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HEARINGS CLERK  
EPA -- REGION 10

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 10  
Seattle, Washington**

IN THE MATTER OF: )

Argent Chemical Laboratories, Inc, )  
Eliot Lieberman, and Bertriz Shanahan, )  
Respondents. )

Docket No. FIFRA-10-2004-0073

CONSENT AGREEMENT AND FINAL  
ORDER FOR PAYMENT OF CIVIL  
PENALTIES

**I. PRELIMINARY STATEMENT**

1. The United States Environmental Protection Agency ("EPA") initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), by issuing a complaint against Argent Chemical Laboratories, Inc., Eliot Lieberman and Bertriz Shanahan (Respondents), on May 3, 2004.

2. In the complaint EPA alleged 304 violations of FIFRA, 7 U.S.C. § 136 et seq. Specifically, the complaint alleged that Respondents failed to comply with: FIFRA Section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), the distribution or sale of an unregistered pesticide; FIFRA Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), the distribution of any pesticide which is adulterated or misbranded; FIFRA section 12(a)(2)(F), 7 U.S.C. § 136j(a)(2)(F), the distribution or sale of or the making available for use of any registered pesticide classified for restricted use for some or all purposes other than in accordance with Section 3(d) and any regulations thereunder; FIFRA Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), the

1 production of pesticides subject to FIFRA in an unregistered establishment; and FIFRA  
2 Section 12(a)(2)(N), 7 U.S.C. § 136j(a)(2)(N), the failure to file reports required by FIFRA.

3 3. The complete factual and jurisdictional basis for proposing the assessment of a  
4 civil penalty is set forth in the Complaint and is incorporated herein by reference.

5 4. As a result of information exchanged during settlement negotiations, EPA and  
6 Respondents agree to resolve this matter by executing this Consent Agreement and Final  
7 Order ("CAFO").  
8

## 9 II. CONSENT AGREEMENT

10 The parties to this action hereby stipulate as follows:

11 5. Respondents do not admit liability. Respondents neither admit nor deny the  
12 specific factual allegations contained in the complaint.  
13

14 6. Respondents admit EPA has jurisdiction over this proceeding.

15 7. As a condition of settlement EPA agrees to withdraw, with prejudice, counts 295  
16 to 298 regarding No FOAM. The parties agree that Respondents may sell NO FOAM as  
17 long as it is properly labeled and advertized in accordance with FIFRA.

18 8. It is the intent of EPA and Respondents to further the objectives of FIFRA and  
19 all obligations set forth below have the objective of requiring and ensuring Respondents'  
20 compliance with FIFRA.  
21

22 9. As a condition of settlement, Respondents agree:

23 A. Except as provided in Paragraph 9.B. below, Respondents shall cease the  
24 domestic and foreign sales of the following products, and products  
25 containing the same active ingredient as the following products:

26 1) Copper Control Algaecide, EPA Registration Number (EPA Reg.  
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- No.) 1812-307-47677;
- 2) Copper Control Liquid, EPA Reg. No. 47677-1 (Cancelled July 24, 1996);
- 3) Copper Control Granular, EPA Reg. No. 47677-8 (Cancelled July 24, 1996);
- 4) Benzalkonium Chloride 50%, EPA Reg. No. 42943-6-47677 (Cancelled October 23, 2003);
- 5) Rotenone 5% Emulsifiable Concentrate, EPA. Reg No. 47677-3 (Cancelled July 19, 1995);
- 6) Chem Fish Toxicant Regular, Rotenone 5% Liquid, EPA Reg. No. 1439-157;
- 7) Rotenone 10% Powder (not registered);
- 8) Kontak Aquarium Algaecide (not registered); and
- 9) Aqua Bacta Aid (ABA) (not registered).

B. Notwithstanding the above Paragraph 9.A.:

- 1) Respondents may sell properly registered and labeled existing stock (that stock in the Respondent's Redmond, Washington facility as of May 5, 2005) of the products listed above for period of 12 months from entry of this CAFO providing EPA has access to verify existing stock (including access to invoices and inventory records).
- 2) Respondents may sell Copper Control Algaecide, EPA Reg No. 67690-24-47677, (formerly EPA. Reg. No. 1812-307-4677) under a valid supplemental distribution agreement so long as the product is



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produced (including all manufacturing, packaging, repackaging, labeling and relabeling) by the registrant.

3) Respondents may sell products containing the ingredients in ABA provided it is properly labeled and advertized in accordance with FIFRA.

