



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 23 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Revised Federal Insecticide, Fungicide, and Rodenticide Act Section 7(c) Expedited Settlement Agreement Program – Penalty Matrix Table (Section VII)

FROM: Rosemarie Kelley, Director *Rosemarie Kelley*
Office of Civil Enforcement

TO: Directors, Enforcement and Compliance Assurance Divisions, Regions 1-10
Regional Counsels, Regions 1-10

The purpose of this memo is to transmit the reissued Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(c) Expedited Settlement Agreement (ESA) Program (Section 7(c) ESA Program). On June 21, 2019, the Office of Civil Enforcement (OCE) issued the Final Section 7(c) ESA Program. The penalty matrix table in Attachment 1 of the Section 7(c) ESA Program did not contain penalty values to address minor incomplete reporting violations. We are reissuing the Section 7(c) ESA Program with a revised penalty matrix table incorporating the penalty values for these types of violations. No other changes to the Section 7(c) ESA Program were made. This Section 7(c) ESA Program supersedes the Section 7(c) ESA Program issued on June 21, 2019.

For questions regarding the revised attachment or the Section 7(c) ESA Program, please feel free to contact Royan Teter at (202) 564-0940.

Attachment

The Federal Insecticide, Fungicide, and Rodenticide Act Section 7(c) Expedited Settlement Agreement Program

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I. Overview

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(c) Expedited Settlement Agreement (ESA) Program (“Section 7(c) ESA Program” or “this ESA Program”) is intended as a tool for regions to more efficiently resolve cases that involve certain minor violations of FIFRA’s establishment reporting requirements. This document details the criteria a case must meet to be eligible for a Section 7(c) ESA, and other aspects of this ESA Program’s implementation.

II. OECA ESA Policy

The Section 7(c) ESA Program is consistent with the Office of Enforcement and Compliance Assurance’s (OECA) 2014 guidance, *Revised Guidance on the Use of Expedited Settlement Agreements* (2014 Revised OECA ESA Policy). The 2014 Revised OECA ESA Policy establishes the following three principles.

First, ESAs should be “part of a complete compliance and enforcement strategy” that encompasses the full range of available tools.

Second, violations must:

- Be easily detected;
- Be easily corrected; and
- Be less egregious and not result in significant harm to human health or the environment or present an imminent or substantial endangerment.

Third, the use of ESAs is not appropriate where:

- The ESA does not adequately address the level of noncompliance or the nature of the violation;
- The entity has deliberately concealed evidence of noncompliance or failed or refused to provide information; or
- The violator has gained significant economic benefit from the delayed compliance.

The 2014 Revised OECA ESA Policy allows EPA to enter into ESAs with repeat violators in certain circumstances. The parameters set forth in Section V below outline when an ESA is an acceptable enforcement response to unlawful activity by a repeat violator.

III. Eligible Violations

Under this ESA program, an ESA may be used only for a case that involves the following specifically-identified Section 7(c) reporting violations, as identified in the FIFRA Section 7(c) Enforcement Response Policy (Section 7(c) ERP)¹:

- A. Late Reporting**
- B. Non-Reporting**
- C. Incomplete Report – Minor**
- D. Incomplete Report – Major**

Attachment 1 lists the only violations that are eligible for ESA treatment under this ESA program. Note that certain violations from the Section 7(c) ERP are not included in Attachment 1 and, thus, are not eligible for ESA treatment. For example, false reporting is not ESA-eligible.

IV. Exclusions

In addition to the limitations above (Section III) and consistent with the 2014 Revised OECA ESA Policy, a Section 7(c) ESA cannot be used if:

- The violator deliberately conceals evidence of noncompliance; fails or refuses to provide records or access needed to determine compliance; or is otherwise obstructive or uncooperative with the compliance monitoring processes or early settlement; or
- The violation results in significant harm to human health or the environment or may present an imminent and substantial endangerment to human health or the environment.

