



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

February 26, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL: No.7011 1150 0000 2643 8302**  
**RETURN RECEIPT REQUESTED**

Mr. Greg Shuppe  
President  
US Biologics, LLC  
170 West Progress Drive  
West Bend, Wisconsin 53095

Consent Agreement and Final Order In the Matter of  
U.S. Biologics, LLC Docket No. FIFRA-05-2015-0028

Mr. Shuppe:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on February 26, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,295 is to be paid in the manner described in paragraphs 23 and 24. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by March 30, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Calvo".

Estrella Calvo  
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2015-0028</b>
	)	
<b>U.S. Biologics, LLC</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>West Bend, Wisconsin,</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
_____	)	



**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) 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 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is U.S. Biologics, LLC, a limited liability company doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. Under FIFRA, no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a); and 40 C.F.R. § 167.20(a).

11. The term “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

12. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide, or to package, repack, label, relabel or otherwise change the container of any pesticide. Section 2(w) of FIFRA, 7 U.S.C. § 136(w); and 40 C.F.R. § 167.3.

13. The terms “pesticide” and “pesticidal product” mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(u) of FIFRA, 7 U.S.C. § 136(u); and 40 C.F.R. § 167.3.

14. The term “establishment” means any site where a pesticide or pesticidal product is produced, or held, for distribution or sale. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd); and 40 C.F.R. § 167.3.

15. Section 14(a)(1), 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased this amount to \$7,500 for each offense occurring after January 12, 2009.

#### **Factual Allegations and Alleged Violations**

16. At all times relevant to this CAFO, Respondent owned or operated a facility located at 170 West Progress Drive, West Bend, Wisconsin 53095 (U.S. Biologics facility).

17. Respondent “produced” “Bio-Save 10 LP Biological Fungicide” at the U.S. Biologics facility in 2013, within the meaning of Section 2(w) of FIFRA, 7 U.S.C. § 136(w); and 40 C.F.R. § 167.3.

18. The product referenced in Paragraph 17 above constitutes a “pesticide” and “pesticidal product,” within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u); and 40 C.F.R. § 167.3.

19. The U.S. Biologics facility constitutes an “establishment,” within the meaning of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd); and 40 C.F.R. § 167.3.

20. At all times relevant to this CAFO, the establishment was not registered with EPA.

21. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a); and 40 C.F.R. § 167.20(a) by producing a pesticide at the unregistered establishment identified in Paragraph 16.

**Civil Penalty**

22. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$2,295. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

23. Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,295 civil penalty for the FIFRA violation by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

The check must note U.S. Biologics, LLC and the docket number of this CAFO.

24. Respondent must send a notice of payment that states Respondent's name, complete address, the case docket number and the billing document number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Eaton Weiler (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

25. This civil penalty is not deductible for federal tax purposes.
26. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
27. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

28. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.
29. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

30. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

31. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

32. The terms of this CAFO bind Respondent, its successors and assigns.

33. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

34. Each party agrees to bear its own costs and attorneys' fees, in this action.

35. This CAFO constitutes the entire agreement between the parties.

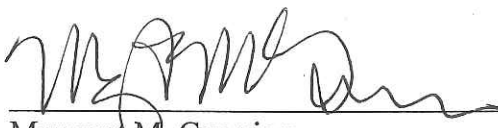
**US Biologics, LLC, Respondent**

07 January, 2015  
Date

  
\_\_\_\_\_  
Greg Shuppe  
President  
US Biologics, LLC

**United States Environmental Protection Agency, Complainant**

2/17/2015  
Date

  
\_\_\_\_\_  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**US Biologics, LLC**  
**Docket No. FIFRA-05-2015-0028**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

2-20-2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5



In the matter of: U.S. Biologics, LLC (West Bend, Wisconsin)

Docket Number: FIFRA-05-2015-0028

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on February 26, 2015, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

Mr. Greg Shuppe  
U.S. Biologics, LLC  
170 West Progress Drive  
West Bend, Wisconsin 53095


Copy by E-mail to  
Attorney for Complainant:

Eaton Weiler  
[weiler.eaton@epa.gov](mailto:weiler.eaton@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

February 26, 2015 

LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S):

7011 1150 0000 2643 8302