



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

November 13, 2020

VIA EMAIL

Ms. Kate Lee
Director of Finance
AP Tech Group, Inc.
5130 Rialto Road
West Chester, Ohio 45069

katie.lee@aptechsolids.com

Consent Agreement and Final Order In the Matter of AP Tech Group, Inc.
Docket Number **FIFRA-05-2021-0002**

Ms. Lee:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on with the Regional Hearing Clerk.

The civil penalty in the amount of \$46,992 is to be paid in three installments in the manner described in paragraph 69. Please be certain that the docket number is included in the comment or description field of the electronic funds transfer. The first payment of \$16,992 is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

**CLAUDIA
NIESS**

Digitally signed by CLAUDIA
NIESS
Date: 2020.11.03 08:38:40
-06'00'

Claudia Niess
Enforcement Officer
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2021-0002
)	
AP Tech Group, Inc.)	Proceeding to Assess a Civil Penalty
West Chester, Ohio,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

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 (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is AP Tech Group, Inc. (AP Tech), a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. 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.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

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

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

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

11. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its label bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect human health and the environment.

13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect human health and the environment.

14. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

15. The term “registrant” means a person who has registered any pesticide pursuant to the provisions of FIFRA. 7 U.S.C. § 136(y).

16. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

17. The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappings. 7 U.S.C. § 136(p).

18. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

19. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

20. 40 C.F.R. § 152.132 states that supplemental distribution of a registered pesticide is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged

(remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

21. 40 C.F.R. § 152.132 also specifies that a 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.

22. After August 1, 2016, the Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$20,228 for each offense that occurred after November 2, 2015, where penalties are assessed on or after January 13, 2020 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

23. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. Respondent is a wholesaler, dealer, retailer, or other distributor.

25. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 11411 Williamson Road, Cincinnati, Ohio 45241 (the Cincinnati establishment).

26. On or about November 15, 2017, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at the Cincinnati establishment.

27. During the November 15, 2017 inspection, the inspector collected labels, receiving records, shipping records and distribution records for “APT-BIO-2,” EPA Reg. No. 1448-212-55400.”

28. On or about July 14, 1988, EPA registered the pesticide product “W-15-2.”

29. EPA assigned “W-15-2” EPA Registration Number (Reg. No.) 1448-212.

30. Buckman Laboratories, Inc. is the “registrant” of “W-15-2,” EPA Reg. No. 1448-212, as that term is defined by Section 2(y) of FIFRA.

31. On or about May 31, 2012, EPA received a Notice of Supplemental Distribution for “W-15-2,” EPA Reg. No. 1448-212.

32. The Notice of Supplemental Distribution identified the distributor product name for “W-15-2” as “APT-BIO 2.”

33. “APT-BIO 2” was assigned EPA Reg. No. 1448-212-55400.

34. The Notice of Supplemental Distribution identified AP Tech as the distributor of “APT-BIO 2,” EPA Reg. No. 1448-212-55400.

35. “APT-BIO 2,” EPA Reg. No. 1448-212-55400, is a “pesticide” as that term is defined by Section 2(u) of FIFRA.

36. On September 19, 2014, EPA accepted an amended label for “W-15-2,” EPA Reg. No. 1448-212.

37. The September 19, 2014 label required “[p]roducts shipped after 12 months from the date of this amendment or the next printing of the label whichever occurs first, must bear the new revised label.”

38. The September 19, 2014 accepted label contained First Aid language in the following order: *1) If Swallowed; 2) If in Eyes.*

39. The September 19, 2014 accepted label contained the following “Precautionary Statements” language for Occupation Use:

“CAUTION: Harmful if swallowed or absorbed through the skin. Causes moderate eye irritation. Avoid contact with skin, eyes, or clothing. Wear long-sleeved shirt, long pants, shoes, socks, and chemical resistant gloves made of any waterproof material (such as any waterproof material, such as Barrier Laminate, Butyl Rubber, Nitrile Rubber, Neoprene Rubber, Natural Rubber, Polyethylene, Polyvinyl Chloride (PVC) or Viton).”

40. The September 19, 2014 accepted label contained the following “Precautionary Statements” language:

“USER SAFETY RECOMMENDATIONS: ser [sic] should wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet. User should remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. User should remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.”

