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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: ) Docket No. FIFRA-07-2017-0004  
) Docket No. FIFRA-04-2017-3005(b)  
)  
DREXEL CHEMICAL COMPANY, )  
) CONSENT AGREEMENT  
Respondent. ) AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency, Region 4 and Region 7 (EPA), and Drexel Chemical Company, (Respondent) have agreed to a settlement of this action before filing of a Complaint, therefore 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 and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

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/Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainants, by delegation from the Administrator of the EPA and redelegation from the Regional Administrators, EPA Regions 4 and 7, are the Director of the Air, Pesticides and Toxic Management Division, EPA, Region 4 and the Director of the Water, Wetlands and Pesticides Division, EPA Region 7.
4. The Respondent is Drexel Chemical Company (Drexel), a producer and distributor of pesticides with its principal place of business at 1700 Channel Avenue, Memphis, Tennessee.

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution, and use of pesticides in the United States. 7 U.S.C. § 136 *et seq.*
6. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to the requirements of FIFRA unless the establishment in which it is produced is registered with EPA.
7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).
8. Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), states that it is unlawful “for any person ... to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to Section 7, any records required to be maintained pursuant to this Act, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this act.”
9. Section 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), states that it is unlawful for a person to falsify all or part of any information relating to the testing of any pesticide submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by FIFRA.
10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, *inter alia*, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
12. Section 14 of FIFRA, 7 U.S.C. § 136l, provides that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of 7 U.S.C. Chapter 6, Subchapter II, *Environmental Pesticide Control*, may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$7,500 for violations that occurred after December 6, 2013, and before November 2, 2015.

General Factual Allegations

13. Respondent is a privately-held pesticide registrant and distributor that specializes in agricultural chemicals, including over 200 EPA-registered pesticides. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA, 7 U.S.C. § 136(s).

14. On or about September 23, 2014, EPA inspectors performed an inspection at the Drexel corporate headquarters facility in Memphis, Tennessee.

15. During and following the inspection, Respondent provided EPA representatives with documents pertaining to pesticide import shipments received by Respondent between October 2012 through the date of the inspection, including but not limited to: NOAs, United States Customs entry forms 3641 and 7501, and shipping and distribution records.

16. From 2012 through 2014, Respondent was the registrant for and caused to be imported and/or further distributed or sold quantities of the following registered pesticide products:

- (i) Atrazine Technical, EPA Reg. No. 19713-566;
- (ii) Simazine Technical, EPA Reg. No. 19713-59;
- (iii) Diuron Technical, EPA Reg. No. 19713-66;
- (iv) Metolachlor Technical, EPA Reg. No. 19713-539;
- (v) Flumetralin Technical, EPA Reg. No. 19713-601;
- (vi) 2, 4D Acid, EPA Reg. No. 19713-641;
- (vii) Simazine 90DF, EPA Reg. No. 19713-252.

17. In addition, the EPA has documented that on two different occasions in 2013, Drexel imported De-Amine 6, EPA Reg. No. 19713-651 and misidentified the product on the Port of Entry (POE) Notice of Arrivals (NOAs) as De-Amine 4.

18. On November 19, 2015, EPA Headquarters’ Waste and Chemical Enforcement Division conducted a FIFRA Good Laboratory Practice Standards (“GLPS”) inspection at Drexel’s Memphis, Tennessee offices.

19. From the review of information gathered during the November 19, 2015 inspection, Respondent had submitted studies in support of three separate pesticide registrations: Lambda-Cyhalothrin Tech, EPA Registration Number 19713-657 (“L-C Tech”); Pin-Dee

3.3 EC, EPA Registration Number 19713-668 (“Pin-Dee”); and Drexel Lamdafos Insecticide, EPA Registration Number 19713-671 (“Lamdafos”).

Allegations of Violation

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

COUNT I

21. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

22. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

23. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

24. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Atrazine Technical, EPA Reg. No. 19713-566, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product’s active ingredient on the product’s Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

25. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(a), by offering for sale and/or holding for distribution an unregistered pesticide.

