

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

## REGION 4

In the Matter of:

**UPL NA, Inc.**

Respondent.

Docket No. **FIFRA-04-2022-0729**

**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 Director of the Enforcement and Compliance Assurance Division, 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 UPL NA, Inc. (UPL), a company based in the state of Pennsylvania. This proceeding pertains to Respondent's importation of registered pesticides into the Port of Miami, Florida, Port of Charleston, South Carolina, and Port of Savannah, Georgia. UPL NA, Inc. was formerly named United Phosphorus. The company's name changed from United Phosphorus to UPL NA, Inc. (UPL) in 2019.

### III. GOVERNING LAW

6. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide that is misbranded.
7. Pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation under FIFRA § 3(a) or FIFRA § 19.
8. Pursuant to Sections 3 and 19(a)(1)(B) of FIFRA, 7 U.S.C. §§ 136a and 136q(a)(1)(B) the labeling of a pesticide must contain the appropriate requirements and procedures for the transportation, storage, and disposal of the pesticide, any container of the pesticide, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide.
9. Pursuant to 40 C.F.R. § 156.140, one of the following statements is required to identify the container type as a refillable container, unless otherwise modified, waived or exempted by the EPA under 40 C.F.R. §§ 156.140(c-e): (1) “Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.” (2) “Refillable Container. Refill this container with [*common chemical name*] only. Do not reuse this container for any other purpose.” The information may be located on any part of the container except the closure. If the statements are placed on the container, they must be durably marked on the container. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.
10. Pursuant to 40 C.F.R. § 156.144, the label of each pesticide must include the applicable instructions for removing pesticide residues from the refillable container that are specified in 40 C.F.R. § 156.156, unless the instructions are otherwise modified or exempted by the EPA under 40 C.F.R. §§ 156.144 (c-g), and all residue removal instructions must be placed under the heading “Storage and Disposal.”
11. Pursuant to 40 C.F.R. § 156.156, residue removal instructions must be given for all pesticides that are distributed or sold in refillable containers, including those that do not require dilution prior to application, that provide the timing of the residue removal procedure and residue removal instructions prior to container disposal. Required language on the timing of the residue removal procedure is provided in 40 C.F.R. § 156.156(a) and the statement must immediately precede instructions required to address residue removal prior to container disposal. Pursuant to 40 C.F.R. § 156.156(b)(1), the residue removal instructions must be appropriate for the characteristics and formulation of the pesticide product and must be adequate to protect human health and the environment. Statements that could fulfill the requirements of 40 C.F.R. § 156.156(b)(1) are listed under 40 C.F.R. § 156.156(b)(2).
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.
13. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is “misbranded” if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.

14. Pursuant to Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is “misbranded” if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.
15. Pursuant to Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii), a pesticide is “misbranded” if the label there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the net weight or measure of the content.
16. 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).
17. 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.
18. 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 to release for shipment.
19. 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 or pesticide devices 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.
20. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
21. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) may be assessed by administrative order.

#### **IV. FINDINGS OF FACTS**

22. 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.
23. On July 27, 2018, the licensed customs broker, Worldwide Logistics Partners, Inc., submitted an entry via the CBP ACE Data Processing System on behalf of United Phosphorus for the importation of a shipment of the pesticide product Asulox Herbicide (EPA Reg. No. 70506-139) under Entry Number EJ4-00247691. The shipment included six ISO tanks (each tank containing 4,359 gallons of the pesticide product) that arrived at the Port of Miami, Florida on or about August 6, 2018. After reviewing the product label that was uploaded in the ACE Data Processing System by the broker, the EPA determined that the label included incorrect information that did not match the EPA master

label for the registered product. More specifically, at the top of the label the language “For Repackaging Purposes Only” was added to the label and the label was missing the Engineering Control statement and the section titled “General Instructions and Information.”

