

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2022-0020
)	
Chemtrade Electrochem Inc.,)	Proceeding to Assess a Civil Penalty
Toronto, Ontario, Canada)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
In care of its U.S. agent,)	Rodenticide Act, 7 U.S.C. § 136l(a)
)	
Chemtrade Electrochem U.S. Inc.,)	
Parsippany, New Jersey)	
)	
Respondent.)	
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Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Chemtrade Electrochem Inc. (Chemtrade), a corporation doing business at 155 Gordon Baker Road in Toronto, Ontario, Canada M2H 3N5, in care of its U.S. agent, Chemtrade Electrochem U.S. Inc., a corporation doing business at 90 East Halsey Road, Parsippany, New Jersey 07054.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States (U.S.) is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12. See also 19 C.F.R. § 12.1(b).

11. 19 C.F.R. § 12.112(a) states, in pertinent part, that an importer desiring to import devices into the U.S. shall submit to the EPA, prior to the arrival of the shipment in the U.S., a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

12. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

13. 19 C.F.R. § 141.18 states, in pertinent part, that a nonresident corporation may not enter merchandise into the U.S. for consumption unless it has a resident agent authorized to accept service of process against the nonresident corporation.

14. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be the importer of record.

15. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

16. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) as, in pertinent part, any form of virus, bacteria, or other micro-organism. See also 40 C.F.R. § 152.5(d).

17. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) as, in pertinent part, any substance or mixture of substance intended for preventing, destroying, repelling, or mitigating a pest.

18. The Administrator of EPA may assess a civil penalty against any registrant, wholesaler, dealer, retailer, importer, or other distributor who violates any provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015, and assessed on or after January 12, 2022, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

19. Respondent is, and was at all times relevant to this CAFO, a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent is, and was at all times relevant to this CAFO, an “importer” as that term is defined in 19 C.F.R. § 101.1.

21. Chemtrade Electrochem U.S. Inc., at all times relevant to this CAFO, was the resident agent for Chemtrade, pursuant to 19 C.F.R. § 141.18.

22. Respondent, at all times relevant to this CAFO, was importing pesticides into the U.S.

Entry Number EI5-14971792

23. On or about September 10, 2021, Respondent imported **Chlorine**, EPA Registration Number (EPA Reg. No.) 69874-5 (Entry Number EI5-14971792) into the U.S. through the International Falls, Minnesota Port of Entry.

24. On or about June 28, 2022, Respondent submitted a NOA for this import shipment.

25. **Chlorine**, EPA Reg. No. 69874-5 is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

26. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Entry Number EI5-15214879

27. On or about December 9, 2021, Respondent imported **Chlorine**, EPA Reg. No. 69874-5 (Entry Number EI5-15214879) into the U.S. through the International Falls, Minnesota Port of Entry.

28. On or about June 28, 2022, Respondent submitted a NOA to EPA for this import shipment under Entry Number E15-30691028.

29. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Entry Number EI5-15214887

30. On or about December 9, 2021, Respondent imported **Chlorine**, EPA Reg. No. 69874-5 (Entry Number EI5-15214887) into the U.S. through the International Falls, Minnesota Port of Entry.

31. On or about June 28, 2022, Respondent submitted a NOA for this import shipment after the arrival of the shipment into the U.S.

32. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Entry Number EI5-15214945

33. On or about December 9, 2021, Respondent imported **Chlorine**, EPA Reg. No. 69874-5 (Entry Number EI5-15214945) into the U.S. through the International Falls, Minnesota Port of Entry.

34. On or about June 28, 2022, Respondent submitted a NOA for this import shipment after the arrival of the shipment into the U.S.

35. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Entry Number EI5-30612610

36. On or about February 11, 2022, Respondent imported **Chlorine**, EPA Reg. No. 69874-5 (Entry Number EI5-30612610) into the U.S. through the International Falls, Minnesota Port of Entry.

37. On or about June 13, 2022, Respondent submitted the NOA to EPA for this import shipment under Entry Number EI5-30678306.

38. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Entry Number EI5-15763875

39. On or about June 4, 2022, Respondent imported **Chlorine**, EPA Reg. No. 69874-5 (Entry Number EI5-15763875) into the U.S. through the International Falls, Minnesota Port of Entry.

40. On or about June 13, 2022, Respondent submitted a NOA for this import shipment under Entry Number EI5-30678207.

41. Respondent did not submit a NOA to the EPA for this import shipment prior to the arrival of the shipment into the U.S.

Counts 1 through 6

42. The preceding paragraphs are incorporated by reference.

43. Respondent's failure to submit NOAs to the EPA for the pesticide contained in the import shipments under Entry Numbers EI5-14971792, EI5-15214879, EI5-15214887, EI5-15214945, EI5-30612610, and EI5-15763875, prior to the arrival of the shipments into the U.S., constitutes six separate violations of Section 12(a)(2)(N) of FIFRA.

44. Respondent's violation of Section 12(a)(2)(N) of FIFRA on six separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a separate civil penalty for each occasion under Section 14(a) of FIFRA.

Civil Penalty and Other Relief

45. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$57,600. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business and the effect on Respondent's ability to continue in business. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

46. Complainant agrees that the appropriate penalty to settle this action is \$57,600.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$57,600 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 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"

In the comment or description field of the electronic funds transfer, state "Chemtrade Electrochem Inc. in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc." and the docket number of this CAFO. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required

fields. In the comment or description field of the electronic funds transfer, state “Chemtrade Electrochem Inc. in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc.” and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Juliane Grange
Regional Hearing Clerk (E-19J)
R5hearingclerk@epa.gov

Anna Nguyen
nguyen.anna@epa.gov

Nidhi K. O’Meara
omeara.nidhi@epa.gov

49. This civil penalty is not deductible for federal tax purposes.

50. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

51. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

52. The parties consent to service of this CAFO by e-mail at the following valid e-mail address: Nidhi O'Meara at omeara.nidhi@epa.gov (for Complainant), and Stacy Stotts at Sstotts@Polsinelli.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

53. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

54. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

55. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

56. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

57. The terms of this CAFO bind Respondent, its successors, and assigns.

58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorney's fees, in this action.

60. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Chemtrade Electrochem Inc.,
in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc.**

9/12/2022

Date

DocuSigned by:
Alan Robinson
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Alan Robinson
Group Vice-President, Chemtrade Electrochem U.S. Inc
U.S. Agent for Chemtrade Electrochem Inc.

**In the Matter of:
Chemtrade Electrochem Inc.,
in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc.**

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2022.09.20
12:32:48 -05'00'

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Chemtrade Electrochem Inc.,
in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc.
Docket No. FIFRA-05-2022-0020**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the Matter of: Chemtrade Electrochem Inc., in care of its U.S. Agent, Chemtrade Electrochem U.S. Inc.

Docket Number: **FIFRA-05-2022-0020**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number FIFRA-05-2022-0020, which was filed on September 23, 2022, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Nidhi O'Meara
Omeara.Nidhi@epa.gov

Copy by E-mail to
Attorney for Respondent:

Stacy Stotts
sstotts@polsinelli.com

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Juliane Grange
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5