

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

IN RE:

Aurora Cooperative Elevator Company
2225 Q. Street
Aurora, NE 68818

RESPONDENT.

Docket No. FIFRA-03-2015-0219

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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 Aurora Cooperative Elevator Company (“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”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.18(b)(2) and (3).

This CA and the accompanying Final Order (“FO”; collectively “CA/FO”) address the alleged sale or distribution of an unregistered and misbranded pesticide in violation of Sections 3, 12(a)(1)(A), and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136a, 136j(a)(1)(A), and 136j(a)(1)(E), respectively, including 40 C.F.R. Part 165.

General Provisions

1. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this CA/FO.
2. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth herein, 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 CA/FO.

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 CA/FO and agrees to comply with its terms.
6. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant are false or, in any material respect, inaccurate.
7. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CA/FO.
8. Respondent shall bear its own costs and attorney's fees.
9. Respondent certifies to EPA by his signature herein that he is presently in compliance with the provisions of FIFRA referenced herein.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this statute, except in certain circumstances which are not relevant to this case.
11. 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 sell or distribute to any person any pesticide that is misbranded.
12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is "misbranded" if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
13. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(I), provides that it shall be unlawful for any person to violate any order issued under Section 13 of FIFRA.
14. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."
15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell" as "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. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” to include “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,” and “any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.”
17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as “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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].” *See also* 40 C.F.R. § 152.5.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. Respondent, Aurora Cooperative Elevator Company, is a corporation established under the laws of the State of Nebraska.
19. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.
20. At all times relevant to the violations alleged herein, Respondent “owned” and “operated” an “establishment” located at 6063 Whitehurst Drive, Seaford, Delaware (EPA Establishment No. 51827-DE-001) as these terms are defined in 40 C.F.R. § 165.3.
21. On May 15, 2013, a FIFRA pesticide producer establishment inspection was performed by EPA representatives at Respondent’s Establishment.
22. Respondent produces two registered pesticides at the Establishment; Lo-Vol6 2, 4D (EPA Reg. No. 42750-20-55467) and LV6 (EPA Reg. No. 713681155467).
23. During the establishment inspection on May 15, 2013, EPA representatives determined that Respondent mixed the two separate registered pesticides at the Establishment; Lo-Vol6 2, 4D (EPA Reg. No. 42750-20-55467) and LV6 (EPA Reg. No. 713681155467) into 150 gallon totes and sold it as Lo-Vol6 2, 4D pesticide to an end user on May 1, 2013.

COUNT I

24. The allegations contained in Paragraphs 1 through 23 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
25. Respondent’s products “Lo-Vol6 2, 4D” and “LV6” are “pesticides” as this term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about May 1, 2013, Respondent mixed the pesticide products “Lo-Vol6 2, 4D” and “LV6” into a 150 gallon tote.
27. The mixture of “Lo-Vol6 2, 4D” and “LV6” is not a registered pesticide pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
28. On at least May 1, 2013, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the unregistered pesticide mixture of “Lo-Vol6 2, 4D” and “LV6.”
29. Respondent’s distribution or sale, or offering for sale or distribution of the unregistered pesticide described in paragraphs 26-28 constitutes a violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT II

30. The allegations contained in Paragraphs 1 through 29 of this Consent Agreement are incorporated by reference herein as though fully set forth at length.
31. On at least May 1, 2013, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the pesticide mixture of “Lo-Vol6 2, 4D” and “LV6” as Lo-Vol6 2, 4D (EPA Reg. No. 42750-20-55467).
32. On at least May 1, 2013, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the misbranded pesticide Lo-Vol6 2, 4D (EPA Reg. No. 42750-20-55467).
33. Respondent’s distribution or sale, held for distribution or sale, or offering for sale or distribution of the misbranded pesticide described in paragraphs 31-32 constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

CIVIL PENALTY

34. In settlement of Complainant’s claims for civil penalties for the violations alleged in the Complaint, Respondent agrees to pay a civil penalty of Twelve Thousand Dollars (\$12,000). The civil penalty is due and payable immediately upon Respondent’s receipt of a true and correct copy of this CA/FO. If Respondent pays the entire civil penalty within 30 calendar days of the date on which this CA/FO is mailed to Respondent, no interest will be assessed against Respondents pursuant to 40 C.F.R. § 13.11(a)(1).
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.

36. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of the CA/FO is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 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 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.
38. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than 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).
39. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors of the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Complainant also took into account the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated December 2009 (“ERP”).
40. Respondent shall pay the civil penalty set forth in Paragraph 34, above, by electronic funds transfer (“EFT”), as described below, or by sending a cashier's check or certified check, made payable to the order of “**United States Treasury.**”
 - a. Checks sent by regular US Postal Service mail delivery must be addressed to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Eric Volck 513-487-2105
 - b. Checks sent by private commercial overnight delivery service must be sent to:

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

- c. Any EFT shall be transmitted to:

Wire Transfer

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")

Automated Clearing House (ACH) Transfer for receiving U.S. currency (also known as REX or Remittance Express)

U.S Treasury REX / Cashlink
ACH Receiver, ABA = 051036706
Account No. 310006
Environmental Protection Agency
CTX Format Transaction Code 22 - checking

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

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV/PAYGOV

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

41. All payments by Respondent shall reference its name and address and the Docket Number of this case (FIFRA-03-2015-0219). At the time of payment, Respondent shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00)
EPA Region III

1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Louis F. Ramalho (3RC30)
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

FULL AND FINAL SATISFACTION

42. This CA/FO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for the violations alleged herein.

RESERVATION OF RIGHTS

43. 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 FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

OTHER APPLICABLE LAWS

44. Nothing in this CA/FO relieves Respondent of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

AUTHORITY TO BIND THE PARTIES

45. Each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and bind themselves hereto.


ENTIRE AGREEMENT

46. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

47. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.


For Respondent: Aurora Cooperative Elevator Company



Kenton Schegg
Vice-President

For Complainant: U.S. Environmental Protection Agency


8/24/15



Louis F. Kamalho
Sr. Assistant Regional Counsel

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

Date: 9/3/2015

By: 

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

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

IN RE:

Aurora Cooperative Elevator Company
 2225 Q. Street
 Aurora, NE 68818

Docket No. FIFRA-03-2015-0219

RESPONDENT.

FINAL ORDER

Complainant, the Director of the Land and Chemical Division, U.S. Environmental Protection Agency, Region III, and Respondent, Aurora Cooperative Elevator Company, have executed a document entitled "Consent Agreement" which I 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 fully set forth at length herein.

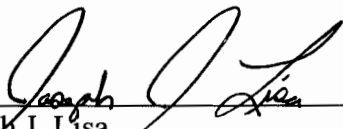
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)", dated December 2009 ("FIFRA ERP"), and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4): the size of Respondents' business, the effect of the penalty on Respondents' ability to continue in business, and the gravity of Respondents' violations.

NOW, THEREFORE, PURSUANT TO Section 14(a) of FIFRA, 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 **TWELVE THOUSAND DOLLARS (\$12,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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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.

Sept. 8, 2015
Date



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


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, **Docket No. FIFRA-03-2015-0219**, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent to the following party:

Kenton Schegg
Vice President
Aurora Cooperative Elevator Company
2225 Q. Street
Aurora, NE 68818

Date

9-8-2015



Louis F. Ramalho
Sr. Assistant Regional Counsel
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029

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