

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA**

In the Matter of:

Sipcam Agro USA, Inc.

Respondent.

Docket No.: FIFRA-04-2020-0704(b)

**CONSENT AGREEMENT**

**I. NATURE OF ACTION**

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA or the Act), and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

**II. PARTIES**

4. Complainant is the Director of the Enforcement and Compliance Assurance Division of the EPA Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

5. Respondent is Sipcam Agro USA, Inc. (hereinafter Sipcam), a corporation, doing business in North Carolina. Oxon Italia S.p.A. was a business based in Milan, Italy, which imported products into the United States in 2018. On March 13, 2019, Oxon Italia S.p.A. changed its name to Sipcom Oxon S.p.A. Sipcam Agro USA, Inc. is the official authorized agent for Sipcam Oxon S.p.A. and has agreed to be the Respondent in this matter and to pay the assessed penalty in this matter for both Sipcam Agro USA and Sipcam Oxon S.p.A.

### **III. GOVERNING LAW**

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. 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).
8. The term "pesticide" is defined at 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.
9. The term "establishment" is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
10. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
11. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer (or its agent) desiring to import pesticides into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1] prior to the arrival of the shipment(s) into the United States, or, as an alternative to submitting an NOA, the importer or its agent may file an entry via the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) Data Processing System.
12. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is "misbranded" if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

#### IV. FINDINGS OF FACTS

13. On or around September 18, 2018, the licensed customs broker CV International, Inc. (CV International) submitted entry documents via the CBP ACE Data Processing System on behalf of Sipcam for the importation of ten drums of the pesticide product Tetraconazole Technical (EPA Reg. No. 60063-11), each drum weighing 250 kilograms, under Entry Number 251-20402679. The information provided to the EPA through the CBP ACE System indicated that the drums of Tetraconazole Technical were scheduled to arrive at the Port of Savannah, Georgia on September 24, 2018. According to Sipcam, the drums arrived at the port on September 24, 2018.
14. On September 26, 2018, CV International emailed to the EPA a copy of the label that CV International represented was on the imported drums of product, and that had been uploaded into the ACE System. After reviewing the label, the EPA emailed CV International on October 2, 2018, advising that the label affixed to the drums appeared to match an EPA master label approved on December 18, 2009, but did not match the most recent EPA master label, approved on January 4, 2017.
15. On October 10, 2018, the licensed customs broker Blue Cargo Group, LLC (Blue Cargo) submitted an NOA on behalf of Oxon Italia (now known as Sipcam Oxon S.p.A) for the importation of sixty-four totes of the pesticide product Caravel Herbicide (EPA Reg. No. 60063-58), each tote containing 264.20 gallons, under Entry Number B2L-10118041. The information provided to the EPA through the NOA form indicated that the totes of Caravel Herbicide were scheduled to arrive at the Port of Savannah, Georgia on October 18, 2018. According to Sipcam, whom EPA was in communication with on behalf of Oxon Italia, the drums arrived at the port on October 19, 2018.
16. After reviewing a copy of the label that was provided by Blue Cargo with the NOA form, the EPA determined that the label did not match the current EPA-approved master label. More specifically, under the Storage and Disposal Section of the label, it indicated that the product was packaged in a container (tote) that was less than five gallons, but the totes being imported each held 264.2 gallons.
17. On November 7, 2018, the EPA issued a Stop Sale, Use, or Removal Order (SSURO) to Sipcam, prohibiting the sale, use, or removal of the drums of Tetraconazole Technical and totes of Caravel Herbicide listed above in paragraphs 13 and 15, but allowing for Sipcam to deliver the drums and totes to their EPA-registered establishment where they could be relabeled so they are in compliance with FIFRA. On November 9, 2018, Sipcam notified the EPA that the SSURO incorrectly listed the containers of Tetraconazole Technical as supersacks instead of drums. On November 16, 2018, the EPA issued an Amendment to the SSURO to change the reference from supersacks to drums. On December 19, 2018, after verifying that Sipcam had relabeled the drums and totes in compliance with the SSURO and FIFRA, the EPA terminated the SSURO and Sipcam was authorized to use and distribute the drums and totes of products.

