

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

FILED

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U.S. EPA REGION 4
HEARING CLERK

In the Matter of:

Valent U.S.A. LLC

Respondent.

Docket No. **FIFRA-04-2023-0726(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended, 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18 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 Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA or Agency) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
5. Respondent is Valent U.S.A. LLC (Valent or Respondent), a limited liability company formed in the State of California. This proceeding pertains to Respondent's importation of pesticide products through the Port of Savannah, Georgia.

III. GOVERNING LAW

6. The term “label” is defined in Section 2(p) of FIFRA, 7 U.S.C. § 136(p), to mean the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
7. The term “labeling” is defined in Section 2(p) of FIFRA, 7 U.S.C. § 136(p), to mean all labels and all other written, printed, or graphic matter: (a) accompanying the pesticide or device at any time; or (b) to which reference is made on the label or in literature accompanying the pesticide or device.
8. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), to mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms 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. § 136w(c)(1).
10. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. Pursuant to Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), a pesticide is misbranded if there is not affixed to its container, a label that bears the net weight or measure of the content.
12. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 3(d) of the Act, are adequate to protect health and the environment.
13. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded.
14. The term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or to release for shipment, or receive and (having so received) deliver or offer to deliver.
15. Pursuant to 40 C.F.R. § 152.3, “to distribute or sell” is further defined to mean the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.
16. Pursuant to 40 C.F.R. § 156.10(i)(2)(ix), the directions for use shall include specific directions concerning the storage, residue removal, and disposal of the pesticide and its container.
17. Pursuant to 40 C.F.R. § 156.10(d), the label must show clearly and prominently the net contents.
18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty for violations of the Act.

IV. FINDINGS OF FACTS

19. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
20. On or around January 22, 2019, the licensed customs broker Geodis USA, Inc., (hereinafter, “Geodis”) submitted entry documents via the U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System on behalf of Valent for the importation of one shipment, Entry Number 113-85122194, of 150 drums weighing 200 kilograms each of the pesticide Technical Asana Insecticide (EPA Reg. No. 59639-208). The shipment of drums of Technical Asana Insecticide arrived at the Port of Savannah, Georgia on or about January 17, 2019.
21. On January 28, 2019, Geodis uploaded a label for Technical Asana Insecticide to the ACE System. After reviewing this label, the EPA determined that the label’s directions for use language did not match the current EPA-approved label (accepted March 10, 2015) for Technical Asana Insecticide. More specifically, the directions for use under the “Storage and Disposal” section on the import label were different from the EPA-approved label in the following ways: The import label stated: “Store in a secure, dry and temperate area. Store in original container. Keep container closed when not in use. Do not store near food or feed. Do not use or store around the home. Avoid contact with water. In case of spill or leak, soak up with sand, earth or synthetic absorbent (do not use alkaline absorbents) and dispose of wastes in compliance with local, State and Federal regulations;” whereas the EPA-approved label states: “Store product only in original container, in a cool, dry industrial location inaccessible to children and pets. Do not use or store in or around the home.” Further, the import label stated: “Pesticide wastes are toxic;” whereas the EPA-approved label states, “Pesticide wastes are acutely hazardous.” After reviewing this label, the EPA noted these directions for use did not match the EPA-approved label’s analogous provisions for storage, residue removal, and disposal as is required by 40 C.F.R. § 156.10(i)(2)(ix). Therefore, the product was misbranded.
22. On or around April 19, 2019, the licensed customs broker Geodis submitted entry documents via the ACE System on behalf of Valent (Entry Number 113-85765778) for the importation of one shipment of three ISO tanks of the pesticide Clethodim 37% (EPA Reg. No. 72056-3) which arrived at the Port of Savannah, Georgia on or about April 1, 2019. On or around April 19, 2019, Geodis uploaded a label for Clethodim 37% to the ACE System. After reviewing this label, the EPA noted that it did not include the net weight as is required by 40 C.F.R. § 156.10(d). Therefore, the product was misbranded.

