

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

IN RE:)
))
Chemtec Products Company, LLC) **DOCKET NO: FIFRA-03-2009-0072**
675 Forman Road)
Franconia, PA 18924)
))
Respondent)

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement (“CA”) is entered into by the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Chemtec Products Company, LLC (“Respondent” or “Chemtec”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136/(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R Part 22, with specific reference to the Consolidated Rules set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This CA and the accompanying Final Order (“FO”; collectively “CA/FO”) address the alleged sale or distribution of an unregistered pesticide in violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A), the alleged sale or distribution of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and the failure to prepare, maintain, or submit to EPA records in violation of FIFRA Section

12(a)(2)(B)(i), 7 U.S.C. § 136j(a)(2)(B)(i).__

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA/FO, except as provided in Paragraph 1, above.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CA/FO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
6. The settlement agreed to by the parties in this Consent Agreement reflects the desire of the parties to resolve this matter without continued litigation.
7. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to Complainant by the Respondent, as listed on Exhibit A to this Consent Agreement. Respondent, by its undersigned representative, certifies that the information submitted to EPA regarding Respondent's ability to pay is accurate and not misleading.
8. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence

that the information provided and/or representations made by Respondent to Complainant regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

9. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CA/FO.
10. Respondent shall bear its own costs and attorney's fees.
11. Respondent certifies to EPA by its signature herein that it is presently in compliance with the provisions of FIFRA referenced herein.

EPA's Findings of Fact and Conclusions of Law

12. In accordance with 40 C.F.R. § 22.18(b)(2) of the Consolidated Rules, Complainant adopts the following findings of fact and conclusions of law.
13. Respondent is a Pennsylvania Corporation, and is and was, at all times relevant hereto, a "person" doing business in the State of Pennsylvania within the meaning of 2(s) of FIFRA, 7 U.S.C. § 136(s).
14. Respondent owns and operates the facility located at 675 Forman Road, Franconia, Pennsylvania 18924 (the "Facility"). Respondent sells and/or distributes pesticides from this facility as part of its wholesale, retail and/or distribution business. Respondent produces pesticides at this facility.
15. Section 2(w) of FIFRA, 7 U.S.C. §136(w), provides, with an exception not relevant to this matter, that the term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. Section 2(w) of FIFRA, 7 U.S.C. §136(w), further provides that

the term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

16. Section 2(u) of FIFRA, 7 U.S.C. §136(u), provides that the term “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

17. Pursuant to 40 C.F.R. § 152.3, the term “pesticide” means, in part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

18. 40 C.F.R. § 152.3 further provides, in pertinent part, that the term “pesticide product” means “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.”

19. 40 C.F.R. § 152.15 provides, in pertinent part, that:

A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

(a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):

(1) That the substance . . . can or should be used as a pesticide; or

* * *

(c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

20. Pursuant to 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term to “distribute or sell” means, with exceptions not relevant to these proceedings, “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.”

**COUNTS I - VI: SALE/DISTRIBUTION OF A MISBRANDED PESTICIDE
(T-3000 Industrial Water Biocide)**

21. Paragraphs 1 through 20 of this CA/FO are incorporated by reference.
22. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.
23. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines “person” as any individual, partnership, association, corporation or any other organized group of persons whether incorporated or not.
24. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is “misbranded” if any word, statement or other information required by FIFRA, 7 U.S.C. §§ 136-136y, to appear on the label is not prominently placed there with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary consumer.
25. Pursuant to Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), a pesticide is “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container or wrapper cannot clearly be read, a label bearing, *inter alia*, the registration number assigned to the pesticide pursuant to FIFRA, 7 U.S.C. §§ 136-136y.
26. Pursuant to 40 C.F.R. § 156.10(a)(1), every pesticide product must bear a label containing the information specified by FIFRA and its implementing regulations. The contents of the label must show clearly and prominently, *inter alia*, the product registration number

as prescribed by 40 C.F.R. § 156.10(e) and the pesticide producing establishment number as prescribed by 40 C.F.R. § 156.10(f).

