

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2

2014 JUN 30 PM 2: 25

REGIONAL HEARING  
CLERK

In the Matter of  
  
Air Techniques, Inc.  
  
Respondent  
  
Proceeding Under the Federal  
Insecticide, Fungicide and  
Rodenticide Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2014-5202

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 1361(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent

Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

### **EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Air Techniques, Inc. (hereinafter referred to as “Respondent”), a New York corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
4. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), as “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.”
5. Respondent is a “wholesaler,” “dealer,” “retailer,” or “other distributor” within the meaning of Section 14(a)(1) of FIFRA, 7 U.S.C. Section 136l(a)(1).

6. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
7. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. Section 2(mm) of FIFRA, 7 U.S.C. Section 136(mm) defines the term “antimicrobial pesticide” as, among other things “a pesticide that (A) is intended to (i) disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms.”
9. Pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a, pesticides generally must be registered with EPA before they are distributed or sold.
10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered with EPA.
11. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. Section 136j(a)(1)(B), states that it shall be unlawful for any person in any State to make claims for a registered pesticide as part of the distribution or sale that substantially differ from any claims made

for it as part of the statement required in connection with registration pursuant to Section 3(c) of FIFRA, 7 U.S.C. Section 136a(c).

12. Section 2(p) of FIFRA, 7 U.S.C. Section 136(p), defines “label” as the written, printed or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.
13. Section 2(p) of FIFRA, 7 U.S.C. Section 136(p), defines “labeling” as all labels or other written, printed or graphic matter (a) accompanying the pesticide or (b) to which reference is made in literature accompanying the pesticide.
14. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. Section 136(q)(1)(A) states that a pesticide is misbranded if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false and misleading in any particular.
15. 40 C.F.R. Section 156.10(a)(5)(i) through (x) states that a pesticide is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims.
16. On May 15, 2013, EPA’s inspectors conducted an inspection of the Respondent’s facility located at 1295 Walt Whitman Road, Melville, New York (“Melville Facility”).

17. At the time of EPA's inspection on May 15, 2013, Respondent sold or distributed the following products from the Melville Facility: Monarch Surface Disinfectant, Monarch Surface Disinfectant/Dry Wipes Combo Starter Pack or Refill Pack, Monarch Enzymatic Cleaner, and Monarch Waterline Cleaner.
18. Each of these products is manufactured, labeled, packaged and sold to Respondent by Micrylium Laboratories, a Canadian company ("Micrylium"). According to a document provided to EPA, Micrylium warranted to Respondent that each of the products Micrylium supplied would comply with all applicable requirements of FIFRA and its regulations in all respects.
19. Micrylium is the registrant for the surface disinfectant "BioSurf" (EPA Reg. No. 70467-3). Respondent distributes the Micrylium BioSurf product under the name, "Monarch Surface Disinfectant" from the Melville Facility.
20. Respondent maintained and/or operated an "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. Section 136(dd).
21. Under 40 C.F.R. Section 152.132, a registrant "may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own" provided that all the conditions in 40 C.F.R. Section 152.132 are met by both the registrant and the other party, called the "distributor." Under this provision, such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product."

22. 40 C.F.R. Section 152.132 states that supplemental distribution is permitted upon notification by the registrant to the Agency, subject to certain conditions. Notice must be given by the registrant by submitting to EPA a completed Notice of Supplemental Distribution of a Registered Pesticide (Form 8570-5) signed by the registrant and the distributor.
23. Micrylium distributes and sells its registered Biosurf pesticide product under the Respondent's name and address. The Monarch Surface Disinfectant is a "distributor product" and Respondent is a supplemental distributor of that product.

#### **MONARCH SURFACE DISINFECTANT**

24. From April 22, 2013 to May 30, 2013, Respondent distributed and/or sold the Monarch Surface Disinfectant to various customers.
25. Subsequent to EPA's May 15, 2013 inspection at the Melville Facility, EPA was provided with a Notice of Supplemental Distribution of a Registered Pesticide Product concerning "BioSurf" (EPA Reg. No. 70467-3), which was signed by the Respondent, the supplemental distributor, and Micrylium, the basic registrant, on October 19, 2012 and October 24, 2012, respectively.

