

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7**

**901 NORTH 5<sup>th</sup> STREET**

**KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

In the Matter of )  
 )  
 )  
Intercon Chemical Company ) Docket No. FIFRA-07-2010-0002  
St. Louis, Missouri )  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7, and Intercon Chemical Company (Intercon) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Intercon has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Intercon Chemical Company, a pesticide dealer and producer, located at 1100 Central Industrial Drive, in Saint Louis, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

## Section III

### Statutory and Regulatory Background

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

8. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient used in producing a pesticide.

9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

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

11. Registrants may distribute or sell their registered product under another person’s name and address instead of, or in addition to, their own, as allowed by regulation at 40 C.F.R. § 152.132. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product. Supplemental distribution is permitted upon notification to EPA if specific conditions, stated at 40 C.F.R. § 152.132(a) through (e), are met. As a requirement of supplemental distribution, the label of the distributor product must be the same as that of the registered product, subject to exceptions stated at 40 C.F.R. § 152.132(d)(1) through (5).

#### **Section IV**

##### **General Factual Allegations**

12. Lonza, Inc., Fair Lawn, New Jersey (Lonza), is the registrant for the pesticide registered as Lonza Formulation P-6, EPA Registration Number (EPA Reg. No.) 6836-169.

Lonza has submitted to EPA the required notification form and information indicating they have a supplemental distributor agreement with Intercon. Under this agreement, Intercon is authorized by Lonza to supplementally distribute its registered pesticide, using the brand name Big Pine, under EPA Reg. No. 6836-169-48211.

13. In December 2008, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at the Intercon facility located at 1100 Central Industrial Drive, in Saint Louis, Missouri. During the MDA inspection it was documented that Respondent was producing and distributing the supplemental distributor pesticide product referenced in paragraph 12. Labels and documentation pertaining to the product were collected by MDA.

#### Violations

14. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

#### Count 1

15. The facts stated in paragraphs 12 through 13 are realleged and incorporated as if fully stated herein.

16. Documentation collected during the inspection referenced in paragraph 13 revealed that Intercon was holding for sale or distribution Big Pine, EPA Reg. No. 6836-169-48211, the pesticide product referenced in paragraph 12.

17. The pesticide product, Big Pine, EPA Registration No. 6836-169-48211, was misbranded in that the label was missing the required Environmental Hazards Statement from the EPA-accepted label for the product, "This product is toxic to fish."

18. The pesticide product, Big Pine, EPA Registration No. 6836-169-48211, was misbranded in that the label was missing the required Physical or Chemical Hazards Statement from the EPA-accepted label for the product, "Do not store near heat or open flame."

19. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it held for sale or distribution a pesticide which was misbranded.

20. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$4,160 be assessed against the Respondent.

### Section V

#### Consent Agreement

21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

22. Respondent neither admits nor denies the factual allegations set forth above.

23. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

24. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

25. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

26. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

27. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

28. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

29. The effect of settlement described in paragraph 30 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 27 above.

30. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

31. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

**Section VI**

**Final Order**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Four Thousand One Hundred and Sixty Dollars (\$4,160) within thirty (30) days of the effective date of this Final Order.
2. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Chris Dudding, Attorney  
Office of Regional Counsel

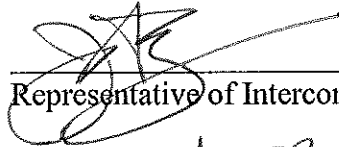
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.



**RESPONDENT**  
**INTERCON CHEMICAL COMPANY**

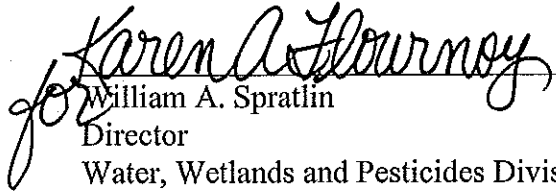
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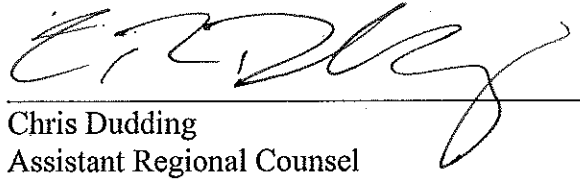
  
\_\_\_\_\_  
Representative of Intercon Chemical Company

JAMES A. ERSTON  
Printed Name

PRESIDENT  
Title

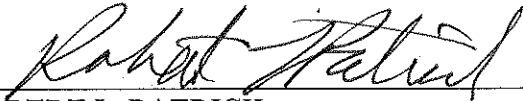
**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 11/13/09   
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date: 11/13/09   
Chris Dudding  
Assistant Regional Counsel  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: Nov. 23, 2009

  
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ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Intercon Chemical Company, Respondent  
Docket No. FIFRA-07-2010-0002

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris Dudding  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Resa J. Manson  
Vice President for Quality Assurance  
Intercon Chemical Company  
1100 Central Industrial Dr.  
Saint Louis, Missouri 63110

Dated: 11/23/09



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7