



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

January 28, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7011 1150 0000 2643 8180

R. Lee Allen
Brandt Consolidated
2935 S. Koke Mill Road
Springfield, Illinois 62711

Consent Agreement and Final Order In the Matter of
Brandt Consolidated, Inc., Docket No. FIFRA-05-2015-0024

Dear Mr. Allen:

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 January 28, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$180,000 is to be paid in the manner described in paragraph 67. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 27, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

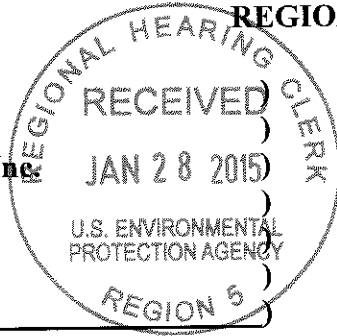
Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Brandt Consolidated, Inc.
Springfield, Illinois,

Respondent.



Docket No. FIFRA-05-2015-0024

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Brandt Consolidated, Inc. (Brandt), 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 currently complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

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

13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” as “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.” Also see 40 C.F.R. §152.3.

14. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines the term “pest” 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 which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

16. 40 C.F.R. § 152.15(a) states, in pertinent part, no person may distribute or sell any pesticide product that is not registered under FIFRA.

17. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

General Allegations

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

19. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 2935 South Koke Mill Road, Springfield, Illinois 62711.

20. On May 12, 2014, inspectors employed by the EPA and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Springfield, Illinois.

BRANDT enTree® Tree Injection System

21. During the May 12, 2014 inspection, the inspector collected information including a label, sticker, advertising literature, and distribution records for the **BRANDT enTree®** tree injection system that contained Tree-äge®.

22. The **BRANDT enTree®** tree injection system is a ready to use system that includes an injection bottle that is capable of being prefilled with several different potential products for attachment to a tree for treatment against insects and/or diseases.

23. Respondent has a website at www.brandt.co.

24. On or about at least April 7, 2014 to May 9, 2014, Respondent’s website lists a

number of products that can be placed into the injection bottle of the **BRANDT enTree**[®] tree injection system.

25. Respondent's website lists Tree-äge[®] as a product that can be placed into the injection bottle of the **BRANDT enTree**[®] tree injection system.

26. Respondent's website lists the active ingredient for Tree-äge[®] as emamectin benzoate 4%.

27. Respondent's website describes the **BRANDT enTree**[®] tree injection system as "a breakthrough technology that makes fertilizing and controlling insects and diseases in trees safer, easier, economical and effective."

28. The sticker collected during the May 12, 2014 inspection states that the **BRANDT enTree**[®] tree injection system contains "Tree-äge[®] 4.0% Emamectin benzoate" and "Contains: Tree-äge[®] 12.5% Water 87.5%."

29. Emamectin benzoate is a known insecticide that is registered with the EPA.

30. Therefore, the Tree-äge[®] 12.5% and Water 87.5% mixture (hereinafter "pesticide product") placed into the injection bottle of the **BRANDT enTree**[®] tree injection system is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15.

31. At all relevant times to this CAFO, the pesticide product placed into the injection bottle of the **BRANDT enTree**[®] tree injection system was not registered with the EPA, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

32. From on or about April 2, 2013 through on or about May 8, 2014, Respondent distributed or sold the **BRANDT enTree**[®] tree injection system containing the pesticide product to various customers located in the United States on 42 separate occasions.

Brandt Midnight Blue SS

33. On or about May 9, 2014, Respondent offered **Brandt Midnight Blue SS** for distribution or sale on its website with the statement: “It reflects the sun’s rays to help control excessive algae growth.”

34. Therefore, on May 9, 2014, **Brandt Midnight Blue SS** was a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15.

35. **Brandt Midnight Blue SS** was not registered with EPA on May 9, 2014, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Brandt Loch Ness SS

36. On or about May 9, 2014, Respondent offered **Brandt Loch Ness SS** for distribution or sale on its website with the statement: “It reflects the sun’s rays to help control excessive algae growth.”

37. Therefore, on May 9, 2014, **Brandt Loch Ness SS** was a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15.

38. **Brandt Loch Ness SS** was not registered with EPA on May 9, 2014, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Brandt Blue Shadow SS

39. On or about May 9, 2014, Respondent offered **Brandt Blue Shadow SS** for distribution or sale on its website with the statement: “It reflects the sun’s rays to help control excessive algae growth.”

