



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

In Reply Refer To Mail Code: 3LC62

NOV 16 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

S. Todd Renner, Esq.
Cooper Owen & Renner, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

Re: Consent Agreement and Final Order
EPA Docket No. FIFRA-03-2011-0002

Dear Mr. Renner:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above, with respect to you client Sal Chemical Company, Inc.. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosures

cc: Stephen Forostiak, EPA

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

IN THE MATTER OF

Sal Chemical Company, Inc.
3036 Birch Drive
Weirton, WV 26062

Respondent.

DOCKET NO: FIFRA-03-2011-0002

CONSENT AGREEMENT

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by Sal Chemical Company, 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 Sections 22.13(b) and .18(b) of 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. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "CAFO") resolve Complainant's civil penalty claims against Respondent under FIFRA arising from the violations of FIFRA 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 jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the 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 Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear his own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA's Findings of Fact and Conclusions of Law

8. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:
9. 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.
10. Respondent is an Ohio corporation with a principle place of business located at 3036 Birch Drive in Weirton, West Virginia.
11. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define "pesticide", in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
13. 40 C.F.R. § 152.3 defines "pesticide product", in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.
14. In 1990, Respondent registered a product with the brand name *Sodium Hypochlorite* with EPA as a pesticide, EPA Reg. No. 62833-1.
15. Respondent's *Sodium Hypochlorite* product, EPA Reg. No. 62833-1, is a "pesticide" and "pesticide product" as those terms are defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
16. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define "produce", in pertinent part, to mean to manufacture, prepare, propagate, compound, or process any pesticide, or to package, repackage, label, relabel or otherwise change the container of any pesticide.

17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3, define “producer”, in pertinent part, to mean any person who produces any pesticide (including packaging, repackaging, labeling and relabeling).
18. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. §167.3, define “establishment”, in pertinent part, to mean any site where a pesticide product is produced.
19. Respondent produced its *Sodium Hypochlorite* product, EPA Reg. No. 62833-1, by repackaging and relabeling sodium hypochlorite purchased from different suppliers at its facility located at 3036 Birch Drive in Weirton, West Virginia.
20. By repackaging and relabeling sodium hypochlorite and offering to sell it as *Sodium Hypochlorite*, EPA Reg. No. 62833-1, Respondent “produced”, and is a “producer” of, a pesticide, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. §167.3.
21. With respect to the production of *Sodium Hypochlorite*, EPA Reg. No. 62833-1, Respondent’s facility located at 3036 Birch Drive in Weirton, West Virginia is an “establishment” as that term is defined by 40 C.F.R. 167.3.
22. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L), it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C § 136e.
23. Pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), “[n]o person shall produce any pesticide . . . in any State unless the establishment in which it is produced is registered with [EPA].”
24. Prior to October 2008, Respondent’s facility located at 3036 Birch Drive in Weirton, West Virginia was not registered with EPA as a pesticide producing establishment.
25. By producing a pesticide at an establishment not registered pursuant to Section 7(a) of FIFRA, 7 U.S.C § 136e(a), Respondent violated that section, constituting an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C § 136j(a)(2)(L).
26. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
27. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “distribute or sell” to mean 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.

28. Since 1990, Respondent distributed or sold its *Sodium Hypochlorite* product, EPA Reg. No. 62833-1, to various individuals, partnerships, associations, corporations and/or organized groups of persons.
29. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if its label does not bear the registration number, assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, of the establishment at which it was produced.
30. On or about October 6, 2008, EPA assigned Respondent's facility located at 3036 Birch Drive in Weirton, West Virginia the establishment number EPA Est. No.: 62833-WV-001.
31. During the time period from October 6, 2009 through August 31, 2010, Respondent distributed or sold *Sodium Hypochlorite*, EPA Reg. No. 62833-1, with labels that bore incorrect EPA establishment numbers, and therefore, Respondent's *Sodium Hypochlorite* product, EPA Reg. No. 62833-1, was misbranded as defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).
32. Respondent distributed or sold misbranded pesticides, constituting unlawful acts in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
33. Pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), it shall be unlawful for any person to distribute or sell a registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.
34. In connection with the registration of its *Sodium Hypochlorite* product, EPA Reg. No. 62833-1, Respondent provided a confidential statement of formula to EPA which identified the suppliers of the components of its *Sodium Hypochlorite* formulation.
35. Beginning some time subsequent to the registration of its *Sodium Hypochlorite* product through May 26, 2010, Respondent distributed or sold *Sodium Hypochlorite*, EPA Reg. No. 62833-1, that was produced from components manufactured by different suppliers from those represented in the confidential statement of formula submitted in connection with the registration.
36. Respondent distributed or sold pesticides with compositions that differ from statements made in connection with their registration, constituting unlawful acts in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).
37. Respondent is a "distributor" or "retailer" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

Civil Penalty

38. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of ELEVEN THOUSAND SEVEN HUNDRED DOLLARS (\$11,700), 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. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.

39. The aforesaid settlement amount is 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, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, May 2010 *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, and 40 C.F.R. Part 19.

40. Payment of the civil penalty amount required under the terms of Paragraph 38, above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Craig Steffen 513-487-2091
Eric Volck 513-487-2105

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL

St. Louis, MO 63101
314-418-1028

c. All payment 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

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D
68010727 Environmental Protection Agency")

e. By automatic clearinghouse ("ACH") to the following account:

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

Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

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

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2011-0002. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Stephen Forostiak (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

41. 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 also to assess 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 CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

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. However, 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 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 cost 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 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).

Certifications

42. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 et seq.

Other Applicable Laws

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

Reservation of Rights

44. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. 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 there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

45. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. 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.

Parties Bound

46. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent.

Effective Date

47. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

48. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

10.13.10
Date

Steve Fenell
Steve Fenell, President
Sal Chemical Company, Inc.

For Complainant:

10-26-2010
Date

Stephen Forostiak
Stephen Forostiak
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

11/9/2010
Date

Nancy L. Daw for AF
Abraham Ferdas, Director
Land and Chemicals Division

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

IN THE MATTER OF)

Sal Chemical Company, Inc.)
3036 Birch Drive)
Weirton, WV 26062)

Respondent.)

DOCKET NO: FIFRA-03-2011-0002

FINAL ORDER

FINAL ORDER

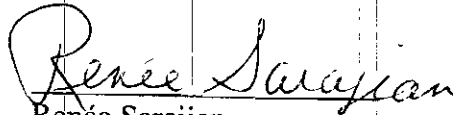
The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Sal Chemical Company, Inc. ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice 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. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and based on representations in the Consent Agreement that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Respondent is hereby ordered to pay a civil penalty of ELEVEN THOUSAND

SEVEN HUNDRED DOLLARS (\$11,700), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of this document is the date on which it is filed with the Regional Hearing Clerk after signature by the Regional Administrator or Regional Judicial Officer.

Date: 11/16/10


Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III

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

IN THE MATTER OF:

Sal Chemical Company, Inc.
3036 Birch Drive
Weirton, WV 26062

Respondent.

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) DOCKET NO: FIFRA-03-2011-0002
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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:

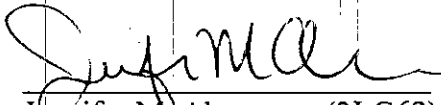
Lydia Guy, Regional Hearing Clerk

Copy by Certified Mail

S. Todd Renner, Esq.
Cooper Owen & Renner, P.C.
1600 Benedum Trees Building
223 Fourth Avenue
Pittsburgh, PA 15222

NOV 16 2010

Date


Jennifer M. Abramson (3LC62)
Senior Assistant Regional Counsel
U.S. EPA, Region III

