

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kan S. Tham 9/22/16  
Name of Case Attorney Date

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

Case Docket Number FIFRA-01-2016-0070

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:

Hydro-Photon, Inc  
PO Box 675  
262 Ellsworth Road  
Blue Hill, ME 04614

Total Dollar Amount of Receivable \$ 1,633 Due Date: 10/22/16

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  
EPA REGION 1 - NEW ENGLAND  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP

**BY HAND**

Wanda I. Santiago, Regional Hearing Clerk  
EPA Region 1 – New England  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

September 22, 2016

RECEIVED

SEP 22 2016

EPA ORC  
Office of Regional Hearing Clerk

Re: In Re: Hydro-Photon, Inc., Docket No. FIFRA-01-2016-0070; Approved  
Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) to initiate and resolving the above-referenced pre-filing enforcement case. Also enclosed are the original and one copy of a Certificate of Service documenting that, on this date, a copy of the CAFO and this cover letter were sent to Brad Rendle, CEO, Hydro-Photon, Inc.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kait S. Tham".

Kait S. Tham, FIFRA Enforcement Coordinator

Enclosure

cc: Brad Rendle., CEO  
Hydro-Photon, Inc.

Henry Jennings, Director  
Maine Dept. of Agriculture, Conservation and Forestry

Hugh W. Martinez, Senior Enforcement Counsel  
EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)**

In the Matter of: )  
)  
)  
Hydro-Photon, Inc. )  
P.O. Box 675 )  
262 Ellsworth Road )  
Blue Hill, Maine 04614, )  
)  
)  
Respondent. )  
)  
\_\_\_\_\_ )

Docket No. FIFRA-01-2016-0070

**CONSENT AGREEMENT  
AND FINAL ORDER**



**INTRODUCTION**

1. Complainant, the United States Environmental Protection Agency (“EPA”), and Hydro-Photon, Inc. (“Respondent” or “HPI”) 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 an alleged violation 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.

## PRELIMINARY STATEMENT

4. Respondent is a business incorporated under the laws of Delaware with its principal place of business located at 262 Ellsworth Road in Blue Hill, ME (the “Blue Hill Establishment”).

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, on or about November 14, 2000, Respondent registered its Blue Hill Establishment as a pesticide- or pesticide device-producing establishment. EPA’s national office in Washington, DC (“EPA Headquarters”) assigned the Office of Pesticide Programs company number 73679. EPA Region 1 assigned the EPA Establishment Number 73679-ME-001 to the Blue Hill Establishment.

6. Pursuant to 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, any producer operating a registered establishment is required to report to EPA the types and amounts of each pesticide or device that the producer is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Pursuant to 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. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after January 12, 2009. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 (“2015 Penalty Inflation Act”), the \$7,500 maximum penalty was raised to \$18,750, effective August 1, 2016. *See* 28 U.S.C. § 2461 note; Pub. L.114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016).

9. On or about August 8, 2014, EPA issued a Notice of Warning (“NOW”) to HPI for failure to file its production report for calendar year 2013 on or before March 1, 2014. After receipt of the NOW, Respondent submitted that production report.

10. On or about August 9, 2016, EPA issued an Opportunity to Show Cause to Respondent for failure to file its production report for calendar year 2015 on or before March 1, 2016.

11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For 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 its right to request a hearing and hereby waives its right to 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 violation 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 producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

15. At all times relevant to this CAFO, including during calendar year 2015, the Blue Hill Establishment was registered with EPA as a producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

16. EPA Headquarters sends annual reminder notices to registered producing establishments, including the Blue Hill Establishment at issue here, of the FIFRA requirement to submit a production report. These reminders are provided at least two months in advance of the March 1 reporting deadline. The reminder notices are issued as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so.

17. Notwithstanding the March 1, 2016 due date, the reminder notices sent from EPA Headquarters, and EPA's issuance of the prior NOW to HPI, Respondent did not submit its annual production report for calendar year 2015 by the March 1, 2016 deadline.

18. Respondent's failure to submit the required information to EPA for calendar year 2015 on or before the March 1, 2016 deadline constitutes a violation 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 a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

### **TERMS OF SETTLEMENT**

19. 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 Inflation Rule, the DCIA, the 2015 Penalty Inflation Act, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$1,633 in settlement of the violation alleged herein.

20. Respondent shall pay the penalty of \$1,633 within thirty (30) days of the effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$1,633 within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the postmark date or the date processed by the appropriate bank, as described below (payment must be received by 11:00 A.M. Eastern Standard time to be considered as received that day).
- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall (i) reference "*In the Matter of Hydro-Photon, Inc.*, Consent Agreement and Final Order, EPA Region 1," Respondent's name and address, and the EPA Docket Number of this action (FIFRA-01-2016-0070), (ii) be in the amount stated above, and (iii) be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

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

**If remitted by any overnight commercial carrier:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

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"

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent 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

Kan S. Tham, FIFRA Enforcement Coordinator  
U.S. Environmental Protection Agency  
Region 1 (Mail Code OES 05-4)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

21. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, 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. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable 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 original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, 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). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

22. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for 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.

23. 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 herein. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

24. This CAFO in no way relieves Respondent or its employees 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. Nothing in the CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable laws.


25. Each Party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. Section 504, or other applicable law.

26. This CAFO may not be amended or modified except upon the written agreement of both Parties and approval by the Regional Judicial Officer.

27. Each undersigned representative of the Parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

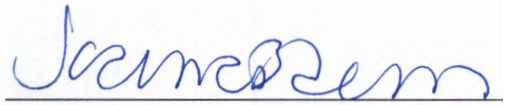
28. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which the fully executed CAFO is filed with the Regional Hearing Clerk.

**For Respondent, Hydro-Photon, Inc.:**

  
Name: BRAD REINDLE  
Title: CEO  
Hydro-Photon, Inc.

9/21/16  
Date

**For Complainant, United States Environmental Protection Agency:**



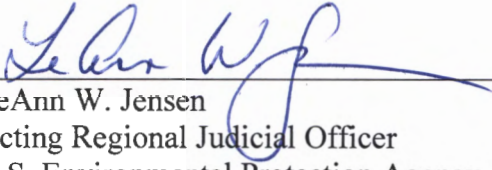
Joanna B. Jerison  
Legal Enforcement Manager  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1

9/20/16  
Date

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent, Hydro-Photon, Inc., 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.

Date: 9/22/16

  
\_\_\_\_\_  
LeAnn W. Jensen  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

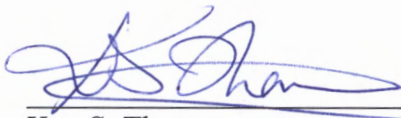
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

In the Matter of:	)	
	)	
Hydro-Photon, Inc.	)	Docket No. FIFRA-01-2016-0070
	)	
	)	<b>CERTIFICATE OF SERVICE</b>
	)	
	)	
Respondent.	)	

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. EPA, Region 1 5 Post Office Square, Suite 100 (ORA 18-1) Boston, Massachusetts 02109-3912
--	--

Copy (Certified Mail, Return Receipt Requested):	Brad Rendle, CEO Hydro-Photon, Inc. P.O. Box 675 262 Ellsworth Road Blue Hill, Maine 04614
---	--

Dated: <u>9/22/2016</u>	 _____ Kan S. Tham FIFRA Enforcement Coordinator U.S. EPA, Region 1 5 Post Office Square, Suite 100 (OES 05-4) Boston, Massachusetts 02109-3912
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