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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:)	Docket No. FIFRA-09-2020- <u>0017</u>
)	
Valent U.S.A. LLC,)	CONSENT AGREEMENT AND FINAL
)	ORDER pursuant to
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Valent U.S.A. LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C § 136l(a)(1), for the assessment of a civil administrative penalty against Respondent for violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

2. Complainant is the Manager of the Toxics Section of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a Delaware limited liability company whose principal offices are located at 1600 Riviera Avenue, Suite 200, in Walnut Creek, California, 94596.

B. STATUTORY AND REGULATORY BASIS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States. . . .”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. 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 micro-organism (except viruses, bacteria, or other living 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. § 136 w(c)(1).

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. 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.
11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
12. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if “any word, statement, or other information required by or under Authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”
13. 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 \$19,936 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 84 Fed. Reg. 2056 (February 6, 2019).

C. ALLEGATIONS

14. At all times relevant to this CAFO, Respondent was a limited liability company and therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
15. On or about October 29, 2019, Respondent submitted to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection (“CBP”) an alternative to the Notice of Arrival through CBP’s Automated Commercial Environment (“ACE”) system under entry number 113-87175216 for an import shipment of 280 bags of “Clothianidin Technical Insecticide.”
16. The NOA stated that Respondent was the importer of record.
17. The import shipment associated with entry number 113-87175216 entered the United States at the Port of Los Angeles, California, on or about October 29, 2019.
18. On or about December 5, 2019, Respondent submitted to CBP an alternative to the Notice of Arrival through CBP’s ACE system under entry number 113-187424176 for an import shipment of 84 bags of “Clothianidin Technical Insecticide.”
19. The NOA stated that Respondent was the importer of record.
20. The import shipment associated with entry number 113-187424176 entered the United States at the Port of Los Angeles, California, on or about December 7, 2019.
21. As the importer of “Clothianidin Technical Insecticide” and by doing business in the United States, Respondent is subject to the requirements of FIFRA and the regulations promulgated thereunder.
22. “Clothianidin Technical Insecticide” is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u). The EPA Registration Number for “Clothianidin Technical Insecticide,” is 59639-173.

23. On or about October 29, 2019 and December 7, 2019, Respondent “distributed or sold,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide “Clothianidin Technical Insecticide” by importing it into the United States.
24. The labeling (including all required text) on the 280 bags of “Clothianidin Technical Insecticide” Respondent imported to the Port of Los Angeles, California, on or about October 29, 2019 and the 84 bags of “Clothianidin Technical Insecticide” Respondent imported to the Port of Los Angeles, California, on or about December 7, 2019, was not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
25. Consequently, the 280 bags of “Clothianidin Technical Insecticide” that Respondent imported to the Port of Los Angeles, California, on or about October 29, 2019 and the 84 bags of “Clothianidin Technical Insecticide” that Respondent imported to the Port of Los Angeles, California, on or about December 7, 2019, are “misbranded” pesticides pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), and their shipments constitute two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

D. RESPONDENT’S ADMISSIONS

26. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO;

(iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and

(v) waives the right to appeal the proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

27. Respondent agrees to the assessment of a penalty in the amount of TWELVE THOUSAND, NINE HUNDRED, AND FORTY DOLLARS (\$12,940) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.
28. Respondent shall pay the assessed penalty no later than thirty (30) calendar days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular Mail:

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

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

c. Certified or Overnight Mail:

U.S. Environmental Protection Agency
1005 Convention Plaza

Mail Station SL-MO-C2-GL
ATTN Box 979077
St. Louis, MO 63101

d. ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 310006, Environmental Protection Agency
CTX Format Transaction Code 22 — checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at (513) 487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Bonnie Rogers
Enforcement and Compliance Assurance Division (ENF-4)
U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street
San Francisco, CA 94105

29. Respondent shall not use payment of any civil administrative penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.
30. If Respondent fails to pay the assessed civil administrative penalty of TWELVE THOUSAND, NINE HUNDRED, AND FORTY DOLLARS (\$12,940) as identified in Paragraph 27 by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all accrued stipulated penalties are paid and shall become due and payable upon EPA's written request. Failure to pay the civil administrative penalty specified in Paragraph 27 by the deadline specified in that Paragraph may also lead to any or all of the following actions:
 - a. EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. The validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review in any such collection proceeding.
 - b. The U.S. Government may 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 U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.
- d. Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges, and nonpayment penalties against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 27 by the deadline specified in that Paragraph.
- (1). *Interest.* Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.
- (2). *Administrative Handling Charges.* Pursuant to 31 U.S.C. § 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on either actual or average cost incurred (including both direct and indirect costs), for every month in which any portion of the assessed penalty is more than thirty (30) days past due.
- (3). *Nonpayment Penalties.* Pursuant to 31 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%)

annually, may be assessed on all debts more than ninety (90) days delinquent.

F. CERTIFICATION OF COMPLIANCE

31. In executing this CAFO, Respondent certifies that, to the best of its knowledge, it is currently in compliance with any and all FIFRA requirements that apply to its ongoing operations.

G. RETENTION OF RIGHTS

32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.
33. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEY'S FEES AND COSTS

34. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

36. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
37. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, VALENT U.S.A. LLC:

1-10-2020
DATE


EDMUND BAUMGARTNER
General Counsel
Valent U.S.A. LLC

FOR COMPLAINANT, EPA:

2.3.2020
DATE


MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

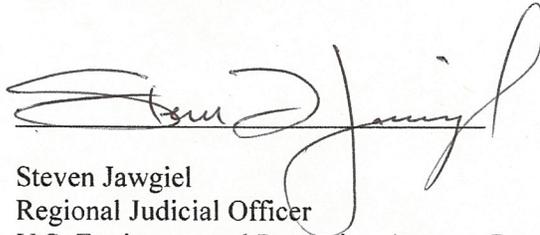
II. FINAL ORDER

Complainant and Respondent, Valent U.S.A. LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2020-⁰⁰¹⁷____) be entered and that Respondent shall pay a civil administrative penalty in the amount of TWELVE THOUSAND, NINE HUNDRED, AND FORTY DOLLARS (\$12,940) and comply with the terms and conditions set forth in the Consent Agreement.

02/13/20

DATE



Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. FIFRA-09-2020-0617) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Edmund Baumgartner
General Counsel
Valent U.S.A., LLC
1600 Riviera Avenue, Suite 200
Walnut Creek California 94596

Certified Mail Number:

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral
Staff Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Nicolas Friedlich for
Regional Hearing Clerk
U.S. EPA, Region IX

February 13, 2020
Date