

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

October 30, 2024 4:54 pm

USEPA – Region II

Regional Hearing Clerk

In the Matter of

Arch Chemicals, Inc.,

Respondent.

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

CONSENT AGREEMENT AND
FINAL ORDER

Docket No. FIFRA-02-2025-5005

CONSENT AGREEMENT

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. § 136l(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* (“CROP”) as codified at 40 C.F.R. Part 22. Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an administrative complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 2.

3. Respondent is Arch Chemicals, Inc., a specialty chemical company, located at 412 Mt. Kemble Ave, Suite 200S, Morristown, NJ 07960.

4. 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.

5. By signing this Consent Agreement, Respondent consents to the assessment of the civil penalty specified below and to all the terms herein.

Jurisdiction and Waiver of Right to Hearing or Jury Trial

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

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

8. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

Statutory and Regulatory Background

9. The registration, production, distribution, and sale of pesticides is governed by FIFRA, 7 U.S.C. §§ 136a-y.

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (“Administrator”). These regulations are found at 19 C.F.R. Part 12.

11. Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1) defines a “pesticide” as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

12. Nineteen C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival (“NOA”) of Pesticides or Devices (EPA Form 3540-1) prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states in relevant part that it is unlawful for any person who is a distributor to fail to file required reports.

14. Section 2(p)(l) of FIFRA, 7 U.S.C. § 136(p)(l), defines a “label” as written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

15. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), sets out the criteria for a pesticide to be deemed “misbranded.”

16. Forty C.F.R. Part 156 sets out label requirements for pesticides and further defines misbranding. Forty C.F.R. § 156.10(a)(1) states that every pesticide product shall bear a label containing information specified by FIFRA and the regulations in this part, including the registration number of the producing establishment.

17. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

18. Forty C.F.R. § 167.20 provides that any establishment where a pesticidal product is produced must be registered with EPA.

19. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person to distribute or sell a misbranded pesticide.

20. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

21. 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 by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 *note*, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$24,255 for each offense for which a penalty is assessed where penalties were assessed on or after December 27, 2023.

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

Factual Allegations and Alleged Violations

23. Respondent is, and was at all times relevant to this Complaint, a corporation, and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. On August 30, 2024, Respondent contacted EPA Region 2 staff via email to inform the Agency that a shipment, Entry # H41-1345137-5 (“Shipment”), of 56 drums of Copper Omadine Powder AF (EPA Reg. No. 6836-496) had arrived in the Port of New York/Newark without a NOA and without the EPA-approved label affixed to the drums.

25. On September 3, 2024, Respondent filed a belated NOA for the Shipment.

26. After reviewing the entry documents and photographs of the products in the Shipment provided by Respondent, EPA staff determined that:

- a. Respondent is the consignee for the Shipment;
- b. The products in the Shipment were pesticides;
- c. The labels on the products in the Shipment displayed an incorrect establishment number; and
- d. The products were therefore misbranded pesticides and ineligible for entry into the United States as labeled upon arrival.

27. Respondent is a distributor within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).

28. Respondent is an “importer” within the meaning of 19 C.F.R. § 12.112.

29. Respondent’s failure to file a NOA for the pesticide in the Shipment prior to its arrival in the United States constitutes an unlawful act as described by Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

30. Respondent’s import of the Copper Omadine Powder AF (EPA Reg. No. 6836-496) in the Shipment as labeled upon arrival constitutes a distribution or sale of misbranded pesticides and is an unlawful act as described by Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

31. Each of Respondent’s unlawful acts, as alleged herein, is a violation of FIFRA for which a

penalty may be independently assessed under Section 14(a)(1), 7 U.S.C. § 136/(a)(1).

Civil Penalty

32. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), Complainant determined that an appropriate civil penalty to settle this action is **\$16,225** (“Assessed Penalty”). In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violation. Complainant also considered EPA’s Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009 (FIFRA ERP).

33. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. When paying the Assessed Penalty, Respondent shall:

- a. Identify the payment with Respondent’s name and the docket number of this Consent Agreement, FIFRA-02-2025-5005.
- b. Concurrently or within twenty-four (24) hours of payment, Respondent shall serve proof of payment by email to the following persons:

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

Michael Brannick
Enforcement & Compliance Assurance Division
Brannick.Michael@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

31. The Assessed Penalty of **\$16,225** must be received by EPA *on or before* thirty (30) calendar days from the date on which the Regional Judicial Officer signs the Final Order located at the end of this CAFO (the “due date”). Failure to pay the full amount of the penalty, according to the above provisions, will result in the referral of this matter to the United States Department of Justice and/or the United States Department of Treasury for collection and/or other appropriate action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed

Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts:

a. **Interest.** Interest begins to accrue from the date on which the Regional Judicial Officer signs the Final Order. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS large corporate underpayment rate. Any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. **Handling Charges.** Respondent will be assessed a monthly charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the date on which the Regional Judicial Officer signs the Final Order. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. **Late Payment Penalty.** A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the date on which the Regional Judicial Officer signs the Final Order.

33. **Late Penalty Actions.** In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following:

a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

34. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

35. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

General Provisions

36. Respondent certifies that, to the best of its knowledge, it is currently in compliance with FIFRA, 7 U.S.C. §§ 136-136y, and its implementing regulations.

37. Respondent certifies that the information provided to EPA regarding the shipment is true, accurate, and complete and that the photographs of the products transmitted to EPA on September 23, 2024, are true and accurate depictions of the products as labeled upon arrival. Respondent acknowledges that EPA has relied on this information to enter into this Consent Agreement.

38. Respondent explicitly and knowingly consents to the assessment of the Assessed Penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement. Full payment of the penalty shall only resolve Respondent's liability for federal civil penalties for the violations described in the Factual Allegations and Alleged Violations section, above. Full payment of this penalty shall not in any case 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.

39. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

40. Compliance with the requirements and provisions of this CAFO shall not constitute a defense to any subsequent (*i.e.* following the filing of this document) action, suit or proceeding EPA (or the United States on behalf of EPA) may commence pursuant to any applicable federal statutory or regulatory provision for any violation(s) occurring after the date of the execution of the Final Order accompanying this Consent Agreement, or for any violation(s) of FIFRA statutory or regulatory requirements or prohibitions not alleged herein but that may have occurred prior to the date of the execution of the Final Order accompanying this Consent Agreement.

41. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk via electronic mail to the following addressee(s):

Lynne Hall
Arxada LLC

412 Mt. Kemble Ave., Suite 200S
Morristown, NJ 07960
lynne.hall@arxada.com

and

Michael Neilson
Assistant General Counsel
Arxada LLC
412 Mt. Kemble Ave., Suite 200S
Morristown, NJ 07960
Michael.Neilson@arxada.com

42. Delivery of the fully executed documents to the email addresses in the above paragraph shall constitute Respondent's receipt and acceptance of the CAFO.

43. Any responses, documentation, and other communication submitted to EPA in connection with this Consent Agreement shall be sent by email to:

Michael Brannick
Brannick.Michael@epa.gov

Unless the above-named EPA contact is later advised otherwise by email, EPA shall address any written future correspondence (including any correspondence related to payment of the penalty in accordance with the provisions of this CAFO), to Respondent's addressee identified in the preceding paragraph.

44. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent agrees that this CAFO constitutes the entire agreement between the parties and all terms of settlement are set forth herein.

45. The terms of this CAFO bind Respondent, its successors, and assigns. Each person signing this agreement 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.

46. Each party agrees to bear its own costs and attorney fees in this action.

RESPONDENT:

BY: _____

(Signature)

NAME: Randall Willis

TITLE: Vice President, Supply Chain

COMPANY NAME: Arch Chemicals, Inc.

DATE: _____

COMPLAINANT:

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of **In the Matter of Arch Chemicals, Inc., FIFRA-02-2025-5005**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of electronic filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, NY.

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency – Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

DATED: _____

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

By Electronic Mail:

Karen Maples
Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

By Electronic Mail

Lynne Hall
Arxada LLC.
412 Mt. Kemble Ave., Suite 200S
Morristown, NJ 07960
Lynne.Hall@arxada.com
