



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 23 2007

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Carlton R. Layne
Aquatic Ecosystem Restoration Foundation
3272 Sherman Ridge Drive
Marietta, GA 30054

SUBJ: Docket No. FIFRA-04-2007-3037(b)
Brewer International, Inc.

Dear Mr. Layne:

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 CFR Part 22.

Please make note of the provisions in the Final Order, with respect to payment of the assessed penalty of \$16,500. The initial payment in the amount of \$2,500 is due within 30 days from the effective date of the CAFO. Remaining payments are due as set forth in Section IV of the CAFO.

Also enclosed, please find a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document notifies your client of their potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note the contact phone number on page three of the Notice has been changed to (202) 551-3115.

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 the U.S. EPA, Cincinnati Accounting Operations address identified in Section IV of the CAFO. Should you have any questions about your company's compliance status in the future, please do not hesitate to call me or Dawn Johnson (404) 562-9017.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Benante".

Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures (2)

cc: Craig Bryant
FL Department of Agriculture
and Consumer Services

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Brewer International, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2007-3037(b)

HEARING CLERK

2007 OCT 23 AM 10: 29

RECEIVED
EPA REGION IV

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) ("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 ("EPA"), Region 4 (EPA). Respondent is Brewer International, Inc. ("Brewer" or "Respondent"), doing business in Florida.
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 EPA Region 4 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:

Dawn Johnson
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9017.

EPA is also represented by the following legal counsel:

Vera S. Kornylak
Associate Regional Counsel
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9589.

5. Respondent is Brewer International, Inc., a Florida corporation, located at 605 90th Avenue, Vero Beach, Florida 32968-9751.
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. On or about July 30, 2004, the Florida Department of Agriculture and Consumer Services, an authorized representative of the EPA, conducted an inspection at 605 90th Avenue, Vero Beach, Florida 32968.

8. During the aforementioned inspection, the product "Bacsize," was identified as being produced and distributed by the Respondent.
9. "Bacsize," which includes hydrogen peroxide, is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (except viruses, bacteria, or other 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. § 136w(c)(1).
11. Respondent "distributes or sells" pesticides. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment. At the time of the inspection, the "Bacsize" was not registered as a pesticide with EPA.
12. Respondent distributed or sold the pesticide on at least four occasions to Helena Chemical Company located in Tampa and Florida City, Florida, as described below:

February 10, 2004, Order number 6625, PO# 364463
February 17, 2004, Order number 6635, PO# 365845
February 25, 2004, Order number 4544
April 15, 2004, PO# 390180

13. It is unlawful according Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
14. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on four separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
15. Additionally, at the time of the inspection, the “Bacsize” product label failed to comply with the requirements of FIFRA with regard to directions for use to protect human health and the environment.
16. According to Section 2(q)(1)(F), a pesticide is misbranded if its label does not contain directions for use necessary to make the product effective and to adequately protect human health and the environment.
17. At the time of the inspection, the “Bacsize” product label did not bear the inert ingredients statement.
18. According to Section 2(q)(2)(A), a pesticide is misbranded if its label does not bear an ingredient statement on the immediate container which is presented or displayed under customary conditions.
19. At the time of the inspection, the “Bacsize” did not contain the net content of the product.
20. According to Section 2(q)(2)(C)(iii), a product is misbranded in that there is not a label affixed to the pesticide container, and to the outside wrapper of the retail package if the required information on the immediate container cannot be clearly read, a label bearing the net weight or measure of the content.
21. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is a violation for

any person in any state to distribute or sell to any person any pesticide which is misbranded.

22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on four separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
23. 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.
24. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), 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.
25. EPA hereby assesses a total civil penalty of sixteen thousand five hundred dollars (\$16,500) 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

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
27. 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.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.

30. Compliance with this CAFO shall resolve the allegations of the violations 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. 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

31. Respondent shall pay a civil penalty of SIXTEEN THOUSAND FIVE HUNDRED DOLLARS (\$16,500). This penalty shall be paid in accordance with the schedule agreed upon, as stated below. The first installment payment of \$2,500 shall be made on October 1, 2007, or within thirty (30) days from the date this CAFO is filed with the Regional Hearing Clerk. The remaining seven installment payments will be made as set forth below:

DATE	AMOUNT
November 1, 2007	\$2,000
December 1, 2007	\$2,000
January 1, 2008	\$2,000
February 1, 2008	\$2,000
March 1, 2008	\$2,000
April 1, 2008	\$2,000
May 1, 2008	\$2,000

32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to

the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099.

The check shall reference the name and the Docket Number of the CAFO [“Brewer International, Inc., FIFRA-04-2007-3037(b)”].

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

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Dawn Johnson
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

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

34. 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.
35. 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 of entry of 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.

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

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

V. Effective Date

39. 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:

Brewer International, Inc.

By: Stephen P. Brewer (Signature)

Date: 9-6-2007

Name: Stephen P. Brewer (Typed or Printed)

Title: President (Typed or Printed)

U.S. Environmental Protection Agency

Beverly H. Banister

Date: 10/12/07

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

APPROVED AND SO ORDERED this 22nd day of October 2007.

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: Brewer International, Inc., FIFRA Docket No. 04-2007-3037(b), on the parties listed below in the manner indicated.

For Complainant:

Dawn Johnson
Pesticides Management Section
U.S. EPA - Region 4, 4APT-PTSB
61 Forsyth Street
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Nancy Tommelleo
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303-8960.

(Via EPA's internal mail)

For Respondent:

Carlton Layne
Aquatic Ecosystem Restoration Foundation
3272 Sherman Ridge Drive
Marietta, GA 30054

(Via Certified Mail - Return Receipt
Requested)

Date:

10-23-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, GA 30303-8960
(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 J. Wilson on 10/13/07
(Name) (Date)

in the OEH at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|---|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Brewer International Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 16,500
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FILED 04 2007 - 3037 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT 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 | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |