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DEPARTMENT OF AGRICULTURE
REGIONAL COUNSEL CLERK

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	
BASF Corporation)	Docket No. FIFRA-09-2009- <u>0002</u>
)	
)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
)	
Respondent.)	
)	

I. COMPLAINT/CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA"), and BASF Corporation ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C.

§136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, EPA, Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

3. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.

4. 19 C.F.R. § 12.111 provides that "all imported pesticides are required to be registered under the provisions of section 3 of the Act."

5. 19 C.F.R. § 12.112 provides that "an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices prior to the arrival of the shipment to the United States."

6. Section 12(a)(1)(E) of FIFRA provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.

7. Section 2(q)(1)(F) of FIFRA states a pesticide is

misbranded if its label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . is adequate to protect health and the environment.

8. Section 12(a)(1)(C) of FIFRA provides that it shall be unlawful for any person to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3.

C. ALLEGATIONS

9. Respondent is a New Jersey corporation and therefore, a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

10. Respondent produces a product named "Sovran" at its facility (the "Facility") in Germany.

11. "Sovran" is used to control or kill fungi.

12. Fungi are "pests" as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

13. "Sovran" is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

14. At all times relevant to this action, "Sovran" was registered with EPA.

15. On or about November 12, 2008, approximately 2,000 bags of "Sovran" that Respondent imported to the United States from

the Facility arrived at the Port of Los Angeles, California.

16. The 2,000 bags of "Sovran" that arrived at the Port of Los Angeles on or about November 12, 2008, carried labeling with inadequate directions for use.

17. The 2,000 bags of "Sovran" that arrived at the Port of Los Angeles on or about November 12, 2008 differed in composition from that described in its EPA registration statement.

18. On or about December 8, 2008, approximately 375 bags of "Sovran" that Respondent imported to the United States from the Facility arrived at the Port of Los Angeles, California.

19. The 375 bags of "Sovran" that arrived at the Port of Los Angeles on or about December 8, 2008, carried labeling with inadequate directions for use.

20. The 375 bags of "Sovran" that arrived at the Port of Los Angeles on or about December 8, 2008 differed in composition from that described in its EPA registration statement.

21. Therefore, the pesticide, "Sovran," that Respondent imported from Germany to the Port of Los Angeles on or about November 12 and December 8, 2008 is a "misbranded" pesticide, and its shipment on or about November 12 and December 8, 2008, constitutes two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

22. Therefore, the pesticide, "Sovran," that Respondent imported from Germany to the Port of Los Angeles on or about

November 12 and December 8, 2008, differed in composition from that described in the statement required in connection with its registration under FIFRA Section 3, and its shipment on or about November 12 and December 8, 2008, constitutes two violations of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(CC).

D. RESPONDENT'S ADMISSIONS

23. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.F of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C portion of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

24. Respondent agrees to the assessment of a penalty in the amount of TWENTY THOUSAND AND EIGHT HUNDRED DOLLARS (\$20,800) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.

25. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the

"Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

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

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Jason Gerdes
Pesticide Office (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

26. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

27. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 25, then Respondent shall pay to EPA the stipulated penalty of TWENTY-FIVE

THOUSAND DOLLARS (\$25,000), which shall be immediately due and payable. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 18 may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative

costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 25. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RETENTION OF RIGHTS

28. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to

resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

29. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

30. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

I. BINDING EFFECT

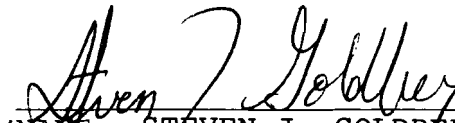
32. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of

this CAFO and to bind the party he or she represents to this CAFO.

33. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, BASF CORPORATION:

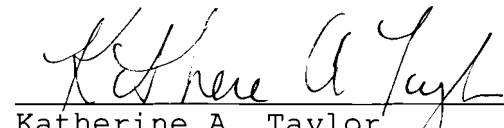
December 10, 2008
DATE



NAME: STEVEN J. GOLDBERG
TITLE: Vice President and Associate General Counsel
Regulatory Law and Government Affairs

FOR COMPLAINANT, EPA REGION IX:

Jan 14, 2009
DATE



Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

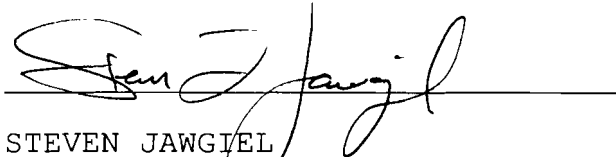
II. FINAL ORDER

____ Complainant and Respondent, BASF Corporation, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-⁰⁰⁰²2009-____) be entered, and that Respondent shall pay a civil administrative penalty in the amount of TWENTY THOUSAND AND EIGHT HUNDRED DOLLARS (\$20,800) and comply with the terms and conditions set forth in the Consent Agreement.

01/16/09

DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection
Agency, Region IX

