



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

FEB 07 2017

REPLY TO THE ATTENTION OF:
LC-8J

VIA EMAIL

Ms. Sangeeta Khattar
Supply Planner
BASF Corporation
100 Campus Drive
Florham Park, New Jersey 07932

sangeeta.khattar@basf.com

Re: Consent Agreement and Final Order In the Matter of BASF Corporation
Docket Number **FIFRA-05-2017-0008**

Ms. Khattar:

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 2/2/2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,251 is to be paid in the manner described in paragraphs 39-40. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

BASF Corporation
Florham Park, New Jersey

Respondent.



Docket No. FIFRA-05-2017-0008

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 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, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is BASF Corporation, a corporation doing business in the State of New Jersey.

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 rights 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 rights to appeal this CAFO.

Statutory and Regulatory Background

9. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Department of the Treasury (Treasury) in consultation with EPA. These regulations are found at 19 C.F.R. Part 12.

10. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by EPA before being permitted entry into the United States. These regulations are found at 40 C.F.R. Parts 152 and 156.

11. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to EPA a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1), prior to the arrival of the shipment to the United States. *See also* Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

12. 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 misbranded.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states in part that a pesticide

is “misbranded” if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon in such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states in part 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 was intended and if complied with, are adequate to protect human health and the environment.

15. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states in pertinent part that the Administrator may require that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

16. 40 C.F.R. § 156.10(a) states in pertinent part that every pesticide product shall bear a label, attached to the immediate container of the pesticide product, containing the information specified by FIFRA and the regulations in 40 C.F.R. Part 156.

17. 40 C.F.R. § 156.140 states in pertinent part that for nonrefillable containers the following statements must be placed on the label or container of a pesticide product: a statement identifying the container as nonrefillable, one of the prescribed reuse statements, and one of the prescribed recycling or reconditioning statements.

18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.

19. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as written, printed,

or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

20. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

21. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living 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).

22. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

23. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.

24. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

25. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) provides that it is unlawful for any person to violate any regulation issued under Section 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a) or 136q.

26. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), and 19 C.F.R § 12.1(b) provide that the regulations for the importation of pesticides and devices are joint regulations and enforceable by

Treasury and EPA.

27. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461 note, and its implementing regulations at 40 C.F.R. Part 19, increased this amount to \$18,750 for each offense occurring after November 2, 2015.

Factual Allegations and Alleged Violation

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

29. On or about January 5, 2017, Respondent submitted to EPA a Notice of Arrival of Pesticides and Devices (NOA) for an import shipment, with Entry Number BER-5057339-1, which arrived from Germany by air transport into the Port of Chicago.

30. The NOA identified the import shipment as 54 boxes of the pesticide product “VISTA TAB DENTAL.”

31. The NOA identified Respondent as the importer of record for the import shipment of the pesticide product “VISTA TAB DENTAL.”

32. The pesticide product “VISTA TAB DENTAL” is a supplemental distributor product, assigned EPA Reg. No. 70060-25-75372, of registered pesticide product “Aseptrol Dental Water Treatment,” EPA Reg. No. 70060-25.

33. The import shipment “VISTA TAB DENTAL,” EPA Reg. No. 70060-25-75372, is a “pesticide,” as defined under Section 2(u) of FIFRA 7 U.S.C. § 136(u).

34. On or about January 5, 2017, Respondent “distributed or sold” the pesticide “VISTA TAB DENTAL,” EPA Reg. No. 70060-25-75372, as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

35. The import shipment of the pesticide “VISTA TAB DENTAL,” EPA Reg. No. 70060-25-75372, associated with Entry Number BER-5057339-1, failed to bear on the containers or a label attached to the immediate containers: a statement identifying the container as nonrefillable, one of the prescribed reuse statements, and one of the prescribed recycling or reconditioning statements, as required by 40 C.F.R. § 156.140.

36. On or about January 5, 2017, for the import shipment associated with Entry Number BER-5057339-1, Respondent distributed or sold the pesticide “VISTA TAB DENTAL,” EPA Reg. No. 70060-25-75372, in violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

37. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

38. 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 \$8,251. 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.

39. Within 30 days of the effective date of this CAFO, Respondent must pay an \$8,251

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. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the case name, "In the Matter of BASF Corporation," and the case docket number for this CAFO.

40. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number for this CAFO to EPA at the following address when it pays the penalty:

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

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

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

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

42. 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.

43. 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.

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

General Provisions

45. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: weiler.eaton@epa.gov (for Complainant), and sangeeta.khattar@basf.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

47. 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.

48. This CAFO does not affect Respondent’s responsibilities to comply with FIFRA and other applicable federal, state, and local laws.

49. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

51. 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.

52. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:
BASF Corporation**

BASF Corporation, Respondent

January 20, 2017
Date

Sangeeta V. Khattar
Sangeeta Khattar
Regulatory Affairs Specialist
BASF Corporation

**In the Matter of:
BASF Corporation**

United States Environmental Protection Agency, Complainant

January 30, 2017
Date


Ignacio L. Arráola
Acting Director
Land and Chemicals Division

In the Matter of:
BASF Corporation
Docket No. FIFRA-05-2017-0008

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.

February 3, 2019
Date



Ann Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

In the matter of: BASF Corporation

Docket Number: _____

FIFRA-05-2017-0008

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on 2/7/2017, in the following manner to the addressees:

Copy by Email to
Respondent:

Sangeeta Khattar
sangeeta.khattar@basf.com

Copy by E-mail to
Attorney for Complainant:

Eaton Weiler
weiler.eaton@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: _____

February 7, 2017 L Whitehead

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5