

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

September 14, 2021 @ 10:44 pm

USEPA – Region II  
Regional Hearing Clerk

In the Matter of

Sonwil Distribution Center, Inc.

Respondent

Proceeding Under the Federal  
Insecticide, Fungicide and  
Rodenticide Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2021-5139

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136I(a) (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter “CROP”).

Complainant in this proceeding is the Director of the Enforcement & Compliance Assurance Division (“ECAD”), United States Environmental Protection Agency, Region 2 (“EPA”). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CONSENT AGREEMENT AND FINAL ORDER (“CAFO”) pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

## **LEGAL AUTHORITIES**

1. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism.
2. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
3. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines a device as any instrument or contrivance (other than a firearm) that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
4. Section 2(s) of FIFRA, 7 U.S.C. Section 136(s) defines the term “person” to mean any individual, partnership, association, corporation, or any group of persons whether incorporated or not.
5. Pursuant to 40 C.F.R. § 167.20(f), an establishment registration will remain effective provided pesticide reports are submitted annually pursuant to the requirements of this part. Failure to submit a report may result in termination of establishment registration, civil and/or criminal penalty assessments.
6. Pursuant to 40 C.F.R. § 167.85(d), a registered establishment must submit an initial report no later than 30 days after the first registration of each establishment the producer operates. Thereafter, an establishment must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.
7. Section 2(w) of FIFRA, 7 U.S.C. Section 136(w) defines the terms “producer” and “to produce” to mean the person who manufactures, prepares, . . . or processes any pesticide or device or

active ingredient used in producing a pesticide. The term “produce” means to manufacture, prepare, . . . or process any pesticide or device or active ingredient used in producing a pesticide.

8. Section 2(dd) of FIFRA, 7 U.S.C. Section 136(dd) defines the term “establishment” to mean any place where a pesticide or device or active ingredient used in producing a pesticide or device is produced, or held, for distribution or sale.

9. Section 7(a) of FIFRA states that “[n]o person shall produce any pesticide device unless the establishment in which it is produced is registered with [EPA].”

10. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person that is a producer of pesticide products or devices to violate any provisions of Section 7 of FIFRA.

11. Section 14(a)(1) of FIFRA, 7 U.S.C. Section 136(l)(a)(1) states that “[a]ny registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty of not more than \$5,000 for each offense.”

12. EPA’s Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751, 1754 (January 13, 2020) adjusted the level of the maximum statutory civil monetary penalty amounts under the statutes that EPA administers, including the FIFRA statute. The maximum statutory monetary civil penalty for violations under Section 14(a)(1), 7 U.S.C. Section 136(l)(a)(1) of FIFRA that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020, is \$20,288.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. Respondent is Sonwil Distribution Center, Inc., a New York corporation (hereinafter “Respondent” or “Sonwil”).

14. Respondent’s headquarters is located at 100 Sonwil Drive, Buffalo, New York 14225.

15. Respondent is a “person” as that term is defined in FIFRA § 2(s), 7 U.S.C. § 136(s).

16. Respondent is a firm that primarily engages in cereal grain and flour storage and a subset of the business is refurbishing Dyson fans and vacuums.

17. Since at least June 12, 2009, Respondent has operated an EPA-registered pesticide producing establishment (EPA Est. No. 86217-NY-1), located at 315 Ship Canal Parkway, Buffalo, New York 14218 (“Respondent’s Facility” or “the Facility”).

18. Respondent’s Facility is an “establishment” as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

19. On or about October 3, 2019, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, an authorized inspector from EPA Region 2 conducted an inspection at Respondent’s Facility.

20. At the time of the inspection, EPA had not received annual production reports since 2010 from Respondent’s Facility.

21. Annual production reports are required to be submitted regardless if production had occurred.

22. Each of Respondent’s failures to file reports for 2015, 2016, 2017 and 2018 constitutes an unlawful act pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), for which a penalty may be individually assessed.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the CROP, 40 C.F.R. § 22.18, it is hereby agreed that:

1. Respondent shall hereinafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations, including the requirements which require submission of annual production reports.

2. Respondent certifies that, as of the date of execution of this Consent Agreement, it is in compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations.

3. Respondent shall pay a civil penalty in the amount of Eight Thousand Ninety-Five Dollars (**\$8,095.00**). Such payment must be received by EPA on or before thirty (30) days after the date of the signature of the Final Order (“Due Date”), which is located at the end of this CAFO, and shall be made by cashier’s check, certified check, electronically via Fedwire or online.

- a. If payment is made by cashier’s check or by certified check, such check shall be made payable to the “Treasurer, United States of America,” and shall be identified with a notation thereon listing the following: **In the Matter of Sonwil Distribution, Inc., Docket Number FIFRA-02-2021-5139**. If payment is made by either form of check, such payment shall be mailed by wither of the following methods:

**STANDARD DELIVERY**

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

**SIGNED RECEIPT CONFIRMATION DELIVERY (Fedex, DHL, UPS, USPS, Certified, Registered, etc.)**

United States Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

- b. If Respondent chooses to make payment electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when payment is made:

1. Amount of payment

2. SWIFT address: **FRNUS33, 33 Liberty Street, New York, NY 10045**
3. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
4. Federal Reserve Bank of New York ABA routing number: **021030004**
5. Field Tag 4200 of the Fedwire message should read: “**D 68010727 Environmental Protection Agency**”
6. Name of Respondent: **Sonwil Distribution Center, Inc.**
7. Case Docket Number: **FIFRA-02-2021-5139**

c. If Respondent chooses to make on-line payment, Respondent shall go to **www.pay.gov** and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Once payment has been made, Respondent shall email proof of payment to [urdaz.damaris@epa.gov](mailto:urdaz.damaris@epa.gov) and [wise.milton@epa.gov](mailto:wise.milton@epa.gov) and shall note on the subject line: **In the Matter of Sonwil Distribution Center, Inc., FIFRA-02-2021-5139.**

4. Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action.

