

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

IN THE MATTER OF:

:
: Docket No. FIFRA-03-2009-0044

Sauquoit Industries LLC,

Respondent

:
: **CONSENT AGREEMENT**

Sauquoit Industries LLC
300 Palm Street
Scranton, Pennsylvania 18505

:
: Proceeding under FIFRA § 14, 7 U.S.C. § 136l

Facility.

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division (formerly known as Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III ("Complainant"), and Sauquoit Industries LLC ("Respondent"), pursuant to Section 14 of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l, 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.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the *Consolidated Rules*, this Consent Agreement and attached Final Order (collectively "CAFO") resolve Complainant's claims for civil penalties against Respondent arising from the violations of FIFRA and EPA's regulations promulgated thereunder, alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CAFO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA and its implementing regulations at the Establishment described in this CAFO.
10. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, for the specific violations alleged herein and as more fully set forth in Paragraph 16 of this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, 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 CAFO following entry of this CAFO. 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*.
12. 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.

13. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
14. This CAFO constitutes 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 herein.
15. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

16. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNT I

- a. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to include any corporation.
- b. Respondent is a Pennsylvania corporation.
- c. Respondent is, and was at all times relevant to this CAFO, a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- d. Respondent and or its corporate predecessor owned and operated an "establishment", within the meaning of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 300 Palm Street, Scranton, Pennsylvania, 18505 ("Establishment"), at the time of the violations alleged herein.
- e. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines "producer" as "the person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide."
- f. Respondent is, and was at all times relevant to this CAFO, a "producer" within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
- g. On November 21, 2006, an inspector from the Pennsylvania Department of Agriculture, duly authorized to conduct inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, conducted an inspection of the Establishment.

- h. During the inspection referenced above, the inspector collected a physical sample and production information for the product produced by Respondent at the Establishment, called "*X-Static The Silver Fiber 30, 40, 70 Denier Filament*" (EPA Registration No. 70927-1) ("*X-Static*").
- i. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest", with exceptions not relevant to this matter.
- j. Pursuant to 40 C.F.R. § 152.15, "a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose . . .".
- k. Pursuant to 40 C.F.R. § 152.15(c), a substance is considered to be intended for a pesticidal purpose, and thus a pesticide, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide" or if the person who distributes or sells the substance "has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose."
- l. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term "pest" includes fungus, bacteria and other microorganisms.
- m. The product, "*X-Static*," is a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 and .15, and has been registered as such with EPA since May 15, 1998.
- n. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with EPA.
- o. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it shall be unlawful for a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
- p. As of September 30, 2008, Respondent had not registered its Establishment with EPA, as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).
- q. Since at least 1998 Respondent or its corporate predecessor has produced the pesticide product, "*X-Static*," at the Establishment.

- r. Respondent produced the pesticide, "X-Static," at an unregistered Establishment on the following dates: June 28, 2006, October 20, 2006, and November 8, 2006.
- s. On the three dates identified in Paragraph 16.r. above, Respondent produced the pesticide, "X-Static," at an unregistered Establishment, in violation of 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
- t. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense.
- u. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of FIFRA occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$6,500 per violation.

Civil Penalty

- 17. Respondent agrees to pay a civil penalty of Seven Thousand Eight Hundred Dollars (\$7800.00) in full satisfaction of EPA's claims for civil penalties based upon the violations alleged in Paragraph 16 of this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO.
- 18. The aforesaid settlement is based upon a consideration of the factors set forth in Section 136l(a)(4) of FIFRA, 7 U.S.C. § 14(a)(4), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990.
- 19. Respondent shall remit the full civil penalty described in Paragraph 17, above, by either cashier's or certified check payable to the "United States Treasury" or electronic wire transfer, automated clearinghouse or other means as specified below:
 - a. Check payments sent via regular mail shall be addressed and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- b. Check payments sent via overnight delivery shall be addressed and sent to:

U.S. Environmental Protection Agency–Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- c. Electronic wire transfer payments 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 Fedwire message should read “D 68010727 Environmental Protection Agency”

Customer service: 212-720-5000

- d. Automated clearinghouse (ACH) (or Remittance Express (REX)) payments shall be directed to:

PNC Bank
ABA = 051036706
Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format
808 17th Street, NW
Washington, DC 20074

Contact: Jesse White 301-887-6548

Customer service: 800-762-4224 (ACH/Wire Info, PNC Bank)

- e. Debit or credit payments may be made online at: www.pay.gov
Enter sfo 1.1 in the search field. Open and complete the form.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

- f. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (FIFRA-03-2009-0044). A paper copy of Respondent's payment (whether by check, EFT, ACH or other means) shall be sent simultaneously to:

Janet E. Sharke (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

20. 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.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days 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).

The costs of the Agency'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.

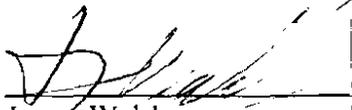
A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on

the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

21. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990, the parties hereto agree that payment of the civil penalty shall be in full and final satisfaction of EPA's claims for civil penalties arising from the violations alleged in this Consent Agreement.

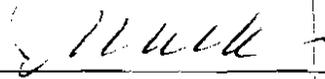
For Respondent

2/6/09
Date


James Walsh
General Manager
Sauquoit Industries LLC

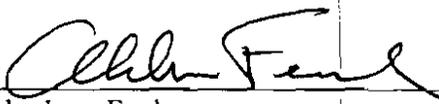
For Complainant

2/27/09
Date


Janet E. Sharke
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

3/12/09
Date


Abraham Ferdas
Director
Land and Chemicals Division

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

IN THE MATTER OF:

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: Docket No. FIFRA-03-2009-0044

Sauquoit Industries LLC

Respondent

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: **FINAL ORDER**

Sauquoit Industries LLC
300 Palm Street
Scranton, Pennsylvania 18505

Facility.

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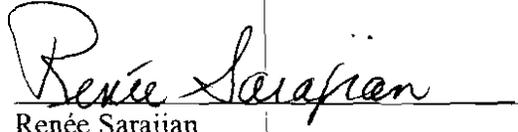
FINAL ORDER

Complainant, the Director of the Land and Chemicals Division (formerly known as Waste and Chemicals Management Division), U.S. Environmental Protection Agency, Region III, and Respondent, Sauquoit Industries LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *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 herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, which authorizes the assessment of a civil penalty for violations of FIFRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in FIFRA § 14(a)(4), 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Seven Thousand Eight Hundred Dollars (\$7800.00), as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

3/23/09
Date

A handwritten signature in cursive script that reads "Renée Sarajian". The signature is written in black ink and is positioned above a horizontal line.

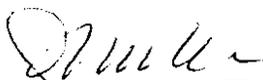
Renée Sarajian
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, EPA Docket No. FIFRA-03-2009-0044, were filed today with the Regional Hearing Clerk, EPA, Region III, and that one copy of the Consent Agreement and Final Order was sent via fax and certified mail, return-receipt requested, to:

Robert E. Fabricant, Esq.
Akerman Senterfitt LLP
335 Madison Avenue, Ste. 2600
New York, NY 10017

3/23/09
Date



Janet E. Sharke (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2689