



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

7018 0360 0000 6461 1034

RECEIPT NO:

Susan Lewis  
VP Operations  
Dow Agrosciences LLC  
9330 Zionsville Road  
Indianapolis, IN 42628

**JUL 26 2019**

Re: Consent Agreement and Final Order – Dow Agrosciences LLC  
Docket No.: FIFRA-09-2019-0058

Dear Ms. Lewis:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Dow Agrosciences LLC. The terms of the CAFO require the payment of \$9,790 be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO. Your completion of all actions laid out in the CAFO will close this case.

If you have any questions, please contact Janice Chan of my staff at 415-972-3308.

Sincerely,

Douglas K. McDaniel  
Chief  
Toxics Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

Enclosure

cc: Joseph Minadeo, Crop Protection Commercial Counsel

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 \*\*

26 JUL 2019 - 08:45AM

U.S.EPA - Region 09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	
	)	
Dow AgroSciences LLC	)	Docket No. FIFRA-09-2019- <u>0058</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 Dow AgroSciences 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

- 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 Manager of the Toxics Section of the Enforcement and Compliance Assurance 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 Delaware limited liability company whose principal offices are located at 9330 Zionsville Road, Indianapolis, Indiana.

**B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States. . . .”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” 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 living micro-

organisms 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. § 136 w(c)(1).

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.
11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(j)(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.
12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states 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. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$19,936 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 84 Fed. Reg. 2056 (February 6, 2019).

### C. ALLEGATIONS

14. At all times relevant to this CAFO, Respondent was a corporation and therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Count 1

15. On or about May 29, 2019, Respondent submitted to the U.S. Department of Homeland Security, Bureau of Customs and Border Protection (“CBP”), an alternative to the Notice of Arrival through CBP’s Automated Commercial Environment (“ACE”) under entry number 916-39250884 for an import shipment of 120 bags of “Dithane 75DF Rainshield,” EPA Reg. No. 62719-402.
16. The ACE filing stated that Respondent was the importer of record.
17. Respondent, as the importer of “Dithane 75DF Rainshield,” and by doing business in the United States is subject to the requirements of FIFRA and the regulations promulgated thereunder.
18. The import shipment associated with entry number 916-39250884 entered the United States at the Port of Los Angeles, California, on or about June 4, 2019.
19. “Dithane 75DF Rainshield” is intended to prevent and/or destroy rust, scab, and other fungal diseases.
20. “Dithane 75DF Rainshield,” is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
21. The labeling on 120 bags of “Dithane 75DF Rainshield” Respondent imported to the Port of Los Angeles, California, on or about June 4, 2019 included disposal instructions directing the end-users to triple or pressure rinse product containers.
22. The EPA registration for “Dithane 75DF Rainshield” does not permit triple or pressure rinsing of nonrefillable nonrigid product bags as a method of disposal.
23. Therefore, the 120 bags of “Dithane 75DF Rainshield” that Respondent imported to the Port of Los Angeles, California, on or about June 4, 2019 are “misbranded” pesticides

pursuant to FIFRA Section 2(q)(1)(A) and their shipment constitutes a single violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

**D. RESPONDENT'S ADMISSIONS**

24. 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**

25. Respondent agrees to the assessment of a penalty in the amount of NINE THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$9,790) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.
26. 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 or Certified Mail:**

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

b. **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."

c. Overnight Mail:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101

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 310006  
CTX Format

e. On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://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

Janice Chan  
Enforcement and Compliance Assurance Division (ENF-2-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

27. 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.
28. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 26, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 26 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 26. 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. CERTIFICATION OF COMPLIANCE**

29. In executing this CAFO, Respondent certifies that, to its knowledge, it is currently in compliance with any FIFRA requirements that may apply to its ongoing operations.

**G. RETENTION OF RIGHTS**

30. 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.
31. 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.

**H. ATTORNEY'S FEES AND COSTS**

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

#### I. EFFECTIVE DATE

33. 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.

#### J. BINDING EFFECT

34. 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.
35. 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, DOW AGROSCIENCES LLC

7/12/2019  
DATE

Susan Lewis  
NAME: susan Lewis  
TITLE: VP Operations

FOR COMPLAINANT, EPA REGION IX:

7/18/19  
DATE

  
\_\_\_\_\_  
Douglas K. McDaniel  
Chief  
Toxics Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region IX

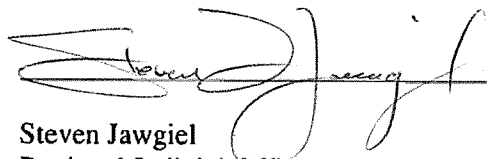
**II. FINAL ORDER**

Complainant and Respondent, Dow AgroSciences LLC, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2019-<sup>0058</sup> ) be entered, and that Respondent shall pay a civil administrative penalty in the amount of NINE THOUSAND SEVEN HUNDRED NINETY DOLLARS (\$9,790) and comply with the terms and conditions set forth in the Consent Agreement.

07/25/19

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-09-2019-<sup>0058</sup>) 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:


Susan Lewis  
VP Operations  
Dow Agrosiences LLC  
9330 Zionsville Road  
Indianapolis, IN 42628

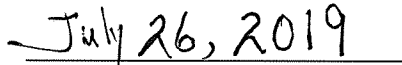
**Certified Mail Number:**

With a copy emailed to Joesph Minadeo, Crop Protection Commercial Counsel at joseph.minadeo@corteva.com.

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

David Kim  
Assistant Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

  
Date