41. The September 19, 2014 accepted label contained the following “Precautionary Statements” language:

“USER SAFETY REQUIREMENTS: Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exists, use detergent and hot water. Keep and wash PPE separately from other laundry. Discard clothing and other absorbent materials that have been drenched (except as required by directions for use) or heavily contaminated with this product's concentrate. Do not reuse them.”

42. The September 19, 2014 accepted label contained the following “Precautionary Statements” language:

“PERSONAL PROTECTIVE EQUIPMENT (PPE): Wear protective eyewear (goggles or face shield). Wear long sleeved shirt and long pants, socks, shoes, chemical-resistant apron and chemical resistant gloves (such as any waterproof material, such as Barrier Laminate, Butyl Rubber, Nitrile Rubber, Neoprene Rubber, Natural Rubber, Polyethylene, Polyvinyl Chloride (PVC) or Viton).”

43. The September 19, 2014 accepted label contained the following directions in the “Directions for Use” section:

“WATER COOLING TOWERS: Prior to the use of this product in water cooling towers, clean the systems to remove algal growth, microbiological slime, and other deposits. Then make an initial slug addition of 4 to 10 fluid ounces of this product per 1000 gallons of water to provide 32 to 80 ppm this product, based on the total weight of water in the system. Repeat initial dosage until control is evident. Make subsequent slug additions of 1.0 to 10.0 fluid ounces of this product per 1000 gallons of water (8 to 80 ppm) every 2 to 5 days or as needed. The frequency of addition depends upon the relative amount of bleedoff and the severity of the microbiological problem. Make slug additions into the sump of water cooling towers.”

44. The September 19, 2014 accepted label contained the following directions in the “Directions for Use” section:

“DECORATIVE FOUNTAINS: This product is used to control the growth of algae in decorative fountains that do not contain fish. Manually clean heavy growths of algae prior to treatment. Fountains with just visible algae growth require an initial dose of 5 to 8 fluid ounces of this product per 1000 gallons of water. To treat a freshly cleaned and filled fountain, add 3 to 5 fluid ounces of this product per 1000 gallons of water. For maintenance dosages, add 1 to 2 fluid ounces of this product per 1000 gallons of water every 5 to 7 days as needed. Make sure this product is added at a point where it can be uniformly distributed. This product may be used in fountains treated with chlorine chemicals, but do not mix this product with concentrated dry or liquid chlorine products.”

45. The September 19, 2014 accepted label contained the following directions in the “Directions for Use” section:

“INDUSTRIAL AIR WASHING SYSTEMS: This product is used to control bacteria in industrial air washing systems that maintain effective mist eliminating components. Prior to its use, clean the systems to remove bacterial slime and other deposits. Make an initial slug dose of 14.8 to 24.7 fluid ounces of this product per 1000 gallons of water. Repeat initial dosage until control is evident. Make subsequent slug additions of 10.1 to 24.7 fluid ounces of this product per 1000 gallons of water each 1 to 5 days, or as needed. The frequency of addition depends upon the relative amount of bleedoff and severity of the

bacterial problem. Make slug additions into the sump or into the water collection trays of the airwash system.”

46. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection at the Cincinnati establishment, was a true and accurate representation of the label on the product for all the shipping records collected as part of the inspection at that establishment.

47. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, contained First Aid language in the following order: *1) If in Eyes; 2) If Swallowed... ”.*

48. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, contained the following “Precautionary Statements” language:

“CAUTION: Causes moderate eye irritation. Harmful if swallowed. Avoid breathing vapors. Avoid contact with skin, eyes, or clothing. Wear chemical-resistant eyewear. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco, or using the toilet. Remove and wash clothing before reuse.”

49. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, did not contain the required User Safety Recommendations identified Paragraph 41.

50. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, did not contain the required Personal Protective Equipment (PPE) language identified Paragraph 42.

51. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, contained the following statement in the “Directions for Use” section:

“APT-BIO 2 is used to control the growth of algae in decorative fountains that do not contain fish.”

52. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, did not contain the directions for use in Decorative Fountains identified in Paragraph 44.

