

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101  
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of

BASF Corporation

Respondent

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Docket No. FIFRA-07-2010-0035

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and BASF Corporation (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Section I**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

## Section II

### Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is a pesticide producer and distributor, with a place of business located at 3568 Tree Court Industrial Boulevard, St. Louis, Missouri 63112.

## Section III

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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

10. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

12. The regulation at 40 C.F.R. § 152.15(a) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states or implies (by labeling or otherwise) that the substance, either by itself or in combination with any other substance can or should be used as a pesticide.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

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

#### Section IV

##### Factual Allegations/Violation

16. Respondent is and, at all times referred to herein, was a “person” within the meaning of FIFRA.

17. On, or about March 18, 2010, the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent’s facility in St. Louis, Missouri.

18. During the inspection referenced in the preceding paragraph, the MDA inspector documented that Respondent held for sale or distribution a quantity of a product called Prescription Treatment Brand Vector Bio-5 Multi-Purpose Drain Cleaner (Vector Bio-5).

19. The labeling for the product Vector Bio-5, referenced above, contained the pesticidal claims that, by cleaning, it “eliminates pest harborages,” “reduces breeding sites for drain pests,” and “neutralizes insect-attracting odors.”

20. At the time of the inspection referenced above, the product Vector Bio-5 was not registered with EPA as a pesticide, and its labeling lacked a required EPA registration number.

21. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it distributed or sold or held for distribution or sale a pesticide that was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

22. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it distributed or sold or held for distribution or sale a pesticide that was misbranded.

23. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated above, it is proposed that a civil penalty of \$3,000.00 be assessed against the Respondent.

#### **Section V**

##### **Consent Agreement**

24. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

25. Respondent neither admits nor denies the factual allegations set forth above.

26. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

28. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

30. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

31. The effect of settlement as described in Paragraph 32 below is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 30 above.

32. Payment of the civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law and/or regulation administered by EPA.

33. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

34. Late Payment Provisions: 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed

after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

## Section VI

### Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136f, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Three Thousand Dollars (\$3,000.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

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

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read

“D 68010727 Environmental Protection Agency”

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101;

and

Chris R. Dudding  
Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

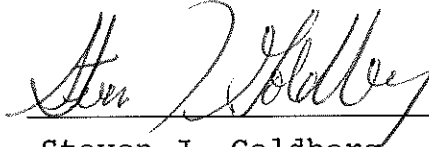
4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.



**RESPONDENT  
BASF CORPORATION**

Date: July 29, 2010

By:



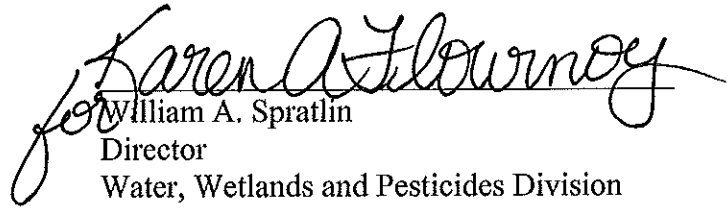
Steven J. Goldberg  
Vice President & Associate General Counsel  
Regulatory Law and Government Affairs

Print Name

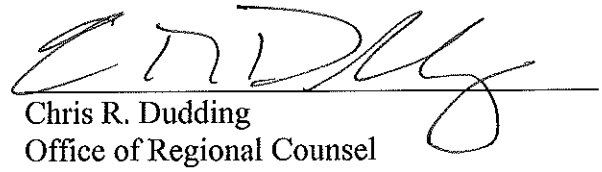
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**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

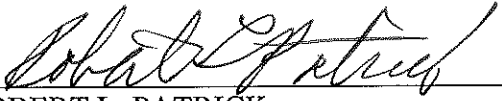
Date: 8/5/10

  
for William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

Date: 8/4/10

  
Chris R. Dudding  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date: August 6, 2010   
ROBERT L. PATRICK  
Regional Judicial Officer

IN THE MATTER OF BASF Corporation, Respondent  
Docket No. FIFRA-07-2010-0035

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris R. Dudding  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Steven J. Goldberg  
Vice President & Associate General Counsel  
Regulatory Law and Government Affairs  
BASF Corporation  
100 Campus Drive  
Florham Park, New Jersey 07932

Dated: 8/6/10



Kathy Robinson  
Hearing Clerk, Region 7