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HEAR KG3 CLERK
FP4 - REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) DOCKET NO. FIFRA-10-2008-0159
BUCKMAN LABORATORIES, INC.) CONSENT AGREEMENT AND FINAL ORDER
Respondent)

I. STATUTORY AUTHORITY

- 1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136*l*(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, who in turn 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 Buckman Laboratories, Inc. ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

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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. 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. Respondent has a Distributor Agreement with CH2O, Inc in Olympia, Washington. This agreement allows CH2O to produce and distribute Respondent's product MECT-5-T (EPA Reg. No. 1448-171) under the CH2O brand name PACT-5 (EPA Reg. No. 1448-171-43553). According to 40 CFR §152.132, the distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.
- CH2O owns and operates a business facility located at 8820 Old Highway 99 3.2. Southeast in Olympia, Washington. This facility has been registered with EPA as a pesticideproducing establishment since July 17, 1980.
- On at least ten separate occasions in 2005, Respondent, through CH2O, produced, 3.3. sold, and distributed PACT-5 with labels that were misbranded. Respondent committed ten violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling and distributing pesticides which were misbranded in that the labels were missing critical updates to the first aid, directions for use, and the directions for disposal statements. 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).

- 3.4. Pursuant to FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$6,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.
- 3.5. EPA has determined that both the registrant and the distributor are to be held liable for this violation in accordance with 40 CFR §152.132. As the registrant, Respondent is ultimately responsible for the integrity of all PACT-5 produced, sold, and distributed by CH2O.

IV. CONSENT AGREEMENT

- 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein, but neither admits nor denies the specific factual allegations put forth by EPA. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order. Respondent also consents that this settlement will be considered prior history under FIFRA once finalized and consents to payment of the penalty as stated below.
- 4.2. Respondent consents to the assessment of a civil penalty in the amount of THIRTYFIVE-THOUSAND ONE-HUNDRED DOLLARS and no cents (\$35,100.00). Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in this paragraph within thirty (30) days of the effective date of this Final Order.
- 4.3. 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 delivered to the following address:

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US Bank - USEPA - Region 10 Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000

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

4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3, above, on the Regional Hearing Clerk and the 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, WA 98101

Attn: Erin Halbert
U.S. Environmental Protection Agency Region 10
Pesticides and Toxics Unit, OCE-084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

- 4.5. 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 under 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.
- 4.6. 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 amounts:
 - a. <u>Interest</u>: Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the accompanying Final Order, provided, however, that

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- 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. <u>Handling Charge</u>: Pursuant to 31 U.S.C. § 3717(e)(1), 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.
- 4.7. The penalty described in Paragraph 4.2, above, including any additional costs incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.
- 4.8. 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.
- 4.9. Respondent shall bear its own costs and attorneys fees in connection with this matter.
- 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.
- 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

DATED:

CHIO. INC. Buckman Laboratories, Inc.

Oct 7, 2008

Charles Brandenburg

CEO

For Respondent

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DATED: U.S. ENVIRONMENTAL PROTECTION AGENCY:

(0/28/08

MERCER ST. PETER Assistant Regional Counsel For Complainant

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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 claims for civil penalties pursuant to 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 regulations promulgated thereunder.
 - 5.3. This Final Order shall become effective upon filing.

RICHARD G. McALLISTER Regional Judicial Officer

U.S. Environmental Protection Agency

Region 10

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached CONSENT AGREEMENT AND FINAL ORDER in In the Matter of: Buckman Laboratories, Inc., DOCKET NO.: FIFRA-10-2008-0159 was filed with the Regional Hearing Clerk on November 3, 2008.

On November 3, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire US Environmental Protection Agency 1200 Sixth Avenue, ORC-158 Suite 900 Seattle, WA 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 on November 3, 2008, to:

Mr. Dennis Barbee, Operations Manager Buckman Laboratories, Inc. PO Box 80305 Memphis, TN 38108

DATED this 3rd day of November 2008.

Carol Kennedy

Regional Hearing Clerk

EPA Region 10