

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**IN THE MATTER OF** )  
 )  
U.S. Water, Inc. )  
12270 43<sup>rd</sup> Street, NE )  
St. Michaels, MN 55376 )  
 )  
Respondent, )  
 )  
Water Chemical Service, Inc. )  
1003 Old Philadelphia Road )  
Aberdeen, MD 21001 )  
 )  
Facility. )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2017-0119

CONSENT AGREEMENT

2017 APR 13 PM 3:10

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director of the Land and Chemicals Division, United States Environmental Protection Agency - Region III (“EPA” or “Complainant”) and by U.S. Water, Inc. (“U.S. Water” or “Respondent”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .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”), 40 C.F.R. §§ 22.13(b) and .18(b). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant's civil penalty claims against Respondent under FIFRA for the violations alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.

3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.
7. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

#### Factual Allegations and Legal Background

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. At all times relevant to the violations alleged herein, Water Chemical Service, Inc. doing business as Waterchem ("Waterchem") was a Maryland corporation with a principle place of business located at 1003 Old Philadelphia Road in Aberdeen, Maryland.
10. At all times relevant to the violations alleged herein, Waterchem was a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
11. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term "pesticide" includes "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."
12. Pursuant to 40 C.F.R. §§ 152.15(a)(1), the regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance "claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide."
13. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.15, the term "pest" includes viruses, bacteria, or other micro-organisms, except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
14. During calendar year 2013, Waterchem distributed or sold the following four (4) products, which are identified by their respective brand names:
  - a. *Waterchem 1015*;
  - b. *Waterchem 2091*;

- c. *Waterchem 1020*; and  
 d. *Waterchem 1025*.

15. The labels for the *Waterchem 1015*, *Waterchem 2091*, *Waterchem 1020*, and *Waterchem 1025* products identified in Paragraph 14 each included claims, statements or implications that the products were intended for pesticidal purpose as described in 40 C.F.R. § 152.15(a)(1).

16. At all times relevant to the violations alleged herein, *Waterchem 1015*, *Waterchem 2091*, *Waterchem 1020*, and *Waterchem 1025* each was a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

17. Pursuant to 40 C.F.R. § 152.132, a registered pesticide may be distributed or sold under the name and address of a person other than that of the registrant (i.e., as a “distributor product”) so long as specified conditions are met including, but not limited to, the submission by the registrant to EPA of a statement with details concerning the agreement between the registrant and other person, and a requirement that the label for the distributor product be the same as that for the registered product with exceptions not relevant to this matter. Distribution or sale of a distributor product is termed “supplemental distribution.”

18. At all times relevant to the violations alleged herein, *Waterchem 1015*, *Waterchem 2091*, *Waterchem 1020*, and *Waterchem 1025* each was intended to be distributed or sold as a distributor product as described in 40 C.F.R. § 152.132, based on the following EPA primary registrations:

<b>Waterchem Product Name</b>	<b>EPA Registered Product Name and Registration Number</b>
<i>Waterchem 1015</i>	ACTICIDE WP (EPA Reg. No. 67071-38) or KATHON WT 1.5% (EPA Reg. No. 707-133)
<i>Waterchem 2091</i>	BELLACIDE 325 (EPA Reg. No. 83451-9) or AMA-204 (EPA Reg. No. 9386-34)
<i>Waterchem 1020</i>	DOW ANTIMICROBIAL 8536 (EPA Reg. No. 464-496)
<i>Waterchem 1025</i>	SUMP BUDDY WT ANTIMICROBIAL TIME RELEASE TABLETS (EPA Reg. No.464-624)

19. *Waterchem* and its Aberdeen, Maryland facility were acquired by Respondent in late 2013, and were fully integrated within Respondent by 2016.

20. Respondent is a “wholesaler, dealer, retailer or other distributor” as described in Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### Alleged Violations

#### COUNT I – VIOLATIONS OF SECTION 12(A)(1)(A) of FIFRA

21. The allegations contained in paragraphs 1 through 20 of this Consent Agreement are incorporated herein by reference.

22. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or for which registration has been canceled or suspended unless otherwise authorized by EPA under FIFRA.

23. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.

24. During calendar year 2013, Waterchem distributed or sold one or more units of *Waterchem 1015* to individuals, partnerships, associations, corporations and/or organized groups of persons on forty-seven (47) separate occasions.

25. During calendar year 2013, *Waterchem 1015* was not registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. *Waterchem 1015* was once a distributor product as described in 40 C.F.R. § 152.132 but the supplemental distribution agreement between Waterchem and the registrant was canceled prior to calendar year 2013 or the supplemental distribution agreement was not filed with EPA.

26. During calendar year 2013, Waterchem distributed or sold one or more units of *Waterchem 2091* to individuals, partnerships, associations, corporations and/or organized groups of persons on two (2) separate occasions.

27. During calendar year 2013, *Waterchem 2091* was not registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. *Waterchem 2091* was once a distributor product as described in 40 C.F.R. § 152.132 but the supplemental distribution agreement between Waterchem and the registrant was canceled prior to calendar year 2013 or the supplemental distribution agreement was not filed with EPA.

28. Each occasion that Waterchem distributed or sold one or more units of *Waterchem 1015* or *Waterchem 2091* constitutes a “distribution or sale” of an unregistered “pesticide” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3 and a separate unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136l(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### COUNT II – VIOLATIONS OF SECTION 12(A)(1)(E) OF FIFRA

29. The allegations contained in paragraphs 1 through 28 of this Consent Agreement are incorporated herein by reference.

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

31. According to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA

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.

