

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Maximilian Boal 3/4/16
Name of Case Attorney Date

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

Case Docket Number FIFRA-01-2016-0017

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:

Mann Distribution, LLC
3134 Post Road
Warwick, RI 02886

Total Dollar Amount of Receivable \$ 6,000 Due Date: 4/2/16

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 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RECEIVED

MAR 02 2016

EPA ORC WS
Office of Regional Hearing Clerk

March 2, 2016

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

BY HAND

Re: *In the Matter of Mann Distribution, LLC*
Docket No. FIFRA-01-2016-0017

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order (CAFO) settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and the certificate of service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maximilian Boal".

Maximilian Boal
Enforcement Counsel

Enclosure

Cc: Harlan Doliner, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	
Mann Distribution, LLC)	Docket No. 1-FIFRA-01-2016-0017
3134 Post Road)	
Warwick, RI 02886)	CONSENT AGREEMENT AND FINAL ORDER
)	
Respondent.)	
)	

Complainant, the United States Environmental Protection Agency (“EPA”), and Mann Distribution, LLC (“Respondent”) enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Respondent for an alleged violation of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Part 167, Subpart E.

This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (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.

NOW THEREFORE, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law, upon the record, and upon consent and agreement of the Parties, it is hereby ordered and adjudged as follows:

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MAR 02 2016

EPA ORC *WS*
Office of Regional Hearing Clerk

I. Statutory Background and General Allegations

1. Respondent is a limited liability company organized under the laws of the State of Rhode Island and is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
2. Respondent operates a pesticide-producing establishment located at 3134 Post Road, Warwick, RI 02886 (“the Establishment”).
3. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, in or about 2009, Respondent registered the Establishment as a pesticide-producing establishment. EPA assigned the EPA Establishment Number 075161-RI-001 to the Establishment.
4. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, any producer operating a registered establishment is required to report to EPA the types and amounts of each pesticide product that the producer is currently producing, that it produced during the past year, and that it sold or distributed during the past year.
5. Pursuant to 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.
6. Under Section 14(a) of FIFRA, 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 of Practice”), 40 C.F.R.

Part 22, Complainant may assess civil penalties for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

7. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

II. EPA Findings

8. EPA finds, based on its investigation of facts and circumstances underlying Respondent's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

9. At all times relevant to this Agreement, including during reporting years 2011, 2013, and 2014, the Establishment was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

10. EPA Headquarters mails annual reminder notices to registered pesticide-producing establishments, including the Facility at issue here, of the FIFRA requirement to submit a production report. These reminders are mailed at least two months in advance of the March 1 reporting deadline. The reminder notices are sent as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so.

11. For reporting year 2011, Respondent failed to submit its annual pesticide production report by the March 1, 2012 deadline. Respondent filed its reporting for reporting year 2011 on or about April 20, 2012.

12. On or about May 28, 2013, EPA issued Respondent a Notice of Potential Violation letter concerning Respondent's potential violations, including Respondent's FIFRA Section 7 violations.

13. For reporting year 2013, Respondent failed to submit its annual pesticide production reporting by the March 1, 2014 deadline. Respondent filed its reporting for reporting year 2013 on or about April 21, 2014.

14. On or about September 24, 2014, EPA issued Respondent a Notice of Warning letter ("NOW") [EPA Reference No. FIFRA-NOW-2014-030] pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for failure to file its annual pesticide production report for reporting years 2011 and 2013 as required by Section 7 of FIFRA, on or before the March 1, 2012 and March 1, 2014 deadlines.

15. Despite receiving the NOW from EPA in September 2014, for reporting year 2014, Respondent failed to submit its annual pesticide production reporting by the March 1, 2015 deadline.

16. On or about July 21, 2015, EPA issued an Opportunity to Show Cause (FIFRA-SC 2015-001) to Respondent regarding the failure to file required FIFRA reports for reporting years 2011, 2013, and 2014.

17. After receiving EPA's Opportunity to Show Cause, Respondent thereafter filed its reporting for reporting year 2014 on July 26, 2015.

III. Violation

18. Complainant re-alleges paragraphs 1 through 17.

19. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85(d), for reporting year 2014, Respondent was required to report to EPA on or before March 1, 2015 the types and amounts of each pesticide product that Respondent was currently producing, that it produced during 2014, and that it sold or distributed during 2014.

20. As described above, Respondent failed to file its annual FIFRA reporting for reporting year 2014 by the March 1, 2015 deadline.

21. Accordingly, Respondent's failure to submit the required information to EPA for reporting year 2014 on or before the March 1, 2015 deadline constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E.

