

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 7  
2017 JAN -3 AM 9:41

IN THE MATTER OF

BASF Corporation

Respondent

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Docket No. FIFRA-07-2017-0005

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), electronic/facsimile filing of page 13 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: 1-3-17

  
Kate Clever  
Regional Judicial Officer

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION 7  
2017 JAN -3 AM 9:41

**BEFORE THE ADMINISTRATOR**

In the Matter of: )  
 )  
 **BASF Corporation** ) **Docket No. FIFRA-07-2017-0005**  
 )  
 Respondent )  
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**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and BASF Corporation (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is BASF Corporation with offices located in New Jersey and North Carolina.

## Section III

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

10. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

13. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for these violations. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, which amend 40 C.F.R. Part 19, so that penalties of up to \$7,500 per day are now authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$18,750 are authorized for violations that occur after November 2, 2015.

## Section IV

### General Factual Allegations

14. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

15. On or about December 19, 2013 and February 20, 2014, a Missouri Department of Agriculture (MDA) inspector conducted a routine producer establishment inspection at the Whitmire Micro-Gen Research Laboratory located at 3568 Tree Court Industrial Boulevard, St. Louis, Missouri (hereinafter “February Inspection”).

16. During the February Inspection, approximately nineteen (19) of Respondent’s registered product labels were collected. The BASF representative certified that the collected labels were identical to the label attached to products packaged, labeled, and offered for shipment.

17. Specifically, the Inspector collected the ULD HydroPy-300 product label bearing the EPA Registration Number (Reg. No.) 499-511.

18. On or about October 7, 2014, an MDA inspector conducted a routine market place inspection at the St. Charles County Co-Operative Co. located at 24 Main Street, St. Charles Missouri (hereinafter “October Inspection”).

19. During the October Inspection, approximately five (5) of Respondent’s registered product labels were collected. The St. Charles County Co-Operative Co. representative certified in writing that the collected labels were identical to the labels attached to bulk tanks at its facility and to the labels attached to repackaged products sold to customers. Invoices documenting the sale of these products were also collected.

20. Specifically, the following product labels were collected during the October Inspection:

- (i) BASF Prowl H<sub>2</sub>O Herbicide bearing the EPA Reg. No. 241-418.
- (ii) BASF RUP Guardsman Max Herbicide bearing the EPA Reg. No. 7969-192.
- (iii) BASF Extreme Herbicide bearing the EPA Reg. No. 241-405.

**Violations**

21. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

**Count 1**

22. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

23. On or about October 7, 2014, Respondent's registered product, BASF Prowl H<sub>2</sub>O Herbicide was being held for sale or distribution in a bulk storage tank located at the St. Charles County Co-Operative Co. facility.

24. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF Prowl H<sub>2</sub>O was identical to the label attached to the bulk storage tank located on-site.

25. The collected label failed to contain the complete container handling instructions and directions for use.

26. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, being held for sale or distribution, was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to

appear on the label.

**Count 2**

27. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

28. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF Prowl H<sub>2</sub>O was identical to the label attached to a bulk container which was repackaged and sold on May 20, 2014. The invoice for the sale of BASF Prowl H<sub>2</sub>O on May 20, 2014 was collected.

29. The collected label failed contain the complete container handling instructions and directions for use.

30. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product was sold or distributed and was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 3**

31. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

32. On or about October 7, 2014, Respondent's registered product, BASF RUP Guardsman Max Herbicide was being held for sale or distribution in a bulk storage tank located at the St. Charles County Co-Operative Co. facility.

33. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF RUP Guardsman Max Herbicide was identical to the label attached to the bulk storage tank located on-site.

34. The collected label failed to contain the complete first aid statements, precautionary statements, correct personal protective equipment statement, complete storage and disposal instructions, and directions for use.

35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, being held for sale or distribution, was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 4**

36. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

37. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF RUP Guardsman Max Herbicide was identical to the label attached to a bulk container which was repackaged and sold on May 8, 2014. The invoice for the sale of BASF RUP Guardsman Max Herbicide on May 20, 2014 was collected.