V. Respondent Eligibility and Repeat Violators

This ESA Program can be used on any size or type of FIFRA-regulated entity. Nonetheless, even if a case meets the criteria for ESA treatment, the region may determine that an ESA is not the appropriate enforcement response to the noncompliance of a particular violator. For instance, the duration of noncompliance may have been significant, or the violator may have gained a significant economic benefit, such that enforcement under the Section 7(c) ERP is more appropriate.

Under the 2014 Revised OECA ESA Policy (citing to 2003 EPA ESA guidance), a “repeat violator” is a violator who, in the past five years, has had the same or closely-related violation(s) that were subject to an enforcement action at the facility where the violation

¹ Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements (Updated May 2010); <http://www.epa.gov/enforcement/waste/documents/policies/fifra-erp-section7-051910.pdf>.

occurred, or at other facilities under the ownership, operation, or control of the violator. The 2014 Revised OECA ESA Policy no longer prohibits the issuance of an ESA to a “repeat violator,” and allows each ESA Program to authorize the issuance of ESAs to repeat violators if such an ESA Program clearly sets forth the parameters regarding when an ESA would be an acceptable enforcement response for a repeat violator and explains why such treatment is appropriate.

The definition for a “repeat violator” under this ESA Program is a violator who, in the past five years, has had the same or closely-related violation(s) that were subject to an enforcement action at the facility, or at other facilities under the ownership, operation, or control of the violator. “Same or closely-related violations” refers to any FIFRA Section 7(c) violation for which the violator has received up to two prior federal enforcement actions.

An ESA can be used to resolve a repeat FIFRA Section 7(c) violation for which a prior enforcement action was taken pursuant to the authority in FIFRA Section 9(c)(3), 14(a)(2) or 14(a)(4) within five years of that enforcement action. A second ESA should not be offered where EPA has issued a Notice of Termination of Establishment Registration (NOTER) against one or more of the violator’s establishments within the last five years.

A second ESA may be appropriate if the region believes the respondent will return to compliance quickly and the increased penalty provides sufficient deterrence. For example, the first ESA addressed non-compliance at virtually all the establishments owned by the respondent, and the second ESA will address non-compliance that remains at fewer establishments under the same ownership. Conversely, as discussed above, if it appears that the use of ESAs is not sufficient incentive for the source to maintain compliance, then a second ESA is not appropriate even though other eligibility criteria may be met. Under this ESA Program, the penalty for a second ESA is greater than the first (although the penalty for either is less than would be calculated under the Section 7(c) ERP). See Section VII. See Figure 1 for a hypothetical timeline.

Figure 1: Hypothetical

	Violation Count	Response	Rationale
Year 1	1 st violation	NOW	Action triggers the start of the 5-year period.
↓	2 nd violation	ESA #1	Same or closely-related violation within the 5-year period.
↓	3 rd violation	ESA #2	Same or closely-related violation within the 5-year period with a higher ESA penalty. No ESA appropriate where a previous violation resulted in a NOTER.
↓	4 th violation	ERP	No ESA appropriate. Continued non-compliance of same or closely-related violation after a NOW and two ESAs suggests a systemic problem that warrants ERP enforcement.
Year 5			

VI. Complete Enforcement Program

Regions should continue to operate “a complete compliance and enforcement strategy” for FIFRA violations which includes an appropriate balance of ESA and non-ESA enforcement activities.

VII. Penalties

To expedite settlements, this ESA provides a reduction from the Gravity-based Penalty (GBP) that would be calculated under the Section 7(c) ERP as set forth in the ESA Penalty Matrix, Attachment 1.

- For the first ESA, the penalty represents 25 percent (25%) of the GBP value; and
- For a second ESA, the penalty represents 50 percent (50%) of the GBP value.