C. Respondents agree to cease pesticide production which for the purposes of this agreement means the production of any product listed in paragraph 9.A. above; any EPA registered pesticide; any product that states, claims or implies by labeling or otherwise that the product could be used as a pesticide; any product containing an active ingredient that has no significant commercially valuable use, as distributed and sold, other than for pesticidal purposes; and any product that Respondents know will be used as a pesticide. Pesticide production includes the manufacturing, preparing, propagating, compounding, or processing of any pesticide and the packaging, repackaging, labeling, relabeling or otherwise changing the container of any pesticide. Respondents will not apply for an EPA Pesticide Producing Establishment number from any EPA office.

D. Respondents agree to cease all foreign sale or distribution of any unregistered pesticide.

E. Respondents will submit copies of the following records every six months for a period of five years to the U.S. Environmental Protection Agency, Region 10 at 1200 6<sup>th</sup> Avenue, Seattle WA 98101:

1) records required by 40 C.F.R. § 169 *Books and Records of Pesticide Production and Distribution*, including the information required by 40 C.F.R. § 169.2 *Maintenance of Records*. This includes

1 but is not limited to records such as production batch records, sales  
2 and receiving records, inventory records, foreign language labels and  
3 foreign purchaser acknowledgment statements and disposal records.

4 2) all records regarding repackaging or contract manufacturing  
5 agreements, a copy of any and all pesticide labels used for domestic  
6 and foreign distribution or sale and a copy of each form of  
7 promotional or informational materials, including paper and electronic,  
8 pertaining to each pesticide product sold or distributed, held or offered  
9 for sale by any of the Respondents; and,  
10

11 3) a copy of all records regarding shipments of pesticides into or out  
12 of the United States from any business wholly or partially owned,  
13 operated or controlled by any of the Respondents;  
14

15 Records shall be submitted on or before July 15 and January 15 each year for the  
16 immediately preceding six month period with the first set of records due on or before July  
17 15, 2005 and the tenth set due on or before January 15, 2010.

18 F. Respondents Lieberman and Shanahan shall each submit an annual  
19 compliance certification certifying that to the best of their knowledge and belief, and after  
20 reasonable inquiry they are acting, and have for the preceding year acted, in compliance  
21 with the terms of this agreement. Each annual certification is due on or before January 15<sup>th</sup>  
22 with the first certifications due on or before January 15, 2006 and the fifth certifications due  
23 on or before January 15, 2010.  
24

25 G. Respondents agree to provide EPA or EPA representatives, upon  
26 presentation of credentials, immediate access at all reasonable times to facilities owned  
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1 or controlled in whole or in part by one or more of the Respondents for the purpose of  
2 monitoring and assessing compliance with this agreement and with FIFRA including but  
3 not limited to: (a) conducting investigations and monitoring any activity required of  
4 Respondents pursuant to this agreement; (b) verifying information submitted to EPA; (c)  
5 obtaining samples; (d) inspecting and copying records; (e) observing and photographing  
6 or otherwise documenting Respondents' activity required or prohibited by this agreement  
7 or FIFRA. This right of access is in addition to and shall not limit any access rights  
8 afforded by law, regulation or warrant.  
9

10 10. As a result of information exchanged during negotiations after filing the  
11 Complaint, and in consideration of the nature of the violations, Respondents' willingness  
12 to settle this matter without further litigation, other relevant factors, and in accordance with  
13 the statutory penalty criteria set out in Section 14(a) of FIFRA, 7 U.S.C. § 136l(a)(4), as  
14 reflected in the applicable penalty policies, EPA has determined and Respondents agree  
15 that an appropriate penalty to settle this action is THREE HUNDRED THOUSAND  
16 DOLLARS (\$300,000). Respondents shall be jointly and severally liable for the payment  
17 of this penalty.  
18

19 11. Respondents consent to issuance of the final order contained in Part III of this  
20 CAFO and payment of the civil penalty in the amount of THREE HUNDRED THOUSAND  
21 DOLLARS (\$300,000) plus interest to be paid in six payments as follows:  
22

23 A. the first payment, \$ 20,000 plus (\$750 interest), is due no later than  
24 September 30, 2005;

25 B. the second payment, \$ 30,000 plus (\$700 interest), is due no later  
26 than December 31, 2005;  
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- C. the third payment, \$ 60,000 plus (\$ 2,500 interest), is due no later than December 31, 2006;
- D. the fourth payment, \$ 70,000 plus (\$ 1,900 interest), is due no later than December 31, 2007;
- E. the fifth payment, \$ 80,000 plus (\$ 1,200 interest), is due no later than December 31, 2008; and
- F. the sixth payment, \$ 40,000 plus (\$ 200 interest), is due no later than June 30, 2009.

