

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for David Peterson
Name of Case Attorney

5/19/14
Date

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

Case Docket Number FIFRA-01-2013-0059

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:

Brian O'Donnell, President & CEO
A.W. Chesterton COMPANY
500 Unicorn PARK DRIVE
Woburn, MA 01801-3345

Total Dollar Amount of Receivable \$ 65,000.00

Due Date: 6/18/14

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

- 1ST \$ _____ on _____
- 2nd \$ _____ on _____
- 3rd \$ _____ on _____
- 4th \$ _____ on _____
- 5th \$ _____ 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
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

May 16, 2014

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In the Matter of A.W. Chesterton Company, Docket No. FIFRA-01-2013-0059

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Consent Agreement and Final Order.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Peterson".

David M. Peterson
Senior Enforcement Counsel

Enclosures

cc: Brian O'Donnell, President & CEO, A.W. Chesterton Company
Susan Cooke, Esq., Counsel to A.W. Chesterton

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

RECEIVED

2014 MAY 19 A 7:52

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

In the Matter of:)

A.W. Chesterton Company)
500 Unicorn Park Drive)
Woburn, MA)

Respondent.)

Proceedings under Section)
14(a) of the Federal Insecticide,)
Fungicide, and Rodenticide Act,)
as amended, 7 U.S.C. § 136l(a).)

Docket No. FIFRA-01-2013-0059

**CONSENT AGREEMENT and
FINAL ORDER**

INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 (“EPA”) as Complainant, and A.W. Chesterton Company (“Chesterton” or “Respondent”), as Respondent, enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent.
2. Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further 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. On September 27, 2013, EPA filed a Complaint and initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a).
5. The Complaint alleges that Respondent failed to properly file required pesticide

production reports for its facility located at 860 Salem Street in Groveland, Massachusetts (the “Groveland Facility”) for a five year period from 2008 until 2012, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. Part 167, Subpart E, all in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

6. The Complaint also alleges that Respondent distributed or sold four (4) pesticide products that were not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, from in or around June 2009 until in or around September 2011, in violation of FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), and regulations promulgated pursuant to FIFRA at 40 C.F.R. Parts 150 – 180.

7. Respondent has been granted a Motion to Extend Time to Answer and Request a Hearing until June 9, 2014.

8. For purposes of this proceeding, without trial or litigation of the issues or any adjudication of the facts, Respondent: (1) admits that EPA has jurisdiction over the subject matter alleged in the Complaint, (2) neither admits nor denies the factual allegations contained in the Complaint, and (3) consents to the terms of this CAFO as a settlement of the allegations raised by EPA in the Complaint.

9. Respondent hereby waives any defenses it might have as to jurisdiction and venue, its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and its right to appeal the Final Order accompanying the Consent Agreement.

10. By signing this CAFO, Respondent certifies, to the best of its knowledge and belief, that it is presently operating, or will be operating within twelve (12) months of the effective date of this CAFO, in compliance with FIFRA and the regulations promulgated thereunder and that it has fully addressed, or will have fully addressed within twelve (12) months

of the effective date of this CAFO, the violations alleged by EPA in the Complaint.

TERMS OF SETTLEMENT

11. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 “FIFRA Enforcement Response Policy” issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, the Monetary Penalty Inflation Adjustment Rules at 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 (“DCIA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), 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 \$65,000 in settlement of the violations alleged in the Complaint.

12. Respondent shall pay the penalty of \$65,000 within thirty (30) days of the effective date of this CAFO.

13. Respondent shall make payment by submitting a bank or certified check, to the order of the “Treasurer, United States of America,” in the amount of \$65,000 to:

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

and shall provide copies of the check to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code: ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

David Peterson, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES04-4)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Respondent shall include the case name and docket number (i.e., *In the Matter of A.W. Chesterton Company*, Docket No. FIFRA-01-2013-0059) on the face of the check.

14. If Respondent fails to pay the civil penalty by the payment deadline, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. 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).

15. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the 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.

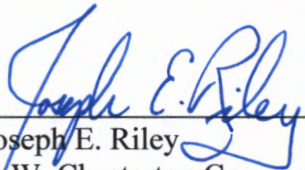
16. This CAFO constitutes a settlement by EPA of all claims for civil penalties, pursuant to Section 14(a) of FIFRA, for the specific violations alleged in the Complaint.

17. This CAFO in no way relieves Respondent 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. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

18. The Parties each shall bear its own costs and attorneys' fees in 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. § 504.

19. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:


Joseph E. Riley
A.W. Chesterton Company
500 Unicorn Park Drive
Woburn, MA

Vice President & General Counsel
(Title)

May 9, 2014
(Date)

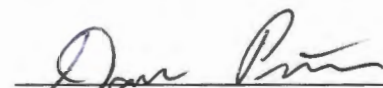
For EPA Region 1:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA-Region 1

5/15/14
(Date)

and:



David Peterson, Senior Enforcement Counsel
Office of Environmental Stewardship
EPA-Region 1

5/15/2014
(Date)

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent, A.W. Chesterton Company, is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

5/15/14
(Date)



LeAnn W. Jensen, Acting Regional Judicial Officer
EPA-Region 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order was delivered in the following manner to the addresses listed below:

Original and One Copy by
hand delivery to:

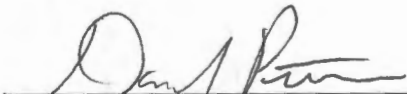
Wanda I. Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

One Copy by Certified Mail
Return Receipt Requested to:

Brian O'Donnell, President & CEO
A.W. Chesterton Company
500 Unicorn Park Drive
Woburn MA 01801-3345

Susan M. Cooke, Esq.
McDermott Will & Emery LLP
28 State Street
Boston, MA 02109-1775

Date: 5/16/2014

Signed: 

David M. Peterson
Senior Enforcement Counsel
Office of Environmental Stewardship (OES04-4)
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912