

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

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HEARING CLERK

In the Matter of: )  
 )  
Helm Agro US, Inc. )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2007-3023(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "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 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Helm Agro US, Inc., 8295 Tournament Drive, Memphis, Tennessee 38125.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mark D. Bloeth, PTSB  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-9013.
5. Respondent is Helm Agro US, Inc., 8295 Tournament Drive, Suite 310, Memphis, Tennessee 38125.
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. On or about October 23, 2006, Respondent submitted a Notice of Arrival of Pesticides and Devices form (NOA) to EPA Region 6 for the release of eighty 200 kg. drums of "Cycloate Technical 97%" originating from Hungary (EPA Est. No. 72607-HUN-002) with an associated EPA Registration Number as "73637-5" and entering into the Port of New Orleans, Louisiana.
8. On or about November 8, 2006, the aforementioned import (Entry No. N90-0636315-0) was denied entry by EPA Region 6 based on a differing percentage of active ingredient claimed on the NOA when compared to the accepted percentage for the product registered as EPA Reg. No. 73637-5.



9. Although denied by EPA Region 6, the import was inadvertently released by US Customs and Border Protection and was transported to the consignee of record, Odom Industries located at 100 Chestnut Street, Pachuta, Mississippi 38347.
10. Odom Industries is a pesticide producing establishment and is assigned EPA Est. No. 62171-MS-003.
11. On January 17, 2007, EPA Region 4 requested the Mississippi Department of Agriculture and Commerce (MDAC) to conduct an import inspection at Odom Industries in Pachuta, Mississippi, to document the importation of the eighty 200 kg. drums of “Cycloate Technical 97%”.
12. On February 12, 2007, MDAC conducted the import inspection and collected documentary evidence to include distribution records, photographs and labeling.
13. The import inspection revealed that the “Cycloate Technical 97%” contained a label identifying the product as “Ro-neet TECHNICAL, min. 97%” as well as “RO-NEET 6-E Selective Herbicide” (EPA Reg. No. 73637-5), an EPA registered end use formulation.
14. “Ro-neet TECHNICAL, min. 97%” and “RO-NEET 6-E Selective Herbicide” are “pesticides” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
15. 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).

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” to include: 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.
17. Respondent “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
18. At the time of the inspection, the imported eighty 200 kg. drums of Cycloate Technical 97% was not a registered pesticide with EPA.
19. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
20. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least one occasion, and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. According to FIFRA 2(q)(1)(A), 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.
22. According to FIFRA 2(q)(1)(C), 7 U.S.C. § 136(q)(1)(C), a pesticide is misbranded if it is an imitation of or offered for sale under the name of another pesticide.
23. It is unlawful according to FIFRA 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), for any person to distribute or sell to any person any pesticide which is misbranded.



24. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least one occasion and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
25. 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.
26. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires 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.
27. The EPA proposes to assess a total civil penalty of NINE THOUSAND THREE HUNDRED SIXTY DOLLARS (\$9,360) against the Respondent for the above violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
29. 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.
30. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
31. Respondent agrees to process the eighty 200 kg. drums of Cycloate Technical 97%, for reformulation purposes only, into the properly EPA registered end use pesticide, "RO-NEET 6-E Selective Herbicide" (EPA Reg. No. 73637-5) and promptly notify EPA Region 4 (Pesticides and Toxic Substances Branch) when this activity is concluded.



32. Respondent agrees to first seek written authorization through EPA's Office of Enforcement and Compliance Assurance and EPA's Office of Pesticide Programs before attempting any future importations of Cycloate Technical, and will promptly notify EPA Region 4 (Pesticides and Toxic Substances Branch) if this occurs.
33. Respondent certifies that it is in compliance with all relevant requirements of FIFRA as of the effective date of this CAFO.
34. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
35. 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.

#### IV. Final Order

36. Respondent is assessed a civil penalty of NINE THOUSAND THREE HUNDRED SIXTY DOLLARS (\$9,360) which shall be paid within thirty (30) days of the effective date of this CAFO.
37. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:



U.S. Environmental Protection Agency  
Cincinnati Accounting Operations  
Mellon Lockbox 371099M  
Pittsburgh, PA 15251-7099.

