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AGENCY REGION 7  
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**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of** )  
 )  
**Bayer CropScience LP** ) **Docket No. FIFRA-07-2017-0008**  
 )  
**Respondent** )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA), Region 7 and Bayer CropScience LP (Respondent), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**COMPLAINT**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).
2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. Respondent is a limited partnership in good standing under the laws of the State of Delaware and doing business in the State of Missouri.

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.
6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell to any person any pesticide which is misbranded.
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to 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.
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
10. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if compiled with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment.
12. Every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R. Part 156. 40 C.F.R. § 156.10(a)(1).
13. Every pesticide product is required to bear hazard and precautionary statements for environmental hazards to non-target organisms, as prescribed in the regulations found in 40 C.F.R. Part 156. 40 C.F.R. § 156.80(a).
14. Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), authorizes the EPA Administrator to assess a civil penalty of up to \$5,000 for each violation of FIFRA. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustments Improvements Act of 2015, which amended 40 C.F.R. Part 19 so that penalties of up to \$18,750 are authorized

for violations that occur after November 2, 2015.

### **General Factual Allegations**

15. Respondent is, and at all times referred to herein was, a limited partnership under the laws of the State of Delaware doing business in the State of Missouri.

16. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. On or about January 20, 2016, a representative of the Missouri Department of Agriculture (MDA) conducted a neutral scheme producer establishment inspection (the “inspection”) of a facility owned and or operated by Consumers Oil & Supply Company at: 100 Railroad Street, Braymer, Missouri 64624 (the “Facility”). The inspection was conducted under the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate Consumers Oil & Supply Company’s and Consumer Oil & Supply Company’s affiliated registrant’s compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. The MDA inspection was subsequently forwarded to EPA for review.

18. At the time of the NDA inspection, and all times relevant to the allegations herein, a stationary bulk pesticide storage container at the Facility bore the product label for and contained and held for sale Respondent’s registered pesticide, Liberty 280 SL Herbicide, EPA Registration Number (“EPA Reg. No.”) 264-829. At the time of the inspection, photographic documentation was collected of the label appearing on the stationary bulk pesticide storage container at the Facility.

19. At the time of the NDA inspection, and at all times relevant to the allegations herein, Respondent allowed Consumer Oil & Supply Company to repackage certain pesticide products registered to Respondent, including Liberty 280 SL Herbicide, EPA Reg. No. 264-829, into refillable containers and to distribute and/or sell such repackaged products under Respondent’s registration and utilizing Respondent’s labeling.

20. At the time of the NDA inspection, and all times relevant to the allegations herein, Respondent’s registered pesticide, Liberty 280 SL Herbicide, EPA Reg. No. 264-829, was being held for sale or distribution as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at the Facility.

21. As a result of the inspection and documentation obtained by the EPA, Complainant has determined that violations of FIFRA and the federal regulations promulgated thereunder have occurred.

### **Allegations of Violations**

22. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

23. The facts stated in paragraphs 15 through 21 are re-alleged and incorporated as if fully stated herein.

24. Documentation collected during the MDA inspection revealed that the label affixed to the bulk pesticide storage container holding Respondent's registered pesticide, Liberty 280 SL Herbicide, EPA Reg. No. 264-829, for sale or distribution, was misbranded pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), because the pesticide's label did not contain directions for use. Further, Respondent's pesticide product, Liberty 280 SL Herbicide, EPA Reg. No. 264-829, did not bear all precautionary statement information as required by 40 C.F.R. §§ 156.80(a) and 156.10(a)(1).

25. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), when its registered product, Liberty 280 SL Herbicide, EPA Reg. No. 264-829, being held for sale or distribution, was misbranded for failing to contain directions for use and all precautionary statement information necessary to make the product effective and to adequately protect health and the environment.

**CONSENT AGREEMENT**

26. For the purpose of this proceeding, a required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

27. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for purposes of settlement to the payment of the civil penalty specified herein.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

**Penalty Payment**

29. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of Four Thousand Six Hundred Twenty-One Dollars (\$4,621.00) as set forth below.

30. Respondent shall pay the penalty within thirty (30) days of the effective date of

the Final Order. Such payment shall identify Respondent by name and docket number and shall be submitted by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

31. A copy of the check or other information confirming payment shall be simultaneously sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

32. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty as stated in Paragraph 29 may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

#### **Effect of Settlement and Reservation of Rights**

33. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take enforcement action with respect to any other violations of FIFRA or other applicable law.

34. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

35. The effect of settlement described in Paragraph 33 is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 36 herein.

36. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

37. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

38. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

39. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

40. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

41. The Final Order portion of this Consent Agreement and Final Order shall apply and be binding upon Respondent, Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**BAYER CROPSCIENCE LP**

Date: 2/14/2017

By: *M.A. Cockrill*

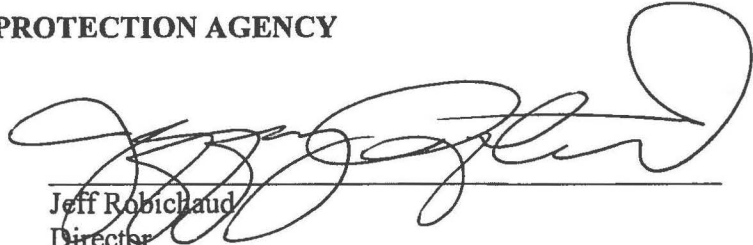
Michael A. Cockrill  
Print Name

V.P. Supply Chain  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date:

2/24/17

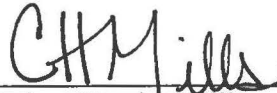


Jeff Robichaud  
Director

Water, Wetlands, and Pesticides Division

Date:

2/21/2017



Clarissa Howley Mills  
Office of Regional Counsel



**FINAL ORDER**

Pursuant to the provisions of FIFRA, 7 U.S.C. § 136 et. seq. and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer

Feb. 28, 2017

Date

IN THE MATTER Of Bayer CropScience LP., Respondent  
Docket No. FIFRA-07-2017-0008

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy via Email to Attorney for Complainant:

mills.clarissa@epa.gov


Copy via Email and First Class Mail to Respondent:

jane.snyder@bayer.com

caroline.belk@bayer.com

Caroline Belk  
Bayer CropScience LP  
P.O. Box 12014  
Research Triangle Park, North Carolina 27709

Dated: 2/28/17

  
Kathy Robinson  
Hearing Clerk, Region 7