



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone: 800-227-8917  
http://www.epa.gov/region08

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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2016-0011

IN THE MATTER OF:

E. M. Systems, Inc.  
1931 West 2425 South  
Woods Cross, Utah 84087

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(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 29<sup>th</sup> DAY OF September, 2016.

Elyana Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Woods Cross, Utah 84087 )

**Docket No.:** FIFRA-08-2016-0011

**Respondent** )  
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**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**I. JURISDICTION**

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. 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.
3. 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.
4. 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).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

**II. ALLEGATIONS**

6. Respondent, E. M. Systems, Inc., 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.
7. Respondent's place of business is located at 1931 West 2425 South, Woods Cross, Utah 84087.

8. At all times relevant to the alleged violations, the 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).
9. By statute, “[t]he 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).
10. 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 ....”
11. 40 C.F.R. § 158.325 states in part, “[t]he following information must be submitted on the materials used to produce the product: (1) For each active ingredient that is derived from an EPA-registered product: (i) The name of the EPA-registered product [and] (ii) The EPA registration number of that product.”
12. 40 C.F.R. § 156.10(a) requires that, “[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: (i) The name, brand, or trademark under which the product is sold ...; (ii) The name and address of the producer, registrant, or person for whom produced ....”
13. 40 C.F.R. § 156.10(a)(1)(ii) requires that the stationary bulk tanks at a facility contain the name and address of the producer, registrant, or person for whom produced.
14. EPA’s Pesticide Registration Notice (PR Notice) 2007-4, available at <http://www2.epa.gov/sites/production/files/2014-04/documents/pr2007-4.pdf>, requires in part, “a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; and for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal.”
15. 40 C.F.R. § 156.10(a)(2)(ii)(C) requires all label text to be displayed prominently on the tanks and “not be obscured or crowded”.
16. 40 C.F.R. § 156.10(a)(4)(ii)(B) states, “[w]hen pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve.”
17. PR Notice 2007-4 directs pesticide manufacturers to update their labels to comply with 40 C.F.R. part 156 established by Final Rule “Pesticide Management and Disposal; Standards for Pesticide Containers and Containment” (71 FR 47330, August 16, 2006). As specified in the final rule, all pesticide products distributed or sold by a registrant must have labels that comply with the new requirements (40 C.F.R. § 156.159) by August 17, 2009.

18. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states "it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 136a of this title or whose registration has been cancelled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under this subchapter."
19. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it "unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3 of FIFRA, 7 U.S.C. § 136a."
20. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states "it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded."

### **III. VIOLATIONS**

#### **Count 1**

21. On May 14, 2014, an EPA inspector conducted a FIFRA inspection at the Respondent's facility to ensure compliance with FIFRA.
22. Respondent has been and is producing, distributing, or selling a pesticide listing Respondent as the registrant for Klor 300 EPA Reg. No. 7726-24.
23. The Klor 300, EPA Reg. No. 7726-24 is registered to Chem Mark International of Beverly Hills, California.
24. The label for Klor 300 stated that the registrant is Respondent.
25. Respondent was reporting production and distribution to the EPA as Chem Mark of Utah, Inc. (Chem Mark).
26. Chem Mark has an EPA Establishment Number of 74700-UT-001, and is located at the same address as Respondent.
27. Chem Mark International is a registrant as defined in section 2(y) of FIFRA, 7 U.S.C. § 136(y), with the EPA-assigned company number 7726.
28. Respondent has been and is producing, distributing, or selling a pesticide listing Respondent as the registrant for Klor 300 EPA Reg. No. 7726-24, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### **Count 2**

29. The Confidential Statement of Formula submitted to the EPA, Form 8570-4, for Klor 300 states that the active ingredients for Klor 300, EPA Reg. No. 7726-24, are purchased from from Luseaux Laboratories.

