



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OFFICE OF
REGIONAL COUNSEL

APR - 5 2012

Reply To: ORC-158

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Andrew Kieniksman
Regulatory Supervisor
Pace International, LLC
5661 Branch Road
Wapato, Washington 98951

Re: Consent Agreement and Final Order for Violation of Federal Insecticide, Fungicide and Rodenticide Act, Docket Number FIFRA-10-2012-0047

Dear Mr. Kieniksman:

I have enclosed a Consent Agreement and Final Order (CAFO) incorporating the terms upon which we reached agreement in principle on March 20, 2012. Please review the CAFO to ensure that the terms reflect your understanding of the agreement. If it is acceptable, please have the Consent Agreement signed and forward the original to me for signature and filing. When we receive the signed agreement from you, we will sign it and send you a copy. The penalty payment will be due 30 days from the filing date of the CAFO.

If you have any questions or concerns, you may reach me at (206) 553-0240 or via email at st-peter.mary@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "MS Peter", written over a large, light-colored scribble.

Mercer St. Peter
Assistant Regional Counsel

Enclosure

cc: George Lobisser,
Pace International, LLC

Derrick Terada
U.S. Environmental Protection Agency

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	
Pace International, LLC)	Docket No. FIFRA 10-2012-0047
)	
Seattle, Washington)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
)	
)	

I. AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.2. Respondent is Pace International, LLC (“Respondent”).

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,”

40 C.F.R. Part 22, EPA hereby issues, and Respondent hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

2.3. A concise statement of the factual basis for alleging violations of FIFRA, together with specific references to the provisions of FIFRA and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1 Pace International, LLC (Respondent) owns and operates a business facility located at 1201 3rd Avenue # 5450, Seattle, Washington 98101.

3.2 Respondent produces the pesticide product “Penbotec 400SC,” EPA Registration Number 43813-32-64864.

3.3 On one occasion in 2011, Respondent imported Penbotec 400SC, which was not labeled in accordance with 40 C.F.R. Part 156 and, therefore, was misbranded.

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

3.5 Respondent committed one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by importing a misbranded pesticide.

3.6 This violation subjects Respondent to the payment of a civil penalty in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 136l of FIFRA, taking into consideration the size of Respondent's business, the economic impact of the proposed penalty on Respondent's business, Respondent's full compliance history and good faith efforts to comply, Respondent's cooperation with EPA, the duration of the violation as established by any credible evidence, the economic benefit of noncompliance, and the seriousness of the violation (in addition to such other factors as justice may require), EPA and Respondent agree that an appropriate penalty to settle this action is \$6,000.

4.7. Respondent consents to the issuance of the Final Order recited herein and to payment of the civil penalty cited in Paragraph 4.6 above within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case. Respondent may also pay the penalty by wire transfer in accordance with instructions provided by EPA.

4.9. Respondent shall serve a photocopy of the check or documentation of wire transfer on the Regional Hearing Clerk and EPA at the following two addressees:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Derrick Terada
Pesticides and Toxics Unit
U.S. Environmental Protection Agency, Region 10
Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.10. Should Respondent fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

(a) Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

(b) Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the assessed penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

4.12. Except as provided in Paragraph 4.15, below, nothing in the CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statute and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

4.14. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original.

4.15. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

FOR PACE INTERNATIONAL, LLC

Andrew Kieniksmann,
Regulatory Supervisor

Dated: _____

George Lobisser,
Chief Executive Officer

Dated: _____

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

Edward J. Kowalski, Director
Office of Compliance and Enforcement

Dated: _____

V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged in the Consent Agreement above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2012

Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Pace International, LLC. FIFRA 10-2012-0047**, was filed with the Regional Hearing Clerk on _____.

