ESA, 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 principal amount not paid within 90 days of the due date.

16. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

17. This ESA shall be binding upon the Respondent, its successors and assigns. Each undersigned representative of the parties to this ESA certifies that he or she is fully authorized by the party represented to enter into this ESA and hereby legally binds that party to it.

18. Upon the effective date of this ESA, payment of the civil penalty shall resolve only Respondent's liability for Federal civil penalties for the violations and facts alleged herein. The 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 ESA, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

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

20. The ESA authorized by the EPA's execution of the Final Order attached hereto constitute a Final Order under 40 C.F.R. Part 22.

21. Effective Date. This ESA is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing with the Regional Hearing Clerk.

IT IS SO AGREED,

Respondent: Cherryville Distributing Company, Inc.

Docket No.: FIFRA-04-2019-3014(b)

Name (print): Matthew Dellinger

Title (print): President

Signature: Matthew Dellinger

Date 03/26/2019

APPROVED BY EPA:

Carol L. Kemker for

Date 4/12/19

Carol L. Kemker

Acting Director

Air, Pesticides and Toxics Management Division

### FINAL ORDER

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

Respondent shall pay a civil penalty in the amount of EIGHT HUNDRED DOLLARS (\$800) to the EPA within fifteen (15) days after the effective date of this Expedited Settlement Agreement and Final Order. This Expedited Settlement Agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA Region 4. Unless otherwise stated, all time periods herein shall be calculated in calendar days from such date.

IT IS SO ORDERED:

Tanya Floyd

Tanya Floyd

Regional Judicial Officer

Date April 22, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Expedited Settlement Agreement and Final Order and served a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order In the Matter of Cherryville Distributing Company, Inc., Docket Number: FIFRA-04-2019-3014(b), to the addressees listed below:

Mr. Matthew Dellinger (via Certified Mail, Return Receipt Requested)  
President  
Cherryville Distributing Company, Inc.  
322 East Main Street  
Cherryville, North Carolina 28021

Patricia Livingston (via EPA's internal mail)  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

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

Date: 4-23-19



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