



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

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

JAN 24 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John R. Erickson
Attorney at Law
BASF Corporation
100 Park Avenue
Florham Park, New Jersey 07932

Re: BASF Corporation
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2011-9187

Dear Mr. Erickson:

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.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

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 any environmental enforcement actions taken by the U.S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mr. Phillip Beard of the EPA Region 4 staff at (404) 562-9012.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony G. Toney".

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondents.

3. 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

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Phillip Beard
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. Respondent BASF Corporation is incorporated in the State of New Jersey, and its North American headquarters for the BASF Crop Protection Division and BASF Plant Science LP are located in Research Triangle Park, North Carolina. Respondent also owns and operates manufacturing plants and/or other business operations in each of the eight EPA-Region 4 states.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), in that it is a corporation, and as such is subject to FIFRA and the regulations promulgated thereunder.

7. Respondent is a “registrant” as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y) in that it is a person who has registered pesticides pursuant to the provisions of FIFRA.
8. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), in that it is a person who manufactures, prepares, compounds, propagates, or processes any pesticide.
9. “Pesticide” is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean 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 produces pesticides “to distribute or sell” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that the pesticides are held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver.

III. Specific Allegations

12. On August 12, 2011, Respondent voluntarily self-disclosed to EPA in writing that it had discovered that it had potentially violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling and distributing an unregistered pesticide as more fully described herein.

13. Respondent's self-disclosure stated that Respondent may have violated FIFRA by selling an unregistered pesticide, Protectol GA 50, to a customer who applied the Protectol GA 50 to a kaolin product to prevent growth of microbes in the kaolin during transport. The Material Safety Data Sheet (MSDS) for Protectol GA 50 that Respondent sent to the customer stated that Protectol GA 50 was to be used as a "preserving agent and disinfectant." The inclusion of "disinfectant" is considered to constitute a pesticidal claim. Therefore, the Protectol GA 50 that Respondent sold to its customer for use as a biocide to treat kaolin was considered to be a pesticide which was required to be registered pursuant to Section 3 of FIFRA. It is a violation of FIFRA Section 12(a)(1)(A) to distribute or sell unregistered pesticides.
14. The Protectol GA 50 that Respondent sold to its customer was also misbranded in that the label failed to bear required labeling requirements such as a signal word, directions for use statement, ingredients statement, first aid statement and text which did not appear in the English language. The product was further misbranded in that a copy of the accepted label was not attached to the shipping papers, and left with the consignee at the time of delivery via tank truck.
15. Respondent also shipped to the same customer noted above, a sample of a registered pesticide called Myacide GA 50, EPA Registration Number 33753-31. This product sample was misbranded in that the label failed to bear required labeling requirements such as the ingredients statement and EPA Registration Number and EPA Establishment Number. It is a violation of FIFRA Section 12(a)(1)(E) to distribute or sell any pesticide which is misbranded.

16. The self-disclosed violations consist of a total of three shipments. They were all shipped to the same customer but on different dates. The Glutaraldehyde 50% Solution Low Methanol sample was shipped on May 10, 2011. The Protectol GA 50 was shipped on July 14, 2011 via tank truck. The Myacide GA 50 sample was shipped on July 26, 2011.
17. Respondent's business included distributing or selling pesticides.
18. Pesticides that are sold and distributed in the United States are required to be registered with the EPA pursuant to Section 3 of FIFRA.
19. 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.
20. By selling and shipping the unregistered Glutaraldehyde 50% Solution Low Methanol and Protectol GA 50 products, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least two occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. Pursuant to FIFRA Section 2(q)(1)(F), 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if its labeling accompanying it does not contain directions for use statement, ingredients statement, first aid statement, signal word and text which did not appear in the English language.
22. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.
23. By shipping the misbranded products Glutaraldehyde 50% Solution Low Methanol, Protectol GA 50, and Myacide GA 50, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least three occasions and is therefore subject to

- the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. 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.
 25. The EPA's Audit Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," allows for reduction of the gravity-based civil penalty assessed against a party who self discloses violations if the self-disclosure meets the conditions set forth in the Audit Policy. Based on a review of the Respondent's self-disclosure, the EPA has determined that Respondent met all conditions except condition 1 of the Audit Policy and is entitled to a 75 percent reduction of the gravity-based penalty.
 26. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the 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.
 27. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and after applying a 75 percent reduction to the penalty as noted in Paragraph 26 above, the EPA proposes to assess a total civil penalty of **SIX THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$6,575)** 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

28. 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.

29. 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.
30. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
31. Respondent certifies that as of the date of its execution of this CAFO, it is, to the best of its knowledge, in compliance with all relevant requirements of FIFRA.
32. 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 the 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.
33. 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

34. Respondent is assessed a civil penalty of **SIX THOUSAND FIVE HUNDRED SEVENTY FIVE DOLLARS (\$6,575)** which shall be paid within 30 days from the effective date of this CAFO.
35. Respondent shall remit the penalty payment 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.**

36. 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;

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

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

37. 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.
38. 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, the 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.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent, its successors and assigns.
41. 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 it.

The remainder of this page intentionally left blank.

VI. Effective Date

42. 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: BASF Corporation
Docket No.: FIFRA 04-2011-9187

Jas/Nov

By: Thomas Heidenfelder (Signature) Date: 12/06/2012

Name: Heidenfelder (Typed or Printed)

Title: Business Manager (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Beverly H. Banister (Signature) Date: 12.17.12
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 24 day of January 2013.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

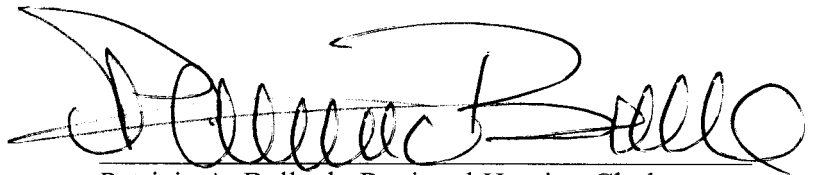
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of BASF Corporation, Docket Number: FIFRA-04-2011-9187, to the addressees listed below:

Mr. John R. Erickson (via Certified Mail, Return Receipt Requested)
Attorney at Law
BASF Corporation
100 Park Avenue
Florham Park, New Jersey 07932

Phillip Beard (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 1-24-13



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511