



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 19 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Donald Wilshe
Owner
Biobased USA, LLC
4237 Cornelius Road
East Bend, North Carolina 27018

Re: Biobased USA, LLC
Docket No.: FIFRA-04-2011-3029(b)

Dear Mr. Wilshe:

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 first installment payment of \$1,125.77 of the assessed penalty of \$14,325.77 is due within 30 days from the effective date. Please ensure that the face of your 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's Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call Ms. Melba Table at (404) 562-9086.

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 you on notice of

your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA.

Sincerely,



Kimberly L. Bingham
Acting Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Karen Hunt
NC Department of Agriculture and Consumer Service

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:

Biobased USA, LLC

Respondent.

Docket No.: FIFRA-04-2011-3029(b)

RECEIVED
EPA REGION IV
2011 SEP 19 PM 3:00
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Biobased USA, LLC.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

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:

Melba Table
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562- 9086.

5. Respondent is Biobased USA, LLC, a North Carolina corporation, located at 4237 Cornelius Road, East Bend, North Carolina 27108.
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 March 24, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 4237 Cornelius Road, East Bend, North Carolina 27108.
8. During the aforementioned inspection, Agriculture Soap Surfactant (Agriculture Soap) was identified as being sold and/or distributed by the Respondent.
9. Agriculture Soap is 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.

10. 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).
11. 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.
12. Pesticides that are sold and distributed in the United States are required to be registered with the EPA.
13. At the time of the inspection, Agriculture Soap was not registered as a pesticide with EPA.
14. The inspector documented four offers for sale and/or distribution of said pesticide.
15. 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.
16. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on four occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. At the time of the inspection, Respondent produced Agriculture Soap in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.

18. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any state unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
19. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
20. 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.
21. 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.
22. 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 **FOURTEEN THOUSAND SIX HUNDRED AND TWENTY DOLLARS (\$14,620)** 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

23. 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.
24. 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.
25. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
27. 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.
28. 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

26. Respondent is assessed a civil penalty of **FOURTEEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$14,620)**. Twelve 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 eleven 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 **FOURTEEN THOUSAND THREE HUNDRED TWENTY-FIVE DOLLARS and SEVENTY- SEVEN CENTS (\$14,325.77)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$1,125.77
2	within 120 days of filing of CAFO	\$1,200.00

3	within 210 days of filing of CAFO	\$1,200.00
4	within 300 days of filing of CAFO	\$1,200.00
5	within 390 days of filing of CAFO	\$1,200.00
6	within 480 days of filing of CAFO	\$1,200.00
7	within 570 days of filing of CAFO	\$1,200.00
8	within 660 days of filing of CAFO	\$1,200.00
9	within 750 days of filing of CAFO	\$1,200.00
10	within 840 days of filing of CAFO	\$1,200.00
11	within 930 days of filing of CAFO	\$1,200.00
12	within 1,020 days of filing of CAFO	\$1,200.00.

27. Respondent shall remit the penalty 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.

28. 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;

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



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

29. 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) 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.
30. 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.
31. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **FOURTEEN THOUSAND SIX HUNDRED TWENTY DOLLARS (\$14,620)** within 30 calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

32. 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.
33. 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.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. 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.

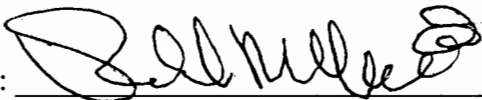
THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

VI. Effective Date

37. 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:

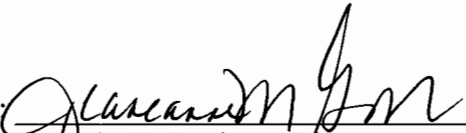
Respondent: Biobased USA, LLC
Docket No.: FIFRA 04-2011-3029(b)

By:  (Signature) Date: 8-5-2011


Name: Donald W. Lshe (Typed or Printed)

Title: OWNER (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 8/25/11
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 19th day of Sept. 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 Biobased USA, LLC, Docket Number: FIFRA-04-2011-3029(b), to the addressees listed below:

Donald Wilshe
Owner
Biobased USA, LLC
4237 Cornelius Road
East Bend, NC 27018

(via Certified Mail, Return Receipt Requested)


Melba Table
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 9/19/11


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 9/19/11
(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: Biobased USA, LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 14,620 (14325.77 incl interest)
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2011 3029(b)

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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION
PROGRAM: _____**

Case Docket Control Number: _____

Total Amount Due: _____

_____ **Full payment due 30 days after issuance date of** _____

_____ **Installment payments to be paid:**

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____