



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 08 2008

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Josephina Garcia
Brazos International, Inc.
220 NE 148TH Street
Miami, FL 33161

SUBJ: Docket No. FIFRA-04-2008-3026(b)
Brazos International, Inc.

Dear Ms. Garcia:

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.

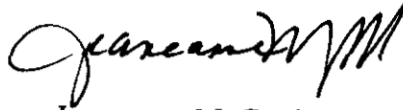
Please make note of the provisions in Section IV of the CAFO with respect to payment of the assessed penalty of \$5,776, which is due within 30 days from the effective date of the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and docket number 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.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeaneanne M. Gettle', written in a cursive style.

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

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

Docket No. FIFRA-04-2008-3026(b)

RECEIVED
EPA REGION 4
2009 MAY -8 PM 2:11
HEARING CLERK

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 Brazos International, Inc., 220 NE 148TH Street, Miami, FL 33161.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and a 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:

Mark D. Bloeth,
U.S. EPA - Region 4
PCB & Chemical Products
Management Section
61 Forsyth Street
Atlanta, Georgia 30303-8960.
5. Respondent is Brazos International, Inc., located at 220 NE 148TH Street, Miami, FL 33161.
6. Respondent is the importer of record of unregistered pesticides intended for further formulation, sale, distribution and export from the United States to foreign countries.
7. 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.
8. On or about March 28, 2008, Respondent submitted a single Notice of Arrival of Pesticides and Devices, EPA Form 3540-1 (hereinafter “NOA”) to EPA, reflecting the importation, into the Port of Miami, of 31 containers (drums) consisting of 6,250 kgs of unregistered “Malathion Technical 95%” (25 drums) and 1,200 kgs of unregistered “Diazinon Technical 95%” (6 drums) from China.
9. “Malathion Technical 95%” and “Diazinon Technical 95%” are “pesticides” 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’s NOA (Entry No. MC2 60486287) identified that the unregistered pesticides were being entered under a Customs Bond into the United States for purposes of further reformulation, repackaging and intended export to a foreign purchaser.
12. Pesticide Registration (PR) Notice 99-1, dated March 1, 1999, sets forth nine conditions whereby EPA will allow the further distribution of imported unregistered pesticides intended for export which correlates to the regulatory allowance at 40 C.F.R. § 152.30(d) to allow for the transfer of unregistered pesticides solely for export.
13. The first condition of PR Notice 99-1 is that the foreign producing establishment is registered under FIFRA Section 7 and is compliant with Section 7 reporting requirements.
14. Respondent failed to complete Block #5 of the NOA to reflect the EPA Foreign Producer Establishment Number.
15. Respondent acknowledged that the foreign producer did not have an EPA Producer Establishment Number.
16. Furthermore, Respondent acknowledged that the stenciled drum markings on both the unregistered “Malathion Technical 95%” and unregistered “Diazinon Technical 95%” constitute the complete pesticide labeling which appeared on the containers.

17. On or about April 10, 2008, Respondent submitted two revised NOAs to separately account for the importation of the aforementioned unregistered pesticides.
18. Respondent identified the Shipper on the NOAs (Block #3) as Iprochem Co., Ltd., Shenzhen, Guangdong Province, China.
19. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” to include: 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.
20. Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
21. It is unlawful according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for any person to distribute or sell to any person any pesticide which is misbranded.
22. Section 2(q) of FIFRA, 7 U.S.C. § 136(q) defines the term “misbranded”, in part, when the labeling does not contain directions for use which are necessary for effecting the purpose for which the product is intended or the labeling does not contain a warning or caution statement adequate to protect health and the environment.
23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. Section 14 of FIFRA, 7 U.S.C. § 136l, in conjunction with the Civil Monetary Inflation Adjustment Rule, 40 CFR Part 19, authorizes EPA to assess a civil penalty of not more than \$6,500 for each offense that occurs on or after March 15, 2004.

25. 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. The EPA proposes to assess a total civil penalty of FIVE THOUSAND SEVEN HUNDRED SEVENTY SIX DOLLARS (\$5,776) against the Respondent for the above 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. Complainant will allow Respondent to further distribute the "Malathion Technical 95%" and "Diazinon Technical 95%" (Entry No. MC2 60486287) to the consignee of record (Southern Agricultural Insecticides, Inc., 7400 Bayshore Road, Rubonia, Florida 34220), who will further formulate and repackage for export to foreign purchaser(s).
30. Southern Agricultural Insecticides, Inc. is identified as EPA Est. No. 829-FL-001.
31. Respondent will notify EPA within 5 calendar days upon receipt of the "Malathion Technical 95%" and "Diazinon Technical 95%" by the consignee.

32. Respondent affirms that within 30 days from the effective date of the CAFO that Respondent will have made or will have caused to have made application for EPA Producer Establishment registration for any foreign sources of unregistered pesticide imports which Respondent chooses to use as a source intended for export purposes.
33. Respondent affirms that any unregistered pesticides obtained will only be from foreign establishments in good standing and that all pesticide products will be labeled in accordance with the requirements of 40 C.F.R. § 156.
34. Respondent certifies that it will be in compliance with all relevant requirements of FIFRA or the conditions established in this CAFO from the effective date of this CAFO.
35. 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.
36. 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

37. Respondent is assessed a civil penalty of FIVE THOUSAND SEVEN HUNDRED SEVENTY SIX DOLLARS (\$5,776) which shall be paid within thirty (30) days of the effective date of this CAFO.

38. Respondent shall pay the penalty by 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.

**The check shall reference on its face the name and the Docket Number of the CAFO
"Brazos International, Inc. FIFRA-04-2008-3026(b)."**

39. At the time of 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
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.

40. 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. 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.

41. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
42. This CAFO shall be binding upon the Respondent, its successors and assigns.
43. The undersigned representatives of the parties to this CAFO certify that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

44. 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:

Brazos International, Inc.

By: Josefina Garcia Date: 4/14/08

Name: JOSEFINA GARCIA (Typed or Printed)

Title: VP (Typed or Printed)

U.S. Environmental Protection Agency

By: Ken Mitchell for Date: 5/11/08

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

APPROVED AND SO ORDERED this 8th day of May 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: **Brazos International, Inc., Docket No. 04-2008-3026(b)**, on the parties listed below in the manner indicated.

Ms. Josephina Garcia
Brazos International, Inc.
220 NE 148TH Street
Miami, FL 33161

(via Certified Mail - Return Receipt Requested)

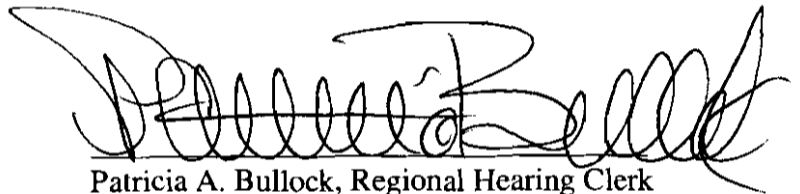
Mark Bloeth
PCB & Chemical Products Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, GA 30303

(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: 5-8-08



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 J Wilson on 5-7-08
(Name) (Date)

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

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" 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: Brozos International
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 5776
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: F1KRA04-2008-3026 (13)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Officer: _____

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