



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
LeRoi Yaffey, President
NuChem Corp.
747 N. Fenwick Street
Allentown, PA 18109

SEP 15 2016

2016 SEP 15 PM 3:36

RECEIVED

Re: Consent Agreement and Final Order
EPA Docket No.: FIFRA-03-2016-0098

Dear Mr. Yaffey:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your files, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson
Senior Assistant Regional Counsel

Enclosures

cc: Evelyn Sorto, EPA

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)

NuChem Corp.)
747 North Fenwick Street)
Allentown, PA 18109)

Respondent)

DOCKET NO: FIFRA-03-2016-0098.

CONSENT AGREEMENT

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RECORDED

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. Pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C. § 136l(a), the Director of the Land and Chemicals Division for the United States Environmental Protection Agency, Region III (“Complainant”), initiated this administrative proceeding for the assessment of civil penalties against NuChem Corp. (“Respondent”), by issuance of a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) filed with the Regional Hearing Clerk on April 7, 2016. The Complaint, incorporated herein by reference, alleges that Respondent violated Section 12 of FIFRA, 7 U.S.C. § 136j, and associated regulations promulgated at 40 C.F.R. §§ 150-189, Subchapter E, in connection with the distribution or sales of its NUCHEM CF-167, EPA Reg. No. 59151-20002; NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151; and NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 products in 2013 and 2014. This Consent Agreement and the accompanying Final Order (“CAFO”) resolve the violations alleged in the Complaint.

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in the Complaint and herein.

3. Except as provided in paragraph 2, above, Respondent neither admits nor denies the specific factual allegations contained in the Complaint and herein.

4. For the purpose of this proceeding, Respondent consents to the assessment and payment of a civil penalty in the amount and in the manner set forth in this CAFO.

5. For the purpose of this proceeding, Respondent agrees to comply with the conditions of this CAFO.

6. For the purpose of this proceeding, Respondent waives its right to contest the allegations in the Complaint and herein, and its right to appeal the Final Order accompanying this Consent Agreement.

7. Respondent shall bear its own costs and attorney fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. SETTLEMENT RECITATION

10. In settlement of EPA's claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWENTY SEVEN THOUSAND FIVE HUNDRED dollars (\$27,500), which Respondent shall be liable to pay in accordance with paragraph 11, below. The Parties represent that the settlement terms are based upon EPA's consideration of a number of factors, including the penalty criteria set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, and Rodenticide Act* and 40 C.F.R. Part 19.

11. Pursuant to this Consent Agreement, Respondent's TWENTY SEVEN THOUSAND FIVE HUNDRED dollar (\$27,500) civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the filed CAFO; however, Respondent may pay such civil penalty amount, and an interest assessment of one percent (1%) per annum on the outstanding principal, in three (3) installment payments, in the following amounts and according to the following schedule:

Payment	Principal	Interest	Total Amount	Number of Days Payment Due after filed CAFO is mailed or hand-delivered to the Respondent
1	\$13,750.00	\$22.92	\$13,772.92	30
2	\$6,875.00	\$34.37	\$6,909.37	120
3	\$6,875.00	\$11.46	\$6,886.46	180
Total	\$27,500	\$68.75	\$27,568.75	

12. Notwithstanding Respondent's agreement to pay the civil penalty in accordance with the installment payment provisions of paragraph 11, immediately above, Respondent may pay the entire TWENTY SEVEN THOUSAND FIVE HUNDRED dollar (\$27,500) civil penalty within **thirty (30) calendar days** after the date on which a copy of this filed CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the incurrence and payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in paragraph 15, below.

13. If Respondent elects to pay the civil penalty in accordance with the installment payment procedure described in paragraph 11, above, but fails to make any installment payment in accordance

with the requirements and schedule set forth in paragraph 11, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent immediately shall pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraph 15, below, in the event of any such failure or default.

