



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
January 29, 2015

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8234

Mr. Mark A Thompson
Biomatrix, Inc.
1002 16th Avenue South
Princeton, Minnesota 55371

Consent Agreement and Final Order In the Matter of
Biomatrix, Inc. Docket No. FIFRA-05-2015-0025

Dear Mr. Thompson:

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 29, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$14,600 is to be paid in the manner described in paragraph 35. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 28, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence Bonace".

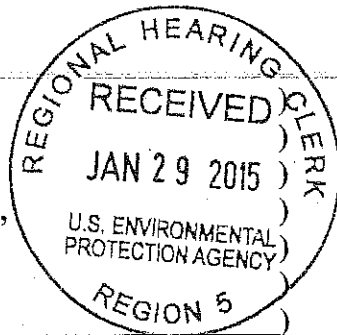
for Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

BioMatrix, Inc.
Princeton, Minnesota,
Respondent.



Docket No. FIFRA-05-2015-0025

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. Respondent is BioMatrix, Inc., a corporation doing business in the State of Minnesota.

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 complying with FIFRA, 7 U.S.C. §§ 136-136y.

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. See also 40 C.F.R. §152.5.

16. 40 C.F.R. § 152.15(a) states, in pertinent part, that 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 Complaint, Respondent owned or operated a place of business located at 1002 16th Avenue, Princeton, Minnesota.

20. On June 19, 2014, EPA issued a “Request for Information Regarding Federal Insecticide, Fungicide and Rodenticide Act Pesticide Products” to Respondent regarding “**bioSecure™BacTrac FB.**”

21. On July 1, 2014, Respondent submitted to EPA labels, product sheets and distribution records for “**bioSecure™BacTrac FB.**”

22. The label and product sheets submitted by Respondent stated, “**bioSecure™BacTrac FB** is used as a dry foot bath to prevent the carrying of bacteria from one facility to another” and “**bioSecure™BacTrac FB** is a proprietary combination of all-natural ingredients designed for use as a dry powder foot bath to prevent the transfer of bacteria from the

environment into animal facilities and from one facility to another.”

23. Bacteria are “pests” per Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

24. To “prevent the carrying of bacteria” or “to prevent the transfer of bacteria from the environment into animal facilities and from one facility to another” constitutes the prevention or mitigation of pests.

25. Therefore, **bioSecure™BacTrac FB** is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15

26. **bioSecure™BacTrac FB** was not registered with the EPA at the time of the June 19, 2014 Request for Information, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

27. On or about March 12, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

28. On or about April 3, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

29. On or about April 11, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

30. On or about May 1, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

31. On or about May 9, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

32. On or about June 4, 2014, Respondent distributed or sold **bioSecure™BacTrac FB**.

33. Between March 12, 2014 and June 4, 2014, Respondent distributed or sold **bioSecure™BacTrac FB** on 6 separate occasions.

34. Respondent’s distribution or sale of the unregistered pesticide, **bioSecure™BacTrac FB**, on 6 occasions in calendar year 2014 constitutes 6 unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

35. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$14,600. In determining the penalty amount, Complainant considered the appropriateness of the penalty relative to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,600 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note BioMatrix, Inc. and the docket number of this CAFO. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

Joanna Glowacki (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

38. If Respondent does not pay timely the civil penalty, 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.

39. 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.

General Provisions

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

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

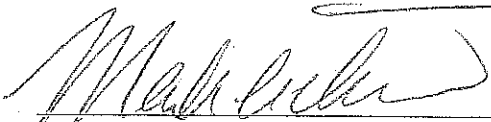
42. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

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

44. The terms of this CAFO bind Respondent, its successors and assigns.
45. 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.
46. Each party agrees to bear its own costs and attorneys' fees in this action.
47. This CAFO constitutes the entire agreement between the parties.

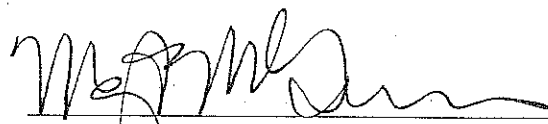
BioMatrix, Inc., Respondent

12-12-2014
Date


Mark Thompson
Chief Operating Officer/Chief Financial Officer
BioMatrix, Inc.

United States Environmental Protection Agency, Complainant

1/21/2015
Date

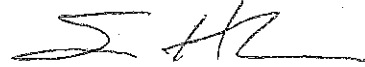

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
BioMatrix, Inc.
Docket No. FIFRA-05-2015-0025

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.

11/26/2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

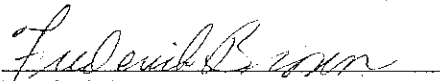
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving, Biomatrix, Inc., was filed on January 29, 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 8234, a copy of the original to the Respondent:

Mr. Mark A Thompson
Biomatrix, Inc.
1002 16th Avenue South
Princeton, Minnesota 55371

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Joanna Glowacki, 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

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