27. On at least six occasions from January 1, 2005 to February 27, 2006, Respondent sold and/or distributed a product, T-3000 Industrial Water Biocide. The label affixed to the T-3000 Industrial Water Biocide product bore the EPA Registration No. 00230-86.
28. Chemtec is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
29. The T-3000 Industrial Water Biocide product is a “pesticide,” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3.
30. Prior to the distributions identified in Paragraph 27, EPA Registration No. 00230-86 was canceled and the T-3000 Industrial Water Biocide product was reregistered as EPA Registration No. 69470-20 under Section 3 of FIFRA, 7 U.S.C. § 136a.
31. At all times relevant to the violations alleged in this CA/FO, the T-3000 Industrial Water Biocide product identified above in Paragraph 27 has been a registered pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a, and has been assigned EPA Registration No. 69470-20 .
32. Respondent’s six sales or distributions of the T-3000 Industrial Water Biocide product identified above in Paragraph 27 at its Facility from January 1, 2005 to February 27, 2006 were sales or distributions of a misbranded pesticide product as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136(q), to a person and therefore were 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).

COUNTS VII - XVIII: SALE/DISTRIBUTION OF AN UNREGISTERED PESTICIDE
(T-9000 Chlorination Tablets)

33. The allegations in Paragraphs 1 through 32 of this Consent Agreement are incorporated herein by reference.
34. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be 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 whose registration has been canceled or suspended, with exceptions not relevant to this matter.
35. Section 3(a) of FIFRA, 7 U.S.C § 136a(a), provides, in pertinent part, that no person in any State may distribute or sell to any person any pesticide that is not registered under FIFRA.
36. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), provides, in pertinent part, that the term “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.
37. On twelve occasions from March 28, 2005 until July 8, 2006, Respondent sold and/or distributed containers of T-9000 Chlorination Tablets to various individuals, partnerships, associations, corporations and/or organized groups of persons.
38. Each occasion on which Respondent sold and/or distributed containers of T-9000 Chlorination Tablets constitutes a “distribution or sale” of a “pesticide” and “pesticide product” 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.

39. At all times relevant to this CA/FO, T-9000 Chlorination Tablets were not registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
40. By selling and/or distributing the unregistered pesticide product, T-9000 Chlorination Tablets, Respondent violated Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
41. Each of the twelve sales and/or distributions of the unregistered pesticide product T-9000 Chlorination Tablets 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).

COUNT XIX: FAILURE TO PREPARE, MAINTAIN, OR SUBMIT TO EPA RECORDS

42. The allegations in Paragraphs 1 through 41 of this Consent Agreement are incorporated herein by reference.
43. Pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), it shall be unlawful for any person to refuse to prepare, maintain or submit any records required by, *inter alia*, FIFRA Section 8, 7 U.S.C. § 136f.
44. Section 8(a) of FIFRA, 7 U.S.C. § 136f, states that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain such records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA and to make the records available for inspection and copying. 40 C.F.R. § 169.2(a), promulgated pursuant to FIFRA § 8, 7 U.S.C. § 136f, requires that all producers of pesticides, devices, or active ingredients used in producing pesticides subject to FIFRA shall maintain records showing the product name, EPA Registration Number, amounts

per batch and batch identification (numbers, letters, etc.) of all pesticides produced. The batch identification shall appear on all production control records. These records shall be retained for a period of two (2) years.

45. Representatives from the EPA inspected the Facility on May 9, 2007. During that inspection, EPA requested records of product names, EPA Registration Numbers, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced at the Facility for the last two years. Respondent, a pesticide “producer,” was unable to produce such records and stated that the Facility did not prepare records of the amounts per batch and batch identification of the pesticides produced at the Facility.
46. Respondent’s failure to prepare, maintain, or submit to EPA records of product names, EPA Registration Numbers, amounts per batch and batch identification (numbers, letters, etc.) of all pesticides produced at the Facility for the last two years is a violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and 40 C.F.R. § 169.2(a).

CIVIL PENALTY

47. In settlement of the above-captioned action, Respondent agrees to pay a civil penalty in the amount of Five Thousand Dollars (\$5,000.00). This civil penalty is due and payable immediately upon Respondent’s receipt of a true and correct copy of this CA/FO.
48. 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.
49. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a

Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order 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).

50. 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.

51. 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).

52. If Respondent pays the entire civil penalty of Five Thousand Dollars (\$5,000.00) within thirty (30) calendar days of the date on which this CA/FO is mailed or hand-delivered to Respondent, no interest will be assessed against Respondent pursuant to 40 C.F.R. § 13.11(a)(1).