Under this Matrix, final ESA penalties are based upon the violation, respondent’s size of business, and whether the case involves an initial or second ESA. Note that FIFRA Section 7(c) ESA settlements ***must conform*** to the amounts set forth in the ESA Penalty Matrix; penalties may *not* be further reduced on any other basis such as ability-to-pay or under any of the adjustment factors such as good faith and cooperation. Nor are penalties calculated under this ESA required to be adjusted using an inflation adjustment factor.²

VIII. Environmental Benefits

Although the 2014 Revised OECA ESA Policy removes the prohibition on “penalty-only” ESAs, this ESA still requires a respondent to fulfill its FIFRA Section 7(c) duty as a condition of settlement unless the respondent has relinquished the establishment registration such that it is no longer required to report under FIFRA Section 7(c). The minimum environmental benefit derived from resolving noncompliance with an ESA is that the respondent stops its noncompliance and modifies its activities or practices so as to prevent future noncompliance.

² Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2019) and Transmittal of the 2019 Civil Monetary Penalty Inflation Adjustment Rule. Rosemarie Kelley, Office Director of Civil Enforcement (March 4, 2019) (“2019 Memo”). The 2019 Memo does not supersede the Amendments to EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule (2018 Memorandum). While the 2018 Memo amended existing EPA civil penalty policies to account for inflation, it did not modify the EPA’s ESA penalty policies. *Id.* at 2. However, for penalties calculated under this ESA to provide appropriate deterrence, the adjusted GBP values from the Section 7(c) ERP were increased and simplified by rounding to the nearest hundredth, as opposed to the nearest dollar, per guidance from the 2018 memo. Additionally, the increased GBP values provides higher ESA penalties for repeat violators.

IX. Enforcement Response Policy

Regions are expected to pursue appropriate enforcement as provided by the Section 7 ERP if, within 30 (calendar) days of respondent's receipt of the ESA offer, the respondent does not correct the violations and return the signed agreement, in which it agrees to pay the penalty within 30 days of the effective date of the agreement.

Upon written request by a respondent, the EPA may, at its discretion, grant a single 30-day extension for settlement under the ESA. EPA may only grant a second 30-day extension if a respondent can demonstrate unusual circumstances that necessitate the additional extension.

Any settlement agreement provided for by this Policy that is signed by the parties for which a final order is filed constitutes a final order within the meaning of the Section 7 ERP and 40 C.F.R. Part 22. *See* 40 C.F.R. §§ 22.18(b)(3) and 22.31. Regions should comply with all applicable provisions of Part 22 and guidance from the Office of Administrative Law Judges, e.g., those governing filing and service of the settlement agreement.

X. Model Documents

Regions should consider using the appended Model Notice Letter (Attachment 2) and Model Settlement Agreement (Attachment 3) when issuing Section 7(c) ESAs. A model certificate of service is not included in this document. Also, regions may elect to use a "Return to Compliance Worksheet" (not included here) that would clearly describe each action taken to correct violations and set forth the date on which the respondent provided appropriate documentation showing when each action was completed and ultimately when the violations were corrected.

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ATTACHMENTS

ATTACHMENT 1

ESA Penalty Matrix³

	Section 7 ERP			ESA Penalty Value	Second ESA Penalty Value
Violation	1st Violation	2nd Violation GBP	3rd Violation GBP	Final Penalty (25% of GBP)	Final Penalty (50% of GBP)
Late Reporting	NOW	C-I - \$3,800	\$8,600	\$1,000	\$1,900
		C-II - \$1,900		\$500	\$1,000
		C-III - \$1,300		\$300	\$700
Non-Reporting	NOW If no response:				
	C-I - \$3,800	C-I - \$5,600	\$8,600	\$1,400	\$2,800
	C-II - \$1,900	C-II - \$3,800		\$1,000	\$1,900
	C-III - \$1,300	C-III - \$1,900		\$500	\$1,000
Incomplete Report-Minor	Informal Response/ NOW	NOW	C-I - \$3,800	\$1,000	\$1,900
			C-II - \$1,900	\$500	\$1,000
			C-III - \$1,300	\$300	\$700
Incomplete Report-Major	NOW	C-I - \$3,800	\$8,600	\$1,000	\$1,900
		C-II - \$1,900		\$500	\$1,000
		C-III - \$1,300		\$300	\$700

³ The final ESA penalty amounts were simplified by rounding to the nearest hundredth.