V. ALLEGED VIOLATIONS

23. The EPA alleges that by importing and distributing the misbranded pesticide products Technical Asana Insecticide (EPA Reg. No. 59639-208) and Clethodim 37% (EPA Reg. No. 72056-3) as described in Section IV above, Respondent has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

VI. STIPULATIONS

24. Pursuant to 40 C.F.R. § 22.13(b), the issuance of this CAFO simultaneously commences and concludes this proceeding.
25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
- (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
 - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waives its rights to appeal the Final Order accompanying this CAFO.
26. For the purpose of this proceeding, Respondent:
- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
 - (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO; and
 - (f) agrees to comply with the terms of this CAFO.
27. In accordance with 40 C.F.R. § 22.5, the individuals named in the Certificate of Service are authorized to receive service related to this proceeding and the Parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

28. Respondent consents to the payment of a civil penalty for the violations alleged herein, which was calculated in accordance with the Act, in the amount of **ELEVEN THOUSAND AND NINE HUNDRED DOLLARS (\$11,900.00)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
29. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and Docket Number for this matter shall be referenced on the face of the check. If Respondent sends payment by U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
P.O. Box 979078
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, Missouri 63045

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: Environmental Protection Agency

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Remittance Express (REX): 1-866-234-5681

30. Respondent shall send proof of payment within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov

and

Perrin Collins
Enforcement and Compliance Assurance Division
Chemical Safety and Land Enforcement Branch
collins.perrin@epa.gov

31. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and Docket No. **FIFRA-04-2023-0726(b)**.
32. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued interest is paid. If the civil penalty is paid within thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (30) days of the Effective Date of this CAFO, interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
 - (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(c)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. *See* 40 C.F.R. § 13.11(c).
 - (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average costs incurred. *See* 31 C.F.R. § 901.9(c) and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
33. In addition to what is stated in the prior Paragraphs, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), the EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) (*see* 40 C.F.R. §§ 13.13 and 13.14);

- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H);
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds (*see* 40 C.F.R. § 13.17); and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

34. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

- 35. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
- 36. In accordance with 40 C.F.R. § 22.18(c), full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall satisfy the requirements of this CAFO; but shall not in any case 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.
- 37. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 42 U.S.C. § 136l(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 42 U.S.C. § 136l(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
- 38. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
- 39. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent hazard as provided under the Act.
- 40. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
- 41. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns. Respondent shall direct its officers, directors, employees, agents, trustees, and authorized representatives to comply with the provisions of this CAFO.

42. Any change in ownership, partnership, corporate, or legal status relating to the Respondent will not in any way alter Respondent's obligations and responsibilities under this CAFO.
43. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
44. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
45. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
46. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
47. The EPA reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
48. It is the intent of the Parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
49. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

50. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Regional Hearing Clerk.

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Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Valent U.S.A. LLC**, Docket Number **FIFRA-04-2023-0726(b)**, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Keriema S. Newman
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Valent U.S.A. LLC,

Respondent.

Docket No. FIFRA-04-2023-0726(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified, and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22.

Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, In the Matter of **Valent U.S.A. LLC**, Docket No. **FIFRA-04-2023-0726(b)**, were filed and copies of the same were emailed to the Parties as indicated below.

Via email to all Parties at the following email addresses:

To Respondent: Michael Boucher
 Step toe & Johnson LLP
 mboucher@step toe.com

 Robin Charlton
 Valent U.S.A. LLC
 robin.charlton@valent.com

To EPA: Perrin Collins
 Physical Scientist
 collins.perrin@epa.gov

 Roberto Buso
 Attorney-Adviser
 buso.roberto@epa.gov

 Robert Caplan
 Senior Attorney
 caplan.robert@epa.gov

Shannon L. Richardson, Regional Hearing Clerk
r4_regional_hearing_clerk@epa.gov