



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

AUG - 3 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7667 9947

Ms. Lauren Larose
BioSafe Systems, LLC
22 Meadow Street
East Hartford, Connecticut 06108

Consent and Final Order In the Matter of BioSafe Systems, LLC.
Docket No. FIFRA-05-2012-0018


Dear Ms. Larose:

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 August 3, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 44 thru 46. Please be certain that the number **BD 2751245P017** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 4, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2012-0018
)	
BioSafe Systems, LLC)	Proceeding to Assess a Civil Penalty
East Hartford, Connecticut)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
_____)	

Consent Agreement and Final Order

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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is BioSafe Systems, LLC, a corporation doing business in Connecticut.
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 Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

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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 rights 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 rights to appeal this CAFO.

9. Respondent certifies that it is currently in compliance with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated under that statute by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated under the statute by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (EPA Form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

14. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular manner.

15. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 microorganism (except viruses, bacteria, or other living 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. § 136 w(c)(1).

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in pertinent part, defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

20. 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.

Factual Allegations and Alleged Violation

21. Respondent BioSafe Solutions, LLC, is a manufacturer of disease and algae control products that is headquartered in Connecticut.

22. Respondent is and was at all times relevant to this CAFO, a Limited Liability Company and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

23. C.H. Robinson is a company that provides freight transportation, produce sourcing, outsource solutions, and information services, among other things for its customers.

24. On or about May 4, 2012, C.H. Robinson, located at 1800 Nicholas Boulevard, Elk Grove Village, Illinois 60007, was a broker/agent for Respondent.

25. On or about May 4, 2012, C.H. Robinson submitted a Notice of Arrival to EPA for an import shipment of the pesticide “Fortune Aza Technical Powder,” EPA Registration Number (EPA Reg. No.) 71038-3 from India under entry number 791-8986949-2.

26. The Notice of Arrival identified BioSafe Systems, LLC, located at 22 Meadow Street, East Hartford, Connecticut 06108, as the importer of record for the shipment of “Fortune Aza Technical Powder.”

27. Respondent, as the importer of record for “Fortune Aza Technical,” EPA Reg. No. 71038-3 and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

28. “Fortune Aza Technical” is a “pesticide,” as defined in Section 2(u) of FIFRA,

7 U.S.C. § 136(u).

29. 40 C.F.R. § 156.10(a)(1) states, in part, that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in Part 156. The contents of the label must show clearly and prominently the following: (i) The name, brand or trademark under which the product is sold; (ii) The name and address of the producer, registrant, or person for whom produced; (iii) The net contents; (iv) The product registration number; (v) The producing establishment number; (vi) An ingredient statement; (vii) Hazard and precautionary statements and environmental hazards; (viii) The directions for use; and (ix) The use classification.

30. 40 C.F.R. § 156.10(a)(4)(i) states, in part, that the label shall appear on or be securely attached to the immediate container of the pesticide product. For purposes of this section, and the misbranding provisions of FIFRA, “securely attached” shall mean that a label can reasonably be expected to remain affixed during the foreseeable conditions and period of use.

31. Several drums of “Fortune Aza Technical” had labels that were torn, detached or defaced.

32. 40 C.F.R. § 156.10(a)(6)(e) states, in part, that the registration number assigned to the pesticide product at the time of registration shall appear on the label.

33. Labels attached to drums of “Fortune Aza Technical” imported by Respondent that entered into the United States on or about May 5, 2012 did not contain the registration number assigned to “Fortune Aza Technical.”

34. The registration number assigned to “Fortune Aza Technical” is EPA Reg. No. 71038-3.

35. The registration number found on labels of "Fortune Aza Technical" was "EPA Reg. No. 71038-4"

36. On or about January 6, 2004, EPA's Biopesticide and Pollution Prevention Division accepted a label containing the following statement which was then required to be found on labels securely attached to drums of "Fortune Aza Technical:"

"Avoid contact with skin, eyes, or clothing."

37. Labels attached to drums of "Fortune Aza Technical" did not contain the statement "Avoid contact with skin, eyes, or clothing."

38. On or about May 5, 2012, Respondent "distributed or sold" the pesticide product "Fortune Aza Technical," as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 38 of this CAFO.

40. On or about May 5, 2012, Respondent distributed or sold the misbranded pesticide "Fortune Aza Technical," EPA Reg. No. 71038-3, in drums under entry number 791-8986949-2 with a label bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading and that did not contain a warning or caution statement which may have been necessary and if complied with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), was adequate to protect health and the environment.

41. Respondent's distribution or sale of the misbranded pesticide identified in paragraph 40 above constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C.

§ 136j(a)(1)(E).

Civil Penalty

42. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the appropriateness of a penalty to 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 determining the amount of the penalty for violations of FIFRA.

43. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated a civil penalty against Respondent in the amount of \$7,500.

44. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending by first class mail 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

45. The check must note "In the Matter of BioSafe Systems, LLC," the docket number of this CAFO, and the billing document (BD) number.

46. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Cynthia Kawakami (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

48. If Respondent does not pay the civil penalty timely, 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. § 136I(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

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

50. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

General Provisions

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

52. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

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

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

56. Each person signing this agreement 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.

57. Each party agrees to bear its own costs and attorney fees in this action.

58. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
BioSafe Systems, LLC.**

BioSafe Systems, LLC, Respondent


7/2/2012
Date

Lauren Larose
Lauren Larose
Operations Manager
BioSafe Systems, LLC

**In the Matter of:
BioSafe Systems, LLC**

United States Environmental Protection Agency, Complainant

July 31, 2012
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
BioSafe Systems, LLC
Docket No. FIFRA-05-2012-0018

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.

8-2-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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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 BioSafe System, LLC., was filed on August 3, 2012, 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. 7009 1680 0000 7667 9947, a copy of the original to the Respondents:

Ms. Lauren Larose
BioSafe Systems
22 Meadow Street,
East Hartford, Connecticut 06108

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Cynthia Kawami, Regional Judicial Officer, 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-05-2012-0018

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