26. Under the Notice of Supplemental Distribution, Micrylium notified EPA of its intent to sell or distribute “BioSurf” (EPA Reg. No. 70467-3) under the name “Monarch Surface Disinfectant” and provided Respondent’s name and address.
27. Under 40 C.F.R. Section 152.132, Micrylium was required to submit to EPA a Notice of Supplemental Distribution of a Registered Pesticide Product concerning “BioSurf” (EPA Reg. No. 70467-3) prior to selling or distributing that product as “Monarch Surface Disinfectant.”
28. Micrylium claimed that it mailed the Notice of Supplemental Distribution to EPA in October 2012. Neither the Respondent nor Micrylium has provided documentary proof that either of them mailed the Notice of Supplemental Distribution to EPA prior to EPA’s inspection on May 15, 2013.
29. EPA records indicate that EPA received a Notice of Supplemental Distribution for the Monarch Surface Disinfectant from the basic registrant, Micrylium, dated October 2012, on or about June 4, 2013.
30. Respondent’s sale or distribution of the Monarch Surface Disinfectant prior to EPA’s receipt of a Notice of Supplemental Distribution from the basic registrant, Micrylium, constituted unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

**MONARCH SURFACE DISINFECTANT/DRY WIPES COMBO  
STARTER PACK OR REFILL PACK**

31. Subsequent to EPA's May 15, 2013 inspection at the Melville Facility, EPA obtained documentation that Respondent sold the "Monarch Surface Disinfectant/Dry Wipes Combo Starter Pack" or "Refill Pack" (the "Combination Packages") to several customers during 2013.
32. The Combination Packages were manufactured, labeled, packaged and otherwise produced by the basic registrant, Micrylium.
33. The Combination Packages produced by the basic registrant included an insert that indicated that the surface disinfectant and dry wipes could be combined or mixed to create wet wipes. These claims substantially differed from the claims made by the basic registrant for the registered product as part of the statement required in connection with its pesticide registration, which included instructions for use only for spray application.
34. 40 C.F.R. Section 152.132 states that the distributor is considered an agent for the registrant for the purposes of FIFRA, and the distributor may be held liable for violations pertaining to the distributor product.
35. Respondent's sale or distribution of the Combination Packages produced by the basic registrant with claims substantially different from the claims made by the

basic registrant for the registered product at registration constitute unlawful acts pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. 136j(a)(1)(B).

### **MONARCH ENZYMATIC CLEANER**

36. During the May 15, 2013 inspection, EPA collected physical samples of the Monarch Enzymatic Cleaner 16.9 and 1.7 ounce products.
37. The label for the Monarch Enzymatic Cleaner 16.9 and 1.7 ounce products had the following statement on the back label—“Directions for Use: Monarch Enzymatic Cleaner is an anti-microbial Ultrasonic Bath Cleaning Concentrate for instruments prior to disinfection or sterilization.”
38. Respondent’s marketing materials for the Monarch Enzymatic Cleaner included the following statement: “An antimicrobial solution is vital for instruments that are later sterilized in order to reduce the infectious load in transit between the ultrasonic and the sterilizer.” The MSDS for the Monarch Enzymatic Cleaner supplied in the package by Micrylium included the following statement:  
“Indication-Liquid Ultrasonic Bath Antimicrobial.”
39. At the time of EPA’s May 15, 2013 inspection at the Melville Facility, by virtue of the “antimicrobial” language on the label, the Monarch Enzymatic Cleaner was an antimicrobial pesticide as defined by Section 2(mm)(1) of FIFRA, 7 U.S.C. Section 136mm(1).

40. The Monarch Enzymatic Cleaner was not registered with EPA as a pesticide.
41. Invoices collected during the May 15, 2013 inspection revealed that during various dates in 2013, the Respondent sold the Monarch Enzymatic Cleaner.
42. Respondent's sale or distribution of the unregistered Monarch Enzymatic Cleaner constituted an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).
43. Upon notice of the potential violations, Respondent promptly and voluntarily suspended sales of the Monarch Enzymatic Cleaner pending changes to the product labeling and company marketing materials and MSDS to remove pesticidal claims. Respondent cooperated in good-faith with EPA's investigation.

