



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 24 2011

UNITED PARCEL SERVICE

James Chen, Esq.
816 South Oakland Street
Arlington, VA 22204

Re: Nisus Corporation
Docket No.: FIFRA-04-2011-3022(b)

Dear Mr. Chen:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the initial payment of \$4,182.25 of the assessed penalty of \$16,640.00 is due within 30 days from the effective date. Please ensure that the face of your client's cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Mr. Bryson Lehman either by telephone at (513) 487-2123 or by written correspondence to his attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you or Nisus have any questions about this matter please call me at (404) 562-8979 or Ms. Dawn Johnson, Case Development Officer at (404) 562-9017.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Nisus on notice of its potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne M. Gettle".

Jeanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Kathy Booker, TN Department of Agriculture
State File No. #0228080493601

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9017.

5. Respondent is Nisus Corporation, a Tennessee corporation, located at 100 Nisus Drive, Rockford, Tennessee 37853.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about November 9, 2005, an authorized representative of the EPA conducted an inspection at Lesco, Inc., located at 573-B Commerce Drive, Upper Marlboro, Maryland.
8. On or about February 28, 2008, an authorized representative of the EPA conducted an additional inspection at the Nisus Corporation, located at 100 Nisus Drive, Rockford, Tennessee.
9. During the aforementioned inspections, the BAC-AZAP product was identified as being sold and/or distributed by the Respondent.
10. During the inspections, it was noted that the BAC-AZAP product labeling made pesticidal claims for the product. Also, EPA has determined that at the time of the

inspection, Respondent's advertisement on the internet made pesticidal claims for the product. Therefore, at the time of the inspections, the BAC-AZAP product was a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as 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 microorganisms 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).
12. Respondent "distributes or sells" pesticides. The term "to distribute to sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
13. Pursuant to Section 3 of FIFRA, pesticides that are sold and distributed in the United States are required to be registered with the EPA.
14. At the time of the inspections, the BAC-AZAP product was not registered as a pesticide with EPA.
15. The inspector documented at least eight (8) sales and/or distributions of the BAC-AZAP product, on the following dates:
 - a. November 9, 2005 - Upper Marlboro, Maryland
 - b. February 19, 2008 - Commerce, California
 - c. February 19, 2008 - Orlando, Florida
 - d. February 21, 2008 - Kent, Washington
 - e. February 21, 2008 - Commerce, California
 - f. February 21, 2008 - Charlotte, North Carolina

- g. February 22, 2008 - Orlando, Florida
- h. February 28, 2008 - packaged, labeled, release for shipment at Nisus Corporation

16. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.
17. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least eight (8) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. At the time of the inspections, the BAC-AZAP product was misbranded as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q) in that the label did not contain a storage and disposal statement to adequately protect human health and the environment. In addition, the label did not bear the establishment registration number assigned under Section 7 of FIFRA.
19. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
20. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least eight (8) occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
22. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.

23. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **SIXTEEN THOUSAND SIX HUNDRED FORTY DOLLARS AND ZERO CENTS** (\$16,640.00) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
25. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

30. Respondent is assessed a civil penalty of **SIXTEEN THOUSAND SIX HUNDRED FOURTY DOLLARS AND ZERO CENTS (\$16,640.00)**. Four payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. The subsequent three payments shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **SIXTEEN THOUSAND SEVEN HUNDRED TWENTY EIGHT DOLLARS AND NINETY CENTS**. Respondent shall make quarterly payments as follows:

| <u>Payment Number</u> | <u>Payment Due Date</u> | <u>PAYMENT AMOUNT</u> |
|------------------------------|-----------------------------------|------------------------------|
| 1 | within 30 days of filing of CAFO | \$4,182.25 |
| 2 | within 120 days of filing of CAFO | \$4,182.25 |
| 3 | within 210 days of filing of CAFO | \$4,182.25 |
| 4 | within 300 days of filing of CAFO | \$4,182.15 |

31. Respondent shall remit each penalty payment specified in paragraph 30 by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. Mail to the following address:

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

The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.

32. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Dawn Johnson
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

33. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) and all accrued interest shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.

34. Further, if Respondent fails to pay the installment payments in accordance with the Schedule set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity,

amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

35. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the payment schedule set forth above, Respondent may pay the entire civil penalty of **SIXTEEN THOUSAND SIX HUNDRED FORTY DOLLARS AND ZERO CENTS (\$16,640.00)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a).
36. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 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). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
37. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.
40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to this CAFO.

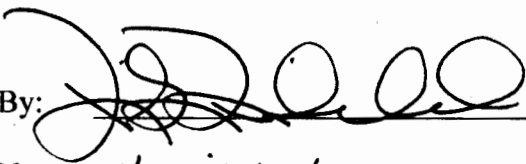
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VI. Effective Date

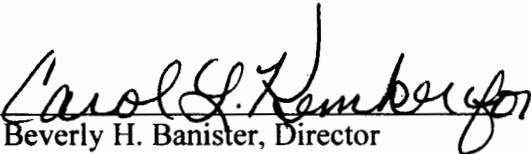
41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

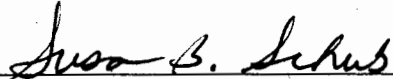
Respondent: Nisus Corporation
Docket No.: FIFRA 04-2011-3022(b)

By:  (Signature) Date: 7-24-11
Name: Kevin L. Kirkland (Typed or Printed)
Title: President/CEO (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8/15/11
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 23rd day of August 2011.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Nisus Corporation., Docket Number: FIFRA-04-2011-3022(b), to the addressees listed below:

James Chen, Esq.
816 South Oakland Street
Arlington, Virginia 22204

(via Certified Mail, Return Receipt Requested)

Dawn Johnson
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

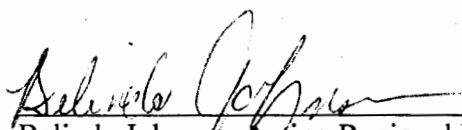
(via EPA's internal mail)

Robert Caplan, Esq.
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

Date:

8/24/11


Belinda Johnson, Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9686

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/19/11
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Nisus Corporation
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 16,640 (incl. interest 16,728.90)
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA of 2011 3022 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044 | 2. Originating Office (EAD) 3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|--|---|
| 1. Originating Office 2. Regional Hearing Clerk | 3. Designated Program Office 4. Regional Counsel (EAD) |
|--|---|