

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

**FILED**

7/11/2024

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**U.S. EPA REGION 8  
HEARING CLERK**

IN THE MATTER OF: )  
)  
Auto-Chlor System of Denver, Inc. )  
5650 Pecos Street, ) **Docket No. FIFRA-08-2024-0053**  
Denver, CO 80221 )  
)  
**Respondent.** ) **CONSENT AGREEMENT**

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), as codified at 40 C.F.R. Part 22.
2. The parties to this proceeding are the authorized representative of the U.S. Environmental Protection Agency, Complainant, and Auto-Chlor System of Denver, Inc., Respondent.
3. Respondent is a corporation organized under the laws of the State of Colorado.
4. Respondent owns and/or operates a pesticide production establishment at 5650 Pecos Street, Denver, CO 80221 (Establishment).
5. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**II. JURISDICTION**

6. This Agreement is issued under the authority vested in the Administrator of EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, or the Act), 7 U.S.C. § 136l(a)(1). The undersigned EPA official has been delegated the authority to institute this action.

7. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a regional judicial officer ratifying this Agreement. If issued, the final order will simultaneously commence and conclude this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

### III. GOVERNING LAW

8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered.
9. 40 C.F.R. § 152.15 authorizes the distribution of a registered pesticide product by persons that are not the registrant if, among other things “[t]he registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product.” 40 C.F.R. § 152.15(a).
10. 40 C.F.R. § 165.70 authorizes repackaging of a registrant’s registered pesticide product if, among other things, “[t]he registrant has entered into a written contract with [the person conducting the repackaging] to repackage the pesticide product and to use the label of the registrant's pesticide product.” 40 C.F.R. § 165.70(b)(3).
11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is misbranded.
12. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide the composition of that differs at the time of its distribution or sale from its composition as described in the statement required in connection with the pesticide’s registration.

13. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest[.]” *See, also*, 40 C.F.R. § 152.15
15. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”
16. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), provides, among other things, that a pesticide is misbranded if . . . “(D) its label does not bear the registration number assigned under section 136e of this title [section 7 of FIFRA] to each establishment in which it was produced”.
17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean “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...” *See, also*, 40 C.F.R. § 152.3
18. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides that, “Except as provided by this subchapter, no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter...” *See also*, 40 C.F.R. § 152.15.
19. The Administrator of the EPA may assess a civil penalty of up to \$24,255 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA for each offense that occurred after November 2, 2015. *See*, section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and the Civil Monetary Penalty Inflation Adjustment Rule at 88 Fed. Reg. 89309, 89312 (December 27, 2023).

#### IV. ALLEGATIONS OF FACTS AND LAW

20. At all times relevant to this Agreement, Respondent was a corporation and therefore a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
21. Respondent’s Establishment carries the EPA establishment registration number 86872-CO-1.
22. On August 24, 2022, a representative of the EPA conducted an inspection of Respondent’s Establishment to determine Respondent’s compliance with FIFRA and its implementing regulations at 40 C.F.R. Parts 150-189.
23. As part of the inspection, samples of the following five products were taken for product integrity analysis: Room Sense 200 Disinfectant Cleaner, EPA Reg. No. 1839-166-6243; Solution QA Ultra, EPA Reg. No. 1839-86-6243; DC 33, EPA Reg. No. 1839-95-6243; Auto-Chlor Solution QA, EPA Reg. No. 6243-1; and Auto-Chlor Super 8, EPA Reg. No. 6243-7.
24. The five products listed in paragraph 23 are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
25. Analysis of the sample of Room Sense 200 Disinfectant Cleaner, EPA Reg. No. 1839-166-6243 taken during the 2022 inspection shows that two active ingredients were below the lower certified limit, and one active ingredient was above the upper certified limit.
26. Analysis of the sample of Solution QA Ultra, EPA Reg. No. 1839-86-6243 taken during the 2022 inspection shows that one active ingredient was below the lower certified limit.
27. Analysis of the sample of DC 33, EPA Reg. No. 1839-95-6243 taken during the 2022 inspection shows that two active ingredients were below the lower certified limit.
28. By letter dated August 23, 2023, EPA requested, among other things, all written supplemental distributor and repackaging agreements with each registrant of each pesticide product for the five pesticides listed in paragraph 23.
29. By letter dated September 26, 2023, Respondent provided EPA documents in its possession.

