

PREET BHARARA
United States Attorney
By: LOUIS A. PELLEGRINO
Assistant United States Attorney
86 Chambers Street, 3rd Fl.
New York, New York 10007
Tel: (212) 637-2689
Fax: (212) 637-2686
Email: louis.pellegrino@usdoj.gov

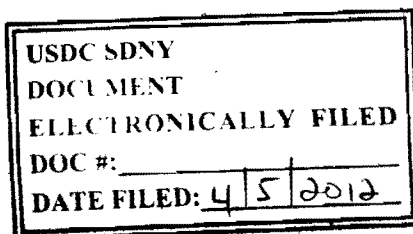
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	x	
UNITED STATES OF AMERICA,	:	12 Civ. <u>2630</u> (ER)
	:	
Plaintiff,	:	
	:	
— v. —	:	<u>CONSENT ORDER</u>
	:	
FLEURCHEM, INC.,	:	
	:	
Defendant.	:	
-----	x	

WHEREAS, simultaneously with the filing of this Consent Order, the United States of America (the “United States” or “Government”), by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, commenced this action by filing a complaint in this Court (the “Complaint”) against Fleurchem, Inc. (“Defendant” or the “Company”);

WHEREAS, at all times relevant to the Complaint, Fleurchem was a Middletown, New York, chemical manufacturing company that manufactured and exported chemical products classified as “List I” chemicals under the Controlled Substances Act, as amended, 21 U.S.C. § 801 *et seq.* (“CSA”);

WHEREAS, the Complaint alleges that Fleurchem repeatedly failed to notify the Drug Enforcement Administration (“DEA”) of the sale and exportation of potentially dangerous List I chemicals such as methyl anthranilic acid, benzaldehyde, phenylacetic acid, gamma-



butyrolactone, and piperonal, to destinations in foreign countries including Israel, Chile, Australia, Canada, Germany, France, Singapore, Switzerland, Greece, and the Netherlands, and failed to maintain DEA-required forms regarding these sales and exports;

WHEREAS, List I chemicals can be used to manufacture illegal drugs and, as a result of their potential for misuse, these chemicals are regulated by the DEA;

WHEREAS, the CSA provides that regulated entities, such as Fleurchem, who import or export a List I chemical "shall notify the Attorney General of the importation or exportation not later than 15 days before the transaction is to take place," 21 U.S.C. §§ 971(a), 961(1); 21 C.F.R. § 1313.21(a);

WHEREAS, the DEA requires that a DEA Form 486 be submitted no later than 15 days prior to the exportation of listed chemicals that meet or exceed the threshold quantities identified in 21 C.F.R. § 1310.04(f), *see* 21 C.F.R. § 1313.21(b); *see also* 21 U.S.C. § 971(d);

WHEREAS, under the CSA, a registrant may be penalized for any failure to make, keep, or furnish DEA Form 486, *see* 21 U.S.C. §§ 842(a)(5), 842(c)(1)(B);

WHEREAS, the Complaint alleges that on dozens of occasions between June 1, 2008 and May 19, 2011, Fleurchem failed to provide notice to the Attorney General of the United States, through DEA, of the sale and exportation of List I chemicals through the provision of DEA Form 486, at least 15 days before these chemicals were sold or exported;

WHEREAS, the Complaint alleges that Fleurchem's acts violated the CSA, as amended, 21 U.S.C. §§ 801 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 1301 *et seq.*;

NOW, THEREFORE, it is hereby ORDERED as follows pursuant to 21 U.S.C. §§ 842(c)(1) and 843(f):

1. Defendant admits, acknowledges, and accepts responsibility for the following conduct alleged in the Complaint:

- a. On dozens of occasions between June 1, 2008 and May 19, 2011, Fleurchem failed to notify the Attorney General, through the DEA, that it exported List I chemicals in quantities that met or exceeded threshold quantities identified in 21 C.F.R. § 1310.04(f), within 15 days prior to exportation;
- b. On those same occasions between June 1, 2008 and May 19, 2011, Fleurchem failed to complete DEA Form 486 within 15 days prior to the exportation of listed chemicals that met or exceeded the threshold quantities identified in 21 C.F.R. § 1310.04(f);
- c. Fleurchem also failed to make, keep, or furnish DEA Form 486; and that,
- d. Fleurchem committed the violations of the CSA and its implementing regulations as set forth in the Complaint, and these violations were wrongful.

2. Defendant shall pay the United States the total sum of FOUR HUNDRED TWENTY THOUSAND DOLLARS (\$420,000.00) (the "Settlement Amount"), which sum shall be paid in 35 monthly installments due on the 15th of each month. The first payment shall be due on the 15th of the month following the month in which the Court enters this Consent Order. Each monthly payment, in the amount of \$12,000, shall be paid by check (or money order) drawn upon Defendant's account and payable to the order of the United States Department of Justice and mailed or delivered to:

United States Attorney's Office
Southern District of New York
86 Chambers Street
New York, New York 10004
Attn: Financial Litigation Unit

or such other address as the Government may direct.