COUNT II

26. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

27. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

28. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple



occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

29. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Simazine Technical, EPA Reg. No. 19713-59, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

30. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(a), by offering for sale and/or holding for distribution an unregistered pesticide.

### COUNT III

31. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

32. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

33. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

34. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Diuron Technical, EPA Reg. No. 19713-66, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(a), by offering for sale and/or holding for distribution an unregistered pesticide.

### COUNT IV

36. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.



37. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

38. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

39. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Metolachlor Technical, EPA Reg. No. 19713-539, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

40. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by offering for sale and/or holding for distribution an unregistered pesticide.

#### COUNT V

41. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

42. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

43. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

44. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Flumetralin Technical, EPA Reg. No. 19713-601, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

45. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by offering for sale and/or holding for distribution an unregistered pesticide.



COUNT VI

46. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

47. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

48. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

49. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product 2,4D Acid, EPA Reg. No. 19713-641, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

50. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by offering for sale and/or holding for distribution an unregistered pesticide.

COUNT VII

51. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

52. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell any pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).

53. From review of information gathered via the September 23, 2014 inspection and from subsequent investigations, the EPA has documented that Drexel distributed on multiple occasions pesticides that had not been produced in accordance with a valid registration as required by FIFRA.

54. On multiple occasions in 2012 and 2013, Respondent distributed and sold quantities of the product Simazine 90DF, EPA Reg. No. 19713-252, that had been produced at an establishment for which the name and address of the establishment had not been reported to EPA as a source of the product's active ingredient on the product's Confidential Statement of Formula, constituting a distribution or sale of a product that was not validly registered under Section 3 of FIFRA, 7 U.S.C. § 136(a).



55. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(a), by offering for sale and/or holding for distribution an unregistered pesticide.

COUNT VIII and COUNT IX

56. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

57. Pursuant to Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), it shall be unlawful for any person to knowingly falsify all or part of any information submitted to the Administrator pursuant to 7 U.S.C. § 136e.

58. On two occasions in 2013, Respondent imported quantities of De-Amine 6, EPA Reg. No. 19713-651 and failed to file a true and accurate Notice of Arrival prior to arrival of the shipment in the United States, as required by Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), and 19 C.F.R. § 12.112.

59. Respondent violated Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), by submitting information that it knew or should have known was false.

COUNT X

60. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

61. Pursuant to 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), it shall be unlawful for a person to falsify all or part of any information relating to the testing of any pesticide submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by FIFRA. 40 C.F.R. Part 160 prescribes FIFRA Good Laboratory Practice Standards (“GLPS”) for use in conducting studies that support applications for research or marketing permits for pesticide products regulated by EPA.

62. The November, 2015 inspection revealed that for the Lambdafos Insecticide study, the facility lacked records of any GLPS training, the quality assurance unit did not have a copy of the master schedule and specific temperature data loggers were not identified. In 2014 and 2015, Respondent submitted to EPA signed statements that the Lambdafos study was conducted in accordance with GLPS, which was inaccurate.

63. Respondent violated Section 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), by submitting to the Administrator false information relating to the testing of a pesticide.





COUNT XI

64. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

65. Pursuant to 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), it shall be unlawful for a person to falsify all or part of any information relating to the testing of any pesticide submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by FIFRA. 40 C.F.R. Part 160 prescribes FIFRA Good Laboratory Practice Standards (“GLPS”) for use in conducting studies that support applications for research or marketing permits for pesticide products regulated by EPA.

66. The November, 2015 inspection revealed that for the Pin-Dee study, the facility lacked records of any GLPS training, the quality assurance unit did not have a copy of the master schedule, specific temperature data loggers were not identified and no protocol deviation was created or approved by the study director when temperatures exceeded a certain level during an accelerated storage stability test. In 2014 and 2015, Respondent submitted to EPA signed statements that the Pin-Dee study was conducted in accordance with GLPS, which was inaccurate.

67. Respondent violated Section 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), by submitting to the Administrator false information relating to the testing of a pesticide.

