



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

In Reply Refer To Mail Code: 3RC50

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LeRoi Yaffey, President
NuChem Corp.
747 N. Fenwick Street
Allentown, PA 18109

APR 07 2016

APR 07 2016
APR 07 10:13
APR 07 10:13

Re: Federal Insecticide, Fungicide and Rodenticide Act
Complaint and Notice of Opportunity for Hearing
EPA Docket No. FIFRA-03-2016-0098

Dear Mr. Yaffey:

Enclosed please find a copy of the Complaint and Notice of Opportunity for Hearing filed today with the Regional Hearing Clerk concerning alleged violations by NuChem Corp. of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136 *et seq.* The Complaint is based on alleged violations of FIFRA and implementing Pesticide Programs regulations codified at 40 C.F.R. Part 150 *et seq.*, in connection with NuChem Corp.'s NUCHEM CF-167, EPA Reg. No. 59151-20002; NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151; and NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 products. The Complaint and Notice of Opportunity for Hearing should be read and analyzed carefully to determine the alternatives available to NuChem Corp. in responding to the alleged violations.

An Answer to this Complaint must be filed within thirty (30) days of its receipt. The Answer must specifically respond to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice by specific Answer within thirty (30) days of receipt of this document will constitute an admission of the allegations made in the Complaint. Failure to answer may also result in the filing of a Motion for a Default Order and the possible issuance of a Default Order without further proceedings.

NuChem Corp. may choose to request a hearing to contest any matter set forth in the Complaint. Such request must be included in the Answer to this Complaint. Whether or not a hearing is requested, NuChem Corp. may request an informal settlement conference to discuss resolution of this case. The attorney assigned to this case is Jennifer M. Abramson, Senior Assistant Regional Counsel. NuChem Corp. may contact, or if represented by counsel have its counsel contact, Ms. Abramson at:

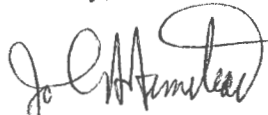
Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Ms. Abramson can be reached by telephone at (215) 814-2066, or by email at abramson.jennifer@epa.gov.

Please see the enclosed "Information for Small Businesses" sheet, which provides information on compliance assistance and on contacting the Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Ombudsman to comment on federal enforcement and compliance activities. Any decision to participate in such program or to seek compliance assistance does not constitute a request for a settlement conference, relieve you of your obligation to file a timely answer to the Complaint, or create any new rights or defenses under law. Nor will such an action affect EPA's enforcement of the Complaint. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process, as set forth in the Consolidated Rules of Practice in 40 C.F.R. Part 22. The SBREFA Ombudsman does not participate in the resolution of EPA's enforcement action.

Additionally, certain companies may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or Local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid NuChem in determining whether it may be subject to the same.

Sincerely,



John A. Armstead, Director
Land and Chemicals Division

Enclosures

cc: Evelyn Sorto, EPA (w/o enclosures)
Jennifer M. Abramson, EPA (w/o enclosures)



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474*

**NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE
ENVIRONMENTAL LEGAL PROCEEDINGS**

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.

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

IN THE MATTER OF)	
)	
NuChem Corp.)	DOCKET NO: FIFRA-03-2016-0098
747 North Fenwick Street)	
Allentown, PA 18109)	ADMINISTRATIVE COMPLAINT
)	AND NOTICE OF
Respondent)	OPPORTUNITY FOR HEARING
)	

2016 APR 7 AM 10:13

I. INTRODUCTION

This Complaint and Notice of Opportunity for Hearing (“Complaint”) is issued to NuChem Corp. (“NuChem” or “Respondent”) under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or “Complainant”) by Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C. § 136l(a), for violations of Section 12 of FIFRA, 7 U.S.C. § 136j, and associated regulations promulgated at 40 C.F.R. §§ 150-189, Subchapter E, 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, a copy of which is attached hereto as Attachment A. The Administrator has delegated this authority under FIFRA to the Regional Administrators by EPA Delegation No. 5-14 dated May 11, 1994, and this authority was further delegated to the Director of the Land and Chemicals Division and the Associate Director of the Office of Toxics and Pesticides for the Land and Chemicals Division, EPA Region III.

II. DEFINITIONS

1. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” to mean the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers; and defines “labeling” to include all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time.
2. 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.
3. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest”, in part, to mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under

Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

4. 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.” 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.” 40 C.F.R. § 152.15(a)(1).

5. Pursuant to 40 C.F.R. § 152.3, the term “pesticide product” means, in pertinent part, a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be distributed or sold.

6. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, the term “produce” means, in pertinent part, to manufacture, prepare, propagate, compound, or process any pesticide, active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3, define to “distribute or sell” to mean 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.

II. GENERAL ALLEGATIONS

8. NuChem is a New Jersey corporation with a principle place of business located at 747 North Fenwick Street in Allentown, Pennsylvania.