ATTACHMENT 2

FIFRA Section 7(c) Expedited Settlement Agreement

Eligible Violations

The following violations are eligible for expedited settlement, consistent with the conditions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(c) Expedited Settlement Agreement (ESA). Except as noted, the violation descriptions and citations are copied from the applicable ERP for FIFRA Section 7(c).⁴

1. Incomplete Reporting

A report that does not contain all the required information or contains incorrect information is considered an incomplete report. Incomplete reporting violations are categorized as either minor or major incomplete reporting violations, based on the seriousness of the error, and treated accordingly.

a. Minor Incomplete Reporting

EPA considers a minor reporting violation to be missing or incorrect information in a report that is non-substantive and easily corrected by the producer. Examples of minor errors are: no date on the signature line, no telephone number, incorrect market codes, incorrect product types, incorrect use classifications, typographical errors, omission of a signature (hard copy submissions only), and all other information the Agency has determined to be necessary to include on the annual production report to help clarify and support the purpose of the report.

b. Major Incomplete Reporting

EPA considers a major reporting violation to be all other missing or incorrect information in a report that cannot be classified as a minor error. For example, a producer fails to report a pesticide that was produced in the preceding year or fails to report the amount of the pesticide that was produced in the preceding year. Other examples of major errors are: failing to report the amounts of pesticide sold or distributed and no EPA registration number.

2. Late Reporting

If a company official submits the report 30 or fewer days after the March 1st due date or 30 or fewer days after the due date of the initial report, it is a late report. Reports not postmarked but received via mail by March 5th are considered to have been postmarked by March 1st.

3. Non-Reporting

If a company official fails to submit the annual report within 30 days after the March 1st due date, or the initial report within 60 days after the initial report is due, the establishment will be considered as non-reporting. Establishments where no production occurred during the year are still required to submit a report (indicating no production) within the 30-day time-frame for annual reports or they will be considered as non-reporting.

⁴ FIFRA Section 7(c) ERP (Updated May 2010).

ATTACHMENT 3

FIFRA § 7(c) Expedited Settlement Agreement Model Notice Letter

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Company Contact Address]

Re: Section 7(c) Notice of Federal Insecticide, Fungicide and Rodenticide Act Requirements:
Opportunity for Expedited Settlement within Thirty (30) Days

Dear **[respondent's name]**:

The U.S. Environmental Protection Agency ("EPA"), Region __ **[Number]**, has conducted a review of information available concerning the pesticide-producing establishment, EPA Establishment Number **[XXXXX]** in **[location, state]**. EPA's review indicates that **[respondent]** failed to comply with the requirement(s) listed below concerning pesticide production reporting under Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, as amended ("FIFRA" or the "Act") and its implementing regulations at 40 C.F.R. Part 167.

Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a pesticide producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e. The submittal of an inaccurate, incomplete, or late annual pesticide report constitutes a violation of FIFRA Section 7(c). Unlawful acts under FIFRA may be subject to the civil and criminal penalty provisions at Sections 14(a) and 14(b) of FIFRA, 7 U.S.C. §§ 136l(a) and 136l(b).

[Specify the requirement(s) allegedly violated by the Respondent and how the Respondent failed to meet the applicable reporting requirements]

[If applicable:] Please be advised that **[Company Name]** has resolved previous violations of Section 7(c) of FIFRA with EPA on **[Date(s) of effective date(s) of those prior enforcement actions]**.

EPA encourages you to immediately review your compliance with the foregoing requirement(s). If you believe you are not subject to or have not violated the foregoing requirement(s), you may provide a written explanation, along with any relevant documentation, to **[EPA Contact]**, at the EPA address shown below within thirty (30) calendar days of your receipt of this letter. If, however, you are out of compliance, EPA is committed to the fair and quick settlement of this matter. Section 14 of FIFRA and subsequent inflation adjustments authorize EPA to pursue civil penalties of up to **[\$19,936 or applicable statutory maximum]** per violation of FIFRA.⁵ Regulations set forth at 40 C.F.R. part 22 provide for a consent agreement or administrative litigation process in order to resolve the violations and establish the appropriate penalty. EPA has the discretion in certain

⁵ [Cite inflation adjustment in Fed Reg.]