On _____, the undersigned certifies that a true and correct copy of the document was hand delivered to:

Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on _____, to:

George Lobisser
Chief Executive Officer
Pace International, LLC
1201 3rd Avenue #5450
Seattle, Washington 98101-3018

Dated: _____

Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply to: OCE-084

October 25, 2011
Amended March 20, 2012

MEMORANDUM

SUBJECT: Penalty Calculation – Pace International, LLC

FROM: Derrick Terada 
Environmental Scientist

TO: Mercer St. Peter
Assistant Regional Counsel

In this memorandum, we describe the factors and process used to calculate an appropriate penalty to resolve violations by Pace International, LLC (Respondent). The proposed penalty was calculated through application of the penalty factors in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as interpreted in the December 3, 2009, Enforcement Response Policy (ERP) for FIFRA. We propose a civil penalty of **\$7,500**.

The ERP applies the three statutory penalty factors set forth in Section 14(a)(4) of FIFRA and provides a framework for determining a base penalty. The three statutory factors are: the size of the respondent's business, the gravity of the violation, and the effect on the respondent's ability to continue in business.

Prior to calculating the proposed penalty for Respondent, the Civil Monetary Penalty Adjustment Final Rules (implementing the Debt Collection Improvement Act of 1996) were considered. As authorized by the Federal Civil Penalties Adjustment Act of 1990 and the ERP, the maximum civil penalty under FIFRA Section 14(a)(1) is \$7,500 per violation and under FIFRA Section 14(a)(2) is \$1,100 (\$650 for first offense) per violation. In calculating a penalty, FIFRA Section 14 also authorizes different maximum penalties depending on the type of business engaged by the respondent. In this case, Respondent is a pesticide registrant, dealer, retailer or other distributor and therefore is subject to the statutory maximum in FIFRA Section 14(a)(1) of \$7,500 per violation because the violation took place after January 12, 2009. Therefore, I have used **\$7,500** as the base penalty for these violations.

The first statutory factor, size of business, is determined by an individual's or company's gross revenues from all revenue sources during the prior calendar year. If the revenue data for the previous year appear to be unrepresentative of the general performance of the business, an average of the gross revenues for the three previous years may be used. The ERP also provides that when information concerning an alleged violator's size of business is not readily available, the penalty is to be calculated using the largest size-of-business category. According to the Dun and Bradstreet Report, respondent had gross revenues of just over \$14.7 million in sales. Respondent falls into the classification of a Category I business because its annual gross revenues were over \$10 million. The size of business category is coupled with the gravity level of the violation to establish a proposed base penalty, which can be further adjusted according to additional gravity factors.

The second statutory factor, the gravity of the violation, is determined through a two-step process: 1) determination of the appropriate gravity level assigned by the EPA to the type of violation, and 2) adjustment of this base penalty amount according to the circumstances surrounding the specific violation. The levels assigned to each violation represent an assessment of the relative gravity of each violation. The relative gravity of each

violation is based on an average set of circumstances which considers the actual or potential harm to human health and/or the environment which could result from the violation, or the importance of the requirement to achieving the goals of the statute. (See ERP, page 19.)

Appendix A of the ERP lists different types of FIFRA violations and the gravity level assigned to each. The levels range from one to four, with Level 1 being the most serious. The EPA alleges that respondent violated Section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) by selling and distributing misbranded pesticides.

For this violation, gravity Level 1 is assigned according to the ERP. The ERP assigns varying gravity levels based on the type of misbranding as described in Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1). In this case, I charged the type of misbranding as a Section 2(q)(1)(F) violation. Section 2(q)(1)(A) of FIFRA states that a pesticide is misbranded if: the label or the labeling accompanying it, does not contain directions for use necessary to make the product effective and the adequately protect health and the environment.

Table 2 of Appendix C in the ERP establishes a matrix based on the size-of-business categories with the level of gravity of the violation to establish a base penalty for Section 14(a)(1) violations that occurred after January 12, 2009. For size of business Category I and gravity Level 1, the base penalty is \$7,500.