40. Therefore, on May 9, 2014, **Brandt Blue Shadow SS** was a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15.

41. **Brandt Blue Shadow SS** was not registered with EPA on May 9, 2014, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Brandt Blue Lagoon SS

42. On or about May 9, 2014, Respondent offered **Brandt Blue Lagoon SS** for distribution or sale on its website with the statement: "It reflects the sun's rays to help control excessive algae growth."

43. Therefore, on May 9, 2014, **Brandt Blue Lagoon SS** was a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15.

44. **Brandt Blue Lagoon SS** was not registered with EPA on May 9, 2014, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Counts 1 through 42

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this CAFO.

46. From on or about April 2, 2013 through on or about May 8, 2014, Respondent distributed or sold an unregistered pesticide product contained in the **BRANDT enTree**[®] tree injection system, to various customers located in the United States on 42 different occasions.

47. Respondent's distribution or sale of the unregistered pesticide product contained in the **BRANDT enTree**[®] tree injection system, on 42 separate occasions, constitutes 42 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

48. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on 42 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) for each of the 42 separate violations of FIFRA.

Count 43

49. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this CAFO.

50. On or about May 9, 2014, Respondent distributed or sold the unregistered pesticide, **Brandt Midnight Blue SS**.

51. Respondent's distribution or sale of the unregistered pesticide, **Brandt Midnight Blue SS**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

52. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 44

53. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this CAFO.

54. On or about May 9, 2014, Respondent distributed or sold the unregistered pesticide, **Brandt Loch Ness SS**.

55. Respondent's distribution or sale of the unregistered pesticide, **Brandt Loch Ness SS**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

56. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 45

57. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this CAFO.

58. On or about May 9, 2014, Respondent distributed or sold the unregistered pesticide, **Brandt Blue Shadow SS**.

59. Respondent's distribution or sale of the unregistered pesticide, **Brandt Blue Shadow SS**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

60. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 46

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 44 of this CAFO.

62. On or about May 9, 2014, Respondent distributed or sold the unregistered pesticide, **Brandt Blue Lagoon SS**.

63. Respondent's distribution or sale of the unregistered pesticide, **Brandt Blue Lagoon SS**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

64. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty and Other Relief

65. 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 civil penalty under FIFRA.

66. 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, Federal Insecticide, Fungicide,*

and *Rodenticide Act*, dated December 2009, Complainant has determined the appropriate civil penalty to settle this action is \$180,000.

67. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a \$180,000 civil penalty in order to settle and resolve the alleged FIFRA violations. Respondent agrees to pay the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

Respondent agrees that the check will note "In the Matter of Brandt Consolidated, Inc.," and the docket number of this CAFO.

68. Respondent agrees that a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number will accompany the payment. Respondent agrees that it will 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

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

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

70. 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

71. Pursuant to 31 C.F.R. § 901.9, Respondent agrees to 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 pursuant to applicable law. Respondent agrees to pay a \$15 handling charge each month that any portion of the civil penalty is more than 30 days past due. In addition, Respondent agrees to pay a 6 percent per year civil penalty on any principal amount 90 days past due.

General Provisions

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

73. 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.

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

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

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


77. Each person signing this CAFO 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.

78. Each party agrees to bear its own costs and attorney's fees in this action.
79. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Brandt Consolidated, Inc.**


Brandt Consolidated, Inc., Respondent

12/18/14
Date


Bill Engel
Vice President

United States Environmental Protection Agency, Complainant

1/21/2015
Date



Margaret M. Guerriero, Director
Land and Chemicals Division

In the Matter of:
Brandt Consolidated, Inc.
Docket No. FIFRA-05-2015-0024

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.

1/26/2015
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

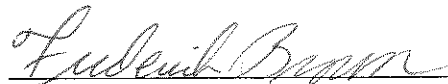
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Brandt Consolidated, Inc., was filed on January 5, 2015, 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. 7011 1150 0000 2643 8180, a copy of the original to the Respondent:

R. Lee Allen
Brandt Consolidated
2935 S. Koke Mill Road
Springfield, Illinois 62711

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Assistant Regional Counsel, 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

Docket No. FIFRA-05-2015-0024