3. Defendant shall have the right to pre-pay the entire balance due without penalty and may tender payments in amounts greater than those stipulated in paragraph 2.

4. In the event the Settlement Amount is not paid in full in accordance with the terms set forth in Paragraph 2 above, the Defendant shall agree to the entry of a Consent Judgment in the amount of one and half times (*i.e.*, 150%) the unpaid balance. Additionally, the United States, at its option, also may: (a) rescind this Consent Order and reinstate the Complaint filed in this action as to the Defendant or seek specific performance of this Consent Order; (b) offset the remaining unpaid balance from any amounts due and owing the Defendant by any department, agency or agent of the United States at the time of default; or (c) exercise any other rights granted by law, or under the terms of this Consent Order, or recognizable at common law or in equity.

5. The Defendant and its employees, agents, and persons acting in concert with the Defendant are hereby (i) enjoined from exporting List I chemicals in quantities that meet or exceed threshold quantities identified in 21 C.F.R. § 1310.04(f), without providing 15 days' notification to DEA for new customers; (ii) enjoined from exporting List I chemicals in quantities that meet or exceed threshold quantities identified in 21 C.F.R. § 1310.04(f), without completing DEA Form 486, and obtaining a DEA control number; and (iii) enjoined from failing to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice or information required under the CSA.

6. Within 30 days of the entry of this Consent Order, Defendant shall hire or otherwise retain a permanent compliance manager for the Company (the "Compliance Manager"). The Compliance Manager shall serve as chief liaison to the DEA, and shall maintain day-to-day supervisory responsibility for properly filing DEA Form 486 with the DEA. In the event that the Compliance Manager fails to perform these duties for any reason or otherwise ceases employment with the Company, Defendant shall appoint a temporary replacement manager within 30 days, and shall retain a permanent replacement within a reasonable time. In

all cases, Defendant will notify the DEA of any change in the status of the Compliance Manager, at the address designated in Paragraph 7 below.

7. For two years from the date of the entry of this Consent Order, the Compliance Manager shall also provide "Quarterly Reports" – which shall consist of copies of all completed Form 486s, with control numbers filed with DEA headquarters—to the DEA's New York City Group Supervisor. These Form 486 Quarterly Reports shall be mailed or faxed to:

Drug Enforcement Administration
Attn: James W. Place, Jr.
Group Supervisor, Group D-62
99 10th Avenue
New York, NY 10011
Fax: (212) 337-2895

or to such other addressee as the DEA may direct, after providing notice in writing, to the Company. Nothing in this paragraph is intended to affect any other obligation to report any information required by the CSA or its implementing regulations.

8. Within 30 days of the entry of this Consent Order, the Compliance Manager shall establish a permanent compliance committee (the "Compliance Committee"), with the Compliance Manager as its chair, to identify and address DEA compliance issues at the Company, and to communicate findings and engage in compliance training throughout the Company.

9. The Compliance Committee shall draft and implement a Standard Operating Procedures Manual that establishes Company-wide procedures for the proper handling of DEA-listed chemicals and for maintaining compliance with the CSA and applicable DEA regulations.

10. Nothing in this agreement is intended to prevent the Compliance Manager or the Compliance Committee from being assigned additional responsibilities, including serving as liaison to any other local, state or federal regulatory agency.

11. For a period of two years, the Company shall grant consent to allow the DEA access to the Company's facilities during regular business hours without the need to obtain an administrative warrant.

12. The Company shall permanently adhere to the following shipping notification requirements, which shall be part of the Company's Standard Operating Procedures Manual:

- a. For "new customers," the Company must file a DEA Form 486 15 days before the exportation of any List I chemical that meets or exceeds the threshold quantities in 21 C.F.R. § 1310.04(f). If the shipment meets or exceeds the threshold quantities in 21 C.F.R. § 1310.04(f), the Company may not export the List I chemical until the new customer has been vetted and, if warranted, the DEA provides the Company with a control number, which indicates the DEA's approval to ship. Once the DEA issues a control number for a new customer, the Company may ship immediately, even if the 15 day period has not yet expired;
- b. For a "regular customer" under 21 U.S.C. § 971(b) and 21 C.F.R. § 1313.21(c)(1), which is any customer for which the Company has obtained a DEA control number within the 12 months prior to the date of the shipment at issue, the Company must contact the DEA for confirmation of that designation. If the DEA agrees with the Company's designation, the DEA will confirm that the customer is a regular customer and, if warranted, issue a control number. Following this confirmation, the Company may ship as soon as it obtains the DEA control number. Otherwise, the customer will be treated as a new customer, and the Company may not ship until the DEA completes its vetting of the company and, if warranted, issues a control number.