32. During calendar year 2013, Waterchem distributed or sold one or more units of the distributor product *Waterchem 1020* to individuals, partnerships, associations, corporations and/or organized groups of persons on one hundred and eighty-seven (187) separate occasions.

33. During calendar year 2013, the label for the distributor product *Waterchem 1020* omitted or misstated words, statements or other information required to appear on the label under FIFRA for the registered product, DOW ANTIMICROBIAL 8536 (EPA Reg. No. 464-496), rendering the distributor product *Waterchem 1020* misbranded under Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

34. Each occasion that Waterchem distributed or sold one or more units of the distributor product *Waterchem 1020* constitutes a “distribution or sale” of a misbranded “pesticide” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3 a separate unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136l(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### Civil Penalty

35. In settlement of EPA’s claims for civil penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of one hundred ninety thousand dollars (\$190,000). The civil penalty amount is due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. If Respondent pays the entire civil penalty of one hundred ninety thousand dollars (\$190,000) within thirty (30) calendar days of the date on which this CAFO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

36. The Parties represent that the settlement terms are based upon EPA’s consideration of a number of factors, including the penalty criteria set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent’s business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act* and 40 C.F.R. Part 19.

37. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

38. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the

Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

39. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

40. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

41. Respondent shall pay the amount described in Paragraph 35 by sending a certified or cashier's check payable to the "United States Treasury," as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen 513-487-2091  
Molly Williams 513-487-2076

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

c. All payment made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

d. By electronic funds transfer (“EFT”) to the following account:

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045

Beneficiary: US Environmental Protection Agency

e. By automatic clearinghouse (“ACH”) to the following account:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA 051036706  
Account No. 310006  
Environmental Protection Agency  
CTX Format  
Transaction Code 22 - checking

Physical location of US Treasury Facility:

5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

f. Online payments can be made at WWW.PAY.GOV by entering “sfo 1.1” in the search field, and opening the form and completing the required fields.

g. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2017-0119. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A.

Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Christine Convery (3LC42), U.S. Environmental Protection Agency, Region III, Land and Chemicals Division, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

Certification

42. Respondent certifies that to the best of its knowledge it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

43. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

Reservation of Rights

44. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of *the Consolidated Rules of Practice*. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

45. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

Parties Bound

46. This CAFO shall apply to and be binding upon Complainant, Respondent, and Respondent's officers, directors, successors and assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

Effective Date

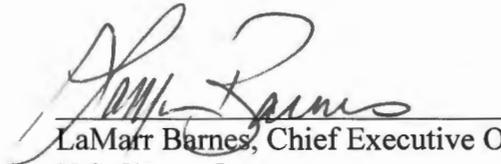
47. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

48. This CAFO constitutes the entire agreement and understanding of the Complainant and Respondent concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between Complainant and Respondent other than those expressed herein.

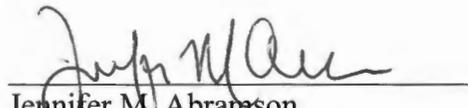
For Respondent:

March 29, 2017  
Date

  
LaMarr Barnes, Chief Executive Officer  
U.S. Water, Inc.

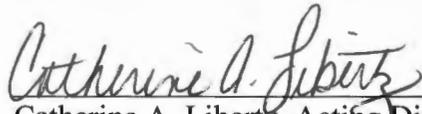
For Complainant:

3/31/17  
Date

  
Jennifer M. Abramson  
Counsel for Complainant

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

4-10-17  
Date

  
Catherine A. Libertz, Acting Director  
Land and Chemicals Division  
U.S. EPA, Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:**

U.S. Water, Inc.  
12270 43<sup>rd</sup> Street, NE  
St. Michaels, MN 55376

Respondent,

Water Chemical Service, Inc.  
1003 Old Philadelphia Road  
Aberdeen, MD 21001

Facility.

**EPA DOCKET NO. FIFRA-03-2017-0119**

**FINAL ORDER**

**Proceeding under Section 14(a) of the  
Federal Insecticide, Fungicide and  
Rodenticide Act, 7 U.S.C. § 136l(a)**

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FIFRA-03-2017-0119  
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**FINAL ORDER**

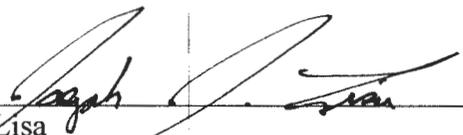
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, U.S. Water, Inc. have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's December 2009 *FIFRA Enforcement Response Policy Federal Insecticide, Fungicide, Rodenticide Act*, and the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

**NOW, THEREFORE, PURSUANT TO** Section 14(a) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136l(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED NINETY THOUSAND DOLLARS (\$190,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

April 13, 2017  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

**IN THE MATTER OF**

U.S. Water, Inc.  
12270 43<sup>rd</sup> Street, NE  
St. Michaels, MN 55376

Respondent,

Water Chemical Service, Inc.  
1003 Old Philadelphia Road  
Aberdeen, MD 21001

Facility.

DOCKET NO: FIFRA-03-2017-0119

CONSENT AGREEMENT

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA.

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CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

**Original and one copy by hand-delivery:**

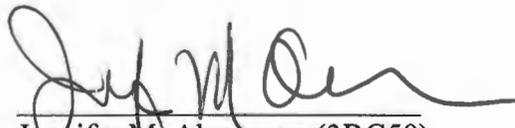
Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail**

Christopher D. Anderson  
U.S. Water Services, Inc.  
30 West Superior Street  
Duluth, MN 55802

APR 13 2017

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jennifer M. Abramson (3RC50)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