24. On February 5, 2019, the licensed customs broker, C.H. Robinson International, Inc., submitted an entry via the CBP ACE Data Processing System on behalf of United Phosphorus for the importation of a shipment of the pesticide product Penncozeb DF (EPA Reg. No. 70506-185), under Entry Number 791-22031821. The shipment included 5,184 bags of the pesticide product (each bag weighing 30 pounds), and arrived at the Port of Charleston, South Carolina on or about February 7, 2019. Upon review of the product label, the EPA determined that the label did not include “and Turf & Ornamental Use” as one of the uses under the Brand Name of the product, yet part of the label included a Turf Section. Additionally, the whole Turf Section was not included on the label as it was missing the “Commercial (Non-Sod Farm) Turf Applications” section. On June 9, 2022, after reviewing the label, the EPA identified the following discrepancies:
  - (a) Under the brand name, “Dry Flowable” was not included on importer’s label;
  - (b) The Use statement did not include “Turf,” but Turf instructions were in the label booklet;
  - (c) Crop headings were removed, and tables combined; and
  - (d) An incorrect subheading included “General Instructions,” whereas the EPA approved master label has “Use Instructions.”
  
25. Between February 2 and March 13, 2020, the licensed customs broker Worldwide Logistics Partners, Inc. submitted entries via the CBP ACE Data Processing System on behalf of UPL for the importation of seven shipments of the pesticide product Blazer MUP (EPA Reg. No. 91813-18). The shipments arrived at the Port of Savannah, Georgia and were filed under the following entry numbers:
  - (a) EJ4-00309640 (included one tank weighing 51,809 pounds)
  - (b) EJ4-00311067 (included one tank weighing 51,809 pounds);
  - (c) EJ4-00313949 (included one tank weighing 51,809 pounds);
  - (d) EJ4-00309814 (included three tanks, each tank weighing 51,809 pounds);
  - (e) EJ4-00312453 (included one tank weighing 51,809 pounds);
  - (f) EJ4-00313915 (included one tank weighing 51,809 pounds);
  - (g) EJ4-00314533 (included two tanks, each tank weighing 51,809 pounds).
  
26. Upon review of the product labels, the EPA determined that the product was misbranded due to the inclusion of incorrect information that did not match the master label for the registered product. The container handling instructions are for triple rinse/pressure wash and did not appear to be appropriate for ISO tanks. Specifically, the language on the label included Container Disposal information for Non-Refillable Containers instead of the appropriate Refillable Containers language. In reviewing the product’s label for compliance with Sections 3 and 19(a)(1)(B) of FIFRA, 7 U.S.C. §§ 136a and 136q(a)(1)(B) and promulgated regulations, the product label neither

identified the container type as a refillable container, pursuant to 40 C.F.R. § 156.140, nor did it have the applicable instructions for removing pesticide residues from the refillable container, pursuant to 40 C.F.R. §§ 156.144 and 156.156.

27. Between December 21, 2020 and January 11, 2021, the licensed customs broker Worldwide Logistics Partners, Inc. submitted entries via the CBP ACE Data Processing System on behalf of UPL for the importation of three shipments of the pesticide product Omite Technical (EPA Reg. No. 400-95). The shipments arrived at the Port of Savannah, Georgia and were filed under the following Entry Numbers: EJ4-00345263 (included one tank weighing 46,562 pounds); EJ4-00348127 (included one tank weighing 45,988 pounds); and EJ4-00349653 (included one tank weighing 45,503 pounds). Upon review of the product label, the EPA determined that the product was misbranded because the net contents on the label only appeared in kilogram as opposed to pounds.
28. On September 20, 2021, the licensed customs broker Worldwide Logistics Partners, Inc. submitted an entry via the CBP ACE Data Processing System on behalf of UPL for the importation of one shipment of the pesticide product Elevate 50 WDG (EPA Reg. No. 66330-35) under Entry Number EJ4-00379429. The entry was for 20 containers (each weighing 1,323 pounds) that arrived at the Port of Charleston, South Carolina on or about September 29, 2021. Upon review of the product label, the EPA determined that the product was misbranded because the Precautionary Statement language of the label did not match the language required under the EPA approved master label for the registered product.
29. Pursuant to 40 C.F.R. § 156.10(a)(1), every pesticide product must bear a label that clearly and prominently shows the information specified therein, including, but not limited to: (iii) The net contents as prescribed in 40 C.F.R. § 156.10(d); (vii) Hazard and precautionary statements as prescribed in 40 C.F.R. Part 156, Subpart D, for human and domestic animal hazards and 40 C.F.R. Part 156, Subpart E for environmental hazards; and (viii) The directions for use as prescribed in 40 C.F.R. § 156.10(i). The claims on the Respondent's product packaging and labelling, as described above, do not meet the requirements of set forth in these regulations.

