



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 01 2011

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7662 1052

Mr. Stan Stevinson
General Counsel
Basic Chemical Solutions, LLC
525 Seaport Boulevard
Redwood City, California 94063

Consent Agreement and Final Order **FIFRA-05-2011-0009**

Dear Mr. Stevinson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on March 1, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,861.00 is to be paid in the manner described in paragraphs 35 thru 36. Please be certain that the number **BD 2751145P008** and the docket number are written on both the transmittal letter and on the check. Payment is due by March 31, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Joseph G. Lukascyk".

Joseph Lukascyk
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Basic Chemical Solutions, L.L.C.,
Redwood City, California,

Respondent.

RECEIVED
MAR 01 2011
REGIONAL HEARING CLERK
USEPA
REGION 5

Docket No. FIFRA-05-2011-0009

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is, by lawful delegation, the Director, Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. The Respondent is Basic Chemical Solutions, L.L.C., a New Jersey limited liability company doing business in the state of California.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

11. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) as, “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

12. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

13. According to the Regulations at 40 C.F.R. § 152.132, supplemental distribution is permitted upon written notification to EPA by both the registrant and the distributor, provided that all of the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the distributor.

Supplemental distribution allows the registrant to distribute or sell the registered product under another person's name and address, and such distribution and sale is termed "supplemental distribution," and the product is referred to as a "distributor product."

14. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor's company number.

15. According to 40 C.F.R. § 152.132, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

16. According to 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

17. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is "misbranded" if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular.

18. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is (adulterated or) misbranded.

19. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

20. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA, of up to \$7,500 for each offense of FIFRA under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2004).

Factual Allegations and Alleged Violations

21. Respondent was, at all times relevant to this Complaint, a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. Respondent did, at all times relevant to this Complaint, “distribute or sell” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

23. On or about November 27, 2000, Respondent registered with the EPA its pesticide product “Sodium Hypochlorite Solution (12.5%),” EPA Reg. No.70567-2.

24. “Sodium Hypochlorite Solution (12.5%),” EPA Reg. No.70567-2, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about July 16, 2007, Respondent and BZB, Inc., d/b/a Busy Bee Nursery, Inc. (BZB), submitted to EPA a “Notice of Supplemental Distribution of a Registered Pesticide

Product” (EPA Form 8570-5) allowing BZB to distribute Respondent’s registered pesticide product, “Sodium Hypochlorite Solution (12.5%),” EPA Reg. No.70567-2, under BZB’s brand name “Chlorine,” EPA Reg. No. 70567-2-74524.

26. On or about September 8, 2009, an inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at BZB, located at 19529 South Halsted, Glenwood, Illinois 60425, to examine and collect samples of any pesticides packaged, labeled, and released for shipment, and to inspect and obtain copies of those records specified in Section 8 of FIFRA, and 40 C.F.R. Part 169.

27. During the September 8, 2009 inspection, the IDA inspector observed and collected documentary samples of the pesticide product “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524.

28. During the September 8, 2009 inspection, the IDA inspector noted that the label of the pesticide product “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524 had the illegal Brand Name “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” instead of the distributor Brand Name “Chlorine.”

29. Because “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524 was packaged, labeled, and released for shipment or sale, Respondent, through its distributor/agent, BZB, “distributed or sold” this misbranded pesticide product.

30. On or about September 8, 2009, Respondent distributed or sold the misbranded pesticide product "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524.

31. Such actions constitute the distribution or sale of a misbranded pesticide product according to Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent's distribution/sale of a misbranded pesticide product constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

33. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$4,290.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's "*Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*," dated December 2009.

34. In consideration of Respondent's attitude and good faith efforts to comply with FIFRA, Complainant agrees to mitigate the proposed penalty of \$4,290.00 to \$3,861.00.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,861.00 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

for checks sent by express mail:

**U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
Contact: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101**

The check must note the following: the case name, the docket number of this CAFO and the billing document number (BD number).

To pay by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

**Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"**

In the comment or description field of the electronic funds transfer, state the case title, the docket number of this CAFO, and the BD number.

To pay by Automated Clearinghouse (ACH) (also known as REX or remittance express), ACH electronic funds transfer should be payable to "Treasurer, United States of America," and sent to:

**US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency**

CTX Format Transaction Code 22 – checking

In the comment area of the ACH electronic funds transfer, state the case title, the docket number of this CAFO, and the BD number.

To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

36. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph G. Lukascyk (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

37. This civil penalty is not deductible for federal tax purposes.

38. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and

appropriateness of the civil penalty are not reviewable in a collection action.

39. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

40. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

41. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

42. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws, and regulations.

43. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

44. The terms of this CAFO bind Respondent and its successors, and assigns.

45. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

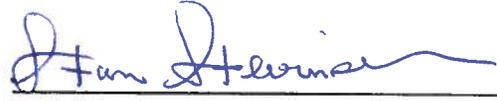
46. Each party agrees to bear its own costs and attorney's fees, in this action.

47. This CAFO constitutes the entire agreement between the parties.

48. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.

Basic Chemical Solutions, L.L.C., Respondent

February 7, 2011
Date



Stan Stevinson
General Counsel
Basic Chemical Solutions, L.L.C.

United States Environmental Protection Agency, Complainant

2/22/11
Date



Bruce Sypniewski
Acting Director
Land and Chemicals Division

In the Matter of:
Basic Chemical Solutions, L.L.C.
Docket No.FIFRA-05-2011-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-25-11

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Basic Chemical Solutions, L.L.C., was filed on March 1, 2011 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7662 1052 copy of the original to the Respondents:

Mr. Stan Stevinson
General Counsel
Basic Chemical Solutions, LLC
525 Seaport Boulevard
Redwood City, California 94063

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Thomas Turner, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2011-0009

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