5. 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, including the United States Environmental Protection Agency, and a charge to cover costs of processing and handling delinquent claims. Forty C.F.R. § 13.11(a)(1) provides for assessing the annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) on installment payments. The Treasury current value of fund rate is one percent (1%) per annum.

6. If Respondent fails to make timely payment of the required payment in accordance with Paragraph 3, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure. In addition, Respondent shall be liable for, and shall pay, administrative

handling charges, late penalty charges and attorney fees and collection costs, as described in the subparagraphs below, in the event of any such failure or default and remit such payment in accordance with the payment instructions in paragraph 3, above.

- a. Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any portion of the civil penalty not paid by the relevant Due Date specified above. 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).
- b. Handling Charges: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.
- c. Late Penalty Charge: A late penalty charge of six percent (6%) per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). The late payment penalty on any portion of the civil penalty that remains delinquent more than ninety days shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

7. The civil penalty (including any payment(s) for interest or late payment and handling charges that have become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and does not constitute a deductible expenditure for purposes of federal or state law.

8. Respondent acknowledges its awareness that false or misleading certification and submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation certified

to and/or provided and/or representations made to Complainant is false or, in any material respect, inaccurate.

9. Nothing in this Consent Agreement, including payment of penalties identified in this Consent Agreement, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.* or any other applicable laws.

10. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following address:

Gerald Walsh at the email address: [gtwalsh@zsa.cc](mailto:gtwalsh@zsa.cc)

Delivery of the fully executed documents to the addressee in this paragraph shall constitute Respondent's receipt and acceptance of the Consent Agreement and Final Order.

11. Any responses, documentation, and other communication submitted to EPA in connection with this Consent Agreement shall be sent by regular mail and email to:

Amanda Bebel  
Lead Paint & Pesticides Compliance Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency – Region 2  
2890 Woodbridge Avenue, MS 500  
Edison, NJ 08837  
[bebel.amanda@epa.gov](mailto:bebel.amanda@epa.gov)

and

Damaris C. Urdaz  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866  
[urdaz.damaris@epa.gov](mailto:urdaz.damaris@epa.gov)



Unless the above-named EPA contacts are later advised otherwise by electronic mail, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty in accordance with the provisions of this CAFO, to the addressee identified in paragraph 10, above.

12. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent. Full payment of the penalty described in paragraph 3 above shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in Paragraphs 18, 20, 21, and 22 of the "Findings of Fact and Conclusions of Law" section in this Consent Agreement. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

13. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding based on the Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies the Findings of Fact and Conclusions of Law contained herein.

14. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

15. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.

16. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

17. The Respondent agrees not to contest the validity or any term of this CAFO in any action brought: a) by the United States, including EPA, to enforce this CAFO; or b) to enforce a judgment relating to this CAFO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CAFO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CAFO.

18. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.

19. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

20. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

21. Nothing in this CAFO shall be construed as a release from any other action under any law and/or regulation administered by EPA.

22. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into this Consent Agreement and all the terms, conditions and requirements set forth in this CAFO, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions, and requirements of this Consent Agreement.

23. The provisions of this CAFO shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives, and successors or assigns.

24. Each party hereto agrees to bear its own costs and fees in this matter.

**In the Matter of Sonwil Distribution Services, Inc., FIFRA-02-2021-5139**

RESPONDENT:

BY: Eric Enciso  
[Eric Enciso \(Sep 9, 2021 13:05 PDT\)](#)  
\_\_\_\_\_  
(Signature)

NAME: Eric Enciso

TITLE: President

COMPANY Sonwil Distribution Center, Inc.

DATE: 09/09/2021  
\_\_\_\_\_

COMPLAINANT:

\_\_\_\_\_

For Dore LaPosta, Director  
Enforcement & Compliance  
Assurance Division  
U.S. Environmental Protection  
Agency - Region 2

DATE: \_\_\_\_\_

**In the Matter of Sonwil Distribution Center, Inc., FIFRA-02-2021-5139**

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Sonwil Distribution Services, Inc. bearing Docket Number FIFRA-02-2021-5139. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of electronic filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

\_\_\_\_\_  
HELEN FERRARA  
Regional Judicial Officer  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: \_\_\_\_\_

**In the Matter of Sonwil Distribution LLC, FIFRA-02-2021-5139**

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order (“CONSENT AGREEMENT AND FINAL ORDER”), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

By Electronic Mail:

Karen Maples  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

Gerald T. Walsh  
Zdarsky Sawicki & Agostinelli LLP  
1600 Main Place Tower  
350 Main Street  
Buffalo, New York 14202  
[gtwalsh@zsa.cc](mailto:gtwalsh@zsa.cc)

Eric Enciso, CHB, CLP  
President and Chief Operating Officer  
Sonwil Distribution Center, Inc.  
Corporate Office  
2732 Transit Road  
West Seneca NY 14224  
T (716) 206-1897  
[enciso@sonwil.com](mailto:enciso@sonwil.com)

Dated: \_\_\_\_\_  
New York, New York

\_\_\_\_\_