



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 03 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7662 0659

Mr. Mark J. Byrne
Member
Basic Chemical Solutions, LLC
525 Seaport Blvd.
Redwood City, California 94063

Re: Notice of Intent to File Civil Administrative Complaint against Basic Chemical Solutions, LLC FIFRA-05-2011-0003

Dear Mr. Byrne:

The U.S. Environmental Protection Agency, Region 5 plans to file an administrative complaint for civil penalties against Basic Chemical Solutions, LLC (you). We will allege that you violated the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(1)(E), by the distribution or sale of a misbranded pesticide, "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524, by your supplemental distributor BZB, Inc. d/b/a Busy Bee Nursery, Inc., located at 19529 South Halsted, Glenwood, Illinois 60425. Based on information currently available to us, we plan to propose a penalty of \$4,290 in the complaint.

FIFRA governs the regulation of pesticides in the United States. Under FIFRA, all pesticides must be registered by EPA before they may be sold or distributed in commerce. FIFRA sets an overall risk/benefit standard for pesticide registration, requiring that pesticides perform their intended function, when used according to labeling directions, without posing unreasonable risks of adverse effects on human health or the environment. In making pesticide registration decisions, EPA is required by law to take into account the economic, social, and environmental costs and benefits of pesticide uses.

This letter is not a demand to pay a penalty. We will not ask you to pay a penalty until we file the complaint or a final order. Before filing the complaint, we are giving you the opportunity to present any information that you believe we should consider. Relevant information might include evidence that you did not violate the law; evidence that you relied on compliance assistance from EPA or a state agency; evidence that we identified the wrong party; or financial data bearing on your ability to pay a penalty.

If you believe that you will be unable to pay a \$4,290 penalty because of financial reasons, please send us certified, complete financial statements including balance sheets, income statements and all notes to the financial statements, and copies of your company's signed income tax returns with all schedules and amendments, for the past three years.

You may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information you submit to us. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If you fail to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it.

We may use any information you submit in support of an administrative, civil, or criminal action.

Enclosed you will find an information sheet titled "U.S. EPA Small Business Resources," which may be helpful if you are a qualified small business.

Within ten calendar days after you receive this letter, please send your response to:

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

We plan to file the complaint against you 14 calendar days after you receive this letter unless you give us information that the complaint is not substantially justified.

If you have any questions, please telephone Thomas Turner, Associate Regional Council at (312) 886-6613.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mardi Klevs" followed by "for M.R." in a cursive style.

Mardi Klevs
Chief
Chemicals Management Branch
Land and Chemicals Division

Enclosure

6. The term “pesticide” is defined in 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.

7. According to the Regulations at 40 C.F.R. § 152.132, supplemental distribution is permitted upon written notification to EPA by both the registrant and the distributor, provided that all of the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the distributor. Supplemental distribution allows the registrant to distribute or sell the registered product under another person’s name and address, and such distribution and sale is termed “supplemental distribution,” and the product is referred to as a “distributor product.”

8. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor’s company number.

9. According to 40 C.F.R. § 152.132, the distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

10. According to 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor’s company number, 4) the establishment number must be that of the

final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

11. 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.

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

13. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

14. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA, of up to \$7,500 for each offense of FIFRA under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2004).

General Allegations

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

16. Respondent did, at all times relevant to this Complaint, “distribute or sell” as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

17. On or about November 27, 2000, Basic Chemical Solutions, LLC (BCS) registered with the EPA its pesticide product "Sodium Hypochlorite Solution (12.5%)," EPA Reg. No.70567-2.

18. "Sodium Hypochlorite Solution (12.5%)," EPA Reg. No.70567-2, is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

19. On or about July 16, 2007, Respondent and BZB, Inc., d/b/a Busy Bee Nursery, Inc. (BZB), submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) allowing BZB to distribute Respondent's registered pesticide product, "Sodium Hypochlorite Solution (12.5%)," EPA Reg. No.70567-2, under BZB's brand name "Chlorine," EPA Reg. No. 70567-2-74524.