After computing the base penalties, the ERP provides for gravity adjustments based on criteria set forth in Appendix B. There are five gravity-of-harm categories. Each gravity-of-harm category has a predetermined set of values or points assigned. The base penalty can be increased or reduced in light of the total number of points.

The gravity adjustments vary based on the pesticide involved in the Section 12(a)(1)(E) violation. The following is a breakdown of each of the gravity-of-harm categories from Appendix B, the amount assigned to each category, and the circumstances that pertain to each:

Penbotec 400SC (EPA Reg. No. 43813-32-648-64) – FIFRA Section 12(a)(1)(E) violation: Base Penalty \$7,500 (sale or distribution of a misbranded pesticide)

- a. Pesticide Toxicity (1-3). Assessed a value of 1 because Penbotec 400SC (EPA Reg. No. 43813-32-648-64) has the signal word “caution” on its labeling.
- b. Harm to Human Health (0-5). Assessed a value of 3 because there is unknown harm to human health due to improper labeling.
- c. Environmental Harm (0-5). Assessed a value of 1 because there is minor potential of harm to the environment.
- d. Compliance History (0-4). Assessed a value of 2 because this company had one prior FIFRA violation in 2010.
- e. Culpability (0-4). Assessed a value of 2 because the violation resulted from negligence.

The sum of the gravity adjustment criteria (9) does not reduce the base penalty. Therefore, the proposed penalty is **\$7,500**.

The third statutory penalty factor is Respondent’s ability to pay and remain in business. As far as we know, the ability of Respondent to continue operating will not be jeopardized by the penalty.

Region 10 has determined that the economic benefit of non-compliance is insignificant for the violations in this action.

Under the ERP, we can also reduce the penalty by 20% to reflect Respondent’s cooperation in this case, if warranted. This would reduce the penalty to \$6,000.

The proposed penalty of **\$7,500** is consistent with the statutory FIFRA penalty factors and the related ERP.

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Actions\Administrative Order (Penalties)\Pace International\Pace International 2012 CAFO.docx

Communication Plan

CC to Brandon Ambrose, Yakama Nation

OECA Weekly

Press Release Requested

EPA Issues Civil Penalty to Pace International LLC. For Misbranded Pesticide Import (Wapato, Washington)

On April XX, 2012, EPA Region 10 issued a \$6,000 civil penalty to Pace International for the misbranded pesticide product "Penbotec 400SC." EPA investigation found that a shipment of imported product was not properly labeled. Upon discovery of the problem, EPA issued a Stop Sale, Use, or Removal Order (SSURO). EPA issued the civil penalty upon the conclusion of the investigation. Pace cooperated fully with the investigation and worked to promptly fix the misbranded products.

Contacts: Mercer St. Peter, 206-553-0240; Derrick Terada, 206-553-4768.

Press Office Point of Contact:

Suggested Communication Tools (Please indicate number):

- | | |
|-------------------|--|
| 1. Press Release | 6. Targeted media outreach |
| 2. Talking Points | 7. Bundle with similar cases to announce |
| 3. Media Advisory | 8. Trade publications |
| 4. Web feature | 9. Op-Ed or Editorial Board |
| 5. Desk statement | |

Attached to this memo is a FIFRA Penalty Calculation Matrix worksheet that summarizes the penalty calculation methodology described above.

SETTLEMENT NEGOTIATIONS – Amended 3/20/2012

During settlement negotiations, EPA and respondent agreed to a penalty amount of **\$6,000**.

The respondent chose to quickly settle this matter and was eligible for a 20% reduction in the proposed penalty. This 20% reduction equated to a \$1,500 dollar reduction in the base penalty, and made the final penalty **\$6,000**.

The proposed penalty of **\$6,000** is consistent with the statutory FIFRA penalty factors and the related ERPs. Attached to this memo is a FIFRA Penalty Calculation Matrix worksheet that summarizes the penalty calculation methodology described above.