

RECEIVED

13 MAR -7 AM 11:22

HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BASF CORPORATION
Florham Park, New Jersey

Respondent

)
)
) DOCKET NO.
) FIFRA-10-2013-0057

)
) CONSENT AGREEMENT
) FINAL ORDER
)
)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and BASF Corporation (“Respondent”) hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed

2.3. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of FIFRA.

III. ALLEGATIONS

3.1. BASF Corporation (Respondent) is a “person” as defined in FIFRA § 2(s) and the registrant of Outlook Herbicide (EPA Reg. No. 7969-156).

3.2. Respondent’s headquarters is located at 100 Park Avenue in Florham Park, New Jersey.

3.3. Valley Agronomics, LLC (Valley Ag) owns and operates a business facility located at 310 Jackson Street in Kimberly, Idaho. This facility is registered as an EPA pesticide-producing establishment under EPA Est. No. 063299-ID-007 and has been a pesticide-producing establishment since 2008.

3.4. Valley Ag repackages Outlook Herbicide at the Kimberly, Idaho, facility under an agreement with Respondent.

3.5. Valley Ag sold or distributed Outlook Herbicide on at least 24 separate occasions in 2009 with outdated labels provided by Respondent that did not include up-to-date warning or caution statements adequate to protect human health and the environment.

3.6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

3.7. 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 requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.

3.8. Valley Ag distributed or sold misbranded pesticides on at least 24 separate occasions in 2009.

3.9. Respondent's sale and distribution of its products through Valley Ag with outdated labels constitutes distribution or sale of misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.10. These violations subject Respondent to the payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

3.11. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

IV. CONSENT AGREEMENT

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order.

4.4. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA.

4.5. Respondent states that it enhanced its label delivery kits in January 2011 to include additional instructions on proper FIFRA labeling. According to Respondent, these enhanced delivery kits include the most current labels and instructions on discarding old labels, and are transmitted with each product shipment to all bulk repackaging customers. Respondent states that it also has enhanced the guidance on obtaining additional labels and proper labeling requirements in its annual repackaging agreements with all its bulk repackaging customers.

4.6. Respondent consents to the assessment of a civil penalty in the amount of ONE HUNDRED NINE THOUSAND, EIGHT HUNDRED FORTY DOLLARS (\$109,840). Respondent consents to issuance of the Final Order set forth in Part V, below, and to payment of this penalty within 30 days of the effective date of the Final Order.

4.7. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this case.

4.8. Respondent shall serve photocopies of the checks described in Paragraph 4.6, above, on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Chad Schulze
U.S. Environmental Protection Agency, Region 10
Pesticides and Toxics Unit, OCE-084
1200 Sixth Avenue, Suite 900

Seattle, Washington 98101

4.9. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.10. Should Respondent fail to pay any portion of the penalty assessed herein in full by its due date, Respondent shall also be responsible for payment of the following amount.

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(2), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.11. The penalty described in Paragraph 4.6, above, including any additional costs incurred under Paragraph 4.10, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.13. Respondent shall bear its own costs and attorneys fees in connection with this matter.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

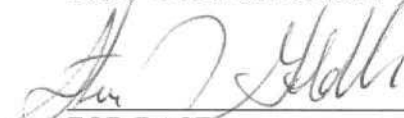
4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

For Respondent:

DATED:

2/28/2013

BASF CORPORATION:




FOR BASF

For Complainant:

DATED:

3/6/2013

U.S. ENVIRONMENTAL PROTECTION AGENCY:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10


V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all civil claims under FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 7th day of March, 2013.


Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : BASF CORPORATION, Docket No.: FIFRA-10-2012-0057**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Christina L. Good
Senior Counsel – Product and Trade Regulation
BASF Corporation Legal Department
Florham Park, New Jersey 07932

DATED this 17th day of March, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