53. The label of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, collected during the November 15, 2017 inspection, contained the following directions in the “Directions for Use” section:

“INDUSTRIAL AIR- WASHING SYSTEMS: APT-BIO-2 is used to control bacteria in industrial air-washing systems to maintain effective mist eliminating components. Prior to its use, systems should be cleaned to remove bacterial slime and other deposits. An initial slug dose of 14.8 to 24.7 fluid ounces of APT-BIO-2 per 1000 gallons of water is recommended. Repeat initial dosage until control is evident. Subsequent slug additions of 10.1 to 24.7 fluid ounces of APTBIO- 2 per 1000 gallons of water should be employed each 1 to 5 days, or as needed. The frequency of addition depends upon the relative amount of bleedoff and severity of the bacterial problem. Slug additions may be made to the sump or to the water collection trays of the airwash system.”

54. On or about March 16, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Cincinnati, Ohio.

55. On or about April 13, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Cincinnati, Ohio.

56. On or about July 8, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Cincinnati, Ohio.

57. On or about July 27, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.

58. On or about September 16, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Cincinnati, Ohio.

59. On or about September 28, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.
60. On or about December 27, 2016, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Dayton, Ohio.
61. On or about March 3, 2017, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.
62. On or about April 21, 2017, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Dayton, Ohio.
63. On or about May 18, 2017, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.
64. On or about July 27, 2017, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.
65. On or about September 21, 2017, Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, to a customer located in Newport, Kentucky.
66. Respondent distributed or sold “APT-BIO 2,” EPA Reg. No. 1448-212-55400, on these twelve separate occasions, that was misbranded as that term is defined by Section 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. § 136(q)(1)(F) and (G).
67. Respondent’s distribution or sale of “APT-BIO 2,” EPA Reg. No. 1448-212-55400, on twelve occasions constitutes twelve separate violations pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

68. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to resolve and settle this action is \$46,992. 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 alleged violations. Complainant also considered EPA’s FIFRA Enforcement Response Policy, dated December 2009.

69. Respondent agrees to pay a \$46,992 civil penalty in three installments with interest, to resolve this matter, as follows: \$16,992 within 30 days of the effective date of this CAFO; \$15,550 within one year of the effective date of this CAFO; and \$15,300 within two years of the effective date of this CAFO. These payment terms are based on Respondent’s certified statement regarding the financial impacts of COVID-19 on Respondent’s business, and any false statements made in the certified statement may result in voiding the penalty portion of the settlement.

<u>Installment</u>	<u>Due By</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment #1	Within 30 days of effective date of CAFO	\$16,992	\$16,992	0
Payment #2	Within one year of effective date of CAFO	\$15,550	\$15,000	\$550
Payment #3	Within two years of effective date of CAFO	\$15,300	\$15,000	\$300

Respondent must pay the installments by on-line payments. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

70. Respondent must send a notice of payment for each payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays

the penalty:

Regional Hearing Clerk (ECA-18J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Susan Prout (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

71. This civil penalty is not deductible for federal tax purposes. If Respondent does not pay any installment payment as set forth in paragraph 69, above, the entire balance of the civil penalty shall become due and owing upon written notice by EPA to Respondent of the delinquency. EPA may refer the delinquency to the Attorney General to recover any unpaid penalty with interest by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

72. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

73. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: prout.susan@epa.gov (for Complainant), and katie.lee@aptechsolids.com (for Respondent).

74. This CAFO resolves only Respondent’s liability for federal civil penalties for the violations alleged in the CAFO.

75. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

76. This CAFO does not affect Respondent’s responsibility to comply with FIFRA and other applicable federal, state and local laws.

77. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

78. The terms of this CAFO bind Respondent, its successors and assigns.


79. 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.

80. Each party agrees to bear its own costs and attorneys fees, in this action.

81. This CAFO constitutes the entire agreement between the parties.

AP Tech Group, Inc., Respondent

Oct. 26, 2020
Date




James S. Heimert
President and CEO
AP: Tech Group, Inc., a Delaware Corporation

United States Environmental Protection Agency, Complainant

11/05/2020

Date

MICHAEL
HARRIS

 Digitally signed by MICHAEL
HARRIS
Date: 2020.11.05 10:20:26 -06'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
AP Tech Group, Inc.
Docket No. FIFRA-05-2021-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date

ANN COYLE Digitally signed by ANN
COYLE
Date: 2020.11.10 10:55:56
-06'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: AP Tech Group, Inc.
Docket Number: **FIFRA-05-2021-0002**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2021-0002**, which was filed on **November 13, 2020**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Susan Prout
prout.susan@epa.gov

Copy by E-mail to
Respondent: Ms. Katie Lee
katie.lee@aptechsolids.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

Dated: _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5