



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

APR 08 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7666 6602

Mr. James Fasel  
601 Holbrook Road  
Glenwood, Illinois 60425

Consent Agreement and Final Order **FIFRA-05-2011-0010**

Dear Mr. Fasel:

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 April 8, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 37 thru 38. Please be certain that the number **BD 2751145P009** and the docket number are written on both the transmittal letter and on the check. Payment is due by May 8, 2011 (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 "J. Lukascyk", followed by the words "for" and a small mark.

Joseph Lukascyk  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Docket No. FIFRA-05-2011-0010

BZB, Inc.  
d/b/a Busy Bee Nursery, Inc.  
Glenwood, Illinois,

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APR - 8 2011

REGIONAL HEARING CLERK  
USEPA  
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)

Respondent.

**Consent Agreement and Final Order Commencing and Concluding the Proceeding**

**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, by lawful delegation, the Director, Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. The Respondent is BZB, Inc. d/b/a Busy Bee Nursery, Inc., a corporation doing business in the state of Illinois.
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 term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

11. The term “distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) as, “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

12. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

13. According to the Regulations at 40 C.F.R. § 152.132, supplemental distribution is permitted upon written notification to EPA by both the registrant and the distributor, provided that all of the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the distributor.

Supplemental distribution allows the registrant to distribute or sell the registered product under another person's name and address, and such distribution and sale is termed "supplemental distribution," and the product is referred to as a "distributor product."

14. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor's company number.

15. According to 40 C.F.R. § 152.132, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

16. According to 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

17. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is "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.

18. 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 (adulterated or) misbranded.

19. According to the regulations at 40 C.F.R. § 169.2(a), all producers of pesticides shall maintain the following records: Records showing the product name, EPA Registration Number, amounts per batch and batch identification of all pesticides produced.

20. According to the regulations at 40 C.F.R. § 169.2(d), all producers of pesticides shall maintain the following records: Records showing the following information regarding the shipment of all pesticides, devices, and active ingredients used in producing pesticides: brand name of pesticide or the common or chemical name of the pesticide active ingredient, name and address of consignee, name of originating carrier, date shipped or delivered for shipment, quantities shipped or delivered for shipment.

21. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

22. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA, of up to \$7,500 for each offense of FIFRA under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

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

24. Respondent did, at all times relevant to this Complaint, “distribute or sell” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

25. At all times relevant to this Complaint, Respondent was a “producer” as that term is defined at Section 2(w) of FIFRA, 7 U.S.C. 136(w), the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

26. The term “producer” is further defined at 40 C.F.R. § 167.3 and means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

27. On or about November 27, 2000, Basic Chemical Solutions, LLC (BCS) registered with the EPA its pesticide product “Sodium Hypochlorite Solution (12.5%),” EPA Reg. No.70567-2.

28. “Sodium Hypochlorite Solution (12.5%),” EPA Reg. No.70567-2, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

29. On or about July 16, 2007, Respondent and BCS, submitted to EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) allowing Respondent to distribute BCS’s registered pesticide product, “Sodium Hypochlorite Solution

(12.5%),” EPA Reg. No.70567-2, under Respondent’s brand name “Chlorine,” EPA Reg. No. 70567-2-74524.

30. On or about September 8, 2009, an inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at Busy Bee Nursery, located at 19529 South Halsted, Glenwood, Illinois 60425, to examine and collect samples of any pesticides packaged, labeled, and released for shipment, and to inspect and obtain copies of those records specified in Section 8 of FIFRA, and 40 C.F.R. Part 169.

31. During the September 8, 2009 inspection, the IDA inspector observed and collected documentary samples of the pesticide product “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524. The IDA inspector also noted that Respondent repackaged the previously mentioned pesticide product that was supposed to be distributed under the brand name, “Chlorine”, pursuant to Respondent’s July 2007 Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) submitted to EPA, as noted in Paragraph 29. This action constituted a misbranding of a regulated pesticide product by Respondent and a violation of Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

32. During the inspection of September 8, 2009, the IDA inspector noted that Respondent failed to maintain production records of the pesticide products it produced. Specifically, the IDA inspector noted that Respondent failed to maintain any production records for “Sodium Hypochlorite Solution (12.5%),” which Respondent was selling under the name “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)”. This action constituted a failure to

maintain proper records of production of a regulated pesticide product and a violation of 40 C.F.R. § 169.2(a).

33. During the inspection of September 8, 2009, the IDA inspector noted that Respondent failed to maintain shipping records of the pesticides that it had distributed or sold. Specifically, the IDA inspector noted that Respondent failed to maintain any shipping records for “Sodium Hypochlorite Solution (12.5%),” which Respondent was selling under the name “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)”. This action constituted a failure to maintain proper records of distribution and sale of a regulated pesticide product and a violation of 40 C.F.R. § 169.2(d).

34. During the inspection of September 8, 2009, the IDA inspector noted that the label of the pesticide product “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524 had the illegal Brand Name “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” instead of the distributor Brand Name “Chlorine.” Because “Busy Bee Nursery Sodium Hypochlorite Solution (12.5%),” EPA Reg. No. 70567-2-074524 was packaged, labeled, and released for shipment or sale, Respondent “distributed or sold” this misbranded pesticide product. This action constituted a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### **Civil Penalty**

35. 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 \$10,206.00. 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.

36. Respondent asserted an inability to pay claim and submitted to EPA income tax statements and financial documents. Based on EPA's ability to pay analysis, EPA has determined that Respondent does not have an ability to pay a \$10,206.00 penalty amount, but does have the ability to pay a partial penalty of \$1,000.00.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,000.00 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. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197

for checks sent by express mail:

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
Contact: Natalie Pearson  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

The check must note the following: the case name, the docket number of this CAFO and the billing document number (BD number).

38. A transmittal letter stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document 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

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

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

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

40. 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.

41. 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**

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

43. 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.

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

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 and its successors, and assigns.

47. Each person signing this agreement certifies that he or she has the authority to sign this agreement 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.

50. The effective date of this CAFO is the date the Complainant files it with the Regional Hearing Clerk.


**BZB, Inc. d/b/a Busy Bee Nursery, Inc., Respondent**

March 21, 2011  
Date

  
James Fasel  
President  
BZB, Inc. d/b/a Busy Bee Nursery, Inc.

**United States Environmental Protection Agency, Complainant**

4/4/11  
Date

  
Bruce Sypniewski  
Acting Director  
Land and Chemicals Division

**In the Matter of:**  
**BZB, Inc., d/b/a Busy Bee Nursery, Inc.**  
**Docket No. FIFRA-05-2011-0010**

**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.

4-5-2011

Date



Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

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USEPA  
REGION 5**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
APR 8 2011  
OFFICE OF REGIONAL  
COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving BZB, Inc., d/b/a Busy Bee Nursery, Inc., was filed on April 8, 2011 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 7666 6602, a copy of the original to the Respondent:

Mr. James Fasel  
601 Holbrook Road  
Glenwood, Illinois 60425

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Thomas Turner, 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

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