



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA GEORGIA 30303-8960

MAR 08 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Larry Walters  
Vice President  
Agrofert USA, Inc.  
463 Johnny Mercer Boulevard  
B-7, #294  
Savannah, Georgia 31410

Re: Agrofert USA, Inc.  
Consent Agreement and Final Order  
Docket No. TSCA-04-2012-2614(b)

Dear Mr. Walters:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Verne George of the EPA Region 4 staff at (404) 562-8988.

Sincerely,

Anthony G. Toney  
Acting Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA**

**RECEIVED  
EPA REGION IV**

**2012 MAR - 8 PM 2:43**

**HEARING CLERK**

**In the Matter of:** )  
 )  
Agrofert USA, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.:** TSCA-04-2012-2694(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4. Respondent is Agrofert USA, Inc.
2. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under TSCA to the EPA Region 4 Regional Administrator by EPA Delegation 12-2-A, dated May 11, 1994. The Region 4 Regional Administrator has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division by EPA Region 4 Delegation 12-2-A, dated January 14, 2009. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to

commence an enforcement action as the Complainant in this matter and has the authority to sign Consent Agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony; the making of any argument; or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to Section 15 of TSCA, 15 U.S.C. § 2614, it is unlawful for any person to:  
(1) fail or refuse to comply with any rule or order promulgated pursuant to Sections 4, 5, 8, 12 or 13 of TSCA, 15 U.S.C. § 2603, § 2604, § 2607, § 2611 or § 2612); (2) use for commercial purposes a chemical substance or mixture that the person knew or had reason to know was manufactured, imported, processed, or distributed in commerce in violation of TSCA Section 5, 15 U.S.C. § 2604; (3) fail to maintain records, submit reports or information, or permit access to or allow copying of records as required by TSCA; and (4) refuse to permit entry or inspection as authorized by Section 11 of TSCA, 15 U.S.C. § 2610.
5. Any person who violates a provision of Section 15 of TSCA shall be liable for a civil penalty in an amount not to exceed \$25,000 for each such violation, in accordance with Section 16(a) of TSCA. The Debt Collection Improvement Act of 1996 requires the EPA to review and adjust penalties, as necessary, for inflation at least once every four years.

As such, pursuant to the Adjustment of Civil Monetary Penalties for Inflation Rule, 40 C.F.R. Part 19, the revised maximum penalty for each violation occurring after January 30, 1997, through March 15, 2004, is \$27,500; for each violation occurring after March 15, 2004, through January 12, 2009, the maximum penalty for each violation is \$32,500; and for each violation occurring after January 12, 2009, the maximum penalty for each violation is \$37,500. Each day a violation continues may constitute a separate violation.

6. All Confidential Business Information (CBI) in this CAFO has been redacted. To determine the identity of the chemical substance referenced in this CAFO or the CBI that was deleted (CBI deleted), Complainant and/or Respondent should refer to EPA's letter, dated August 12, 2011, sent to the Respondent identifying the potential violations of TSCA and notifying the Respondent of the opportunity to show cause why the EPA should not proceed with an enforcement action.

### **III. Specific Allegations**

7. Respondent owns and operates a chemical importing business located at 463 Johnny Mercer Boulevard, B-7 # 294 Savannah, Georgia.
8. Respondent is an importer as the term is defined in 40 C.F.R. § 710.3.
9. On June 24, 2011, Complainant mailed an information request letter (IRL) to Respondent's place of business requesting Respondent to provide records that would enable EPA to determine Respondent's compliance with TSCA Sections 4, 5, 8, 12, and 13.
10. The IRL was mailed as an alternative to an onsite inspection pursuant to Section 11(a) of TSCA, 15 U.S.C. § 2610(a).

