

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

REGIONAL HEARINGS OFFICE
EPA REGION III, PHILA. PA

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In the Matter of: Eastern Technologies, Inc. 60 Thousand Oaks Blvd. Morgantown, PA 19543, Respondent.	: Consent Agreement and : Final Order : : U.S. EPA Docket Number : FIFRA-03-2015-0004 : : Proceeding Under Section 14 of the : Federal Insecticide, Fungicide and : Rodenticide Act, as amended, 7 : U.S.C. § 136l
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CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and by Eastern Technologies, Inc. ("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 22.18(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 22.18(b). This Consent Agreement ("CA") and the attached Final Order (collectively, "CAFO") resolve Complainant's civil penalty claims against the Respondent arising from the violations of FIFRA alleged herein.

In accordance with 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and (3), Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA's civil claims alleged in the Findings of Fact and Conclusions of Law of this Consent Agreement.

Jurisdiction

1. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l; 40 C.F.R. Part 156; and 40 C.F.R. §§ 22.1(a)(1) and 22.4.

General Provisions

2. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
3. Except as provided in paragraph 2 herein, for purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
4. Respondent agrees not to contest the jurisdiction of the U.S. Environmental Protection Agency (“EPA”) with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of this CAFO.
5. 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 CA and any right to appeal the accompanying Final Order.
6. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
7. Respondent shall bear its own costs and attorney’s fees.
8. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

EPA’s Findings of Fact and Conclusions of Law

9. In accordance with Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the following findings of fact and conclusions of law:
10. Section 25(a)(1) of FIFRA, 7 U.S.C. § 136w(a)(1), authorizes EPA to prescribe regulations to carry out the provisions of FIFRA.
11. 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.
12. Respondent is a corporation, with a principal place of business located at 60 Thousand Oaks Blvd., Morgantown, Pennsylvania.
13. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
14. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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.

15. Respondent is a “wholesaler, dealer, retailer or other distributor” subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
16. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” includes “viruses, bacteria, or other micro-organisms. . . .”
17. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide” means, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
18. Pursuant to 40 C.F.R. § 152.15, “[a] substance is considered to be intended for a pesticidal purpose . . . if: (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide”
19. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15, anyone (“Registrant”) who is going to distribute or sell a pesticide for a pesticidal purpose to any person must register that pesticide with EPA.
20. In order to register a pesticide, Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C), requires the Registrant to submit, among other things, a complete copy of the pesticide’s labeling.
21. In accordance with Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), EPA will register the pesticide if, among other things, the labeling meets the requirements of FIFRA.
22. In accordance with Section 3(b)(1) of FIFRA, 7 U.S.C. § 136a(b)(1), and 40 C.F.R. §§ 152.30(b) and 152.132, a registered pesticide may be distributed or sold using another person's name and address instead of (or in addition to) the Registrant’s own.
23. In accordance with 40 C.F.R. 152.132, if the Registrant distributes or sells his registered product under another person's name and address instead of (or in addition to) his own, the distribution and sale is termed a “supplemental distribution” and the pesticide is referred to as a “distributor product.”
24. 40 C.F.R. 152.132(d) requires that the label of the distributor product be the same as (with some minor exceptions) the label the Registrant submitted to EPA to register the pesticide.
25. 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.

Count I
(Distribution or Sale of a Misbranded Pesticide)

26. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.
27. Occidental Chemical Corporation (“OxyChem”) is the primary registrant for the pesticide “Towerbrom 60M Granules” (EPA Reg. No. 935-71).
28. Condor Technologies, Inc. (“Condor”) has an agreement with OxyChem to distribute or sell the pesticide “Towerbrom 60M Granules” under the name “Condor Formula 1598-G” (EPA Reg. No. 935-71-39866).
29. Respondent, Eastern Technologies, Inc., has an agreement with OxyChem to distribute or sell the pesticide Condor Formula 1598-G on behalf of Condor.
30. At all times relevant to the violations alleged herein, the label that Respondent placed on containers of Condor Formula 1598-G bore the following language:

FORMULA 1598-G is a high performance bromine microbiocide which aids in the control organic slimes of algae, bacteria and fungi when used with the Directions for Use.

31. The language described in Paragraph 30 claims, states or implies that Condor Formula 1598-G can or should be used as a pesticidal product within the meaning of 40 C.F.R. § 152.15.
32. As a result of the language described in Paragraph 30 that claims, states or implies that Condor Formula 1598-G is a pesticidal product, at all times relevant to the violations alleged herein, Condor Formula 1598-G was a “pesticide” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.
33. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is “misbranded” if, *inter alia*, the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.
34. The EPA-Accepted label, dated October 3, 2000, for Towerbrom 60M Granules, under the heading Recirculating Water Systems, clearly stated that the aquatic site use of the pesticide for “Lakes/Ponds/Reservoirs Systems” was limited by afterwards adding the parenthetical statement of “Without Human or Wildlife Use.”
35. As the result of a March 15-16, 2012 inspection of the Eastern facility and subsequent Show Cause Letter/Information request, EPA found that the Condor Formula 1598-G pesticide label under Directions for Use did not limit the aquatic site use of the pesticide for “Lakes/Ponds/Reservoirs Systems” because the label did not have the limiting statement of “Without Human or Wildlife Use.”

