

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2015 SEP 30 PM 12:38

Docket No. FIFRA-08-2015-0007

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Spa Performance and Supply, LLC )  
9733 South Mount Jordan Road )  
Sandy, Utah 84092 )  
Respondent. )

**PENALTY COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**JURISDICTION**

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a). The rules for this proceeding are 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 (Rules of Practice),” 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned United States Environmental Protection Agency (EPA) officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent, Spa Performance and Supply, LLC, has violated FIFRA by selling and distributing a pesticide that has been canceled and proposes the assessment of a civil penalty, as more fully explained below. FIFRA section 14(a)(1) authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. § 136l(a).

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the Complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the Complaint and assert your right to a hearing, Respondent must file a written answer and one copy with the Regional Hearing Clerk at 1595 Wynkoop Street; Denver, Colorado 80202-1129, within 30 days of receiving this Complaint. The Answer must clearly admit, deny or explain the factual allegations of the Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

**FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS  
MAY WAIVE RESPONDENT’S RIGHT TO DISAGREE WITH THE ALLEGATIONS  
OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND  
ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

## QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$78,750) proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the Final Order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

## SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Brenda Morris at 1-800-227-8917; extension 6891, 303-312-6891, or at the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

## ALLEGATIONS

At all times pertinent to the Complaint, the following general allegations apply:

8. Respondent is incorporated in the State of Utah at 9733 South Mount Jordan Road, Sandy, Utah 84092 (the facility). The registered agent for Respondent is Shon Thomas located at the same address.

9. Respondent is a "person" within the meaning of section 2(s) of FIFRA, and subject to the requirements of the statute and/or regulations.

10. On or about November 18, 2002, the EPA received Respondent's Notice of Supplemental Distribution of a Registered Pesticide Product, "CT-100," signed by Respondent's Owner, President, and Agent, Shon Thomas.

11. Chemtech, Inc., located at P.O. Box 3180, Muncie, IN 47307, is the registrant of the copper sulfate pentahydrate CT-100 pesticide product. Chemtech, Inc.'s EPA registration number is 70246-1.

12. On or about May 17, 2012, and October 22, 2012, Respondent purchased the copper sulfate pentahydrate CT-100 pesticide product from Chemtech, Inc.

13. Respondent repackages, re-labels, distributes and sells the copper sulfate pentahydrate CT-100 as “Blue Juice Alternative Purifier” or “Alternative Purifier” under the Respondent’s distributor company number 74912-UT-001.

14. The seventh condition listed on the signed Notice referenced in paragraph 10, *supra*, states, “All conditions of the basic registration apply equally to distributor products. It is the responsibility of the basic registrant to see that all distributor labeling is kept in compliance with the requirements placed upon the basic product.”

15. In a letter dated July 16, 2009, Debra Edwards, Ph.D., Director of the EPA’s Office of Pesticide Programs, informed the basic registrant, Chemtech, Inc. that the CT-100 pesticide product registration was canceled for non-payment of the annual registration maintenance fee due on January 15, 2009. See, FIFRA section 4(i)(5)(G), 7 U.S.C. section 136a-1(i)(5)(G).

16. On or about August 30, 2013, the Utah Department of Agriculture and Food (UDAF) inspected the Spa Performance facility at the request of the EPA.

17. During the UDAF inspection, the inspectors reviewed Respondent’s invoices and determined that at least fifteen sales of the Alternative Purifier took place between June 19, 2012 and July 19, 2013.

18. A condition of supplemental distribution found at 40 C.F.R. section 152.132, requires the supplemental distributor to keep the labeling information found on the CT-100 product on the Alternative Purifier product it repackages and re-labels for distribution or sale.

19. Upon inspection of the Alternative Purifier label in comparison to the CT-100, the EPA found that the Alternative Purifier failed to include the environmental hazards, storage and disposal section.

20. Respondent’s distribution and fifteen sales of the product Alternative Purifier subsequent to the cancelation of the product constitutes fifteen violations of FIFRA section 12(a)(1)(A), 7 U.S.C. section 136j(a)(1)(A), sale of a canceled product.

### **PROPOSED CIVIL PENALTY**

21. FIFRA authorizes the assessment of a civil penalty of up to \$7,500 for each offense of the Act and the Debt Collection Improvement Act of 1996. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person’s ability to continue in business, and the gravity of the violation. EPA has established policies that

provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this Complaint, EPA proposes a penalty of \$78,750. This Complaint includes fifteen violations based on the facts alleged herein, the United States explicitly reserves its right to pursue any other violations that may arise in the pursuit of enforcing this Complaint. The penalty narrative and calculation can be found in complainant's Exhibit Number 1.


22. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. In this case, the maximum would be \$112,500.

To discuss settlement or ask any questions you may have about this process, please contact Brenda Morris, Enforcement Attorney, at 1-800-227-8917; ext. 6891, or at the address below.


UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8,  
Office of Enforcement, Compliance  
and Environmental Justice,

Complainant

Date: 9/29/15

By:   
\_\_\_\_\_  
David Cobb, Acting Director  
Technical Enforcement Program  
UIC-FIFRA  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 9/30/15

By:   
\_\_\_\_\_  
James H. Eppers, REU Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wyncoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

To at the following addresses:

Shon Thomas, Registered Agent for  
Spa Performance and Supply, LLC  
9733 South Mount Jordan Road  
Sandy, Utah 84092

9/30/15  
Date

Joan Dettly