#### **MONARCH WATERLINE CLEANER**

44. During the May 15, 2013 inspection, EPA collected physical samples of the Monarch Waterline Cleaner product.
45. The Monarch Waterline Cleaner product is used for cleaning dental unit waterlines. At the time of the May 15, 2013 inspection, the product was packaged and distributed by Micrylium in a cardboard box which contained ten 16.9 fluid ounce bottles. Respondent has represented at the time of the inspection that the product had received premarket clearance as a medical device under Section 510(k) of the Food, Drug and Cosmetic Act.

46. The label on the Monarch Waterline Cleaner cardboard box has the following claims: “Antimicrobial solution for hygienic scaling or as an overnight solution for the unit waterlines;” and “This solution reduces the risk of cross contamination, bacterial aerosols and microbial contamination while cleaning dental unit supply tubing.”
47. The log sheet insert for the Monarch Waterline Cleaner had the following statements; “Multi-purpose antimicrobial dental waterline cleaner;” “Full-strength solution is used to clean and control microbial contamination in the waterlines of pressurized independent dental water delivery systems;” and “Copious biofilm (thick slime) is discharged during first time cleaning session....” Additionally, the MSDS sheet for this product had the following statement: “Waterline Tubing Disinfectant.”
48. Respondent’s marketing material for the Monarch Waterline Cleaner had the following statements: “...a proven antimicrobial, which protects from cross contamination and bacterial aerosols,” “...proven chemical antiseptic to reduce bacterial counts,” “penetrates biofilm and is effective against pseudomonas aeruginosa.” Respondent has informed EPA that these claims were the same as those made on the Micrylium “Lines Cleaner.”

49. At the time of EPA's May 15, 2013 inspection at the Melville Facility, by virtue of the antimicrobial language on the label, the product log sheet insert, and the Respondent's marketing material, the Monarch Waterline Cleaner was an antimicrobial pesticide as defined by Section 2(mm)(1) of FIFRA, 7 U.S.C. Section 136mm(1).
50. The Monarch Waterline Cleaner was not registered with EPA as a pesticide.
51. Invoices collected during the May 15, 2013 inspection revealed that during various dates in 2013, the Respondent sold or distributed the Monarch Waterline Cleaner product to various customers.
52. Respondent's sale or distribution of the unregistered Monarch Waterline Cleaner constituted an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).
53. Upon notice of the potential violations, Respondent promptly and voluntarily suspended sales of the Monarch Waterline Cleaner pending changes to the product labeling to remove pesticidal claims. Respondent cooperated in good faith with EPA's investigation.

#### **IMPORTATION OF PESTICIDES WITHOUT FILING NOTICE OF ARRIVAL**

54. 19 C.F.R. Section 12.112 requires an importer desiring to import pesticides into the United States to submit EPA Form 3540-1, Notice of Arrival of Pesticides and

Devices, to EPA prior to the arrival of pesticide shipments in the United States (hereinafter a "Notice of Arrival").

55. During the May 15, 2013 inspection of the Melville Facility, EPA inspectors collected evidence showing that Respondent had ordered shipments of the Monarch Surface Disinfectant from Micrylium and that Micrylium, as importer of record, had arranged for shipments of the Monarch Surface Disinfectant into the United States in April and May 2013. Neither Micrylium nor Respondent filed a Notice of Arrival with EPA.
56. Importation of the Monarch Surface Disinfectant products without a Notice of Arrival being filed with EPA prior to their arrival into the United States is a violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N) and 19 C.F.R. Section 12.112.