COUNT XII

68. The facts stated in paragraphs 13 through 19 are re-alleged and incorporated as if fully stated herein.

69. Pursuant to 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), it shall be unlawful for a person to falsify all or part of any information relating to the testing of any pesticide submitted to the Administrator, or that the person knows will be furnished to the Administrator or will become a part of any records required to be maintained by FIFRA. 40 C.F.R. Part 160 prescribes FIFRA GLPS for use in conducting studies that support applications for research or marketing permits for pesticide products regulated by EPA.

70. The November, 2015 inspection revealed that for the L-C Tech study, the facility lacked records of any GLPS training, the quality assurance unit did not have a copy of the master schedule, specific temperature data loggers were not identified and the quality assurance unit only conducted three inspections when four were required. In 2014 and 2015, Respondent submitted to EPA signed statements that the L-C Tech study was conducted in accordance with GLPS, which was inaccurate.

71. Respondent violated Section 12(a)(2)(Q) of FIFRA, 7 U.S.C. § 136j(a)(2)(Q), by submitting to the Administrator false information relating to the testing of a pesticide.

**CONSENT AGREEMENT**

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

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

74. 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.

75. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees incurred as a result of this action.

76. Nothing contained in the Final Order accompanying this Consent Agreement shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

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

78. By signing this CA/FO Respondent certifies that Respondent is presently in compliance with FIFRA, 7 U.S.C. § 136 *et seq.*, and all regulations promulgated thereunder.

**Effect of Settlement**

79. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

80. The effect of settlement described in paragraph 79 is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in paragraph 78.

**Reservation of Rights**

81. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.



Payment of Penalty

82. Respondent agrees that in settlement of the claims alleged in this CA/FO, Respondent shall pay a civil penalty of One Hundred Forty One Thousand Two Hundred Dollars (\$141,200) within thirty (30) days of the effective date of this CA/FO and as directed in paragraphs 83 and 84 below.

83. Respondent shall pay the penalty by cashier's or certified check, by wire transfer, or online. The payment shall reference the Docket Number on the check or wire transfer. If made by cashier's or certified check, the check shall be made payable to "United States Treasury" and remitted to:

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

Wire transfers shall be directed to the Federal Reserve Bank of New York as follows:

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"

On-line payments are available through the Department of Treasury:

*www.pay.gov*  
Enter "sfo 1.1" in the search field.  
Open the form and complete required files.

84. A copy of the check, transfer, or online payment confirmation shall be sent simultaneously to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;



and to:

Anne Rauch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

Supplemental Environmental Project

85. In settlement of this matter, Respondent agrees to complete a Supplemental Environmental Project (“SEP”) as set forth in Attachment A, which the parties agree is intended to secure significant environmental and/or public health benefits. The SEP shall be completed no later than 365 days from the effective date of the Final Order.

86. The total expenditure for the SEP shall be no less than One Hundred Eighty Four Thousand Dollars (\$184,000), in accordance with the specifications set forth in Attachment A. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

87. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to the EPA as follows:

- a. The SEP Completion Report shall contain the following:
  - I. a detailed description of the SEP as implemented;
  - II. itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
  - III. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and
  - IV. certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO.
- b. Respondent shall submit all notices and reports required by this CA/FO by first class mail to the following:

Mark Leshner, WWPD/TOPE  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

- c. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
88. Respondent agrees to payment of stipulated penalties as follows:
- a. In the event Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in paragraph 85 of this CA/FO, and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in paragraph 86 of this CA/FO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
- I. Except as provided in subparagraph a.II. and a.III. of this paragraph, if the SEP is not completed satisfactorily and timely pursuant to the agreement set forth in paragraph 85 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty to the United States in the amount of One Hundred Thirty One Thousand Two Hundred Dollars (\$131,200), minus any documented expenditures determined by the EPA to be acceptable for the SEP.
- II. If Respondent fails to timely and completely submit the SEP Completion Report required by paragraph 87 of this CA/FO, Respondent shall be liable for and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250) per day. This stipulated penalty shall begin to accrue on the first day after the SEP Completion Report is due and continue to accrue through the day the SEP Completion Report is submitted.
- III. If the SEP is not completed in accordance with paragraphs 87 and 88 of this CA/FO, but EPA determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.



- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA.
- c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 83 of this CA/FO. Interest and late charges shall be paid as stated in paragraph 93 of this CA/FO.

89. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case, nor to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

90. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

91. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

92. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of FIFRA."

#### Late Payment Provision

93. Pursuant to 31 U.S.C. § 3717, the 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 82 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



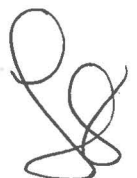
balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), 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.

General Provisions

94. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

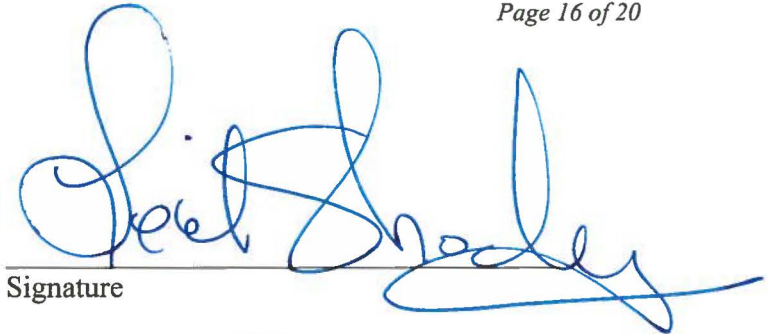
95. This CA/FO shall apply to and be binding upon Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for him with respect to matters included herein, comply with the terms of this CA/FO.

96. The effective date of this CA/FO shall be the date on which it is filed by the Regional Hearing Clerk for EPA Region 7.



**RESPONDENT:  
DREXEL CHEMICAL COMPANY**

Date: January 18, 2017

  
Signature

Leigh Shockley  
Name

CEO  
Title





**COMPLAINANT:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**

Date: 1-30-17

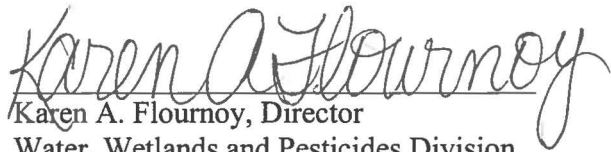


Beverly H. Banister, Director  
Air, Pesticides and Toxics Management Division  
U.S. Environmental Protection Agency, Region 4




**COMPLAINANT:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7**

Date: 3-1-17

  
Karen A. Flournoy, Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency, Region 7

Date: 3/1/17

  
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**FINAL ORDER**

Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date:

February 27, 2017



Tanya Floyd  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 4



**FINAL ORDER**

Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: March 7, 2017

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7



IN THE MATTER Of Drexel Chemical Company, Respondent  
Docket Nos. FIFRA-07-2017-0004 and FIFRA-04-2017-3005(b)

CERTIFICATE OF SERVICE

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

Copy via Email to Attorney for Complainant:

rauch.anne@epa.gov

Copy via U.S. First Class Mail to Attorney for Respondent:

Stephen A. Owens

Squire Patton Boggs (US) LLP

1 E. Washington St., Suite 2700

Phoenix, Arizona 85004

Dated: 3/7/17



Kathy Robinson

Hearing Clerk, Region 7

## **Supplemental Environmental Project: Import Tracking Compliance System**

Drexel Chemical Company ("Drexel") agrees to undertake the Supplemental Environmental Project ("SEP") described herein in connection with settlement of the EPA enforcement matter described in the Consent Agreement and Final Order ("CAFO"). Specifically, Drexel agrees to implement a technology-based Import Tracking Compliance System ("ITCS"). Drexel estimates that the cost to complete this SEP will be approximately \$184,000.

### **Background**

Drexel historically has been a "paper-driven" company and has not utilized information technology and electronic databases to any significant degree for document development and control and import tracking functions. Drexel recognizes that the lack of a technology-based system contributed to the circumstances that led to EPA's enforcement action and that implementation of this system will assist Drexel's compliance regarding its imports.

Implementing a system of this nature will require substantial changes to Drexel's document management and shipment tracking process, including new hardware, infrastructure, architecture, software and training to assure the accuracy, security, reliability, and manageability of Drexel's product and shipping records and compliance data.

