

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Arch Chemicals, Inc.
1200 Bluegrass Lakes Parkway
Alpharetta, GA 30004-0548,**

Respondent.

EPA Docket No. FIFRA-03-2015-0250

CONSENT AGREEMENT

**Proceeding Under Section 14 of the
Federal Insecticide, Fungicide and
Rodenticide Act, as amended, 7 U.S.C.
§ 136l**

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CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”), and by Arch Chemicals, Inc. (“Respondent”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 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 of Practice”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure to comply with certain requirements of FIFRA, as amended, 7 U.S.C. §§ 136 *et seq.*, and the Pesticide Programs Regulations promulgated at 40 C.F.R. Subchapter E.
2. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 14(a) of FIFRA, 7 U.S.C. §136l(a), and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), authorizes EPA to prescribe regulations to carry out the provisions of FIFRA.
12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
13. Respondent is a corporation, with a principal place of business located at 1200 Bluegrass Lakes Parkway in Alpharetta, Georgia.
14. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to “distribute or sell” means 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.
16. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” means, in part, any insect rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism.
17. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” means, in part any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
18. On April 3, 2014, EPA conducted an inspection of a shipment of pesticides being imported into the United States by “Arch Chemical Inc., 5660 New Northside Drive, NW, Suite 1100, Atlanta, GA 30328” (Entry Number 656-0641250-3). The pesticides being imported were Proxel Ultra 10 Preservative (EPA Reg. No. 1258-1284) (“Proxel Ultra”) and Proxel BC Industrial Microbiostat (EPA Reg. No. 1258-1336) (“Proxel BC”).
19. On June 3, 2015, EPA received notice from Arch Chemicals that a shipment of pesticides was imported into the United States by “Arch Chemicals Inc., 90 Boroline Road, Allendale, NJ 07401” (Entry Number WBG-0081581-4) on May 7, 2015. The pesticide being imported was Vanquish 100 Antimicrobial (EPA Reg. No. 1258-1249) (“Vanquish”).
20. The May 7, 2015 Vanquish shipment was released from U.S. Customs without the proper EPA-approved Notice of Arrival.

V. VIOLATIONS ALLEGED

21. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.
22. FIFRA § 2(q), 7 U.S.C. § 136a(q) provides that a pesticide is misbranded, in part, if:
 - the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health and the environment; or
 - the label does not contain a warning or caution statement which may be necessary and if complied with . . . is adequate to protect health and the environment.

Count I

23. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
24. Pursuant to 40 C.F.R. § 156.10(a)(1)(viii), every pesticide product must bear a label containing the directions for use as prescribed in 40 C.F.R. § 156.10(i).
25. 40 C.F.R. § 156.10(i)(2) states that directions for use must include, among other things, the dosage rate associated with each site and pest, and the method of application, including instructions for dilution.
26. Pursuant to 40 C.F.R. § 156.10(a)(1)(vii), every pesticide product shall bear a label containing hazard and precautionary statements as prescribed in 40 C.F.R. Part 156, Subpart D for human and domestic animal hazards and Subpart E for environmental hazards.
27. 40 C.F.R. § 156.70(b) states that when data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure, and the precautions to be taken to avoid accident, injury, or toxic effect or to mitigate the effect.
28. The label affixed to containers of the pesticide Proxel BC imported by Arch Chemicals on April 3, 2014 listed an improper dosage rate associated with the use sites “household products” and “raw materials for household products such as silicone, surfactant and detergent concentrates.”
29. The label affixed to containers of the pesticide Proxel BC imported by Arch Chemicals on April 3, 2014 did not contain complete, EPA-accepted precautionary statements.
30. Under 40 C.F.R. § 156.10(a), failure to include the proper dosage rate associated with each site and pest and failure to include complete precautionary statements on the Proxel BC label constitute a violation of 40 C.F.R. §§156.10(i)(2) and 156.70(b), and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
31. Violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count II

32. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
33. Pursuant to 40 C.F.R. § 156.10(a)(1)(vii), every pesticide product must bear a label containing hazard and precautionary statements as prescribed in 40 C.F.R. part 156, Subpart D for human and domestic animal hazards and Subpart E for environmental hazards.