36. As a result, Condor Formula 1598-G was misbranded.
37. On six (6) occasions in 2011, Respondent distributed and/or sold Condor Formula 1598-G to a person.
38. Such distribution and/or sale of a pesticide without stating the limits on aquatic site uses constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
39. Respondent's distributions and/or sales of the pesticide Condor Formula 1598-G on at least six occasions constitute six separate unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

40. In settlement of the above-captioned action including Count I, Respondent consents to the assessment of a civil penalty of ELEVEN THOUSAND SIX HUNDRED SIXTY-NINE DOLLARS (\$11,669.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. However, in accordance with 40 C.F.R. § 13.11(a)(1), EPA will not seek to recover interest on any amount of the penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue.
41. The Parties represent that the settlement terms are reasonable and are based upon Complainant's consideration of a number of factors, including, but not limited to, the statutory factors 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, the gravity of the violation, and the Respondent's good faith efforts. 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, and Rodenticide Act* and 40 C.F.R. Part 19.
42. Payment of the civil penalty amount required under the terms of Paragraph 40, above, shall be made as follows:
 - a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, that is, FIFRA-03-2015-0004;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed for delivery to:

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

Contact: Craig Steffen 513-487-2091

- d. All payments made by check and sent by overnight delivery service (FedEx, DHL, UPS, etc.) shall be addressed for delivery to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: 314-418-1028

- e. All payments 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 ML King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfers shall be made through the Federal Reserve Bank of New York using the following information:

ABA = 021030004
Account No. = 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"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid 202-874-7026 or REX 866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at the following internet address:

www2.epa.gov/financial/makepayment

43. 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 the following addressees:

Lydia A. Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Philip Yeany
Sr. Asst. Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

44. The person signing this CA on behalf of the Respondent certifies to Complainant that, upon investigation, to the best of their knowledge and belief, the Respondent is in compliance with all applicable requirements of FIFRA, 7 U.S.C. § 136 *et seq.*

Other Applicable Laws

45. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations nor does this CAFO constitute a waiver, suspension or modification of the requirements of FIFRA, 7 U.S.C. § 136 *et seq.*, or any regulations promulgated thereunder.

Reservation of Rights

46. 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 that 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

47. 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

48. This CAFO shall apply to and be binding upon EPA, Respondent, and the successors and assigns of Respondent. 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

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

Entire Agreement

50. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CA and the attached Final Order.

In the Matter of:
Eastern Technologies, Inc.
EPA Docket No. FIFRA-03-2015-0004

For Respondent:

11/20/14
Date

Gary M. Reggiani
Gary M. Reggiani
President
Eastern Technologies, Inc.

For Complainant:

1/16/15
Date

Philip Yeany
Philip Yeany
Senior Assistant Regional Counsel
U.S. EPA, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

1.21.15
Date

John A. Armstead
John A. Armstead, Director
Land and Chemicals Division
U.S. EPA, Region III

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

In the Matter of:	:	Consent Agreement and
	:	Final Order
Eastern Technologies, Inc.	:	
60 Thousand Oaks Blvd.	:	U.S. EPA Docket Number
Morgantown, PA 19543,	:	FIFRA-03-2015-0004
	:	
	:	Proceeding Under Section 14 of the
	:	Federal Insecticide, Fungicide and
	:	Rodenticide Act, as amended, 7
Respondent.	:	U.S.C. § 136l
	:	

FINAL ORDER

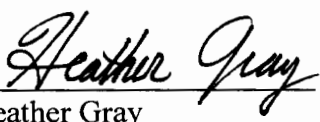
Complainant, the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Eastern Technologies, Inc. ("Respondent") have executed a document entitled "Consent Agreement" which I hereby ratify as a Consent Agreement in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits*, 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

NOW, THEREFORE, PURSUANT TO 40 C.F.R. § 22.18(b)(3) and Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and having determined, based on the representations of the parties in the attached Consent Agreement, that the civil penalty agreed to therein is based upon a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of ELEVEN THOUSAND SIX HUNDRED SIXTY-NINE DOLLARS (\$11,669.00), as set forth in the Consent Agreement, and to comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this FINAL ORDER

is the date on which the Consent Agreement and this FINAL ORDER are filed with the EPA Regional Hearing Clerk.

Date: 1-30-15


Heather Gray
Regional Judicial Officer
U.S. EPA, Region III