



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

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<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0005

IN THE MATTER OF:

CHEMTECH, INC.

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 16th DAY OF November, 2017.

Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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EPA REGION VIII
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In the Matter of:)
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Chemtech, Inc.)
P.O. Box 3180)
3700 South Hoyt Ave.)
Muncie, IN 47307)
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Respondent)
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_____)

Docket No.: FIFRA-08-2017-0005

CONSENT AGREEMENT

I. JURISDICTIONAL ALLEGATIONS

1. This Consent Agreement and Final Order (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The complaint in this matter named both Bond Technology Systems, Inc. and Chemtech, Inc. as respondents. Chemtech, Inc. is the manufacturing subsidiary of Bond Technology Systems, Inc. and this Agreement will address the violation alleged in the complaint to the full satisfaction of the EPA.
3. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
4. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
5. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
6. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual or legal allegations in this Agreement.

II. FACTUAL AND LEGAL ALLEGATIONS

7. Respondent's place of business is located at P.O. Box 3180, 3700 South Hoyt Ave., Muncie, IN 47307. The registered agent for Respondent is Jon Moll Defur, Voran, LLP, located at 400 South Walnut St., Muncie, IN 47305.
8. Respondent is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
9. Respondent is a "registrant" within the meaning of section 2 of FIFRA, 7 U.S.C. § 136(y), with an EPA registration number of 70246-1.
10. Respondent is the registrant of copper sulfate pentahydrate CT-100.
11. Copper sulfate pentahydrate CT-100 is a "pesticide" within the meaning of section 2 of FIFRA, 7 U.S.C. § 136(u).
12. "The term 'to distribute or sell' means 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" FIFRA section 2(gg), 7 U.S.C. § 136 (gg).
13. At all times relevant to the alleged violations, Respondent was a "distributor/seller" as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of a "pesticide" defined in FIFRA section 2(u), 7 U.S.C. § 136(u), and a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. § 136(w).
14. Under FIFRA section 3(a), it is "unlawful for any person in any State to distribute or sell to any person-(A) any pesticide that is not registered under 136a ... or whose registration has been canceled"
15. In a letter dated July 16, 2009, Debra Edwards, Ph.D., Director of the EPA's Office of Pesticide Programs, informed the basic registrant, Chemtech, Inc., that the CT-100 pesticide product registration was canceled for non-payment of the annual registration maintenance fee due on January 15, 2009.
16. The July 16, 2009 letter required Respondent to distribute and sell existing stocks of the canceled product by January 15, 2010.
17. Respondent sold CT-100 on or about May 17, 2012, and October 22, 2012, to Spa Performance and Supply, LLC, 9733 South Mount Jordan Road, Sandy, UT 84092.

III. VIOLATION

Counts 1 and 2

18. Respondent's sale of CT-100 on or about May 17, 2012, and October 22, 2012, to Spa Performance and Supply, LLC, constituted two counts of sale of an unregistered pesticide.

III. PAYMENT OF CIVIL PENALTY

19. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
20. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
21. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA assessed a total civil penalty of \$8,008.00 against Respondent for the above-described violation. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.
22. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$8,008.00 in the manner described below:
 - a. Payment shall be made in six installments. The first installment is due no later than 30 calendar days from the effective date of the Final Order. Each subsequent installment is due thirty calendar days after the due date of the previous installment. The first five installments shall be in the amount of \$1,334.66 and the sixth and final installment shall be in the amount of \$1,334.70. If the due date of any payment falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered received that day.
 - b. Respondent shall:
 - i. Pay the penalty using any method provided on the following website:
<https://www.epa.gov/financial/makepayment>;
 - ii. Identify each and every payment with the docket no. assigned to the Final Order and
 - iii. Within 24 hours of payment, email proof of payment to Erin Agee at agee.erin@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 that payment has been made according to EPA requirements, in the amount due, and identified with the docket number assigned to the Final Order.
23. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

24. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

IV. TERMS AND CONDITIONS

25. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status 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. This Agreement contains all terms of the settlement agreed to by the parties.
26. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
27. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he represents to the terms and conditions of this Agreement.
28. Each party shall bear its own costs and attorney fees in connection with this matter.
29. This Agreement, upon incorporation into a Final Order and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violation alleged herein.
30. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
31. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
32. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

V. EFFECTIVE DATE


33. This Consent Agreement and Final Order shall be effective upon execution of the Final Order by the Regional Judicial Officer.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Office of Enforcement, Compliance
and Environmental Justice

Complainant

Date: 11/3/17

By: 

David Cobb, Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

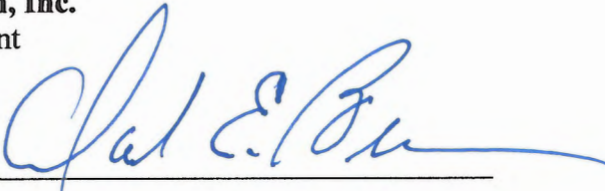
Date: 11/6/17

By: 

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Chemtech, Inc.
Respondent

Date: 10/18/17

By: 

Printed Name: DONALD E. BURNS
PRESIDENT
CHEMTECH, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **CHEMTECH, INC.;** **DOCKET NO.: FIFRA-08-2017-0005** was filed with the Regional Hearing Clerk on November 16, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Laurianne Jackson, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on November 16, 2017, to:

Respondent

Donald Burns
Chemtech, Inc.
9030 West Sahara, #505
Las Vegas, Nevada 89117

Nicholas Tokar
Attorney
Defur Voran LLP
400 S. Walnut Street, Suite 200
Muncie, Indiana 47305

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 16, 2017



Melissa Haniewicz
Regional Hearing Clerk