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circumstances to expedite that process. This letter is an offer to quickly resolve the violation(s) alleged here against [**Firm/Company**] through an expedited settlement agreement.

The terms of this offer to resolve the above-described violations in an expedited settlement agreement are as follows. Within thirty (30) days of your receipt of this letter, you must:

- (1) Correct the violation(s) and provide documentation of such corrections. [**specify if appropriate, or attach a "Return to Compliance Worksheet"**]; and
- (2) Complete and return to EPA the enclosed Expedited Settlement Agreement and Final Order ("Agreement" or "ESA/FO") as directed below. Please note that in signing the Agreement, you are certifying under penalty of law that you: (a) have corrected the violation(s); and (b) have agreed to pay the civil penalty of [\$XXX.XX] set out in the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal under 40 C.F.R. part 22 concerning your violation(s).

A fully-executed ESA/FO will be sent to you via certified mail once it has been ratified and filed with the EPA Regional Hearing Clerk. As provided in the Agreement, the civil penalty will be due within thirty (30) calendar days of the date that the ESA/FO is filed with the Regional Hearing Clerk. **Please do not send a payment for penalty until you receive the fully-executed ESA/FO, which will include the docket number that is required in order to submit payment.**

You should send your signed Agreement, along with required documentation demonstrating that you are now in compliance with the requirements that were alleged to be violated, by certified U.S. Mail, return receipt requested, to:

[EPA program contact]

[ORC attorney]

If you can demonstrate in writing that it is technically infeasible or impracticable to correct your violation(s) within thirty (30) days, upon request, EPA, at its discretion, may grant an extension of up to thirty (30) days. You must send your request for extension in writing to EPA no later than 10 days before the end of the initial thirty (30) day compliance period. The request must clearly indicate whether you intend to take advantage of this expedited settlement offer and contain a schedule for when you will come into compliance (which must not extend beyond the extension period). Any extensions must be granted in writing by EPA.

If the terms set forth above are not met within thirty (30) days of your receipt of this letter or the end of any extended period granted by EPA in writing, then this settlement offer will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

If you have any questions or wish to discuss the general circumstances of your case, then please contact the [EPA program contact], Enforcement Case Officer assigned to your case at [XXX-XXX-XXXX] or by electronic mail at [EPA program contact] @epa.gov.

Sincerely,

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[EPA FIFRA Manager's Name and Signature Block]

cc: **[Persons to CC]**

Enclosure:

Expedited Settlement Agreement and Final Order (ESA/FO)

ATTACHMENT 4

**FIFRA § 7(c) Expedited Settlement Agreement:
Model ESA Settlement Agreement and Final Order (ESA/FO)**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION [Number]**

IN THE MATTER OF:)	Docket No. _____
)	
)	
[Respondent's Name],)	EXPEDITED SETTLEMENT
)	AGREEMENT AND
Respondent.)	FINAL ORDER
_____)	

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) alleges that [respondent’s name] (“Respondent”) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c), for its facility, EPA Establishment Number _____, located at [establishment address].

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides (and, if applicable, active ingredients used in producing pesticides): which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year. In addition, § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

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3. 40 C.F.R. § 167.85(a) and (b) adds requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

4. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by EPA. The applicable form, “EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments” requires, inter alia, identification of the establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the “Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year January 1, 20XX through December 31, 20XX” provides additional detail regarding information required on the Form.

5. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

6. [Identify the specific FIFRA Section 7(c) and 40 C.F.R. § 167.85 reporting requirement(s) that Respondent allegedly violated and set out the factual basis to support the alleged violation. Note: Only the following violations are eligible for expedited settlement: Incomplete Reporting – Minor; Incomplete Reporting – Major; Late Reporting; and Non-reporting. (False Reporting is not ESA-eligible.) Additional descriptions of these violations are included in the FIFRA Section 7 ESA Policy (June 2019) and the FIFRA Section 7 Enforcement Response Policy (ERP) (Updated May 2010).]

12. Respondent’s failure to comply with Section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

13. EPA and Respondent agree to settle this matter for a civil penalty of [XXX.XX] (xxx dollars and 00 cents [write out amount]). [Note that ESA settlements must conform to the

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amounts set forth in the ESA Penalty Matrix contained in the FIFRA Section 7 ESA Pilot.

Penalties may not be further reduced on any other basis such as ability-to-pay or under any of the adjustment factors such as good faith and cooperation.] The Parties agree that settlement of this matter is in the public interest.

14. EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (“Agreement”), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136f and 40 C.F.R. § 22.13(b) and § 22.18(b).

15. By signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraphs 2 through 5 above; (b) admits that EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of the penalty set forth herein; and (e) waives any right to contest the allegations contained herein and its right to appeal the proposed Final Order attached hereto.

16. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of [**\$XXX (xxx hundred dollars and 00 cents)**] for the FIFRA violations identified in this Agreement by sending a cashier’s or certified check, payable to “Treasurer, United States of America” via either:

- U.S. Mail to:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

- Or overnight/common carrier (i.e., FedEx, DHL, UPS) to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza SL-MO-C2-GL
St. Louis, MO 63101

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Alternatively, the penalty payment to “Treasurer, United States of America” may be made via:

- Electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

The check or electronic funds transfer instrument must state the case title (“In the Matter of: **[Insert Name]**”), and the docket number of this Agreement.

17. When it pays the penalty, Respondent must send a notice of payment that states Respondent’s name, complete address, and the case docket number (along with a photocopy of the check or a statement of affirmation or receipt of an electronic funds transfer) to:

Regional Hearing Clerk
U.S. EPA, Region XX
[RHC Address]

[EPA program contact and address]

[ORC attorney and address]

18. Full payment of the penalty set forth in this Expedited Settlement Agreement and Final Order shall only resolve Respondent’s liability for Federal civil penalties for the violations and facts alleged herein.

19. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

20. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States’ enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalties are not reviewable in a collection action.

21. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this Agreement.

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22. Respondent certifies that it has corrected the alleged violation(s) **[if applicable, add “ has submitted true and accurate documentation of such correction to EPA”]**, and is complying with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and its implementing regulations set forth at 40 C.F.R. § 167.85.

23. Upon signing and returning this Agreement to EPA, Respondent waives any and all remedies, claims for relief and other available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Expedited Settlement Agreement, including the opportunity for a hearing or appeal pursuant to FIFRA and 40 C.F.R. Part 22 and any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

24. Each party shall bear its own costs and fees, if any.

25. The Agreement authorized by EPA’s execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

26. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order.

27. The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following valid e-mail addresses: **[insert ORC attorney’s e-mail address]** (for Complainant), and _____ (for Respondent).

IT IS SO AGREED,

FOR RESPONDENT:

Name (print): _____

Title (print): _____

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Signature: _____

Date: _____

FOR COMPLAINANT:

Name [**of Agency delegated official**] (print): _____

Title (print): _____

Signature: _____

Date: _____

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FINAL ORDER

Pursuant to the authority in Section 14(a) of FIFRA, 7 U.S.C. § 136I(a), 40 C.F.R. §§ 22.13(b) and 22.18(b)(3), IT IS HEREBY ORDERED THAT:

This Expedited Settlement Agreement and Final Order, as agreed to by the parties, shall be effective immediately upon filing with the Regional Hearing Clerk for EPA, Region [XX]. Such filing will conclude this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31.

IT IS SO ORDERED.

Date _____

[Name of RJO]
Regional Judicial Officer
United States Environmental Protection Agency
Region [XX]