53. The above settlement amount was 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, and the gravity of the violation), and in accordance with EPA's FIFRA Enforcement Response Policy ("ERP") dated July 2, 1990.

54. Payment of the civil penalty amount described in Paragraph 47, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- A. All payments by Respondents shall reference their names and addresses, and the Docket Number of this action, *i.e.*, FIFRA-03-2009-0072;
- 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 and mailed to:

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

Contact: Natalie Pearson, 314-418-4087

- D. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency—Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087

- E. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

- F. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact: Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - Checking
Environmental Protection Agency
Account 310006
CTX Format

- G. On-Line Payment Option:

WWW.PAY.GOV

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

- H. The customer service phone numbers for the above payment centers are:

212-720-5000 (wire transfers, Federal Reserve Bank of New York)

800-762-4224 (ACH/Wire Info, PNC Bank)

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm

- I. Copies of all checks and/or copies of all electronic fund transfers made in payment of the penalty described in Paragraph 47 shall be sent simultaneously to:

Brianna Tindall
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

RESERVATION OF RIGHTS

55. This CA/FO resolves only those civil claims for penalties based on the specific violations of FIFRA alleged herein. 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 CA/FO, following its

filing with the EPA Regional Hearing Clerk.

OTHER APPLICABLE LAW

56. Nothing in this CA/FO shall relieve Respondent of any duties otherwise imposed upon it by applicable federal, state, or local law, regulation and/or ordinance.

FULL AND FINAL SATISFACTION

57. Payment of the penalty specified in Paragraph 47, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have for the violations of FIFRA alleged herein.

PARTIES BOUND

58. This CA/FO shall apply to and be binding upon the parties hereto, their officers, directors, employees, agents, successors, and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into this agreement and to bind Respondent to the terms and conditions of this Consent Agreement and the Final Order.

EFFECTIVE DATE

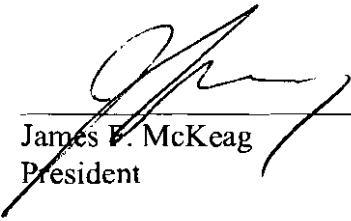
59. The effective date of this CA/FO is the date on which the Final Order is filed with the Regional Hearing Clerk.

For the Respondent:

Chemtec Products Company, LLC

Date:

2/18/09



James F. McKeag
President

In the Matter of:
Chemtec Products Company, LLC


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Consent Agreement
Docket No. FIFRA-03-2009-0072

For the Complainant:


**United States Environmental Protection Agency
Region III**

Date: 3/5/09


Brianna Tindall
Assistant Regional Counsel

The Land and Chemicals Division, United States Environmental Protection Agency -
Region III, recommends that the Regional Administrator of U.S. EPA Region III or his
designee issue the accompanying Final Order.

Date: 3/20/2009


Abraham Ferdas
Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

In the Matter of:
Chemtec Products Company, LLC

Consent Agreement
Docket No. FIFRA-03-2009-0072

EXHIBIT A

Respondent Chemtec Products Company, LLC submitted to EPA the following documents:

1. Financial Statement of Corporate Debtor, signed by James F. McKeag, Owner, submitted via letter postmarked July 21, 2008.
2. U.S. Income Tax Return for S Corporation - 2003.
3. Personal Federal U.S. Income Tax Returns for James F. McKeag - 2004, 2005, 2006, and 2007.

In the Matter of:
Chemtec Products Company, LLC

Consent Agreement
Docket No. FIFRA-03-2009-0072

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

IN RE:

Chemtec Products Company, LLC
675 Forman Road
Franconia, PA 18924

U.S. EPA Docket No. FIFRA-03-2009-0072

RESPONDENT

FINAL ORDER

Complainant and Respondent have executed a document entitled "Consent Agreement" which I ratify as a Final Order in accordance with Section 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. § 22.18(b)(3).

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the Consolidated Rules, and having determined, based on the representations in the Consent Agreement, that the penalty agreed to in the Consent Agreement is consistent with the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), it is hereby ordered that Respondent pay Five Thousand Dollars (\$5,000.00), in accordance with the foregoing Consent Agreement, and otherwise comply with the terms and conditions of the Consent Agreement and this Final Order.


In the Matter of:
Chemtec Products Company, LLC

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Consent Agreement
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This Final Order shall become effective immediately upon filing with the Regional
Hearing Clerk.

March 24, 2009
Date


Renée Sarajian
Regional Judicial Officer