30. Respondent did not produce the required written documents during the inspection or provide them in response to EPA's information request.
31. During the inspection the inspector observed that the label for Solution QA Ultra, EPA Reg. No. 1839-86-6243 did not bear the registration number assigned under section 7 of FIFRA, and the EPA registration number was covered by another number.
32. During the inspection the inspector observed that the label for Auto-Chlor Super 8, EPA Reg. No. 6243-7 did not bear the registration number assigned under section 7 of FIFRA.
33. By letter dated April 30, 2024, Respondent provided a response to EPA's inspection observations and sampling.
34. During the inspection the inspector collected invoices showing the distribution or sale of the five pesticides listed in paragraph 23 by Respondent.

#### **V. ALLEGED VIOLATIONS OF LAW**

35. Respondent did not produce the required documents for supplemental distribution and/or repackaging of Room Sense 200 Disinfectant Cleaner, EPA Reg. No. 1839-166-6243; Solution QA Ultra, EPA Reg. No. 1839-86-6243; DC 33, EPA Reg. No. 1839-95-6243; during the inspection or in response to the EPA information request. These products, therefore, were unregistered.
36. Respondent distributed or sold these unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
37. Solution QA Ultra, EPA Reg. No. 1839-86-6243 and Auto-Chlor Super 8, EPA Reg. No. 6243-7 were misbranded.
38. Respondent distributed or sold these misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
39. Room Sense 200 Disinfectant Cleaner, EPA Reg. No. 1839-166-6243, Solution QA Ultra, EPA Reg. No. 1839-86-6243 and DC 33, EPA Reg. No. 1839-95-6243 had active ingredients that were outside of the certified limits.

40. Respondent distributed or sold these pesticides with a composition different than the composition described in their registration statements in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

## VI. TERMS OF AGREEMENT

41. For the purposes of this proceeding, Respondent:
- a. admits the jurisdictional allegations in this Agreement;
  - b. neither admits nor denies the alleged factual allegations in this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
  - e. waives any right to contest the allegations in this Agreement and to appeal any final order ratifying this Agreement.
42. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) authorizes EPA to assess a civil penalty in this matter.
43. Based on the allegations above and having considered the appropriateness of the assessed penalty to Respondents' size of businesses, the effect on Respondent's ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 1367(a)(4), Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.
44. Penalty Payment. Respondent agrees to:
- a. pay a civil penalty of \$39,500.00 within 30 calendar days of the effective date of this Agreement;
  - b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>; and
  - c. within 24 hours of each payment, email proof of payment to Chris Tokarz, EPA Region 8, at Tokarz.Chris@epa.gov, and the Regional Hearing Clerk for EPA Region 8 at [R8\\_Hearing\\_Clerk@epa.gov](mailto:R8_Hearing_Clerk@epa.gov). "Proof of payment" means, as

applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

45. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order pursuant to 26 U.S.C. § 6621(a)(2), attorney's fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
  - b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;
  - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, subparts C and H; and
  - d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
46. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
47. This Agreement applies to Respondent and its officers, directors, agents, trustees, authorized representatives, successors, and assigns. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets

or real or personal property, shall not alter Respondent's responsibilities under this Agreement.

48. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
49. Except as qualified by paragraph 45 above, each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
50. The parties consent to service of this Agreement and any final order ratifying it by email at the following valid email addresses: figur.charles@epa.gov (for Complainant), and Charles Schaller at cschaller@bakerdonelson.com (for Respondent).

## VII. EFFECT OF AGREEMENT

51. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order approving this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged above.
52. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
53. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
54. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.



**VIII. EFFECTIVE DATE**

55. This Agreement shall become effective on the date a final order ratifying this Agreement is filed with the regional hearing clerk for EPA Region 8.

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY REGION 8,  
Complainant**

Date: \_\_\_\_\_

By: \_\_\_\_\_

David Cobb, Section Supervisor  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance Division

**AUTO-CHLOR SYSTEM OF DENVER, INC.,  
Respondent**

Date: 07/01/2024

By: *Jonathan Bennie*

Name, Title: Jonathan Bennie  
Technical Director, Chemical