14. Payment of the civil penalty amount required under the terms of Paragraph 10, above, or each installment payment pursuant to paragraph 11 above, thereof, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO, 63197-9000.
Contact: Craig Steffen 513-487-2091
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

c. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

d. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA 021030004
Account No. 68010727
SWIFT Address FRNYUS33
33 Liberty Street
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency")

e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver
ABA 051036706
Account No. 310006
Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Contact: John Schmid
202-874-7026

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

The payment shall also reference the above case caption and docket number (Docket No.: FIFRA-03-2016-0098). At the same time that any payment is made, Respondent shall mail a copy of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to the following addressees:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Jennifer M. Abramson (3RC50)
Senior Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

15. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and also to assess a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment or to comply with the conditions in this CAFO may result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of the Agency’s administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA’s Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

16. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

V. CERTIFICATION

17. Respondent certifies, upon personal investigation and to the best of its knowledge and belief, that it is currently in compliance with all applicable requirements of FIFRA and associated regulations promulgated at 40 C.F.R. §§ 150-189, Subchapter E.

VI. OTHER APPLICABLE LAWS

18. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable Federal, State, and local laws and regulations.

VII. RESERVATION OF RIGHTS

19. This CAFO resolves only EPA's civil claims for penalties against Respondent for the specific violations alleged in the Complaint and herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

VIII. FULL AND FINAL SATISFACTION

20. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondent under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in the Complaint and herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

IX. PARTIES BOUND

21. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

X. EFFECTIVE DATE

22. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

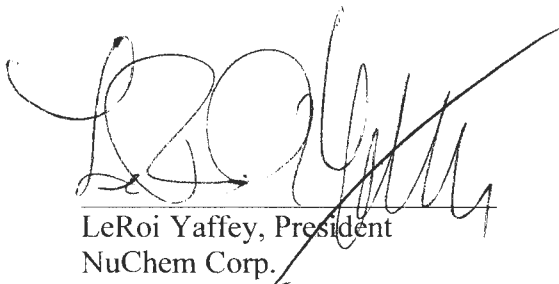
XI. ENTIRE AGREEMENT

23. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For Respondent:

9/2/16

Date

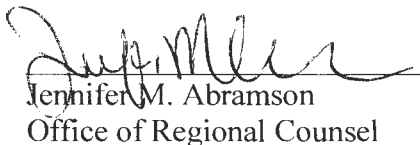


LeRoi Yaffey, President
NuChem Corp.

For EPA:

9/7/16

Date

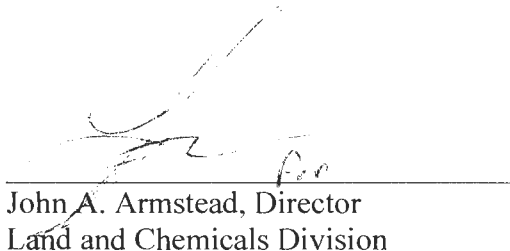


Jennifer M. Abramson
Office of Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

9/14/16

Date



John A. Armstead, Director
Land and Chemicals Division

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

NuChem Corp.
747 North Fenwick Street
Allentown, PA 18109

Respondent

EPA DOCKET NO. FIFRA-03-2016-0098

FINAL ORDER

**Proceeding under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, 7 U.S.C. § 136l(a)**

FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, NuChem Corp. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

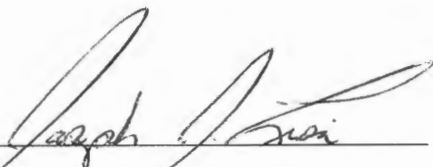
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

NOW, THEREFORE, PURSUANT TO Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 15, 2016
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF)

NuChem Corp.)
747 North Fenwick Street)
Allentown, PA 18109)

Respondent)

DOCKET NO: FIFRA-03-2016-0098

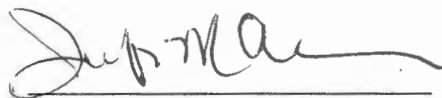
CERTIFICATE OF SERVICE

I hereby certify that I caused the original and one copy of the foregoing ~~CONSENT~~ AGREEMENT AND FINAL ORDER to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and a true and correct copy to be mailed via certified mail, return receipt requested, postage prepaid, to the following person at the following address:

LeRoi Yaffey, President
NuChem Corp.
747 N. Fenwick Street
Allentown, PA 18109

Date

SEP 15 2016



Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066

REGIONAL HEARING CLERK
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