



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 22 2013

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Ms. Dana E. Sargent  
Regulatory Affairs Lead  
Arysta LifeScience North America, LLC  
15401 Weston Parkway, Suite 150  
Cary, North Carolina 27513

Re: Arysta LifeScience North America, LLC  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2011-9155

Dear Ms. Sargent:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter self-disclosed by Arysta LifeScience North America, LLC to the Environmental Protection Agency. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Cheryn L. Jones of the EPA Region 4 staff at (404) 562-9006.

Sincerely

Anthony G. Toney  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

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HEARING CLERK

**In the Matter of:**

Arysta LifeScience North America, LLC

Respondent.

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)  
) **Docket No.:** FIFRA-04-2011-9155  
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**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136/(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Arysta LifeScience North America, LLC.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Cheryn L. Jones  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9006.

5. Respondent is Arysta LifeScience North America, LLC, a limited liability company, formed and organized under the State of California and authorized to do business in the State of North Carolina.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y), in that it is a person who has registered pesticides pursuant to the provisions of FIFRA.

8. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), in that it is a person who manufactures, prepares, compounds, propagates, or processes any pesticide.
9. “Pesticide” is defined by 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.
10. A “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 microorganisms 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).
11. Respondent produces pesticides “to distribute or sell” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), which includes pesticides that are held for distribution, held for sale, held for shipment, shipped, delivered for shipment or released for shipment.

### **III. Specific Allegations**

12. The pesticide Clethodim 2EC, EPA Reg. No. 66330-353, is registered to Respondent and manufactured or produced for Respondent by Omnium LLC, located at 1417 Lower Lake Road, St. Joseph, Missouri 64504.
13. On or about April 11, 2011, Omnium LLC notified Respondent of a concern regarding the percent purity of the active ingredient Clethodim 70% MUP, EPA Reg. No. 59639-148-66330, in Clethodim 2EC.

14. Respondent conducted an investigation and discovered variations in the percent of the active ingredient in four lots of Clethodim 2EC produced for Respondent by Omnium LLC. Product from three of these four lots of Clethodim 2EC had been distributed or sold.
15. Respondent voluntarily disclosed the violations in writing to the EPA by letter dated April 26, 2011.
16. Further investigation by Respondent revealed 25 shipments of Clethodim 2EC were incorrectly formulated in that they contained the active ingredient Clethodim 70% MUP in concentrations above or lower than the allowable certified limits set forth in the Certified Statement of Formulation filed by Respondent with Clethodim 2EC's registration.
17. Under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), it is a violation of FIFRA to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution and or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.
18. Respondent violated Section 12 (a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), on at least 25 separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C 136l .
19. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
20. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the

effect on Respondent's ability to continue in business, and the gravity of the violation.

21. The EPA's Audit Policy, "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," allows for reduction of the gravity-based civil penalty assessed against a party who self discloses violations if the self-disclosure meets the conditions set forth in the Audit Policy. Based on a review of the Respondent's self-disclosure, the EPA has determined that Respondent met all conditions except condition 1 of the Audit Policy and is entitled to a 75 percent reduction of the gravity-based penalty.
22. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the EPA's Audit Policy, the EPA proposes to assess a total civil penalty of **TWENTY-SIX THOUSAND EIGHT HUNDRED TWENTY-FIVE DOLLARS (\$26,825)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations or conclusions of law pertaining to Respondent's alleged violations set forth above.
24. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
25. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
26. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance

with all relevant requirements of FIFRA.

27. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

#### **V. Final Order**

29. Respondent is assessed a civil penalty **TWENTY-SIX THOUSAND EIGHT HUNDRED TWENTY-FIVE DOLLARS (\$26,825), which shall be paid within 30 days from the effective date of this CAFO.**
30. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America." and shall send the check via U.S. mail to the following address:

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

#### **The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

31. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following

persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Cheryn L. Jones  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

32. For purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
33. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the due date . A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.

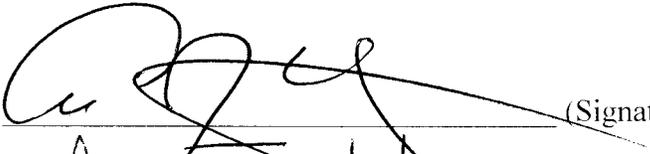
authorized by the party represented to enter into this CAFO and hereby binds that party to it.

**VI. Effective Date**

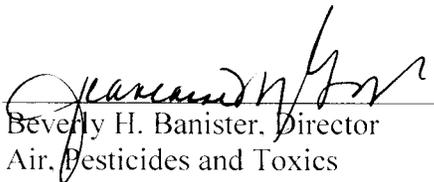
37. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

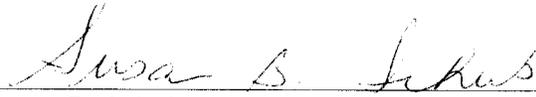
**Respondent:** Arysta LifeScience North America, LLC  
**Docket No.:** FIFRA-04-2011-9155(b)

By:  (Signature) Date: 3 December 2012  
Name: Amy J. Hader (Typed or Printed)  
Title: President & CEO (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By:  Date: 12-19-12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 22 day of January 2013

  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

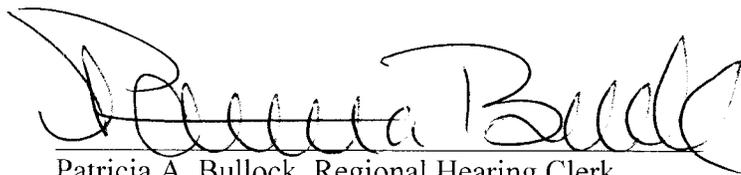
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of Arysta LifeScience North America, LLC, Docket Number: FIFRA-04-2011-9155(b), to the addressees listed below:

Ms. Dana Sargent (via Certified Mail, Return Receipt Requested)  
Regulatory Affairs Lead  
15401 Weston Parkway, Suite 150  
Cary, North Carolina 27513

Cheryn Jones (via EPA's internal mail)  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Date: 1-22-13

  
Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511