#### **SUMMARY OF VIOLATIONS AND CORRECTIVE MEASURES**

57. Based on EPA's May 15, 2013 inspection of Respondent's establishment, information and documentation obtained subsequent to the inspection, and EPA's review of the labeling, company website and marketing materials for the above-mentioned pesticide products, EPA found the following violations in 2013: (1) Respondent distributed or sold unregistered pesticides, "Monarch Surface Disinfectant," "Monarch Enzymatic Cleaner" and Monarch Waterline Cleaner" in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A);

(2) Respondent distributed or sold the Combination Packages in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. Section 136j(a)(1)(B); and (3) the Respondent imported pesticide products without a Notice of Arrival being filed with EPA prior to the pesticide products' arrival in the United States, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. Section 136j(a)(2)(N), and 19 C.F.R. Section 12.112.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondent certifies, to the best of its knowledge and belief, the accuracy of each of the following statements as of the date of its signature on the Consent Agreement:
  - (i) Respondent has discontinued distribution or sale of the Monarch Enzymatic Cleaner with pesticidal claims on the label and company website.
  - (ii) Respondent has discontinued distribution or sale of the Monarch Waterline Cleaner (aka "Monarch Lines Cleaner") with pesticidal claims

on the label, including the Log Sheet insert, the MSDS sheet, and the cardboard. In addition, the Respondent has removed pesticidal claims on its website.

- (iii) The label on the immediate product container (e.g. bottle) of the Monarch Lines Cleaner has been changed in order so that the lettering is not obscured by the dark liquid background.
- (iv) The Monarch All-Purpose Dry Wipes are sold separately and not part of any combination pack/refill;
- (v) Respondent has discontinued distribution or sale of the Monarch Surface Disinfectant Combination Packages;
- (vi) Respondent has provided notice to its distributors requesting that, for any offer for sale of the Monarch Surface Disinfectant Combination Packages, any advertising (where necessary) be changed to omit any claim that the surface disinfectant may be combined or mixed with the dry wipes, and/or that the surface disinfectant may be used to create pre-moistened wipes.
- (vii) The labeling and Respondent's website for the Monarch Surface Disinfectant do not include any statement that is false or misleading within the meaning of 40 C.F.R. Sections 156.10(a)(5)(i) through (x), and do not

include in particular any statements that the product is “stronger,” “safe,” “safer,” “non-toxic,” or “environmentally-friendly.”

- (viii) The virucidal claim on the label of the Monarch Surface Disinfectant has been changed in order to limit such claim to “Canine Parvovirus CPV-265.” The label was also changed to indicate that the product kills Tuberculosis in 60 seconds.
- (ix) Respondent has instituted a standard operating procedure designed to ensure that all pesticides it receives from outside the United States will have a Notice of Arrival filed with EPA for incoming pesticides prior to their arrival into the United States and offer for entry into the United States.

2. If in the future, EPA believes that any information which Respondent certified to, pursuant to paragraph 1 above, is untrue or inaccurate, EPA will so advise Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA. If, after consideration of Respondent’s reply, EPA determines that any part of the certification was untrue or inaccurate as of the date of Respondent’s signature of this Consent Agreement, then Respondent shall be liable to EPA for a stipulated penalty of \$25,000. EPA also may initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

3. Respondent shall pay, by certified check, a civil penalty in the amount of Three Hundred and Seventy Five Thousand Dollars (\$375,000.00) payable to the “Treasurer of the United States of America” and shall mail the check with the notation of the name and docket number of this case as follows: In the Matter of Air Techniques, Inc., Docket No. FIFRA-02-2014-5202.

The check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent shall also send a copy of the payment to both:

Bruce Aber, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866; and

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

The payment must be received at the above address on or before the due date specified in paragraph 3(a) below (the date by which the payment must be received shall hereafter be referred to as its “due date”).

- a) The payment of the above-mentioned civil penalty must be received at the above address on or before forty-five (45) calendar days after the date of the Regional

Administrator's signature of the Final Order at the end of this document (due date).