20. On or about September 8, 2009, an inspector employed by the Illinois Department of Agriculture (IDA) and authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at BZB, located at 19529 South Halsted, Glenwood, Illinois 60425, to examine and collect samples of any pesticides packaged, labeled, and released for shipment, and to inspect and obtain copies of those records specified in Section 8 of FIFRA, and 40 C.F.R. Part 169.

21. During the September 8, 2009 inspection, the IDA inspector observed and collected documentary samples of the pesticide product "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524.

22. During the September 8, 2009 inspection, the IDA inspector observed and collected documentary samples of a record of receipt, and a copy of a bin label for the pesticide product "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524.

23. During the September 8, 2009 inspection, the IDA inspector issued a "Receipt for Samples" to Mr. Jeff Fasel, Owner, for all samples collected.

24. During the September 8, 2009 inspection, Mr. Jeff Fasel indicated, by his signature on the "Receipt for Samples," that he was an owner, operator, or agent of BZB.

25. During the September 8, 2009 inspection, Mr. Jeff Fasel indicated, by his signature on the Receipt for Samples, that all samples collected were from pesticide products that were packaged, labeled, and released for shipment.

26. During the September 8, 2009 inspection, the IDA inspector noted that the label of the pesticide product "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524 had the illegal Brand Name "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," instead of the distributor Brand Name "Chlorine."

27. Because "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524 was packaged, labeled, and released for shipment or sale, Respondent, through its distributor/agent, BZB, "distributed or sold" this misbranded pesticide product.

Count

28. The statements provided in paragraphs 1 through 27 are incorporated by reference as though set forth here in full.

29. On or about September 8, 2009, Respondent distributed or sold the misbranded pesticide product "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524.

30. Such actions constitute the distribution or sale of a misbranded pesticide product according to Section 3 of FIFRA, 7 U.S.C. § 136a.

31. 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.

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

33. Respondent's distribution/sale of a misbranded pesticide product constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and 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).

Proposed Civil Penalty

Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violations alleged in this Complaint as follows:

Distribution/sale of a misbranded pesticide "Busy Bee Nursery Sodium Hypochlorite Solution (12.5%)," EPA Reg. No. 70567-2-074524: 7 U.S.C. § 136j(a)(1)(E).....	\$4,290
Total Proposed Civil Penalty	\$4,290

Complainant determined the proposed civil penalty according to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). In determining the penalty amount, Complainant considered the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009, a copy of which is enclosed with this Complaint.

Rules Governing This Proceeding

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" (the Consolidated Rules), codified at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

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

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized

Thomas Turner, Associate Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Turner at (312) 886-6613. His address is:

Thomas Turner (C-14J)
Office of Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terms of Payment

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197

If Respondent pays the proposed penalty in full within 30 days after receiving the Complaint, no answer need be filed. A copy of the check, however, must be filed with the Regional Hearing Clerk at the address listed above.

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mr. Turner and to:

Joseph G. Lukascyk (LC-8J)
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;

- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Joseph G. Lukascyk, Enforcement Case Officer at 312-886-6233. Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. However, the Complainant will not reduce the proposed penalty because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, state, or local law.



Mardi Klevs
Chief
Chemicals Management Branch
Land and Chemicals Division

Dec. 3, 2010

Date

RECEIVED

DEC 03 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint of the civil administrative action involving Basic Chemical Solutions, LLC, was filed on December 3, 2010 with the Regional Hearing Clerk (E-19J), U. S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7662 0659 a copy of the original to the Respondents:

Mr. Mark J. Byrne
Member
Basic Chemical Solutions, LLC
525 Seaport Blvd.
Redwood City, California 94063

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Thomas Turner, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

FIFRA-05-2011-0003

Docket No. _____

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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**