



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 09 2007

REPLY TO THE ATTENTION OF:
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9301

Mr. Steven J. Goldberg
Vice President, Associate General Counsel and Assistant Secretary
BASF Corporation
100 Campus Drive
Florham Park, N. J. 07932

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0037

Dear Mr. Goldberg:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on August 9, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$6,500 is to be paid in the manner prescribed in paragraphs 30 and 31. Please be certain that the number **BD** 2750745P037 and the docket number are written on both the transmittal letter and on the check. Payment is due by September 9, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Joseph G. Lukascyk".

Joseph G. Lukascyk
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2007-0037
)	
BASF Corporation)	Proceeding to Assess a Civil Penalty
Florham Park, New Jersey)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Chief of the Chemicals Management Branch, United States Environmental Protection Agency (U.S. EPA), Region 5. The authority to settle this matter has been delegated to the Director of the Land and Chemicals Division, U.S. EPA, Region 5.

3. Respondent is BASF Corporation (BASF), a corporation doing business at 100 Campus Drive, Florham Park, New Jersey 07932.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3, and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

11. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

12. Section 3(c)(1)(C) of FIFRA, 7 U.S.C. 136a(c)(1)(C) states that each applicant for registration of a pesticide shall file with the Administrator a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

13. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the written, printed, or graphic matter on, or attached to the, pesticide or device or any of its containers or wrappers.

14. 40 C.F.R. Section 156.10(a)(1) states, in pertinent part, that every pesticide product shall bear a label.

15. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states that a pesticide is “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular.

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

Factual Allegations and Alleged Violations

17. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Panalpina, Inc., located at 19409 Kenswick Drive, Humble, Texas 77338, is a broker/agent for Respondent.

19. On or about May 23, 2007, Respondent’s broker/agent, Panalpina, Inc., submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to U.S. EPA for the import shipment of a product, “CHARTER PB,” EPA Reg. No. 7969-387.

20. BASF was listed as the importer of the May 23, 2007 shipment.

21. On May 24, 2007, the U.S. EPA detained the import shipment that was imported by BASF on May 23, 2007, for inspection.

22. On June 15, 2007, an investigator employed by the U.S. EPA and duly authorized to conduct inspections under FIFRA, conducted an inspection of the import shipment imported by Respondent on May 23, 2007 at Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois 60143, in order to determine compliance with the provisions of FIFRA.

23. During the inspection, the inspector saw that the import shipment, "CHARTER PB," EPA Reg. No. 7969-387, consisted of 25 – 200 gallon plastic totes enclosed in a metal cage.

24. The product "CHARTER PB," EPA Reg. No. 7969-387 is a pesticide as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(s).

25. During the inspection, the inspector observed that the containers of "CHARTER PB," EPA Reg. No. 7969-387 did not bear the U.S. EPA "Accepted with comments" label of September 27, 2006 in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, and 40 C.F.R. 156.10, which constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

26. On or about May 23, 2007, Respondent distributed or sold an import shipment of the pesticide product "CHARTER PB," EPA Reg. No. 7969-387 that was misbranded, as that term is defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(a), because the label on the import shipment of the pesticide product, "CHARTER PB," EPA Reg. No. 7969-387 failed to match the language found on the September 27, 2006 U.S. EPA "Accepted with comments" label of "CHARTER PB," EPA Reg. No. 7969-387.

27. The fact that Respondent distributed or sold a misbranded pesticide “CHARTER PB,” EPA Reg. No. 7969-387 constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. § 156.10(a).

28. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. § 156.10(a) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

29. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$6,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered U.S. EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,500 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251 - 7531

The check must note the following: the case name, the docket number of this CAFO and the billing document number.

31. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Joseph G. Lukascyk (DT-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay the civil penalty timely, U.S. EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

35. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

36. Respondent shall immediately contract with an EPA registered establishment, within the Chicago land area, to have the import pesticide product labeled in accordance with FIFRA and its regulations.

37. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

38. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws, and regulations.

39. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for FIFRA.

40. The terms of this CAFO bind Respondent and its successors, and assigns.

41. Each person signing this agreement certifies that he or she has the authority to sign this agreement for the party whom he or she represents and to bind that party to its terms.

42. Each party agrees to bear its own costs and attorney's fees in this action.

43. This CAFO constitutes the entire agreement between the parties.

BASF Corporation, Respondent

July 18, 2007
Date

Steven J. Goldberg
Steven J. Goldberg,
Vice President, Associate General Counsel,
and Assistant Secretary

United States Environmental Protection Agency, Complainant

8/2/07
Date

Anthony J. Restano
for Mardi Klevs, Chief
Chemicals Management Branch
Land and Chemicals Division

8/6/07
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

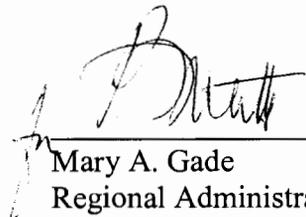
FIFRA-05-2007-0037

**In the Matter of:
BASF Corporation
Docket No. FIFRA-05-2007-0037**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-8-07
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

10 6
2007
10/23/07

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving BASF Corporation, was filed on August 9, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 , and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 9301 , a copy of the original to the Respondents:

Mr. Steven J. Goldberg
Vice President, Associate General Counsel and Assistant Secretary
BASF Corporation
100 Campus Drive
Florham Park, N. J. 07932

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0037**