

Sylvia Quast  
Regional Counsel

David H. Kim  
Assistant Regional Counsel (ORC-3)  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3882

**\*\* FILED \*\***  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	
	)	
Arysta LifeScience North America, LLC	)	Docket No. FIFRA-09-2016- <u>0002</u>
	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Arysta LifeScience North America, LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Assistant Director of the Water and Pesticides Branch of the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a California corporation that imports pesticides into the State of California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17 of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA, 7 U.S.C. § 1360(e), by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. Pesticide Registration Notice 99-1 clarifies EPA's interpretation of the scope of FIFRA Section 17 (a)(1), 7 U.S.C. § 1360(a)(1), as it relates to the import of unregistered pesticides, devices or active ingredients used in producing a pesticide when the importation is solely for the purpose of formulation or packaging for subsequent export.
6. All imported pesticides are required to be registered under the provisions of section 3 of the Act. 19 C.F.R. § 12.111.
7. An importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices prior to the arrival of the shipment to the United States. 19 C.F.R. § 12.112.
8. Section 17(a)(1) of FIFRA, 7 U.S.C. § 1360(a)(1), states that notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active

ingredients used in producing pesticides shall be subject to sections 2(p), 2(q)(1)(A), (C), (D), (E), (G), and (H), 2(q)(2)(A), (B), (C)(i) and (iii), and (D), 7 and 8 of the Act.

9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), provides that a “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
11. Section 2(t)(1) of FIFRA, 7 U.S.C. § 136(t)(1), provides that a “pest” means any insect, rodent, nematode, fungus, or weed.
12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that “to distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is adulterated or misbranded.
14. Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H), provides that a pesticide is misbranded if, in the case of a pesticide not registered in accordance with section 3 of this Act and intended solely for export, the label does not contain, in words prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) as to render it likely to be noted by the ordinary

individual under customary conditions of purchase and use, the following: “Not Registered for Use in the United States of America.”

15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under the Act.

### C. ALLEGATIONS

16. Respondent is a corporation and therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
17. The company, Rallis India Ltd. manufactures the substance, “Acephate Technical” at its facility in India for Respondent.
18. “Acephate Technical” is a substance that is used to control or kill insects.
19. Insects are “pests,” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
20. Therefore, “Acephate Technical” is a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
21. The pesticide, “Acephate Technical” is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
22. On or about August 11, 2015, Respondent imported approximately 680 drums of the pesticide, “Acephate Technical” into the United States from India at the Port of Los Angeles in California.
23. Respondent’s importation of 680 drums of the pesticide, “Acephate Technical” into the Port of Los Angeles in California on or about August 11, 2015 constitutes a “distribution or sale” of an unregistered pesticide, as that term is defined Section 2(gg) of FIFRA, 7

U.S.C. § 136(gg), and a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

24. On or about August 11, 2015, Respondent imported the 680 drums of the pesticide, “Acephate Technical” into the United States solely for the purpose of formulation or packaging for subsequent export.
25. On or about August 11, 2015, the labeling on the 680 drums of the pesticide, “Acephate Technical” that Respondent imported into the United States for subsequent export did not contain the words “Not Registered for Use in the United States of America.”
26. Consequently, Respondent’s importation of the 680 drums of the pesticide, “Acephate Technical” into the United States at the Port of Los Angeles on or about August 11, 2015 constitutes a distribution or sale of a “misbranded” pesticide, as that term is defined at Section 2(q)(1)(H) of FIFRA, 7 U.S.C. § 136(q)(1)(H), and a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### D. RESPONDENT’S ADMISSIONS

27. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

28. Respondent agrees to the assessment of a penalty in the amount of FOURTEEN THOUSAND, SEVEN HUNDRED DOLLARS (\$14,700) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of the CAFO.
29. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular Mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. Certified or Overnight Mail:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

c. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency."

d. ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
ABA = 051036706  
Transaction Code 22 — checking  
Environmental Protection Agency  
Account 31006  
CTX Format

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "sfo1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO.

Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Allison Watanabe  
U.S. Environmental Protection Agency, Region IX  
Southern California Field Office  
600 Wilshire Blvd. Ste. 1460  
Los Angeles, CA 90017

30. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

31. If Respondent fails to pay the civil administrative penalty specified in Paragraph 28 of this CAFO within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA a stipulated penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon EPA's written demand. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 29 may lead to any or all of the following actions:
- a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected 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. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
  - d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 29. Interest will be

assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. RETENTION OF RIGHTS

32. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

33. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEYS' FEES AND COSTS

34. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

I. BINDING EFFECT

36. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
37. 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.

FOR RESPONDENT, ARYSTA LIFESCIENCE NORTH AMERICA, LLC:

10/12/2015  
DATE

  
NAME: Rico Christensen  
TITLE: President

FOR COMPLAINANT, EPA REGION IX:

11/5/2015  
DATE

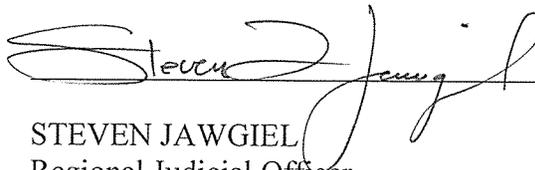
  
Claire Trombadore  
Assistant Director  
Water and Pesticides Branch  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

Complainant and Respondent having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0002) be  
entered, and that Respondent shall pay a civil administrative penalty in the amount of  
FOURTEEN THOUSAND, SEVEN HUNDRED DOLLARS (\$14,700) and comply with the  
terms and conditions set forth in the Consent Agreement.

11/10/15

DATE



STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0002) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

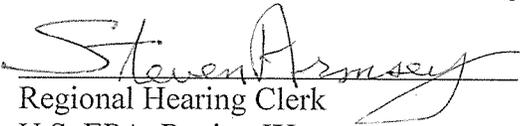
A copy was mailed via CERTIFIED MAIL to:

Ms. Susan Parker  
Arysta LifeScience North America, LLC  
15401 Weston Parkway, Suite 150  
Cary, NC 27513

**CERTIFIED MAIL NUMBER:** 70142120 0003 0493 3980

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

12-NOV-2015  
Date