13. Subject to the exceptions in Paragraph 15 below, in consideration of the obligations set forth in this Consent Order, and conditioned upon Defendant's payment in full of the Settlement Amount and full compliance with Paragraphs 1-12 above, the United States (on behalf of itself and its agencies, departments, officers, employees, servants and agents) agrees to release Defendant from any civil claim or administrative monetary claim that the United States has or may have under the CSA, arising out of any violation alleged in the Complaint.

14. This Consent Order is intended to be for the benefit of the United States and Defendant only; by this instrument the parties to this Consent Order do not release any claims against any other person or entity.

15. Notwithstanding any term of this Consent Order, including the release provided in Paragraph 13, any and all of the following are specifically reserved and excluded from the scope and terms of this Consent Order as to any entity or person:

- a. any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Consent Order, any administrative liability, including suspension or debarment from participating in transactions with the United States;
- d. any liability to the United States (or its agencies) for any conduct other than that alleged in the Complaint;
- e. any claims based upon such obligations as are created by this Consent Order; and
- f. any liability to the United States of any entity or person not released by the terms of this Consent Order.

16. In the event of a criminal prosecution or administrative action relating to the allegations asserted in the Complaint, Defendant waives and will not assert any defenses it may have, based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Consent Order bars a remedy sought in such criminal prosecution or administrative action.

17. Nothing in this Consent Order constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code.

18. If within 91 days of the date of entry of this Consent Order or of any payment made under this Consent Order, Defendant commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Defendant's debts, or seeking to adjudicate Defendant as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Defendant or for all or any substantial part of Defendant's assets, Defendant agrees as follows:

- a. Defendant's obligations under this Consent Order may not be avoided pursuant to 11 U.S.C. § 547, and Defendant shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Defendant's obligations under this Consent Order may be avoided under 11 U.S.C. § 547; (ii) Defendant was insolvent at the time this Consent Order was entered into; or (iii) the mutual promises, covenants, and obligations set forth in this Consent Order do not constitute a contemporaneous exchange for new value given to Defendant.

b. If the Defendant's obligations under this Consent Order are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the Government, at its sole option, may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendant for the claims that would otherwise be covered by the releases provided herein. Defendant agrees that (i) any such claims, actions, or proceedings brought by the Government are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this paragraph, and Defendant shall not argue or otherwise contend that the Government's claims, action, or proceedings are subject to an automatic stay; (ii) Defendant shall not plead, argue, or otherwise raise any defenses under theories of statute of limitations, laches, estoppels, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the Government within 60 calendar days of written notification to Defendant that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on June 1, 2008, and (iii) the Government has a valid claim against Defendant in the amount of at least \$420,000.00, and the Government may pursue its claim in the case, action, or proceeding referenced in the first clause of this paragraph, as well as in any other case, action or proceeding.

c. Defendant acknowledges that their agreements in this paragraph are provided in exchange for valuable consideration provided in this Consent Order.

19. The Court will retain jurisdiction over the enforcement and interpretation of this Consent Order and to resolve all disputes arising hereunder.

20. The undersigned signatories represent that they are fully authorized to enter into this Consent Order and to execute and legally bind the parties they represent to the terms of this Consent Order.

21. This Consent Order contains the entire agreement between Defendant and the United States with respect to the subject matter of the Complaint. No prior agreements, oral representations or statements shall be considered part of this Consent Order.

Dated: White Plains, N.Y.
April 2, 2012

Dated: New York, N.Y.
April 2, 2012

For Fleurchem, Inc.:

For the United States of America:

PREET BHARARA
United States Attorney

By: Barbara Hart / SVP
BARBARA HART, ESQ.
SCOTT PAPP, ESQ.
Lowey Dannenberg Cohen & Hart, P.C.
One North Broadway, Suite 509
White Plains, NY 10601
Main Line: 914-997-0500
Fax: 914-997-0035
BHart@lowey.com

By: Louis A. Pellegrino
LOUIS A. PELLEGRINO
Assistant United States Attorney
86 Chambers Street, 3d Floor
New York, NY 10007
Tel: (212) 637-2689
Fax: (212) 637-2686
louis.pellegrino@usdoj.gov

By: Rochele Gluck
ROCHELE GLUCK
CEO- Fleurchem, Inc.
33 Sprague Ave
Middletown, New York 10940
Tel: (845) 341-2100 x 103
Fax: (845) 341-2121
Rochele.Gluck@Fleurchem.com

SO ORDERED ON THIS SM ~~3~~ DAY OF April, 2012:

[Signature]
UNITED STATES DISTRICT JUDGE