- b) If payment in full is not made, Respondent shall pay a stipulated penalty of Five Thousand Dollars (\$5,000.00) per month for each month in which full payment has not been made. Stipulated penalties for failure to pay the penalty on time are due and payable within thirty (30) calendar days of Respondent's receipt from EPA of a written demand for payment of penalties. All stipulated penalty payments shall be made in accordance with the payment instructions above. Stipulated penalties shall accrue as provided above, regardless of whether EPA has notified Respondent of the violation or has made a demand for payment, but need only be paid upon demand.
- c) Failure to pay the full amount of the penalty, or any stipulated penalty demanded by EPA, according to the above provisions, will result in the referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection and/or other appropriate action.
- d) If timely payment is not received on or before the due dates, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$25.00 will be assessed for each thirty (30) calendar day period, or any portion thereof, following the due date in which the balance remains unpaid.

- e) A 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of the due dates.
4. Unless Respondent provides EPA with a written explanation in accordance with paragraph 5 below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand may be mailed by certified mail, return receipt requested to Respondent, as follows: Director of Quality, Regulatory, Air Techniques, Inc., 1295 Walt Whitman Road, Melville, New York 11747. All stipulated penalty payments shall be made by cashier's or certified check. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.
5. After receipt of a demand from EPA for stipulated penalties pursuant to paragraphs 2, 3 or 4 above, Respondent shall have fifteen (15) calendar days in which to provide Complainant with a written explanation of why it believes a stipulated penalty is not appropriate for the cited violation(s) of the Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 6 below, EPA shall evaluate the written explanation provided by Respondent.

6. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under the CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to the preceding paragraph, if any, Complainant determines that Respondent has failed to comply with the provisions of paragraphs 2, 3 or 4 above of the Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of the Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.
7. At any time prior to Respondent's payment of stipulated penalties, the Complainant, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Complainant makes such determination, EPA shall notify Respondent in writing of any such action.
8. The civil penalty provided for herein and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law to the extent provided therein.

9. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve the civil and administrative claims described in the EPA Findings of Fact and Conclusions of Law section in this Consent Agreement, as provided in 40 C.F.R. Sections 22.18 (c) and 40 C.F.R. Section 22.31(a).
10. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 1361(a), to commence a civil administrative proceeding based on the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies any determination in the EPA Findings of Fact and Conclusions of Law contained therein.
11. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
12. Respondent explicitly and knowingly consents to the assessment of the civil penalties as set forth in this Consent Agreement and agrees to pay the civil penalties in accordance with the terms of this Consent Agreement.

13. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint, this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
14. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO; or b) to enforce a judgment relating to this CA/FO.
15. Respondent waives any right it might have to appeal this Consent Agreement and the accompanying Final Order.
16. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.
17. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. Section 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

18. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder, as provided in 40 C.F.R. Section 22.31(a).
19. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.
20. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement and Final Order.
21. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.
22. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

23. Each party hereto agrees to bear its own costs and fees in this matter.
24. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**In the Matter of Air Techniques, Inc., FIFRA-02-2014-5202**

RESPONDENT:

BY: \_\_\_\_\_

*John L. Scott*  
(Signature)

NAME: \_\_\_\_\_

*John L. Scott*

TITLE: \_\_\_\_\_

*President*

DATE: \_\_\_\_\_

*6/18/14*

**In the Matter of Air Techniques, Inc. FIFRA-02-2014-5202**

COMPLAINANT:



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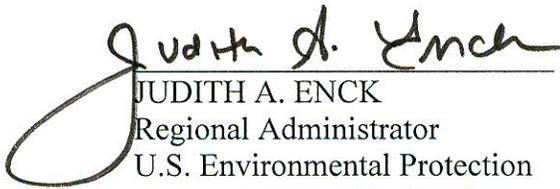
Dore LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

DATE: JUNE 24, 2014

**In the Matter of Air Techniques, Inc., FIFRA-02-2014-5202**

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

  
JUDITH A. ENCK  
Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway  
New York, New York 10007

DATE: 6/25/14

**In the Matter of Air Techniques, Inc. FIFRA-02-2014-5202**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866  
Attn: Karen Maples

Copy by Certified Mail/  
Return Receipt Requested:

James G. Votaw  
Manatt, Phelps & Phillips, LLP  
700 12th Street, NW, Suite 1100  
Washington, DC 20005

Dated: June 30, 2014  
New York, New York

  
\_\_\_\_\_