



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Phone 800-227-8917  
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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2019-0003

IN THE MATTER OF:

NUTECH SPECIALTIES, 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 1<sup>st</sup> DAY OF July, 2019.

Katherin E. Hall  
Katherin E. Hall  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF: )  
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NuTech Specialties, Inc. )  
9811 South 6150 West )  
West Jordan, Utah 84081 )  
 )  
Respondent. )  
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Docket No. **FIFRA-08-2019-0003**

CONSENT AGREEMENT

**I. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13 and 22.18 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. NuTech Specialties, Inc. (Respondent) owns and/or operates a facility located at 9811 South 6150 West, West Jordan, Utah 84081 (Facility).
3. The EPA and Respondent, having agreed that 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**

4. This Agreement is issued 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 undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

**III. GOVERNING LAW**

7. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded.

8. A “person” is defined by 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.”
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. “The term ‘pesticide’ means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .” FIFRA section 2(u), 7 U.S.C. § 136 (u).
11. The term ‘pest’ means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism . . . which the Administrator declares to be a pest under section 136w(c)(1) of this title.” FIFRA section 2(t), 7 U.S.C. § 136 (t).
12. “A pesticide is misbranded if . . . any word, statement, or other information required by or under the authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. . . .” FIFRA section 2(q)(E), 7 U.S.C. § 136 (q)(E).
13. “The term ‘label’ means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” FIFRA section 2(p)(1), 7 U.S.C. § 136 (p)(1).
14. Regulations promulgated under the authority of FIFRA, 7 U.S.C. 136 – 136y, require that the following phrase be placed on the label or container of nonrefillable containers: “Nonrefillable container.” 40 C.F.R. § 156.140(a)(1).

#### **IV. ALLEGED FACTS**

15. Respondent is in the business of selling and blending commercial and industrial cleaning products.
16. Respondent is a person as defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s).
17. Microbiocide PQ 15 (EPA Reg. No. 1448-212-74734) (Pesticide), a registered pesticide, is a pesticide as defined by FIFRA section 2(u), 7 U.S.C. § 136(u).
18. Respondent receives the Pesticide from Buckman Laboratories (the Registrant of the Pesticide). Respondent then repackages and relabels the Pesticide and sells and distributes the product. Registrant has submitted annual reports to EPA stating their prior year’s sale and distribution of the Pesticide as well as anticipated future sale and distributions.
19. On October 17, 2018, EPA conducted an inspection at the Facility. This inspection revealed that the labels for the Pesticide did not include the phrase “Nonrefillable container.”

20. Respondent informed the EPA at the inspection that Buckman Laboratories provides NuTech Specialties, Inc. with electronic label information and that NuTech Specialties, Inc. elects to take this information and print their own labels.
21. Based on further investigation by the EPA, it was revealed that Buckman Laboratories had emailed NuTech Specialties, Inc. on April 12, 2012, with electronic label information that included the phrase "Nonrefillable container." This further investigation also revealed that on April 19, 2012, NuTech Specialties, Inc. had confirmed receipt of the electronic labeling information that included the phrase "Nonrefillable container."
22. Respondent did not include the phrase "Nonrefillable container" on its nonrefillable containers containing the Pesticides until February 4, 2019.
23. The EPA determined that NuTech Specialties, Inc. has sold and distributed the Pesticide without the following phrase prominently placed upon its label: "Nonrefillable container."
24. Based on the above information, EPA determined that Respondent has sold or distributed a misbranded pesticide.

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

25. Respondent violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when it sold and distributed the misbranded pesticide Microbiocide PQ 15, EPA Registration Number 1448-212-74734.

#### **VI. TERMS OF CONSENT AGREEMENT**

26. For the purpose of this proceeding, Respondent
  - a. admits the jurisdictional allegations in section II of this Agreement;
  - b. neither admits nor denies the factual allegations stated in section IV of this Agreement;
  - c. consents to the assessment of a civil penalty as stated below;
  - d. consents to the issuance of any specified compliance or corrective action order;
  - e. consents to any stated Permit Action;
  - f. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
  - g. waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706; and

- h. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.
27. Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1) authorizes the EPA to assess a civil penalty in this matter.
28. In determining the amount of the penalty to be assessed, EPA considered 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, in accordance with section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4).
29. The EPA has determined that a civil penalty of \$3,400 is appropriate to settle this matter.
30. Penalty Payment. Respondent agrees to
- a. pay a civil penalty in the amount of \$3,400 within 30 calendar days of the Effective Date of this Agreement;
  - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
  - c. identify each and every payment with the docket number that appears on the final order; and
  - d. within 24 hours of payment, email proof of payment to Shaula Eakins at [eakins.shaula@epa.gov](mailto:eakins.shaula@epa.gov) and Christine Tokarz at [tokarz.christine@epa.gov](mailto:tokarz.christine@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 that appears on the final order).
31. 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; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States’ enforcement expenses;
  - b. refer the debt to a credit reporting agency or a collection agency, 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 Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
32. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), the Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
33. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in NuTech Specialties, Inc. 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.
34. The undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
35. Except as qualified by paragraph 30, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

36. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
37. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other Delegatee.
38. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to \$5,000 per day per violation, or both, as provided in section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1) and adjusted for inflation pursuant to 40 C.F.R. part 19, as well as criminal sanctions as provided in section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(b). The EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.
39. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and 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.
40. Nothing herein shall be construed to limit the power of the EPA 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.

41. If and to the extent that 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**

42. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

Consent Agreement In the Matter of NUTECH SPECIALTIES, INC.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Complainant.**

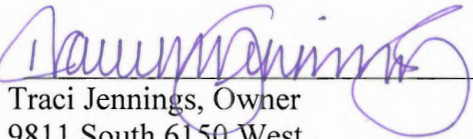
Date: 6/27/2019

By:   
Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

Consent Agreement In the Matter of NUTECH SPECIALTIES, INC.

**NUTECH SPECIALTIES, INC.  
Respondent.**

Date: 6/12/2019

By:   
Traci Jennings, Owner  
9811 South 6150 West  
West Jordan, Utah 84801



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **NUTECH SPECIALTIES, INC.; DOCKET NO.: FIFRA-08-2019-0003** was filed with the Regional Hearing Clerk on July 11, 2019.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on July 11, 2019, to:

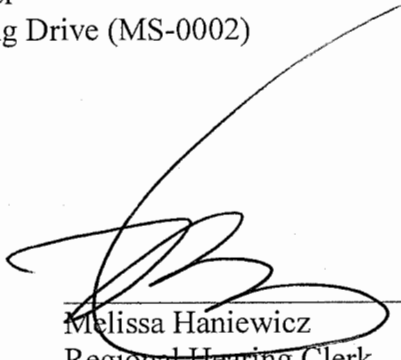
Respondent

Tracie Jennings  
NuTech Specialties  
9811 South 6150 West  
West Jordan, Utah 84081

And emailed to:

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

July 11, 2019



Melissa Haniewicz  
Regional Hearing Clerk