



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
MAR 01 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7672 0984

BASF Corporation
ATTN: Steven J. Goldberg
100 Campus Drive
Florham Park, New Jersey 07932

Consent Agreement and Final Order
BASF Corporation Docket No. FIFRA-05-2012-0005

Dear Mr. Goldberg:

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, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 42 and 43. Please be certain that the number **BD 2751245P004** and the docket number are written on both the transmittal letter and on the check. Payment is due by April 1, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED

MAR 01 2012

REGIONAL HEARING CLERK
USEPA

In the Matter of:)

BASF Corporation)
Florham Park, New Jersey)

Respondent.)
_____)

Docket No. FIFRA-05-2012-0005 REGION 5

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

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 the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is BASF Corporation, a corporation doing business at 100 Campus Drive, Florham Park, 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 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 importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

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 the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (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 a pesticide which is adulterated or misbranded.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “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.

14. Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), defines a pesticide as “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the net weight or measure of the content.

15. 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.

16. 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).

17. 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.

18. 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.

19. 40 C.F.R. § 156.10, states in pertinent part, that every pesticide product shall bear a label containing (i) the name, brand, or trademark under which the product is sold; (ii) the name and address of the producer, registrant, or person for whom produced; (iii) the net contents; (iv) the product registration number; (v) the producing establishment number; (vi) an ingredient statement; (vii) hazard and precautionary statements; (viii) the directions for use; and (ix) the use

classification(s).

20. The Administrator of EPA may assess a civil penalty against any registrant or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 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, and was at all times relevant to this Complaint, a corporation and, therefore, is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. On or about December 12, 2011, Panalpina Inc., located at 19409 Kenswick Drive, Humble, Texas 77338 was a broker/agent for Respondent for the import shipment under entry number 554-5080588-6.

23. On or about December 12, 2011, Panalpina Inc. submitted a NOA, on behalf of the importer of record, under entry number 554-5080588-6, to EPA for an import shipment of the pesticide "Poast Manufacturer Concentrate," EPA Registration Number (EPA Reg. No.) 7969-56, from Japan.

24. The importer of record listed on the NOA for the shipment under entry number 554-5080588-6 was BASF Corporation.

25. On or about December 12, 2011, one shipment consisting of six ISO tanks containing a total net weight of 120,110 kilograms of "Poast Manufacturer Concentrate" entered into the United States at the Chicago, Illinois port of entry.

26. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

27. On or about December 12, 2011 , Respondent distributed or sold the pesticide product “Poast Manufacturer Concentrate,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

28. The labels on each of the six ISO tanks of “Poast Manufacturer Concentrate” that entered into the United States on or about December 12, 2011 were false or misleading because some information contained on the affixed label conflicted with the EPA accepted label, dated September 18, 2009.

29. In particular, each of the six ISO tanks of “Poast Manufacturer Concentrate” had an international label affixed to it that identified the product as “SETHOXYDIM (HERBICIDE).”

30. The international label also included the signal word “WARNING.”

31. The EPA accepted label, dated September 18, 2009, requires the product label to include the signal word “CAUTION/PRECAUCION.”

32. The international label also included the following language: “IN CASE OF FIRE Use water spray (fog), foam, dry chemical, or CO₂.”

33. This language was not on EPA accepted label, dated September 18, 2009.

34. The international label also included the following language: “IN CASE OF SPILL Sweep and remove. Flush spill area with water.”

35. The EPA accepted label, dated September 18, 2009, requires the product label to include the following language: “Keep spill out of all sewers and open bodies of water.”

36. Additionally, the label affixed to each ISO tank did not contain the net contents.

Specific Allegations

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this Complaint.

38. On or about December 12, 2011, Respondent distributed or sold the pesticide product "Poast Manufacturer Concentrate," in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

39. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), 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) for each separate unlawful act.

Civil Penalty And Other Relief

40. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

41. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$7,500.

42. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. 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 "In the Matter of BASF Corporation," the docket number of this CAFO and the billing document (BD) number.

43. 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-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

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

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

45. 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. § 1367(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

46. 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.

47. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

48. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Section 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

General Provisions

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

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

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

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

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

54. 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.

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

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

**In the Matter of:
BASF Corporation**

BASF Corporation, Respondent


Feb 7 2012
Date

Steven J. Goldberg
Steven J. Goldberg
Vice President & Associate General Counsel
Regulatory & Government Affairs
BASF Corporation

In the Matter of:
BASF Corporation

United States Environmental Protection Agency, Complainant

2/27/12
Date


Margaret M. Guerriero
Director
Land and Chemicals Division


**In the Matter of:
BASF Corporation
Docket No. FIFRA-05-2012-0005**

RECEIVED
MAR 07 2012
REGIONAL HEARING CLERK
USEPA
REGION 5

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.

2-29-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
MAR 01 2012

REGIONAL HEARING CLERK
USEPA
REGION 5

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in the resolution of the civil administrative action involving BASF Corporation, was filed on March 1, 2012 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 7672 0984, a copy of the original to the Respondent:

BASF Corporation
ATTN: Steven J. Goldberg
100 Campus Drive
Florham Park, New Jersey 07932

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, 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-05-2012-0005