38. The collected label failed to contain the complete first aid statements, precautionary statements, correct personal protective equipment statement, complete storage and disposal instructions, and directions for use.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product was sold or distributed and was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

**Count 5**

40. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if



fully stated herein.

41. On or about October 7, 2014, Respondent's registered product, BASF Extreme Herbicide was being held for sale or distribution in a bulk storage tank located at the St. Charles County Co-Operative Co. facility.

42. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF Extreme Herbicide was identical to the label attached to the bulk storage tank located on-site.

43. The collected label failed to contain complete product information and directions for use.

44. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, being held for sale or distribution, was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

#### **Count 6**

45. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

46. A representative of St. Charles County Co-Operative Co. certified in writing that the collected label for BASF Extreme Herbicide was identical to the label attached to a bulk container which was repackaged and sold on July 30, 2014. The invoice for the sale of BASF Extreme Herbicide on July 30, 2014 was collected.

47. The collected label failed to contain the complete product information and directions for use.

48. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),

when its registered product was sold or distributed and was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

### **Count 7**

49. The facts stated in paragraphs 14 through 20 are realleged and incorporated as if fully stated herein.

50. On or about February 20, 2014, a representative at the Whitmire Micro-Gen Research Laboratory certified in writing that Respondent's registered product, BASF UDL HydroPy-300 was being held for sale or distribution.

51. The representative certified in writing that the collected label for BASF UDL HydroPy-300 was identical to the label attached to the container of BASF UDL HydroPy-300 being held for sale or distribution.

52. The collected label failed to contain the complete precautionary statements, user safety requirements, user safety recommendations, environmental hazards statement, directions for use, and disposal instructions.

53. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, being held for sale or distribution, was misbranded for failing to include words, statements, or other information required by or under the authority of FIFRA to appear on the label.

### **Section V**

#### **Consent Agreement**

54. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent

proceeding to enforce the terms of the Final Order.

55. Respondent neither admits nor denies the factual allegations set forth above.

56. Respondent waives the right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

57. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

58. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

59. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

60. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.*, and all regulations promulgated thereunder.

61. The effect of settlement as described in Paragraph 62 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 60 above.

62. Full payment of the penalty proposed in this CAFO shall only resolve Respondent's liability for the violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

63. Full payment of the penalty proposed in this CAFO shall not in any case affect the right of the Agency 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 obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

64. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a mitigated penalty of Forty-One Thousand Forty Dollars (\$41,040) as set forth in Paragraph 1 of the Final Order.

65. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

66. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(d)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(c) and (d).

## **Section VI**

### **Final Order**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Forty-One Thousand Forty Dollars

(\$41,040) within thirty (30) days of the effective date of this Final Order. If by certified or cashier's check, payment shall identify Respondent by name and docket number and shall be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency  
Fines and Penalties - CFC  
PO Box 979077  
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219;


and

Kelley Catlin, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

**RESPONDENT**  
BASF Corporation

Date: Dec 19, 2016 By: 

Steven J Goldberg  
Print Name

Vice President, Deputy General Counsel &  
Title Assistant Secretary

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12-21-16

Karen Flournoy  
Karen Flournoy  
Director  
Water, Wetlands, and Pesticides Division

Date: 12/21/16

Kelley Catlin  
Kelley Catlin  
Office of Regional Counsel

IN THE MATTER OF BASF Corporation  
Docket No. FIFRA-07-2017-0005  
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**IT IS SO ORDERED. .**

Date: 1-3-17



Kate Clever  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 7



IN THE MATTER Of BASF Corporation, Respondent  
Docket No. FIFRA-07-2017-0005

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Orders were sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

catlin.kelley@epa.gov

Copy by First Class Mail to Respondent:

Ms. Christina Good, Esq.  
Assistant General Counsel  
Product and Trade Regulation  
BASF Corporation Legal Department  
100 Park Avenue  
Florham Park, New Jersey 07932

Dated: 1/3/17

A handwritten signature in black ink that reads "Kathy Robinson". The signature is written in a cursive style with a long horizontal flourish at the end.

Kathy Robinson  
Hearing Clerk, Region 7