

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

FILED
2018 JAN -9 PH 2: 16
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

Arrow Magnolia International
2646 Rodney Lane
Dallas, Texas 75229

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CONSENT AGREEMENT AND
FINAL ORDER

RESPONDENT

DOCKET NO. FIFRA 06-2018-0305

CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 ("EPA") as Complainant, and Arrow Magnolia International (Arrow Magnolia), 2646 Rodney Lane Dallas, TX (Respondent) in the above referenced action, have consented to the terms of this Consent Agreement and Final Order ("CAFO").

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this CAFO.

I.
PRELIMINARY STATEMENT

1. This CAFO is instituted by the United States Environmental Protection Agency, Region 6 (EPA) pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136/(a) ("FIFRA") which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500¹ for each violation of Section 12(a)(2)(L) of FIFRA, 7

¹The Civil Monetary Penalty Inflation Adjustment Rule (73 Fed Reg. 75340, December 11, 2008 and 81 Fed Reg. 43091, July 1, 2016) provided for increases in the statutory penalty provisions for violations which occur after the date the increases took effect. For violations after December 11, 2008, the potential maximum penalty for such violations changed from \$6,500 to \$7,500. For violations after November 2, 2015, the potential maximum penalty for such violations changed from \$7,500 to \$18,750.

U.S.C. § 136j(a)(2)(L) (producing a pesticide in an unregistered establishment). This proceeding is instituted by the issuance of a Consent Agreement and Final Order [hereinafter "CAFO"] incorporated herein.

2. The CAFO alleges Respondent violated regulations promulgated pursuant to the FIFRA.

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4. Respondent consents to the issuance of this CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this CAFO.

5. By signature on this CAFO, Respondent waives any right to an appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this CAFO.

7. Respondent agrees that the provisions of this CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, but not limited to, subsequent purchasers.

II.
STATUTORY AND REGULATORY BACKGROUND

8. Section 2(s) of FIFRA defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Section 2(gg) of FIFRA defines the term "to distribute or sell" as distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

11. Section 2(w) of FIFRA defines the term "produce" as to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

12. Section 2(dd) of FIFRA defines "establishment" as any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.

13. Pursuant to Section 12(a)(2)(L) of FIFRA it shall be unlawful for any person who is a producer to violate any provisions of section 7.

14. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e, no person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator.

15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136f(a), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$7,500² for each offense.

²The Civil Monetary Penalty Inflation Adjustment Rule (73 Fed Reg. 75340, December 11, 2008 and 81 Fed Reg. 43091, July 1, 2016) provided for increases in the statutory penalty provisions for violations which occur after the date the increases took effect. For violations after December 11, 2008, the potential maximum penalty for such violations changed from \$6,500 to \$7,500. For violations after November 2, 2015, the potential maximum penalty for such violations changed from \$7,500 to \$18,750.

III.
FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The Respondent is Arrow Magnolia at 2646 Rodney Lane Dallas, Texas 75229.
17. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA.
18. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1).

IV.
VIOLATIONS

19. Respondent's product, Bio San (EPA Reg. No. 10324-117-82439), is a pesticide as defined in FIFRA Section 2(u).
20. At all relevant times, the Respondent was a "distributor," as that term is defined at Section 2(gg) of FIFRA, of the pesticide described in paragraph 19.
21. The product described in paragraph 19 was produced in an unregistered establishment.
22. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it shall be unlawful for any person who is a producer to violate any provisions of section 7.

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

23. For the reasons set forth above, Respondent has agreed to pay a civil penalty which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), which authorizes EPA to assess a civil penalty of up to **EIGHTEEN THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$18,750.00)**³ for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law,

³ See footnote 1.

which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" Section 7 (c) dated May 2010, located at:

<http://www.epa.gov/compliance/resources/policies/civil/fifra/fifra-erp-section7-051910.pdf>

It is ORDERED that Respondent be assessed a civil penalty of **THREE THOUSAND SIX HUNDRED DOLLARS AND NO CENTS (\$3,600.00)**.

24. Within thirty (30) days of Respondent's receipt of this fully executed CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America. EPA - Region 6."

25. Payment shall be remitted in one of the alternatives provided in the collection information section below:

COLLECTION INFORMATION

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33

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33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency

Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
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 following directions for EPA Miscellaneous payments.

EPA Miscellaneous Payments - Cincinnati Finance Center

Form Number: **SFO Form Number 1.1**
Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket number FIFRA-06-2018-0305 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a

copy of the money order or check to the following:

Chuck Ruple
Pesticides Section (6MM-XP)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

26. Respondent's adherence to this request will ensure proper credit is given to the matter at hand.

27. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

29. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an

additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.


VI.
COSTS

30. Each party shall bear its own costs and attorney's fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

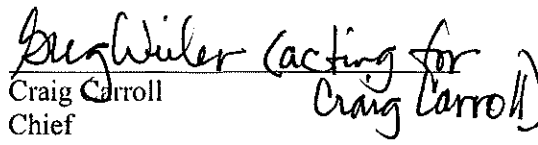
Date: 12/20/17



Curtis Shaw
CEO
Arrow Magnolia International

FOR THE COMPLAINANT:

Date: 1/2/18



Craig Carroll
Chief
Pesticides & Toxics Section

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 11/9/2018




Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2018, the original and one copy of the foregoing Consent Agreement and Final Order were hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and a true and correct copy was delivered to the following individual by method indicated below:

VERIFIED EMAIL – ADOBE PDF - RETURN RECEIPT

Curtis Shaw
CEO
Arrow Magnolia International
2646 Rodney Lane
Dallas, TX 75229



Chuck Ruple
Enforcement Officer
Pesticides Section