30. During the inspection, the inspector asked for purchase invoices of the active ingredients of the Klor 300 product and the Respondent provided invoices for a Brenntag product and a Thatcher product, but not Luseaux Laboratories.
31. The Klor 300 product produced by Respondent did not contain the active ingredients as specified on the Confidential Statement of Formula for EPA Reg. No. 7726-24.
32. The Klor 300, EPA Reg. No. 7726-24 products produced at Respondent's facility were in violation of 40 C.F.R. § 158.325 at the time of the inspection.
33. Respondent has been and is producing, distributing, or selling a pesticide, Klor 300. EPA Reg. No. 7726-24, which differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration, in violation of section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

### Count 3

34. During the inspection, the inspector observed multiple labels on the stationary bulk storage tanks at Respondent's facility.
35. The tank with the label for Klor 300 also included two other labels for two different pesticide products in violation of 40 C.F.R. § 156.10(a)(2)(ii)(C).
36. The label for Klor 300, EPA Reg. No. 7726-24, was accepted by the EPA on October 20, 1994. The EPA issued guidance in 2007 alerting registrants to update their storage disposal/container handling requirements (PR Notice 2007-4).
37. The Klor 300 label on the Respondent's bulk tanks did not include the updated Storage and Disposal/Container Handling requirements in accordance with PR Notice 2007-4 and 40 C.F.R. § 156.10(a)(4)(ii)(B) requiring that "[w]hen pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label of labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge control valve."
38. Respondent's sale and distribution of Klor 300 from a bulk storage tank with multiple labels that do not comply with the updated storage disposal/container handling requirements constitutes a misbranded pesticide.
39. Respondent has been and is producing, distributing, or selling a misbranded pesticide, Klor 300 EPA Reg. No. 7726-24, in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

### III. PAYMENT OF CIVIL PENALTY

40. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

41. 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.
42. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$10,995 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.
43. 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 \$10,995 in three installment payments of \$3,665.00 each as follows:
  - a. First payment of \$3,665 is due and owing within thirty days of the effective date of the Final Order.
  - b. Second payment of \$3,665 is due and owing on or before March 30, 2017.
  - c. Third payment of \$3,665 is due and owing on or before July 30, 2017.
  - d. If the due date of any of the payments 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, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - e. Each of the payments shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

**Regular Mail:**

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

Federal Express, Airborne, or other commercial carrier:

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen  
513-487-2091

**Wire Transfers:**

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

**ACH (also known as REX or remittance express):**

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility  
5700 Rivertech Court  
Riverdale, MD 20737  
US Treasury Contact Information:  
Randolph Maxwell: 202-874-7026  
Remittance Express (REX): 1-866-234-5681

**On-line Payment:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov).

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

44. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Daniel Webster (8ENF-UFO)	and	Melissa Haniewicz (8RC)
Technical Enforcement Program		Regional Hearing Clerk
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

45. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
46. 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 of the penalty is received in full (i.e., on the 1st late day, 30 days of interest will have accrued).
47. 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.

#### **V. TERMS AND CONDITIONS**

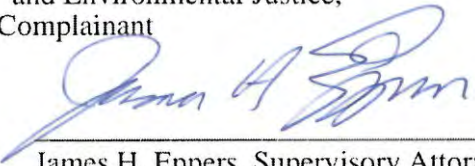
48. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets, or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
49. 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.
50. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
51. Each party shall bear its own costs and attorney fees in connection with this matter.
52. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
53. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
54. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.



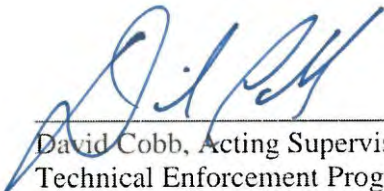
55. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8,**  
Office of Enforcement, Compliance  
and Environmental Justice,  
Complainant

Date: 9/28/16

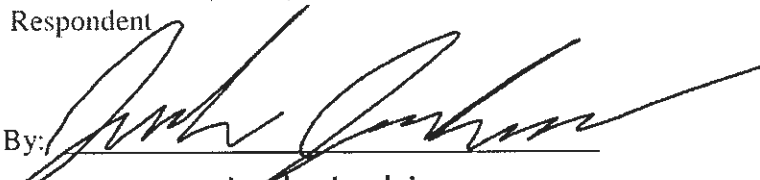
By:   
James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice  
U.S. EPA Region 8  
Denver, Colorado 80202-1129

Date: 9-27-16

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

**EM SYSTEMS, INC.,**  
Respondent

Date: 9/23/2016

By:   
Printed Name: Josh Jenkins

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **E. M. Systems, Inc.; DOCKET NO.: FIFRA-08-2016-0011** was filed with the Regional Hearing Clerk on September 28, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/29/16.


Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/29/16, to:

Respondent

Josh Jenkins  
E. M. Systems, Inc.  
1931 West 2425 South  
Woods Cross, Utah 84087

And emailed to:

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

  
\_\_\_\_\_  
John F. Pickens II  
Acting Regional Hearing Clerk