## **V. ALLEGED VIOLATIONS**

30. The EPA alleges that Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) on at least seven occasions (for the seven shipments outlined in paragraph 25) due to its failure to comply with Section 19 of FIFRA, and the container regulations set forth in 40 C.F.R. §§ 156.140, 156.144 and 156.156. As a result of these alleged violations, Respondent is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
31. The EPA alleges that Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by importing and distributing misbranded pesticides on at least six occasions (for the shipments outlined in paragraph 23, 24, 27 and 28) as set forth in Section IV above and is therefore subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
32. 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**

33. The issuance of this CAFO simultaneously commences and concludes this proceeding.

40 C.F.R. § 22.13(b).

34. 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.
35. 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 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 comply with the terms of this CAFO.
36. 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 and the parties agree to receive service by electronic means.

## VII. TERMS OF PAYMENT

37. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **EIGHTY-FOUR THOUSAND, TWO HUNDRED DOLLARS**

**(\$84,200.00)**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.

38. 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

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

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
R4\_Regional\_Hearing\_Clerk@epa.gov

and

Kimberly Tonkovich  
Pesticides Enforcement Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
tonkovich.kimberly@epa.gov

40. “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-04-2022-0729.
41. 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 of the Effective Date of this CAFO, 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 penalty and accrued Interest is 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 and is not paid, 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. § 901.9(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.

42. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, pursuant to Section 14 (a)(5) of FIFRA 7 U.S.C. § 136l(a)(5), the 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 that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).
43. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

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

44. 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.
45. 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. 40 C.F.R. § 22.18(c),
46. 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.
47. 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.
48. 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.
49. 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.

50. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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.
58. 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**

59. 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.

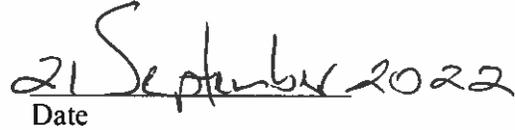
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**Complainant and Respondent will Each Sign on Separate Pages]**

The foregoing Consent Agreement In the Matter of UPL NA Inc., Docket Number FIFRA-04-2022-0729 Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:

  
Signature

  
Date

Printed Name: Craig Brekkas

Title: President

Address: 630 Freedom Business Center, Suite 402

King of Prussia, PA 19406

The foregoing Consent Agreement In the Matter of **UPL NA, Inc.**, Docket Number **FIFRA-04-2022-0729** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

for

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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:

**UPL NA, Inc.**

Respondent.

Docket No. **FIFRA-04-2022-0729**

**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.**

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Tanya Floyd  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of **UPL NA, Inc.**, Docket No. **FIFRA-04-2022-0729**, were filed and copies of the same were emailed to the parties as indicated below.

**Via email to all parties at the following email addresses:**

To Respondent:       Cristen Rose  
                              Haynes and Boone, LLC  
                              800 17th Street NW, Suite 500  
                              Washington, DC 20006  
                              (202) 654-4506  
                              cristen.rose@haynesboone.com

To EPA:                 Kimberly Tonkovich  
                              Life Scientist  
                              tonkovich.kimberly@epa.gov

                              Robert Caplan  
                              Senior Regional Counsel  
                              caplan.robert@epa.gov

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Shannon L. Richardson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960