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MAR 25 2013
Pesticides & Toxic Substances Branch

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of :
:
BASF Corporation : **CONSENT AGREEMENT**
:
Respondent : **AND FINAL ORDER**
:
Docket No. FIFRA-02-2013-5105
:
Proceeding under the Federal :
Insecticide, Fungicide, and :
Rodenticide Act, as amended :
-----X

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 MAY -3 P 3:04
REGIONAL HEARING
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. 136 l(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. 136 et seq. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency ("EPA"), Region 2, issued a Complaint and Notice of Opportunity for Hearing to Respondent, BASF Corporation, located at 100 Park Avenue, Florham Park, New Jersey 07932.

The Complainant charged Respondent with two violations of 7 U.S.C. 136e(c)(1) and 40 C.F.R. 167.85, the requirements under FIFRA governing the submission of annual Pesticide Reports for Pesticide-Producing Establishments ("Pesticide Reports"). Said violations are unlawful under FIFRA 12(a)(2)(L), 7 U.S.C. 136j (a)(2)(L).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Parties to this Consent Agreement agree that the title to this proceeding should properly read In the Matter of BASF Corporation.
2. This Consent Agreement is being entered into by Respondent, BASF Corporation and this Consent Agreement is binding on BASF Corporation.
3. Respondents establishments were registered under Section 7 of FIFRA, 7 U.S.C. 136e as pesticide producing establishments. Assigned EPA Establishment Numbers are 7969-DEU-001, 033753-GBR-002, 033753-GBR-003, 053263-OH-001, and 053263-SC-001.
4. Pursuant to Section 7(c) of FIFRA and 40 C.F.R. 167.20(f), any producer operating an establishment registered under Section 7 shall submit annually to the EPA the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, has produced during the past year, and has sold or distributed during the past year.
5. Title 40 C.F.R. 167.85 provides that a producer operating an establishment must submit an annual pesticide production report (the Report) on or before March 1 of each year, even if the producer has produced no pesticides for that reporting year.
6. Respondent failed to submit annual pesticide production reports for pesticide producing establishments 033753-GBR-002 (2007-2010), and 033753-GBR-003 (2007-2010).
7. Respondent submitted inaccurate annual pesticide production reports for the pesticide producing establishment 7969-DEU-001 (2008-2010).
8. Respondent failed to submit annual pesticide production reports for pesticide producing establishments 053263-OH-001 (2011), and 053263-SC-001 (2011).

9. Failure to submit annual pesticide production reports or submitting inaccurate information is a violation of Section 7(c)(1) and Section 12(a)(2)(L) of FIFRA.

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal laws and regulations, it is agreed that:

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent agrees to waive any jurisdictional objections, regarding proper service of the Complaint and/or any other questions concerning acquisition of the personal jurisdiction of BASF Corporation.
3. Respondent shall comply at all times with the requirements of Section 7 of FIFRA, 7 U.S.C. 136e and the applicable regulations.
4. Respondent admits the specific factual allegations set forth in the Findings of Fact and Conclusions of Law in this Consent Agreement.
5. Respondent explicitly agrees to pay, by cashiers or certified check, a civil penalty in the total amount of Fifty Nine Thousand Four Hundred Dollars (\$59,400) to the Treasurer, United States of America. The payment of Fifty Nine Thousand Four Hundred Dollars (\$59,400) is due within forty-five (45) days after the date of signature of the Final Order at the end of this document (the date by which the payment must be received shall hereafter be referred to as the due date). Such check shall be identified with a notation of the name and docket number of this case, set forth in the caption of the first page of this document. Such check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent chooses to make payment by electronic fund transfer (EFT), then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 02130004
- 5) Field Tag 4200 of the Fedwire message should read D 68010727 Environmental Protection Agency
- 6) Name of Respondent: BASF Corporation
- 7) Case Number: FIFRA-02-2013-5105

Respondent shall also send copies of this payment to each of the following:

Michael Kramer, FIFRA Enforcement Coordinator
Pesticides Team
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue (MS-500)
Edison, NJ 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007

a. Failure to pay the above amount in full according to the above provisions will result in referral of this matter to the United States Department of Justice for collection.

b. Furthermore, if a payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. 3717, on the overdue amount from the effective date of payment.

c. In addition, a late payment handling charge of fifteen dollars (\$15) for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid will be assessed.

d. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date.

6. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other environmental laws.

7. Nothing in this Consent Agreement and Final Order shall preclude Complainant from further enforcement action, including the assessment of civil penalties, arising from the violation of any environmental laws.

8. This Consent Agreement is being entered into by the parties in full settlement of civil liabilities associated with pesticide production establishment reporting requirements under 7 U.S.C. 136 (e) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq. Respondent has read the Consent Agreement and Final Order, finds it reasonable, and consents to its issuance and its terms.

9. Respondent explicitly waives its right to request a hearing on the Complaint, this Agreement, or the attached Final Order.

10. Respondent waives any right it may have pursuant to 40 C.F.R. 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This Consent Agreement shall be binding on both parties to this action, their officers, directors, employees, successors, and assigns.

12. The undersigned representative of each party to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Agreement and bind that party to it.


13. Each party shall bear its own costs and attorneys fees in the action resolved by this Consent Agreement.

14. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BASF Corporation

*JES
NWR*
BY: Dirk Bengel
 Authorizing Signature
NAME: DIRK BENGEL
 (PLEASE PRINT)
TITLE: SVP Care Chemicals
DATE: March 22, 2013

COMPLAINANT:



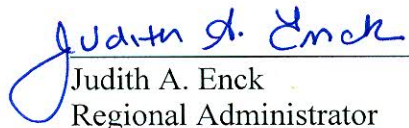
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

DATE: APRIL 2, 2013

In the Matter of BASF Corporation
Docket Number: FIFRA-02-2013-5105

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Judith A. Enck
Regional Administrator
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: 4/22/13

In the Matter of BASF Corporation
Docket Number: FIFRA-02-2013-5105

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order for the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy

by Interoffice Mail:

Office of Regional Hearing Clerk
United States Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

USPS First Class Mail

John Erickson
BASF Corporation
100 Park Avenue
Florham Park, NJ 07932

Dated: May 1, 2013
Edison, New Jersey

