



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

OCT 09 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Bill Lewis  
Summit Agro USA LLC  
240 Leigh Farm Road, Suite 215  
Durham, North Carolina 27707

Re: Summit Agro USA LLC  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2019-9738(b)

Dear Mr. Lewis:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. 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's 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.

Should you have any questions about this matter or your compliance status in the future, please contact Kimberly Tomczak of the EPA Region 4 staff at (404) 562-8987.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth  
Chief  
Chemical Safety and Land Enforcement Branch

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

**In the Matter of:** )  
 )  
Summit Agro USA LLC )  
 )  
Respondent. )  
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\_\_\_\_\_ )

**Docket No.: FIFRA-04-2019-9738(b)**

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HEALTH AND SAFETY  
OFFICE OF REGIONAL  
ADMINISTRATION

**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. § 136l(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 Enforcement and Compliance Assurance Division of EPA Region 4 and has been delegated the authority to settle civil administrative penalty proceedings under Section 14(a) of FIFRA. Respondent is Summit Agro USA LLC (Respondent or Summit).
2. 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**

3. Respondent is licensed to do business in the State of North Carolina.

4. 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.
5. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.
6. The term "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.
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 "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.
9. 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.
10. 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.

11. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. §136(q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
12. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or offer for sale a misbranded pesticide.

### **III. Specific Allegations**

13. On or around February 22, 2019, the licensed customs broker James J. Boyle & Co., filed one entry via the CBP ACE system as Entry Number 221-36466442 on behalf of Summit for the importation of two shipments, each shipment containing 20 supersacks of the imported pesticide product Technical Sulfentrazone (EPA Reg. No. 88783-3), and each supersack weighing 500 kilograms. The information provided to the EPA through the CBP ACE System indicated that the shipments were scheduled to arrive into the Port of Jacksonville, Florida on February 22, 2019. Upon review of the product label that was uploaded into the ACE system by the broker, the EPA determined that the label included incorrect information that was not compliant with the EPA master label. More specifically, the Storage and Disposal section of the EPA-master label includes separate directions for the disposal and reuse of plastic lined containers and supersacks; however, in the Storage and Disposal section of the label on the imported supersacks of Technical Sulfentrazone, there were instructions for reuse/disposal of drums only, and none for reuse/disposal of supersacks.
14. Based on its determination that the supersacks of the pesticide were misbranded, on March 8, 2019, the EPA informed Summit of the following options: (1) export or destroy the supersacks; (2) relabel the supersacks at an EPA-registered establishment under a Stop Sale, Use, or Removal Order (SSURO); or (3) relabel the supersacks at a bonded warehouse that is an EPA-registered establishment under a Permit to Transfer. On March 11, 2019, Summit advised the

EPA Region 4 that the company wished to proceed with option 2, to relabel the supersacks under a SSURO.

15. On March 22, 2019, the EPA issued a SSURO to Summit, prohibiting the Respondent from further selling, distributing, using or removing the supersacks of Technical Sulfentrazone, but also provided the Respondent an opportunity to come into compliance by relabeling the supersacks at an EPA-registered establishment.
16. On May 17, 2019, the EPA terminated the SSURO after verifying that the supersacks of the pesticide product had been properly relabeled and were in compliance with FIFRA.
17. The EPA alleges that by importing the misbranded pesticide products under Entry Number 221-36466442, as described above, Summit distributed misbranded pesticides on at least one occasion 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 civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. 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.
19. 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(s).
20. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100)** against the Respondent for the above-described alleged violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

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

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
22. 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.
23. 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.
24. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
25. 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 alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.
26. 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**

27. Respondent is assessed a civil penalty of **FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

28. 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.**

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

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.

Electronic Payment: Any electronic payment method as indicated in EPA's electronic payment options website found at:  
<https://www.epa.gov/financial/makepayment#electronic>

29. 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 S.W.  
Atlanta, Georgia 30303;

Kimberly Tomczak  
Chemical Safety Section  
Chemical Safety and Land Enforcement Branch  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303.

30. For the 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.
31. Pursuant to 31 U.S.C. § 3717, the 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 date required. 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.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.



**VI. Effective Date**

35. 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:** Summit Agro USA LLC

**Docket No.:** FIFRA-04-2019-9738(b)

By: William M Lewis (Signature)

Date: Sep. 24, 2019

Name: William M Lewis (Typed or Printed)

Title: President & CEO (Typed or Printed)

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

By: Suzanne G. Rubini  
Suzanne G. Rubini  
Acting Director  
Enforcement and Compliance Assurance Division

Date: 10/3/2019

**APPROVED AND SO ORDERED** this 9<sup>th</sup> day of October 2019.

Tanya Floyd  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

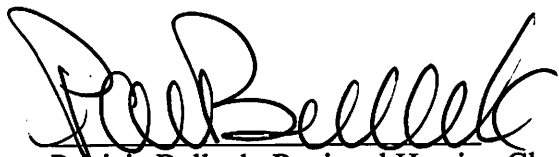
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Summit Agro USA LLC Docket Number: FIFRA-04-2019-9738(b) to the addressees listed below.

Mr. Bill Lewis (via Certified Mail, Return Receipt Requested)  
Summit Agro USA LLC  
240 Leigh Farm Road, Suite 215  
Durham, North Carolina 27707

Kimberly Tomczak (via EPA's internal mail)  
Chemical Safety Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Mr. Robert Caplan (via EPA's internal mail)  
Senior Attorney  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

10-9-19  
DATE

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