11. On July 13, 2011, Respondent submitted a written response to the IRL.
12. Based on the records that were provided to EPA Region 4, EPA determined that Respondent imported greater than 100,000 pounds of Chemicals D and E in 2005.
13. Chemicals D and E were on the TSCA Master Inventory at the beginning of the Inventory Update Reporting (IUR) period (August 25, 2006, through March 23, 2007) and were not excluded from the 2006 IUR.
14. Pursuant to 40 C.F.R. § 710.45, any chemical substance which is on the TSCA Master Inventory at the beginning of the IUR period described in 40 C.F.R. § 710.53 and was not excluded from reporting pursuant to 40 C.F.R. § 710.46 is subject to the reporting requirements set forth at 40 C.F.R. § 710, Subpart C.
15. Chemicals D and E were subject to the 2006 IUR.
16. During the reporting period, Respondent failed to submit a 2006 IUR for Chemicals D and E.
17. Pursuant to 40 C.F.R. § 710.1(c), Section 15(3) of TSCA (15 U.S.C. 2614) makes it unlawful for any person to fail or refuse to submit information required under the reporting regulations.

#### **IV. Consent Agreement**

18. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
19. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
20. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.

21. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with the TSCA regulations referenced in this CAFO.
22. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
23. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of TSCA.
24. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service for the EPA in this proceeding:

Verne George  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-8988.

#### **V. Final Order**

25. Respondent is assessed a civil penalty of **THIRTY THOUSAND, SIX HUNDRED SIXTY DOLLARS (\$30,660)** which shall be paid within thirty (30) days of the effective date.
26. Respondent shall remit the penalty payment by either a cashier's or certified check made payable to the "Treasurer, United States of America." **The Respondent shall note on the face of the check the Respondent's name and the Docket Number associated with**

**this CAFO.** The penalty payment shall be sent by one of the following methods to the address identified for the method chosen.

Address for payment submittal using the United States Postal Service:

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

Address for payment submittal using other mail service (e.g., Federal Express, United Parcel Service (UPS), DHL, etc.):

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

Contact Person: Natalie Pearson - (314) 418-4087.

27. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303;

Verne George  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303.

28. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
29. Pursuant to 31 U.S.C. § 3717, the 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. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent and its successors and assigns.
32. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

**The remainder of this page is intentionally blank.**




**VI. Effective Date**

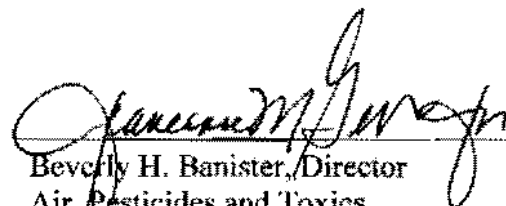
33. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

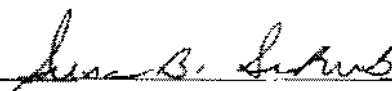
**Respondent:** Agrofert USA, Inc.  
**Docket No.:** TSCA-04-2012-2614(b)

By:  Date: 2-27-12  
Name: LARRY L WALTERS  
Title: VP

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 3-2-12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 8<sup>th</sup> day of March, 2012

By:   
Susan B. Schub  
Regional Judicial Officer

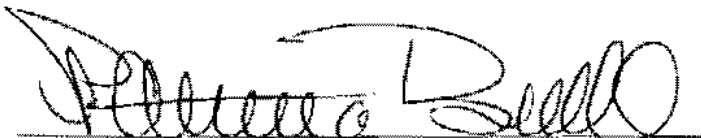
**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Agrofert USA, Inc. , Docket Number: TSCA-04-2012-2614(b), to the addressees listed below.

Mr. Larry Walters (via Certified Mail, Return Receipt Requested)  
President  
Agrofert USA, Inc.  
463 Johnny Mercer Boulevard  
B-7 #294  
Savannah, Georgia 31410

Verne George (via EPA's internal mail)  
Chemical Products and Asbestos Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

By:   
Patricia Bullock, Regional Hearing Clerk  
United States Environmental Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511

Date: 3-8-12