



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

AUG 28 2008

Certified Mail – Return Receipt Requested

Mr. Donald C. Devine  
AS America, Inc.  
1 Centennial Plaza  
Piscataway, NJ 08855

SUBJ: Docket No. FIFRA-04-2008-3035(b)  
AS America, Inc.

Dear Mr. Devine:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section IV of the CAFO, the assessed penalty of \$500 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Mark Bloeth at (404) 562-9013.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle".

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: ) Docket No. FIFRA-04-2008-3035(b)  
)  
AS America, Inc. )  
)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

2008 AUG 27 PM 3:38  
HEARING CLERK  
EPA REGION 4

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §136 *et seq.* (hereinafter “FIFRA”), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is AS America, Inc. (hereinafter “ASA, Inc.”).
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR §22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR §22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. §136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to the Regional Administrators by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 CFR §22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mr. Mark Bloeth  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.
5. Respondent is ASA Inc., a Delaware corporation, located at One Centennial Avenue, Piscataway, NJ 08855-6820.
6. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. §136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. §136(w), and 40 CFR §167.3.
8. On or about October 31, 2007, Respondent acquired ownership from American Standard, Inc. of a facility located at 1000 Industrial Park, Paintsville, KY 41240, which is identified as EPA Establishment Number 73028-KY-001.
9. Producers operating an establishment registered with EPA are required to submit to the Administrator of EPA an annual report which indicates the types and amounts of pesticides or active ingredients and/or pesticidal devices which they are currently

producing, which they produced during the past year, and which they sold or distributed during the past year, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. §136e(c)(1), and the regulations promulgated at 40 CFR §167.85.

10. Submittal of the annual production report for calendar year 2006 was due on or before March 1, 2007.
11. Submittal of the annual production report for calendar year 2007 was due on or before March 1, 2008.
12. The annual reports for 2006 and 2007 were not submitted on or before the required date.
13. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136j(a)(2)(L), further referenced at Section 7(c)(1)(B) of FIFRA, 7 U.S.C. §136e(c)(1)(B).
14. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
15. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
16. EPA proposes to assess a total civil penalty of FIVE HUNDRED DOLLARS (\$500) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. §136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

17. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth in paragraphs 1 through 3 above, but neither admits nor denies any findings of fact or conclusion of law contained herein.

18. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
20. Respondent certifies that within 30 days of the date of its execution of this CAFO, it will be in compliance with all relevant requirements of FIFRA with respect to the matters addressed in this CAFO.
21. Respondent agrees to submit all future pesticide-production reports required under FIFRA on or before the March 1<sup>st</sup> due date.
22. EPA recommends that all future pesticide-production reports be submitted by means of certified mail, return receipt requested or a similar manner of delivery confirmation.
23. Compliance with this CAFO shall resolve the allegation of the violation contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

25. Respondent shall submit the annual report for 2007 to EPA within 30 days of the date of entry of this CAFO.

26. Respondent shall send all future pesticide-production reports required under Section 7 of FIFRA, 7 U.S.C. §136(e), to the following address:

U.S. EPA Region 4  
PCB & Chemical Products  
Management Section  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

27. Respondent is assessed a civil penalty of FIVE HUNDRED DOLLARS (\$500).

28. Payment shall be made within 30 days from the date that this CAFO is filed with the Regional Hearing Clerk.

29. Respondent shall pay the penalty forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

30. **The check shall reference on its face "Docket No. FIFRA-04-2008-3035(b)."**

31. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payments is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

Mr. Mark Bloeth  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

32. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
33. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.

34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to this CAFO.

V. Effective Date

37. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**AS America, Inc.**

By: Donald C. Devine (Signature)  
Name: Donald C. Devine  
Title: President and Chief Executive Officer

Date: 8/18/08

**U.S. Environmental Protection Agency**

By: Beverly H. Banister for  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

Date: 8/25/08

**APPROVED AND SO ORDERED** this <sup>th</sup> 27 day of Aug., 2008.

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: **AS America, Inc., FIFRA Docket No. 04-2008-3035(b)**, on the parties listed below in the manner indicated.

Mr. Donald C. Devine  
AS America, Inc.  
1 Centennial Plaza  
Piscataway, NJ 08855

(via Certified Mail - Return Receipt Requested)


Mark Bloeth  
PCB & Chemical Products  
Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

Date: 8-28-08



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/27/08 (Name) (Date)

in the Region 4, ORC, OEA (Office) at (404) 562-9504 (Telephone Number)

Non-SF Judicial Order/Consent Decree USAO COLLECTS

Administrative Order/Consent Agreement FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree DOJ COLLECTS

Oversight Billing - Cost Package required: Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: A S America Inc (Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 500 (If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2008 3035 (6)

The Site Specific Superfund Account Number:

The Designated Regional/Headquarters Program Office:

The IFMS Accounts Receivable Control Number is: Date

If you have any questions, please call: of the Financial Management Section at:

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- 1. Debt Tracking Officer Environmental Enforcement Section Department of Justice RM 1647 P.O. Box 7611, Benjamin Franklin Station Washington, D.C. 20044
2. Originating Office (EAD)
3. Designated Program Office

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
2. Regional Hearing Clerk
3. Designated Program Office
4. Regional Counsel (EAD)