IV. Terms of Settlement

22. By signing this CAFO, Respondent certifies that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder and that it has fully addressed the violations alleged herein by EPA.

23. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that the allegations in this CAFO state a claim upon which relief can be granted. Respondent hereby waives any defenses it might have as to jurisdiction and venue.

24. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth herein and waives its right to appeal the Final Order accompanying this Consent Agreement.

25. Without admitting or denying the allegations herein, Respondent consents to the terms and issuance of this CAFO and agrees to the payment of a civil penalty for the purpose of settlement of this action.

26. This CAFO shall apply to and be binding upon Respondent and its officers, directors, agents, successors and assigns.

Penalty

27. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”), and the 2013 update to the Penalty Inflation Rule at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and to \$7,500 for violations occurring after January 12, 2009.

28. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA’s “Enforcement Response Policy for FIFRA Section 7(c), Establishment Reporting Requirements” (May 2010), 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 six thousand dollars (\$6,000) in settlement of the violation alleged herein.

29. Respondent shall pay the penalty of \$6,000 within thirty (30) days of the effective date of this CAFO in the manner described below:

- a. Payment shall be in a single payment of \$6,000 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below.

Payment must be received by 11:00 A.M. Eastern Standard time to be considered as received that day.

- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall reference “*In the Matter of Mann Distribution, LLC*, Consent Agreement and Final Order, EPA Region 1,” Respondent’s name and address, and the EPA Docket Number of this action (FIFRA-01-2016-0017), shall be in the amount stated above, and be payable to “Treasurer, United States of America.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read “D 68010727
Environmental Protection Agency”

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA’s Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting “submit data,” entering the relevant debit card, credit card, or bank account information.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

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

and

Maximilian Boal, Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code OES 04-2)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

30. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that the civil penalty is not paid when due, the penalty shall be payable, plus accrued interest, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six (6) percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, 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). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

31. All penalties, interest, and charges payable pursuant to this CAFO shall represent civil penalties assessed by EPA and shall not be deductible for 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.

General Provisions

32. Respondent shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO. Each Party shall bear its own costs, disbursements and attorneys' fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other Party pursuant to the Equal Access to Justice Act, 5 U.S.C. Section 504, or other applicable law.

33. 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 this CAFO, contingent on Respondent's full compliance with the terms of this CAFO. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

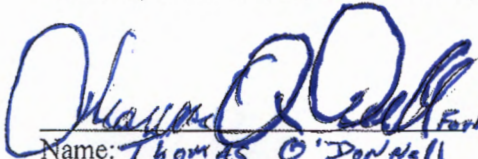
34. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Nothing in the CAFO shall be construed to limit the authority of the United States to

undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or Respondent's violation of the statutes and regulations upon which this agreement is based, or for Respondent's violation of applicable provision of law.

35. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

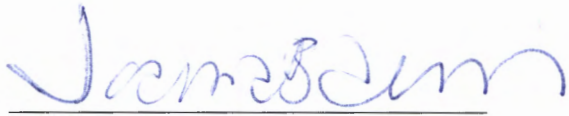
36. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed with the Regional Hearing Clerk.

For Respondent Mann Distribution, LLC:

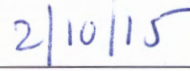

Name: Thomas O'Donnell Mann Distribution, LLC
Title: MANAGER
Mann Distribution, LLC

1-29-16
Date

For Complainant, United States Environmental Protection Agency:



Joanna Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

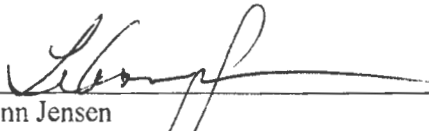


Date

V. FINAL ORDER

The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order. The Respondent, Mann Distribution, LLC, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

Date: March 1, 2016



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region I

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:)	
Mann Distribution, LLC)	Docket No. FIFRA-01-2016-0017
)	CERTIFICATE OF SERVICE
)	
)	
)	
)	
Respondent.)	
)	

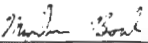
I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:

Original and One Copy (Hand-Delivered):	Wanda Santiago Regional Hearing Clerk U.S. EPA, Region I 5 Post Office Square, Suite 100 (ORA18-1) Boston, Massachusetts 02109-3912
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Copy (Certified Mail, Return Receipt Requested):	Thomas O'Donnell, Manager Mann Distribution, LLC 3134 Post Road Warwick, RI 02886
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Harlan M. Doliner, Esq.
Verrill Dana LLP
One Boston Place, Suite 1600
Boston, MA 02108

Dated: March 2, 2016



Maximilian Boat
Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-2)
Boston, Massachusetts 02109-3912