



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 9, 2021

VIA EMAIL ONLY

BDP International, Inc.

c/o

Ms. Amy L. Wachs

HUSCH BLACKWELL LLP

190 Carondelet Plaza, Suite 600

St. Louis, Missouri 63105-3433

Amy.Wachs@huschblackwell.com

Consent Agreement and Final Order
In the Matter of BDP International, Inc.
Docket Number **FIFRA-05-2021-0022**

Ms. Wachs:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on August 9, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$17,800 is to be paid in the manner described in paragraphs 36-37 of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

ABIGAIL
WESLEY

Digitally signed by
ABIGAIL WESLEY
Date: 2021.08.03
09:46:22 -05'00'

Abigail Wesley
Enforcement Officer
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2021-0022
)	
BDP International, Inc.)	Proceeding to Assess a Civil Penalty
Philadelphia, Pennsylvania)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
)	Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.)	
<hr style="border: 1px solid black;"/>		

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 Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is BDP International, Inc. (BDP), a corporation doing business at 510 Walnut Street, Suite 14, Philadelphia, Pennsylvania 19106-3619.

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 and alleged violations 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 (U.S.) 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 Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.110 *et seq.* See also 19 C.F.R. § 12.1(b).

11. 19 C.F.R. § 12.112(a) states, in pertinent part, that an importer or an importer's agent desiring to import pesticides into the U.S. shall submit to the EPA, prior to the arrival of the shipment in the U.S., a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

12. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), states that it is unlawful for any person who is a distributor to fail to file reports required by 7 U.S.C. Title 7, Chapter 6, Subchapter II.

13. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).

14. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf.

15. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

16. 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).

17. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), states 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 \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 247 (December 23, 2020).

General Allegations

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

19. Respondent is, and was at all times relevant to this CAFO, an “importer’s agent” as that term is defined in 19 C.F.R. § 101.1 because Respondent was the licensed customs broker for each shipment listed in this CAFO.

20. On May 2, 2021, an importer, Janssen Pharmaceutical, imported **Econea Technical II**, EPA Registration Number (EPA Reg. No.) 43813-52, Entry Number 916-44360298, into the U.S. through the Cincinnati, Ohio Port of Entry.

21. **Econea Technical II**, EPA Reg. No. 43813-52, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

22. On May 17, 2021, the Respondent, as the importer’s agent, submitted a hardcopy NOA via electronic communication to the EPA for this import shipment.

23. Respondent did not submit an NOA to the EPA for this shipment prior to the arrival of the shipment into the U.S.

24. On May 3, 2021, an importer, Janssen Pharmaceutical, imported **Zinc Pyrion Powder Industrial Microbiostat**, EPA Reg. No. 43813-45, Entry Number 916-44423955, into the U.S. through the Cincinnati, Ohio Port of Entry.

25. **Zinc Pyrion Powder Industrial Microbiostat**, EPA Reg. No. 43813-45, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

26. On May 17, 2021, the Respondent, as the importer’s agent, submitted a hardcopy NOA via electronic communication to the EPA for this import shipment.

27. Respondent did not submit an NOA to the EPA for this shipment prior to the arrival of the shipment into the U.S.

Count 1

28. The preceding paragraphs are incorporated by reference.

29. Respondent’s failure to submit an NOA to the EPA for **Econea Technical II**, EPA Reg. No. 43813-52, Entry Number 916-44360298, prior to the arrival of the shipment into the U.S., constitutes a violation of Section 12(a)(2)(N) of FIFRA.

30. Respondent’s violation of Section 12(a)(2)(N) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA.

Count 2

31. The preceding paragraphs are incorporated by reference.

32. Respondent's failure to submit an NOA to the EPA for **Zinc Pyrion Powder Industrial Microbiostat**, EPA Reg. No. 43813-45, Entry Number 916-44423955, prior to the arrival of the shipment into the U.S., constitutes a violation of Section 12(a)(2)(N) of FIFRA.

33. Respondent's violation of Section 12(a)(2)(N) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA.

Civil Penalty and Other Relief

34. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(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.

35. Based on an evaluation of the facts alleged in this CAFO, 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 \$17,800.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,800 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "BDP International, Inc." and the docket number of this CAFO.

37. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
whitehead.ladawn@epa.gov

Abigail Wesley
wesley.abigail@epa.gov

Nidhi K. O'Meara
omeara.nidhi@epa.gov

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

39. If Respondent does not pay the civil penalty in a timely manner, 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.

40. 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

41. Consistent with the Standing Order Authorizing E-Mail Service of Orders 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 for their respective representatives:

omeara.nidhi@epa.gov (attorney for Complainant), and Amy.Wachs@huschblackwell.com (attorney for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

43. 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.

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

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

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

47. 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.

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

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

**In the Matter of:
BDP International, Inc.**

BDP International, Inc., Respondent

07/30/2021

Date

Tracy G
Dunnagan  Digitally signed by Tracy G Dunnagan
Date: 2021.07.30 11:49:06 -04'00'

Tracy G. Dunnagan,
Director of Global Compliance
BDP International, Inc.

**In the Matter of:
BDP International, Inc.**

United States Environmental Protection Agency, Complainant

**Harris,
Michael**

Digitally signed by Harris,
Michael
Date: 2021.08.05
11:09:51 -05'00'

Michael D. Harris, Director
Enforcement & Compliance Assurance Division

In the Matter of:
BDP International, Inc.
Docket No. FIFRA-05-2021-0022

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2021.08.05
13:11:42 -05'00'

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

Consent Agreement and Final Order
In the Matter of: BDP International, Inc.
Docket Number: **FIFRA-05-2021-0022**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2021-0022**, which was filed on **August 9, 2021**, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant: Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Respondent: Amy L. Wachs
Amy.Wachs@huschblackwell.com

Copy by E-mail to
Regional Judicial Officer: Ms. Ann Coyle
coyle.ann@epa.gov

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