9. NuChem is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

10. On March 12, 2014, employees of the EPA, duly designated to conduct inspections under the authorities of Sections 8 and 9 of FIFRA, 7 U.S.C. § 136f and § 136g, conducted an inspection at NuChem’s facility located at 747 North Fenwick Street in Allentown, Pennsylvania (the “Facility”).

11. During the inspection described immediately above, EPA collected copies of labels and other information, including sales records, pertaining to products that were being produced, distributed or sold by NuChem, including but not limited to:

- a. NUCHEM CF-167, EPA Reg. No. 59151-20002;
- b. NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151; and
- c. NUCHEM CDS-100, EPA Reg. No. 1839-86-59151.

12. The label for NUCHEM CF-167, EPA Reg. No. 59151-20002 collected during EPA's inspection includes an EPA pesticide product registration number as well as language that describes the product's application for "sanitization" and "disinfection".
13. The EPA pesticide product registration number and label language described in paragraph 12 constitute claims, statements or implications that NUCHEM CF-167, EPA Reg. No. 59151-20002 can or should be used as a pesticide.
14. NUCHEM CF-167, EPA Reg. No. 59151-20002 is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
15. The label for NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 collected during EPA's inspection includes an EPA pesticide product registration number as well as language for directions for use of the product for the "control of bacteria and fungi", "control of algae", and for "controlling algal, bacterial, fungal slimes and mollusks in open or closed-cycle, once through cooling systems", as well as language for "pesticide storage" and "pesticide disposal".
16. The EPA pesticide product registration number and label language described in paragraph 15 constitute claims, statements or implications that NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 can or should be used as a pesticide.
17. NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
18. The label for NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 collected during EPA's inspection includes an EPA pesticide product registration number as well as language that identifies the product as a "disinfectant", "sanitizer", "virucide" and "mildewstat".
19. The EPA pesticide product registration number and label language described in paragraph 18 constitute claims, statements or implications that NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 can or should be used as a pesticide.
20. NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
21. EPA regulations permit a registered pesticide to be distributed or sold under the name and address of a person other than that of the registrant so long as the conditions specified in 40 C.F.R. § 152.132 are met. Such distribution and sale is termed "supplemental distribution" and such pesticide product is referred to as a "distributor product."
22. NuChem is a registrant, dealer, retailer or other distributor under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

III. VIOLATIONS

COUNT I -DISTRIBUTION OR SALE OF UNREGISTERED PESTICIDES

23. The allegations contained in paragraphs 1 through 22 of this Complaint are incorporated herein by reference.
24. 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.
25. 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.
26. Sales records collected during EPA's March 12, 2014 inspection show that during the time period between March 12, 2013 and March 12, 2014, NuChem sold, distributed, shipped, delivered for shipment, or released for shipment its NUCHEM CF-167, EPA Reg. No. 59151-20002 product on seven (7) occasions to various individuals, partnerships, associations, corporations and/or organized groups of persons.
27. Each occasion that NuChem sold, distributed, shipped, delivered for shipment, or released for shipment its NUCHEM CF-167, EPA Reg. No. 59151-20002 product between March 12, 2013 and March 12, 2014 constitutes a "distribution or sale" of a "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.
28. During the time period between March 12, 2013 and March 12, 2014, NUCHEM CF-167, EPA Reg. No. 59151-20002 was not registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. NUCHEM CF-167, EPA Reg. No. 59151-20002 was once registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, but that registration was cancelled in October 2004. *See* 69 Fed. Reg. 62666, 62667 (October 27, 2004).
29. By distributing or selling the unregistered pesticide NUCHEM CF-167, EPA Reg. No. 59151-20002, NuChem violated Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
30. Each occasion on which NuChem distributed or sold the unregistered pesticide NUCHEM CF-167, EPA Reg. No. 59151-20002 during the time period between March 12, 2013 and March 12, 2014 constitutes a separate unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

31. Sales records collected during EPA's March 12, 2014 inspection show that on or about April 29, 2013, NuChem sold, distributed, shipped, delivered for shipment, or released for shipment its NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 product to an individual, partnership, association, corporation or organized group of persons.
32. NuChem's April 29, 2013 sale, distribution, shipment, delivery for shipment, or release for shipment of its NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 product constitutes a "distribution or sale" of a "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.
33. On April 29, 2013, NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 was not registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 was once a distributor product of the registered product DANTOBROM RW, EPA Reg. No. 6836-115 as described in 40 C.F.R. § 152.132 but the registration for the distributor product for NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 was canceled on or about March 2009.
34. By distributing or selling the unregistered pesticide NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151, NuChem violated Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
35. NuChem's April 29, 2013 distribution or sale of the unregistered pesticide NUCHEM BIO 600 AQUABROM, EPA Reg. No. 6836-115-59151 constitutes an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT II - DISTRIBUTION OR SALE OF A PESTICIDE WITH A COMPOSITION THAT DIFFERS

