



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

APR 17 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0182 9665

Mr. Reid Willen
Chief Financial Officer
Buchheit, Inc.
33 PCR 540
Perryville, Missouri 63775

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0010

Dear Mr. Willen:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on April 17, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$5,200 is to be paid in the manner described in paragraphs 32 and 33. Please be certain that the number **BD 2750945P009** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 17, 2009 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2009-0010
)	
Buchheit, Inc.)	Proceeding to Assess a Civil Penalty
Perryville, Missouri,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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Consent Agreement and Final Order
Commencing and Concluding a Proceeding

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 the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Buchheit, Inc., a corporation doing business in the States of Illinois and Missouri.
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. 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 that is misbranded.

11. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is “misbranded” if its label does not bear the registration number assigned under section 7 of FIFRA to each establishment in which it was produced.

12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirement imposed under Section 3 of FIFRA, 7 U.S.C. § 136(a), are adequate to protect health and the environment.

13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirement imposed under Section 3 of FIFRA, 7 U.S.C. § 136(a), is adequate to protect health and the environment.

14. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states that a pesticide is “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, a label bearing the registration number assigned to the pesticide under FIFRA.

15. 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.” 7 U.S.C. § 136(gg).

16. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest [or] [any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant]. 7 U.S.C. § 136(u).

17. A “pest” is 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 which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

18. The term “pesticide” is defined at 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.

19. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide, 40 C.F.R. § 152.15(a)(1)

20. The Administrator of U.S. EPA may assess a civil penalty against any registrant who

violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. On October 11, 2007, Respondent owned or operated a place of business located at 2200 West Morton Avenue, Jacksonville, Illinois.

23. On October 11, 2007, an inspector employed by the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Jacksonville, Illinois.

24. During the October 11, 2007 inspection, the inspector collected photographs of a product, LV400 2,4-D Weed Killer, EPA Reg. No. 2217-77, which was being offered for sale on Respondent’s store shelves.

25. LV 400 2,4-D Weed Killer is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. The label on the pesticide product, LV 400 2,4-D Weed Killer, lacked the product registration number, the establishment registration number, directions for use, and warning or caution statements.

27. On or about October 11, 2007, Respondent was distributing or selling LV 400 2,4-D Weed Killer, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Count I

28. Complainant incorporates by reference the allegations contained by Paragraphs 1 through 27 of the Complaint.

29. On or about October 11, 2007, Respondent distributed or sold a pesticide product, LV 400 2,4-D Weed Killer, that was misbranded, as that term is defined by Sections 2(q)(1)(D), 2(q)(1)(F), 2(q)(1)(G) and 2(q)(2)(C) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D), 136(q)(1)(F), 136(q)(1)(G) and 136(q)(2)(C) because the label did not include the product registration number, the establishment registration number, directions for use and warning or caution statements on it.

30. The distribution and sale of the misbranded pesticide product, LV 400 2,4-D Weed Killer, constitutes an unlawful act pursuant 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

31. 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 \$5,200. 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 FIFRA Section 7(c)(ERP)*, dated June 2007.

32. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,200 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:

for a check sent by regular U.S. Postal Service mail:

U.S. EPA
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

for a check sent by overnight mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

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

33. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mr. Terence R. Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Mrs. Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

35. 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.

36. 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

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

38. 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.

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

40. This CAFO is a "final order" for purposes of EPA's ERP for FIFRA.

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

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

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

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

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Buchheit, Inc., Respondent

3-23-2009
Date

Reid Willen
Reid Willen, CFO
Buchheit, Inc.

United States Environmental Protection Agency, Complainant

04/14/09
Date

Josie D. Guinno
for Margaret M. Guerriero
Director
Land and Chemicals Division

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In the Matter of:

Buchheit, Inc.

Docket No. **FIFRA-05-2009-0010**

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.

4/16/09
Date

Walter W. Kovalyck
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAR 23 2009

OFFICE OF REGIONAL
COUNSEL

CERTIFICATE OF SERVICE

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I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Buchheit, Inc., was filed on April 17, 2009, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9665, a copy of the original to the Respondents:

Mr. Reid Willen
Chief Financial Officer
Buchheit, Inc.
33 PCR 540
Perryville, Missouri 63775

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/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 60604-3590

Docket No. **FIFRA-05-2009-0010**