



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

'JAN 24 2012'

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Michael C. Ford, Esq.  
CityScape Tower  
1 East Washington Street, Suite 1200  
Phoenix, Arizona 85004

Re: Genesis Biosciences, Inc.  
Docket No. FIFRA 04-2012-3006(b)

Dear Mr. Ford:

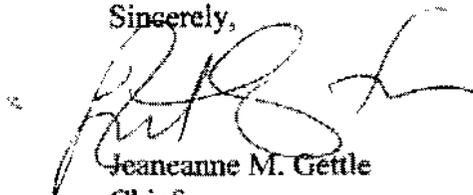
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the assessed penalty of \$3,240 is due within 30 days from the effective date. Please ensure that the face of your clients' cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Ms. Heather Russell either by telephone at (513) 487-2044 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call Mr. Phillip Beard at (404) 562-9012.

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 EPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeaneanne M. Géttle', written over the typed name.

Jeaneanne M. Géttle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

cc: Tommy Gray, Program Director, Georgia Dept. of Agriculture

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2012 JAN 24 PM 2:42  
HEARING CLERK

In the Matter of: )  
 )  
Genesis Biosciences, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: FIFRA-04-2012-3006(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Genesis Biosciences, Inc.
2. 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**

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136f(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
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 is Genesis Biosciences, Inc., a Georgia corporation, located at 696 Winer Industrial Way, Lawrenceville, Georgia, 30046.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.

## **III. Specific Allegations**

7. On or about May 24, 2010, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 696 Winer Industrial Way, Lawrenceville, Georgia, 30046.
8. During the aforementioned inspection, the product "BEC 502" was identified as being sold and/or distributed by Respondent and offered for sale on Respondent's website. At that time, Respondent made pesticidal claims on its website that application of BEC 502 would "inhibit algae growth" and "prevent... periods of excessive algae growth."

9. Based on the pesticidal claims that were made by Respondent for BEC 502 on its website, at the time of sale and/or distribution of BEC 502, it was a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. The term “antimicrobial pesticide” is defined in Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), to include a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms. BEC 502 was an antimicrobial pesticide at the time of the inspection based on the pesticidal claims that it could inhibit or prevent the growth of algae.
11. 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).
12. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any state to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
13. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
14. At the time of the inspection, Respondent distributed and/or sold BEC 502 which was not registered as a pesticide with the EPA.

15. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
16. 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.
17. 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.
18. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **THREE THOUSAND TWO HUNDRED FORTY DOLLARS (\$3,240)** against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

19. 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.
20. 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.
21. 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.
22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.

23. 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.
24. 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**

25. Respondent is assessed a civil penalty of **THREE THOUSAND TWO HUNDRED FORTY DOLLARS (\$3,240)** which shall be paid within 30 days from the effective date of this CAFO.
26. Respondent shall remit the penalty 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.**

Alternatively, Respondent shall remit the penalty by wire transfer. The wire transfer shall be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA – 021030004  
Account – 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”  
Field Tag 6000 should reference the name of this matter and the  
docket number of this CAFO.

27. At the time of payment, Respondent shall send a written statement that the payment is being made in accordance with this CAFO along with a wire transfer transaction report or a separate copy of the check, 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.

28. 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.
29. Pursuant to 31 U.S.C. § 3717, the 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. Interest will therefore begin to accrue on the civil penalty from the

effective date of this CAFO, if the penalty is not paid by the date required. 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.

30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns. 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 is intentionally left blank.**

**VI. Effective Date**

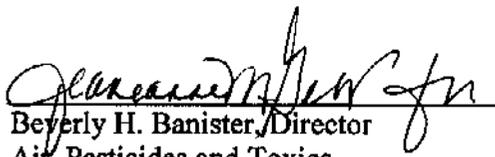
32. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

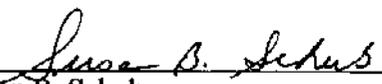
**Respondent: Genesis Biosciences, Inc.**  
**Docket No.: FIFRA-04-2012-3006(b)**

By:  (Signature) Date: Jan. 6, 2012  
Name: Mark Furnia (Typed or Printed)  
Title: CFO (Typed or Printed)

**Complainant: U.S. Environmental Protection Agency**

By:  Date: 1-19-2012  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

APPROVED AND SO ORDERED this 24<sup>th</sup> day of January 2012.

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

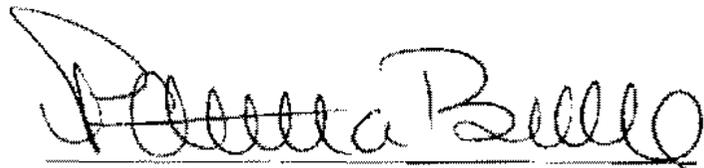
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order. In the Matter of Genesis Biosciences, Inc., Docket Number: FIFRA-04-2012-3006(b), to the addressees listed below.

Michael C. Ford, Esq. (via Certified Mail, Return Receipt Requested)  
CityScape Tower  
1 East Washington Street, Suite 1200  
Phoenix, Arizona 85004

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

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

Date: 1-24-12



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