36. The allegations contained in paragraphs 1 through 35 of this Complaint are incorporated herein by reference.
37. 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.
38. NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 is a distributor product of the registered product BTC® 2125M 10% Solution, EPA Reg. No. 1839-86 as described in 40 C.F.R. § 152.132. During the time period between March 12, 2013 and March 12, 2014, NuChem produced NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 at its Facility using sources of active ingredients that were not listed in the Confidential Statements of Formula (EPA Form 8570-4) submitted in connection with the registration of BTC® 2125M 10% Solution, EPA Reg. No. 1839-86. As a result, the distributor product NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 produced by NuChem differed in composition from the composition represented in such statements.

39. Sales records collected during EPA's March 12, 2014 inspection show that during the time period between March 12, 2013 and March 12, 2014, NuChem sold, distributed, shipped, delivered for shipment, or released for shipment its NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 product on twelve (12) occasions to an individual, partnership, association, corporation and/or organized group of persons.

40. Each occasion that NuChem sold, distributed, shipped, delivered for shipment, or released for shipment its NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 product between March 12, 2013 and March 12, 2014 constitutes a "distribution or sale" of a "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.

41. Each occasion on which NuChem distributed or sold NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 between March 12, 2013 and March 12, 2014 constitutes a separate unlawful act under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

IV. PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), and the subsequent Adjustment of Civil Monetary Penalties for Inflation rule, 40 C.F.R. Part 19 ("Penalty Inflation Rule"), violations of FIFRA which occur subsequent to January 12, 2009 are subject to a statutory maximum penalty of \$7,500 per violation. *See* 78 Fed. Reg. 66643, 66647. On the basis of the violations of FIFRA alleged above, EPA has determined that NuChem is subject to penalties under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

For purposes of determining the amount of any penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of such penalty given the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has also taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2009 *FIFRA Enforcement Response Policy - Federal Insecticide, Fungicide, and Rodenticide Act* ("December 2009 FIFRA ERP"), as supplemented by EPA's December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, copies of which are attached hereto. These policies provide a rational, consistent and equitable methodology for applying to particular cases the statutory penalty factors set forth above.

EPA proposes to assess a civil penalty of thirty four thousand three hundred dollars (\$34,300) against NuChem, which was calculated pursuant to the process described in the December 2009 FIFRA ERP and illustrated as follows:

	Count I		Count II
	Section 12(a)(1)(A)		Section 12(a)(1)(C)
	<u>CF-167</u>	<u>BIO 600 AQUABROM</u>	<u>CDS-100</u>
Number of Violations	7	1	12
Size of Business	Category 3	Category 3	Category 3
Gravity of Violation	Level 1	Level 1	Level 2
Base Penalty	\$7,150	\$7,150	\$4,250
Case-Specific Adjustments			
Pesticide Toxicity	3	3	3
Human Health Harm	0	0	0
Environmental Harm	0	0	0
Compliance History	0	0	0
Culpability	<u>1</u>	1	<u>1</u>
TOTAL GRAVITY	4 → 50% red.	4 → 50% red.	4 → 50% red.
Adjusted Base Penalty	\$3,575	\$3,575	\$2,125
Economic Benefit	\$0	\$0	\$0
Ability to Pay	Presumed	Presumed	Presumed
Graduated Penalty			
Sales 1-5 @ 100% →	\$17,875	\$3,575	Sales 1-5 @ 100% → \$10,625
Sales 6-7 @ 10% →	<u>\$ 732*</u>		Sales 6-12 @ 10% → <u>\$ 1,498*</u>
SUBTOTALS	\$18,607	\$3,575	\$12,123

TOTAL PROPOSED PENALTY: \$34,300 (ROUNDED TO NEAREST \$100)

* Includes sale(s) that took place *after* December 6, 2013. Per EPA's December 6, 2013 *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*, penalties calculated under EPA's December 2009 FIFRA ERP for violations that took place after December 6, 2013 are to be multiplied by 1.0487. One of the seven (7) distributions or sales of NUCHEM CF-167, EPA Reg. No. 59151-20002 took place after December 6, 2013. One of the twelve (12) distributions or sales of NUCHEM CDS-100, EPA Reg. No. 1839-86-59151 took place after December 6, 2013.