18. On November 26, 2018, CV International submitted entry documents via the ACE System on behalf of Sipcam for the importation of 6,496 drums of the pesticide product Echo 90DF (EPA Reg. No. 6006-10), each drum weighing 10 kilograms, under Entry Number 251-20423642. The NOA indicated that the drums of Echo 90DF were scheduled to arrive at the Port of Memphis, Tennessee on November 16, 2018. According to Sipcam, the drums arrived at the port on November 23, 2018.
19. After reviewing a copy of the label submitted by CV International with the NOA, the EPA determined that the label did not match the current EPA-approved master label. More specifically, the front label on the product added the phrases “Pull back book here” and “See Inside Booklet for First Aid and Additional Precautionary Statements” which did not appear on the Master label.
20. On November 28, 2018, Sipcam submitted a Notification to the EPA Headquarters to correct the misbranded label on the Echo 90DF product. Based on the Notification, the EPA released the hold on the product on November 29, 2018, which allowed it to enter the United States.

## **V. ALLEGED VIOLATIONS**

21. The EPA alleges that by importing the misbranded pesticide products Tetraconazole Technical, Caravel Herbicide, and Echo 90DF as described above, Sipcam and Oxon Italia S.p.A., now known as Sipcam Oxon S.p.A distributed misbranded pesticides on at least three occasions in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Sipcam Agro USA, a wholly owned subsidiary of, and acting as agent of Sipcam Oxon S.p.A in the United States, has agreed to enter into this settlement with the EPA and to pay the assessed penalty.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty.

## **VI. STIPULATIONS**

23. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
  - (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;
  - (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
  - (c) consents to the assessment of a civil penalty as stated below;
  - (d) consents to the conditions specified in this CAFO;

- (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

25. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to the EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO; and
- (f) agrees to and comply with the terms of the CAFO.

26. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding.

## **VII. TERMS OF PAYMENT**

27. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of \$11,800.00, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
28. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819.

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contact: Craig Steffen (513) 487-2091  
REX (Remittance Express): 1-866-234-5681

29. Respondent shall send proof of payment within 24 hours of payment of the civil penalty, to:

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

and

Kimberly Tomczak  
Chemical Safety Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
Tomczak.kimberly@epa.gov

30. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and Docket No. FIFRA-04-2020-0704(b).
31. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
  - (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due under Section VII and is not paid in full, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).
  - (c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.90(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.
32. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA 7 U.S.C. § 136l(a), 40 C.F.R. §§ 13.13 and 13.14;
  - (b) 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 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) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
  - (d) request the Attorney General to bring a civil action in an appropriate district court to recover the outstanding civil penalty. Section 14 (a)(5) of FIFRA 7 U.S.C. § 136l(a)(5).
33. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

#### **VIII. EFFECT OF CAFO**

34. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
35. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law in accordance with 40 C.F.R. § 22.18(c).
36. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 42 U.S.C. § 136l(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 42 U.S.C. § 136l(b). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
37. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
38. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

39. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
40. 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.
41. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
42. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
43. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
44. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
45. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
46. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
47. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

48. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

**IX. EFFECTIVE DATE**

49. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

**Remainder of Page Intentionally Left Blank**

**Complainant and Respondent will Each Sign on Separate Pages**

The foregoing Consent Agreement In the Matter of Sipcam Agro USA, Inc., Docket FIFRA-04-2020-0704(b) Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:



May 4, 2020

Signature

Date

Printed Name: Tracy Heinzman

Title: Attorney

Address: 1776 K Street N.W., 10th floor, Washington, DC 20006

The foregoing Consent Agreement In the Matter of Sipcam Agro USA, Inc, Docket Number: FIFRA-04-2020-0704(b) Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Carol L. Kemker  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

**Sipcam Agro USA, Inc.,**

Respondent.

Docket No. **FIFRA-04-2020-0704(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of **Sipcam Agro USA, Inc.**, Docket No. **FIFRA-04-2020-0704(b)**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties:**

To Respondent: Ms. Lizbeth Rea, lrea@sipcamagro.com

and Ms. Tracy Heinzman, Attorney at Law, theinzman@wiley.law

To EPA: Kimberly Tomczak, Life Scientist, tomczak.kimberly@epa.gov,

and Robert Caplan, Senior Attorney, caplan.robert@epa.gov

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9511