



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
December 9, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8142

Ms. Lisa Burchi
Bergeson & Campbell
2200 Pennsylvania Ave. NW
Suite 100 W
Washington, D.C. 20037

Consent Agreement and Final Order In the Matter of
Producers Chemical Company Docket No. FIFRA-05-2015-0015

Dear Ms. Burchi:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on December 9, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$12,000 is to be paid in the manner described in paragraphs 51 and 52. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by January 8, 2015, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2015-0015
)	
Producers Chemical Company)	Proceeding to Assess a Civil Penalty
Sugar Grove, Illinois,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136I(a)
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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136I(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Producers Chemical Company (Producers), a company doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “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.” Also see 40 C.F.R. §152.3.

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

15. Section 2(t) of FIFRA, 7 U.S.C. 136(t) defines the term “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 which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

16. 40 C.F.R. § 152.15(a) states, in pertinent part, no person may distribute or sell any pesticide product that is not registered under FIFRA.

17. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations

18. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

19. At all times relevant to this Complaint, Respondent owned or operated a place of business located at 1960 Bucktail Lane, Sugar Grove, Illinois.

20. On April 16, 2013, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Sugar Grove, Illinois.

21. During the April 16, 2013 inspection, the inspector collected a label, photos, and distribution records for the pesticide product **Prohypo** which Respondent was holding for distribution or sale.

22. The label collected during the inspection contains directions for use for disinfection of swimming pools and drinking water and sanitization of surfaces.

23. Disinfection and sanitization constitute the killing of microorganisms.

24. Microorganisms are pests as defined under Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

25. The label collected during the inspection shows that **Prohypo** contains the active ingredient, sodium hypochlorite.

26. Sodium hypochlorite is a known pesticide when used as a disinfectant or sanitizer.

27. Therefore, **Prohypo** is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15

28. **Prohypo** was not registered with the EPA at the time of the April 16, 2013, inspection, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

29. On or about April 5, 2013, Respondent distributed or sold **Prohypo** to a facility in Glen Allen, Virginia.

30. On or about April 8, 2013, Respondent distributed or sold **Prohypo** to a facility in Plano, Illinois.

31. On or about April 9, 2013, Respondent distributed or sold **Prohypo** to a facility in Zion, Illinois.

32. On or about April 11, 2013, Respondent distributed or sold **Prohypo** to a facility in Rockford, Illinois.

Count 1

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this CAFO.

34. On or about April 5, 2013, Respondent distributed or sold the unregistered pesticide **Prohypo** to a facility in Glen Allen, Virginia.

35. Respondent's distribution or sale of the unregistered pesticide **Prohypo** constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 2

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this CAFO.

38. On or about April 8, 2013, Respondent distributed or sold the unregistered pesticide **Prohypo** to a facility in Plano, Illinois.

39. Respondent's distribution or sale of the unregistered pesticide **Prohypo** constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

40. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 3

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this CAFO.

42. On or about April 9, 2013, Respondent distributed or sold the unregistered pesticide **Prohypo** to a facility in Zion, Illinois.

43. Respondent's distribution or sale of the unregistered pesticide **Prohypo** constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

44. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 4

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this CAFO.

46. On or about April 11, 2013, Respondent distributed or sold the unregistered pesticide **Prohypo** to a facility in Rockford, Illinois.

47. Respondent's distribution or sale of the unregistered pesticide **Prohypo**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

48. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty and Other Relief

49. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider 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, when assessing an administrative civil penalty under FIFRA.

50. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's *Enforcement Response Policy, Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009, Complainant has determined the appropriate civil penalty to settle this action is \$12,000.

51. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a \$12,000 civil penalty in order to settle and resolve the alleged FIFRA violations. Respondent agrees to pay the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

Respondent agrees that the check will note "In the Matter of Producers Chemical Company," and the docket number of this CAFO.

52. Respondent agrees that a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number will accompany the payment. Respondent agrees that it will send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

53. This civil penalty is not deductible for federal tax purposes.

54. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States District Court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136I(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

55. Pursuant to 31 C.F.R. § 901.9, Respondent agrees to pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to applicable law. Respondent agrees to pay a \$15 handling charge each month that any portion of the civil penalty is more than 30 days past due. In addition, Respondent agrees to pay a 6 percent per year civil penalty on any principal amount 90 days past due.

General Provisions

56. This CAFO resolves only Respondent's alleged liability for federal civil penalties for the violations and facts alleged in this CAFO.

57. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

58. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

59. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

60. The terms of this CAFO bind Respondent, its successors, and assigns.

61. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.


62. Each party agrees to bear its own costs and attorney's fees in this action.

63. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Producers Chemical Company**

**Producers Chemical Company,
Respondent**

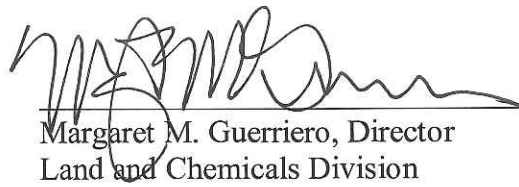
NOVEMBER 12, 2014
Date



Roger T. Harris
President/CEO

United States Environmental Protection Agency, Complainant

12/2/2014
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

**In the Matter of:
Producers Chemical Company**

Docket No. FIFRA-05-2015-0015

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-5-2014

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Producers Chemical Company, was filed on December 9, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7011 1150 0000 2643 8142, a copy of the original to the Respondent:

Ms. Lisa Burchi
Bergeson & Campbell
2200 Pennsylvania Ave. NW
Suite 100 W
Washington, D.C. 20037

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Assistant Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2015-0015