Respondent Lieberman shall pay at least Five Thousand dollars (\$5,000) and Respondent Shanahan shall pay at least Five Thousand Dollars (\$5,000) of each payment.

12. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

Mellon Bank  
EPA Region 10  
P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251

A transmittal letter giving Respondents' name, complete address, and this case docket number must accompany the payment. A copy of the checks and of the accompanying transmittal letter shall be delivered or mailed to the Regional Hearing Clerk at the following address:

U.S. Environmental Protection Agency  
Region 10 Hearing Clerk  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

13. Should Respondent fail to pay any portion of the penalty assessed herein by

1 its due date, the entire unpaid balance of the assessed penalty and accrued interest shall  
2 become immediately due and owing. Should such a failure to pay occur, Respondent may  
3 be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to  
4 collect any unpaid portion of the assessed penalty, together with interest, handling  
5 charges, and nonpayment penalties as set forth in Paragraph 14 below.  
6

7 14. Pursuant to 31 U.S.C. § 3717, Respondents shall pay the following amounts:

8 A. Interest. Any unpaid portion of the assessed penalty shall bear interest  
9 at the rate established by the Secretary of the Treasury pursuant to  
10 31 U.S.C. § 3717(a)(1) from the date a conformed copy of this CAFO is  
11 mailed to Respondents; provided, however, that no interest shall be payable  
12 on any portion of the assessed penalty that is paid within 30 days of the date  
13 a conformed copy of this CAFO is mailed to Respondents.  
14

15 B. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling  
16 charge of \$15 shall be paid if any portion of the assessed penalty is more  
17 than 30 days past due.  
18

19 C. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment  
20 penalty of 6% per annum shall be paid on any portion of the assessed  
21 penalty that is more than 90 days past due, which nonpayment penalty shall  
22 be calculated as of the day the underlying penalty first becomes past due.

23 15. The civil penalty described in this CAFO shall represent civil penalties assessed  
24 by EPA for purposes of federal taxes.

25 16. Respondents agree that failure to comply with any of the conditions in  
26 Paragraph 9 above shall be a violation of this CAFO and Respondents shall be jointly and  
27



1 severally liable for the following stipulated penalties:

2 A. \$1,000 for each sale or distribution of a product prohibited by Paragraph  
3 9.A.

4 B. \$100 per day for each day that a record required to be submitted to EPA  
5 under Paragraph 9.E. is late.  
6

7 17. All stipulated penalties shall be due within thirty (30) days of the date of the act  
8 or omission to which the stipulated penalty applies. The method of payment shall be in  
9 accordance with the provisions of Paragraph 12 above.

10 18. The undersigned representative(s) of Respondents certify that he or she is fully  
11 authorized to enter into the terms and conditions of this CAFO and to bind Respondents  
12 and their officers, directors, agents, servants, employees, successors, and assigns to this  
13 document.  
14

15 19. Except as described in Paragraph 14 of this CAFO, each party shall bear its  
16 own costs in bringing or defending this action.

17 20. Respondents expressly waive any right to contest the allegations and their right  
18 to appeal the Final Order contained herein.

19 21. Respondents state that, to the best of their knowledge, they are now in  
20 compliance with FIFRA.  
21

22 22. Respondents and EPA agree to the issuance of the Final Order below, and  
23 Respondents consent to the assessment of the civil penalty specified therein.

24 23. This document is a "Final Order" as that term is defined in the Enforcement  
25 Response Policy for FIFRA, dated July 2, 1990, for the purposes of demonstrating prior  
26 violations.  
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STIPULATED AND AGREED this 18<sup>th</sup> day of May, 2005;

