



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

September 26, 2012

REPLY TO THE ATTENTION OF

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7668 0745

Mr. Gregory J. Bradley
Dow Microbial Control
1650 Joseph Dr.
100 Larkin Center, Office 117
Midland, Michigan 48674

Consent Agreement and Final Order In the Matter of
The Dow Chemical Company Docket No. FIFRA-05-2012-0027

Dear Mr. Bradley:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on September 26, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$67,500 is to be paid in the manner described in paragraphs 27 thru 29. Please be certain that the number **BD 2751245P026** and the docket number are written on both the transmittal letter and on the check. Payment is due by October 26, 2012 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) **Docket No. FIFRA-05-2012-0027**
)
The Dow Chemical Company) **Proceeding to Assess a Civil Penalty**
2030 Dow Center) **Under Section 14(a) of the Federal**
Midland, Michigan) **Insecticide, Fungicide, and Rodenticide**
) **Act, 7 U.S.C. § 136l(a)**
Respondent.)
_____)

RECEIVED
SEP 26 2012

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is The Dow Chemical Company (Dow), a corporation doing business in Midland, Michigan.
4. 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.
5. Respondent consents to the assessment of the civil penalty specified in this Consent Agreement and Final Order (CAFO), and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

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

7. Respondent waives its rights 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 rights to appeal this CAFO

8. Respondent certifies that the pesticidal products that are the subject of this CAFO are currently in compliance with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

9. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator).

10. Pursuant to regulations promulgated under Section 17(c) of FIFRA, 7 U.S.C § 136o(c), an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (EPA Form 3540-1), prior to the arrival of the shipment to the United States.

11. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136(a)(2)(N), states that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer or other distributor to fail to file reports required by FIFRA

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

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living 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. § 136 w(c)(1).

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

Factual Allegations

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

16. On or about June 18, June 19 and July 15, 2012, UPS Custom Brokerage (UPS), located at 1201 C Street, NW Auburn, Washington 98001 was a broker/agent for Respondent.

17. On or about June 18, June 19 and July 15, 2012, UPS submitted nine Notices of Arrival to EPA for import shipments of the pesticide “DBNPA 100 PTech,” EPA Registration Number (EPA Reg. No.) 464-655 from China under entry numbers UPS-5549021-6 ,UPS-5549015-8, UPS-5549018-2, UPS-5557018-1, UPS-5557009-0, UPS5557026-4, UPS5557031-4, UPS-5554408-7 and UPS-5556999-3.

18. The nine Notices of Arrival for the shipments identified in paragraph 17 were submitted to EPA after the shipments arrived into the United States.

19. Each Notice of Arrival referenced in paragraph 17 above, the Dow Chemical Company, 2030 Willard H Dow Center, Midland, Michigan 48674, is identified as the importer of record for the shipments of “DBNPA 100 PTech”

20. Respondent, as importer of “DBNPA 100 PTech” and by doing business in the

United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

21. “DBNPA 100 PTech” is a registered pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

22. On or about June 18, June 19 and July 15, 2012 Respondent “distributed or sold” the pesticide product “DBNPA 100 PTech,” as that term is defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Alleged Violations

23. Complainant incorporates by reference the allegations contained in paragraphs 1 through 22 of this CAFO.

24. On or about June 18 , June 19 and July 15, 2012, UPS failed to provide nine timely Notices of Arrival to EPA, prior to arrival to the United States, for import shipments of the pesticide “DBNPA 100 PTech,” EPA Registration Number (EPA Reg. No.) 464-655, from China under entry numbers UPS-5549021-6 ,UPS-5549015-8, UPS-5549018-2, UPS-5557018-1, UPS-5557009-0, UPS5557026-4, UPS5557031-4, UPS-5554408-7 and UPS-.5556999-3, as required by Section 17(c) of FIFRA, 7 U.S.C. §136o(c).

25. Respondent’s failure to submit timely NOAs for the nine shipments identified in paragraph 24 above, prior to arrival into the United States, constitutes nine unlawful acts under Section 12(a)(2)(N) of FIFRA, 7 U.S.C.§136j(a)(2)(N), 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).

Civil Penalty

26. 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 \$67,500. 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 December 2009.

27. Within 30 days of the effective date of this CAFO, Respondent must pay a \$67,500 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

28. The check must note "In the Matter of The Dow Chemical Company," the docket number of this CAFO and the billing document (BD) number.

29. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

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

31. If Respondent does not pay the civil penalty timely, 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).

32. 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.

33. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Sections 12(a)(2)(N) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 60 days after the effective date of this CAFO.

General Provisions

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

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

36. This CAFO does not affect Respondent's responsibilities to comply with FIFRA and

other applicable federal, state, and local laws.

37. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

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

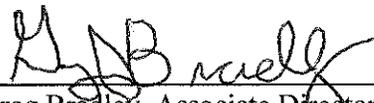
40. Each party agrees to bear its own costs and attorney fees in this action.

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

**In the Matter of:
The Dow Chemical Company**

The Dow Chemical Company, Respondent

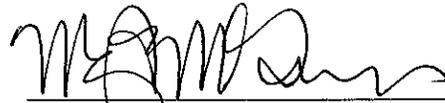
17 Sept 2012
Date


Greg Bradley, Associate Director
Global Regulatory Sciences and Product
Sustainability
The Dow Chemical Company

**In the Matter of:
The Dow Chemical Company**

United States Environmental Protection Agency, Complainant

September 21, 2012
Date



Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
The Dow Chemical Company
Docket No. FIFRA-05-2012-0027

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.

9-24-12

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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SEP 26 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 The Dow Chemical Company, was filed on September 26, 2012 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 7668 0745, a copy of the original to the Respondent:

Mr. Gregory J. Bradley
Dow Microbial Control
1650 Joseph Dr.
100 Larkin Center, Office 117
Midland, Michigan 48674

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Regional Judicial Officer, ORC/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

Docket No. FIFRA-05-2012-0027