**The check shall reference on its face the name and the Docket Number of the CAFO**

**“Helm Agro US, Inc., FIFRA-04-2007-3023(b).”**

38. 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  
Atlanta, Georgia 30303;

Mark D. Bloeth (PTSB)  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303;

and

Saundi Wilson  
Environmental Accountability Division  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303.

39. 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.



40. Pursuant to 31 U.S.C. § 3717, 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 date of entry 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 principle amount not paid within 90 days of the due date.
41. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
42. This CAFO shall be binding upon the Respondent, its successors and assigns.
43. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.



**The remainder of this page is intentionally left blank.**




V. Effective Date

44. 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:

Helm Agro US, Inc.

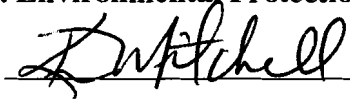
By: 

Date: 6-28-07

Name: VOLKER HEIDE (Typed or Printed)

Title: CEO, General Manager (Typed or Printed)

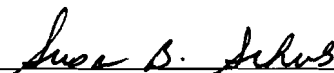
U.S. Environmental Protection Agency

By: 

Date: 7/12/07

Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303

APPROVED AND SO ORDERED this 16<sup>th</sup> day of July 2007.

  
Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Helm Agro US, Inc., FIFRA Docket No. 04-2007-3023(b), on the parties listed below in the manner indicated.

For Complainant:

Mark D. Bloeth  
PCB & Chemical Products Management Section  
U.S. EPA - Region 4, 4APT-PTSB  
61 Forsyth Street  
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960.

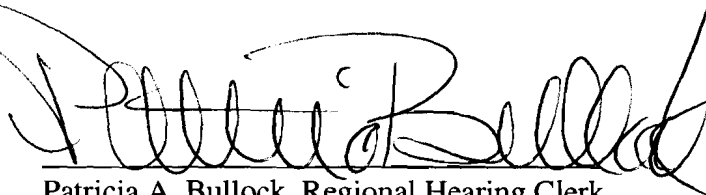
(Via EPA's internal mail)

For Respondent:

Mr. Bob Christian  
Helm Agro US, Inc.  
8295 Tournament Drive, Suite 310  
Memphis, TN 38125.

(Via Certified Mail - Return Receipt Requested)

Date: 7-17-07



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saund, Wilson on 7/13/09  
(Name) (Date)

in the DEA, OATGL at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Helm Argo US, Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ \_\_\_\_\_  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FLETCAD 2007 30230

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

7005 2570 0001 4561 6755

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the [ ] should be mailed to:

- |  |                           |
|--|---------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (I) |
|  | 3. Designated Program     |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page

- |                           |                         |
|---------------------------|-------------------------|
| 1. Originating Office     | 3. Designated Program   |
| 2. Regional Hearing Clerk | 4. Regional Counsel (E) |

**ES Form 3900 June 2002**

**See Reverse for Instructions**

Postage \$ \_\_\_\_\_  
Certified Fee \_\_\_\_\_  
Return Receipt Fee (Endorsement Required) \_\_\_\_\_  
Restricted Delivery Fee (Endorsement) \_\_\_\_\_  
Postmark Here

Sent To: \_\_\_\_\_  
Total P: \_\_\_\_\_  
Mr. Bob Christian  
Helm Argo US, Inc.  
8295 Tournament Drive, Suite 310  
Memphis, Tennessee 38125

Street, A or PO Box \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

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**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

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(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 7/13/09  
(Name) (Date)

in the DEA, OATGL at (404) 562-9504  
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Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

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(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ \_\_\_\_\_  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FLEPPA 2007 30230

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management

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|--|---------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (E) |
|  | 3. Designated Program (E) |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page

- |                           |                           |
|---------------------------|---------------------------|
| 1. Originating Office     | 3. Designated Program (E) |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EA)  |

7005 2570 0001 4561 6755

PS Form 3800, June 2002

Sent To: \_\_\_\_\_  
Street, A \_\_\_\_\_  
or PO Box \_\_\_\_\_  
City, State, ZIP+4 \_\_\_\_\_  
Mr. Bob Christian  
Helm Argo US, Inc.  
8295 Tournament Drive, Suite 310  
Memphis, Tennessee 38125

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorser)	

Postmark Here

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