ARGENT CHEMICAL LABORATORIES, INC.  
Respondent

By: Bertriz Shanahan Dated: 05/13/05

(Print Name) BERTRIZ SHANAHAN  
Title VICE President

ELIOT LIEBERMAN  
Respondent

By: \_\_\_\_\_ Dated: \_\_\_\_\_

(Print Name) \_\_\_\_\_

BERTRIZ SHANAHAN  
Respondent

By: Bertriz Shanahan Dated: 05/13/05

(Print Name) BERTRIZ SHANAHAN

U.S. ENVIRONMENTAL PROTECTION AGENCY  
Complainant

By: Jullane R.B. Matthews Dated: 5/18/05

Jullane R.B. Matthews  
Assistant Regional Counsel

1 STIPULATED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2005:

2 ARGENT CHEMICAL LABORATORIES, INC.  
3 Respondent

4 By \_\_\_\_\_ Dated: \_\_\_\_\_

5 (Print Name) \_\_\_\_\_

6 Title \_\_\_\_\_

7  
8 ~~ELIOT LIEBERMAN~~  
9 Respondent

10 By Eliot Lieberman Dated: 5/15/05

11 (Print Name) ELIOT LIEBERMAN

12  
13 BERTRIZ SHANAHAN  
14 Respondent

15 By \_\_\_\_\_ Dated: \_\_\_\_\_

16 (Print Name) \_\_\_\_\_

17  
18  
19 ~~U.S. ENVIRONMENTAL PROTECTION AGENCY~~  
20 ~~Complaint~~

21 By \_\_\_\_\_ Dated: \_\_\_\_\_

22 Juliane R.B. Matthews  
23 Assistant Regional Counsel



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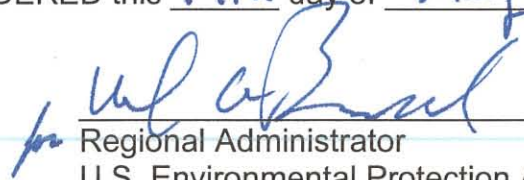
**III. FINAL ORDER**

24. EPA Region 10 and Respondents, having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-10-2004-0073) be entered, and Respondents shall pay a civil administrative penalty in the amount of THREE HUNDRED THOUSAND DOLLARS (\$300,000) in accordance with the terms set forth in the Consent Agreement.

25. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the FIFRA for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of the FIFRA and regulations issued thereunder.

26. This Final Order shall become effective upon filing.

SO ORDERED this 19th day of May, 2005:

  
\_\_\_\_\_  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER FOR PAYMENT OF CIVIL PENALTIES** in **In the Matter of: Argent Chemical Laboratories, Inc., Eliot Lieberman, and Bertriz Shanahan, FIFRA-10-2004-0073**, was filed with the Regional Hearing Clerk on May 19, 2005.

On May 19, 2005 the undersigned certifies that a true and correct copy of the document was delivered to:

Juilane Matthews  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt and by fax on May 19, 2005 to:

John York  
215 N.E. 40<sup>th</sup> Street, Suite C-3  
Seattle, WA 98105

Larry Finegold  
The Finegold Law Firm  
1809 7<sup>th</sup> Avenue, Suite 1301  
Seattle, WA 98101

Beatriz Shanahan  
Argent Chemical Laboratories, Inc.  
8702 152<sup>nd</sup> Avenue N.E.  
Redmond, WA 98502

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in regular EPA mail and by fax on May 19, 2005 to:

The Honorable Spencer T. Nissen  
Office of Administrative Law Judges  
U.S. EPA, Mail Code 1900L  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

DATED this 19<sup>th</sup> day of May 2005.

A handwritten signature in cursive script that reads "Carol Kennedy". The signature is written in black ink and is positioned above a horizontal line.

---

Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10  
1200 Sixth Avenue  
Seattle, WA 98101

May 19, 2005

Reply To  
Attn Of: ORC-158

John York  
215 N.E. 40<sup>th</sup> Street, Suite C-3  
Seattle, WA 98105

Larry Finegold  
The Finegold Law Firm  
1809 7<sup>th</sup> Avenue, Suite 1301  
Seattle, WA 98101

Beatriz Shanahan  
Argent Chemical Laboratories, Inc.  
8702 152<sup>nd</sup> Ave. NE  
Redmond, WA 98052

Re: Argent Chemical Laboratories, Inc., Eliot Lieberman and Beatriz Shanahan  
Docket No. FIFRA -10-2004-0073


Dear Sirs and Ms. Shanahan:

Enclosed is a conformed copy of the Consent Agreement and Final Order (CAFO) which was signed by the Regional Administrator on May 19, 2005. The original CAFO has been filed with the Regional Hearing Clerk. Pursuant to the paragraph 11 of the CAFO, the initial penalty payment is due no later than September 30, 2005. The remaining penalty payments are due as indicated in paragraph 11. Please ensure penalty payments are made in the manner specified in paragraph 12.

I will forward a conformed copy of the CAFO to Judge Nissen.

On behalf of the U.S. Environmental Protection Agency, thank you again for your cooperation in reaching a satisfactory resolution in this matter.

Sincerely,

  
Juliane Matthews  
Assistant Regional Counsel

Enclosure  
CC: Honorable Spencer Nissen, ALJ