34. 40 C.F.R. § 156.70(b) states that when data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure, and the precautions to be taken to avoid accident, injury, or toxic effect or to mitigate the effect.
35. The label affixed to containers of the pesticide Proxel Ultra imported by Arch Chemicals on April 3, 2014 did not contain complete, EPA-accepted precautionary statements.
36. Under 40 C.F.R. § 156.10(a), failure to include complete precautionary statements on the Proxel BC label constitutes a violation of 40 C.F.R. § 156.70(b), and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
37. Violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count III

38. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
39. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N), it is unlawful for any registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.
40. Section 17 of FIFRA, 7 U.S.C. §136o, directs the Secretary of the Treasury, in consultation with the Administrator of the EPA, to prescribe regulation for the importation of pesticides and devices.
41. 19 C.F.R. § 12.112 requires that a pesticide importer submit a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency Form 3540-1) (“NOA”) to the EPA prior to the arrival of a shipment in the US.
42. On May 7, 2015, Respondent imported the pesticide Vanquish without submitting an NOA to EPA prior to the arrival of the shipment in the US.
43. Failure to submit an NOA to EPA prior to the Vanquish pesticide shipment arriving in the US is a violation of 19 C.F.R. § 12.112 and Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N).
44. Violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §136j(a)(2)(N), subjects Respondent to penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count IV

45. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
46. On May 7, 2015, Respondent imported the pesticide Vanquish bearing a label designed for sale in another country, which was not the EPA-approved label.
47. Failure to include, among other things, proper directions for use and precautionary statements on the Vanquish label is a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
48. Violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

VI. CIVIL PENALTY

49. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of fourteen thousand six hundred and fifty dollars (\$14,650.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not recover interest where the debt is paid within thirty (30) days of the effective date of this CAFO.
50. The Parties represent that the settlement terms are reasonable and are 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, the gravity of the violation, and the Respondent's good faith efforts. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy*, as revised December 2009, and 40 C.F.R. Part 19.
51. Payment of the civil penalty amount 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 Respondent's name and address, and the Docket Number of this action, *i.e.*, **FIFRA-03-2015-0250**;
 - 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen (513) 487-2091
Secondary Contact: Molly Williams (513) 487-2076

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1818

- 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 45268-0001

52. Respondent may also pay the amount described in Paragraph 49, above, electronically or on-line as follows:

- a. 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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- b. 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Remittance Express (REX): 1-866-234-5681

- c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

- d. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

A copy of Respondent's check or a copy of Respondent's electronic transfer shall be sent simultaneously to:

Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III (3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029.

- 53. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest 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 in this Consent Agreement and the attached Final Order shall result in the

assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

54. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the 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.
55. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the 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 the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
56. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

57. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under FIFRA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

58. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

59. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with applicable provisions of FIFRA, 7 U.S.C. § 136 *et seq.*

X. RESERVATION OF RIGHTS

60. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in the Complaint. 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, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under FIFRA 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.

XI. PARTIES BOUND

61. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent's successors, agents and assigns.

XII. EFFECTIVE DATE

62. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

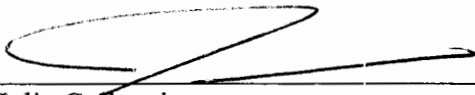
63. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

64. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by her signature that she is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

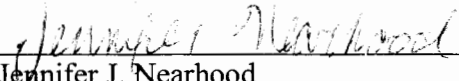
For Respondent:

Date: 9/3/15

By: 
Julie Gallucci
Vice President – NAFTA Industrial Solutions
Arch Chemicals, Inc.

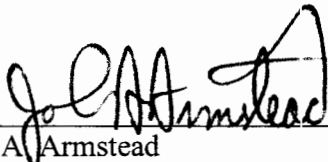
For Complainant:

Date: 9/8/15

By: 
Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator, or his designee the Regional Judicial Officer, issue the Final Order attached hereto.

Date: 9.11.15

By: 
John A. Armstead
Director, Land and Chemicals Division
U.S. EPA, Region III

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

**Arch Chemicals, Inc.
1200 Bluegrass Lakes Parkway
Alpharetta, GA 30004-0548,**

Respondent.

EPA Docket No. FIFRA-03-2015-0250

FINAL ORDER

**Proceeding Under Section 14 of the
Federal Insecticide, Fungicide and
Rodenticide Act, as amended, 7 U.S.C.
§ 136l**

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FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Arch Chemicals, Inc., have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth at length.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *FIFRA Enforcement Response Policy*, as revised December 2009, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of fourteen thousand six hundred and fifty dollars (\$14,650.00), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 14, 2015



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

Arch Chemicals, Inc.
1200 Bluegrass Lakes Parkway
Alpharetta, GA 30004-0548,

Respondent.

EPA Docket No. FIFRA-03-2015-0250

CONSENT AGREEMENT

Proceeding Under Section 14 of the
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§ 136f

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

Lydia Guy, Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by UPS Overnight:

Michael Neilson
Assistant General Counsel
Lonza America Inc.
90 Boroline Rd.
Allendale, NJ 07401

9/14/15
Date

Jennifer J. Nearhood
Jennifer J. Nearhood (3RC50)
Assistant Regional Counsel
U.S. EPA, Region III

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