This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

EPA will consider, among other factors, NuChem's ability to pay to adjust the proposed civil penalty assessed in this Complaint. The proposed penalty reflects a presumption of NuChem's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business. The burden of raising and demonstrating an inability to pay rests with NuChem. In addition, to the extent that facts or circumstances unknown to EPA at the time of the issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

EPA's applicable penalty policies represent an analysis of the statutory penalty factors enumerated above, as well as guidance on their application to particular cases. If the penalty proposed herein is contested through the hearing process described below, EPA is prepared to support the statutory basis for the elements of the penalty policy applied in this case as well as the amount and nature of the penalty proposed. If appropriate, penalty adjustments may be made during settlement negotiations. EPA reserves the right to seek higher penalties if new evidence supports such assessment.

V. OPPORTUNITY TO REQUEST A HEARING

NuChem has the right to request a hearing to contest any matter of law or material fact set forth in this Complaint or the appropriateness of the proposed penalty. To request a hearing, NuChem must file a written Answer to the Complaint with the Regional Hearing Clerk, Mail Code 3RC00, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, *within thirty (30) days of receipt of this Complaint*. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint of which NuChem has any knowledge. If NuChem has no knowledge of a particular factual allegation, its Answer should so state. The Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which NuChem disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered to be admitted by NuChem.

If NuChem fails to file a written Answer within (30) days of receipt of this Complaint, such failure shall constitute an admission by NuChem of all facts alleged in the Complaint and a waiver of NuChem's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order seeking the imposition of penalties without further proceedings.

Any hearing requested by NuChem will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Complaint. A copy of NuChem's Answer and all other documents that NuChem files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

Jennifer M. Abramson
Senior Assistant Regional Counsel
Mail Code 3RC50
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

VI. QUICK RESOLUTION

In accordance with 40 C.F.R. § 22.18(a) of the Consolidated Rules of Practice, NuChem may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If NuChem pays the specific penalty proposed in this Complaint within 30 days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1) of the Consolidate Rules of Practice, no Answer need be filed. If NuChem wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2) of the Consolidated Rules of Practice, NuChem may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that it agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and a copy shall be provided to Jennifer M. Abramson (3RC50), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within 60 days of receiving the Complaint, NuChem shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject NuChem to default pursuant to 40 C.F.R. § 22.17 of the Consolidated Rules of Practice.

Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3) of the Consolidated Rules of Practice, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by NuChem shall constitute a waiver of NuChem's rights to contest the allegations and to appeal the Final Order.

Payment of the penalty shall be made by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at:
<http://www.epa.gov/financial/makepayment>

Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

NuChem must note on the check the title and docket number of this action (In re: NuChem Corp., Docket No.: FIFRA-03-2016-0098). Concurrently with payment, NuChem must serve photocopies of the check, or proof of other payment method, on the Regional Hearing Clerk and EPA Region III at the following addresses:

Lydia A. Guy	Jennifer M. Abramson (3RC50)
Regional Hearing Clerk (3RC00)	Senior Asst. Regional Counsel
U.S. EPA, Region III	U.S. EPA, Region III
1650 Arch Street	1650 Arch Street
Philadelphia, PA 19103-2029	Philadelphia, PA 19103-2029

VI. SETTLEMENT CONFERENCE

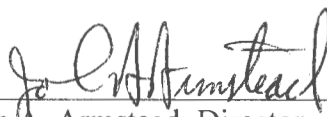
EPA encourages settlement of the proceedings at any time after issuance of the Complaint if such settlement is consistent with the provisions and objectives of FIFRA. Whether or not a hearing is requested, NuChem may request a settlement conference with the Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. A request for a settlement conference does not relieve NuChem of its responsibility to file a timely Answer.

In the event settlement is reached with the NuChem, the terms shall be expressed in a written Consent Agreement prepared by EPA, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of NuChem's right to contest the allegations of the Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If NuChem wishes to arrange a settlement conference, it should contact Jennifer M. Abramson, Senior Assistant Regional Counsel, at (215) 814-2066 or Abramson.jennifer@epa.gov.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: EPA Region III, Office of Regional Counsel, EPA Region III, Land and Chemicals Division, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of the NuChem on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 4.5.16

John A. Armstead, Director
Land and Chemicals Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103-2029

IN THE MATTER OF)
)
NuChem Corp.)
747 North Fenwick Street)
Allentown, PA 18109)
)
Respondent)
_____)

DOCKET NO: FIFRA-03-2016-0098

2016 APR 7 AM 10:13
RECEIVED

CERTIFICATE OF SERVICE

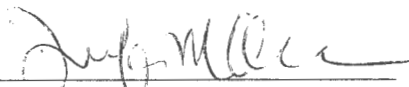
I hereby certify that I caused the original and one copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING to be hand-delivered to the Regional Hearing Clerk, EPA Region III, and a true and correct copy to be mailed via certified mail, return receipt requested, postage prepaid, to the following person at the following address:

LeRoi Yaffey, President
NuChem Corp.
747 N. Fenwick Street
Allentown, PA 18109

APR 7

Date

APR 07 2016


Jennifer M. Abramson (3RC50)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2066