### **Establishment of a New Document Production and Management System**

Drexel will establish a new document production and management system (DMS) using Laserfiche Enterprise Content Management (ECM) software. The new system will be completely browser based and hosted on a private network at Drexel, which, in addition to facilitating ease of use, will provide protection from internet-based threats. The Laserfiche ECM system provides add-ons for Microsoft Office and Adobe Acrobat, which will enable documents and correspondence (including emails) to be attached to (and correlated with) specified records in the DMS, enabling easy tracking of and access to comprehensive records relating to Drexel products and shipments. The document access tools in the ECM system (e.g., electronic file cabinets, workflows, and views) also will be customized to meet Drexel's regulatory compliance requirements and provide authorized Drexel employees easy and efficient access to needed records.

Drexel's existing procedures for the creation and management of Confidential Statements of Formula (CSFs) also will be integrated into the new ECM to ensure continued compliance, and the CSFs for each product will be encompassed within the ECM. Drexel's already has put into place new procedures for the creation of CSFs and has established a comprehensive database system (consisting of an electronic approved CSF database with a hard copy spreadsheet) that keeps Drexel's management advised of Drexel's approved facilities and also shows all new pending production facilities for Drexel's technical grade active ingredients (TGAs). This database contains a list of all Drexel products, along with the approved CSF for each product. The spreadsheet is utilized by Drexel upper management and the Director of Drexel's Registration Division to track Drexel's products to ensure their compliance. The spreadsheet is maintained by the Registration Manager, who is the only individual with authorized "Write Capabilities" for the spreadsheet and the database system (in order to ensure the accuracy of the

them. In addition to promoting greater compliance, this will facilitate review and inspection of Drexel's documentation for compliance purposes.

## **Infrastructure**

### *Overview*

Drexel will install substantial new hardware to support this advanced system (and the numerous applications) and ensure their optimal performance. The system will be hosted on a High Availability Cluster that will be housed on-site at Drexel, both to facilitate operation of the system and ensure security. As noted, the DMS will not be internet-facing to protect the data from internet-based attacks. All data will be backed up daily at the VM snapshot level and application level. The application level backups also will be sent off site to a secure private data center. Moreover, both the physical and virtual infrastructure for the system will have dual redundancies, so that no single point of failure could occur in either the physical or virtual infrastructure (including routers, firewalls, switches, server hardware, storage hardware, generators, batteries, internet service, and virtual objects). This will result in almost continual uptime of the system. The infrastructure also will include a "disaster recovery" plan to ensure the preservation of all records and related data in the event of an unanticipated event (such as a natural disaster) that might result in damage to the system and/or infrastructure.

### *Storage and Input Capacity*

Drexel will need to add significant data storage capacity, along with dual redundancies, to adequately house the volume of documents, emails, correspondence and other materials relating to its import shipments, to ensure preservation and accessibility of these items for compliance purposes. Optical Character Recognition (OCR) technology will also be incorporated and utilized to integrate hard-copy materials into the system and enable searching of their contents. Drexel also will add additional I/O (input/output) technology for optimal performance and accessibility of data.

To ensure optimal implementation of the high availability data cluster (and provide necessary storage) Drexel also will install at least three additional large memory servers (likely Dell FX2). The servers will be installed in conjunction with the VMWare vSphere Essentials Plus software virtualization platform to support high application availability and data protection and prevent system downtime (e.g., in the event of a hardware failure on any single host). Drexel will install at least two enterprise scanners (likely HP ScanJet Enterprise Flow N9120s) to enable two employees to scan and input documents simultaneously and provide redundancy.

### *Redundant Firewalls and Switches*

Two firewalls (likely a pair of Fortinet FG-200D firewalls) will be installed to ensure that all data being transmitted is scanned for not only known signature based threats but also anomaly based activity. This technology also will enable Drexel to perform reverse SSL decryption to inspect encrypted transmissions, as well as provide access to such information for compliance purposes. In addition, the firewalls will be equipped with and operated in "automatic failover mode" that will provide backup appliance in the event of hardware failure. An additional HP 2910g switch also will be installed to ensure that the failure of a single switch will not result in downtime or create issues with document creation, storage or access.

### *Support Technology*

Drexel also will install an additional chiller as a back-up to its existing coolant system to protect against