

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W Martinez 3/2/15  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2014-0027

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Dow AgroSciences LLC  
9330 Zionsville Road  
Indianapolis, IN 46268

Total Dollar Amount of Receivable \$ 182,640 Due Date: 3/25/15

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I – New England  
5 Post Office Square - Suite 100 (OES 04-3)  
Boston, Massachusetts 02109-3912

HUGH W. MARTINEZ  
SENIOR ENFORCEMENT COUNSEL  
(direct: 617-918-1867)

OFFICE OF  
ENVIRONMENTAL STEWARDSHIP



February 25, 2015

**BY HAND**

Wanda I. Santiago, Regional Hearing Clerk  
EPA Region 1 – New England  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

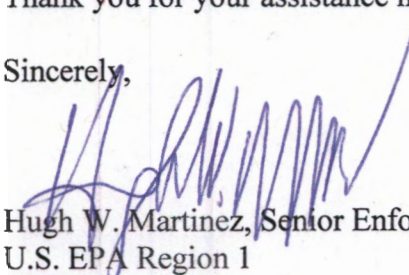
Re: In Re: Dow AgroSciences LLC, Docket No. FIFRA-01-2014-0027; Approved  
Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) resolving the above-referenced pre-filing enforcement case. Also enclosed is the original and one copy of a Certificate of Service documenting that, on this date, a copy of the CAFO and this cover letter were sent to Respondent's legal counsel, Eileen B. Salathé Gernhard, Esquire.

Thank you for your assistance in this matter.

Sincerely,

  
Hugh W. Martinez, Senior Enforcement Counsel  
U.S. EPA Region 1

Enclosures

cc: Eileen B. Salathé Gernhard, Lead Counsel  
Regulatory and EH&S – Dow AgroSciences LLC

Kan S. Tham, FIFRA Enforcement Coordinator, EPA Region 1

**CERTIFICATE OF SERVICE**

I hereby certify that this Certificate of Service and the foregoing Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were delivered in the following manner to the addressees listed below:

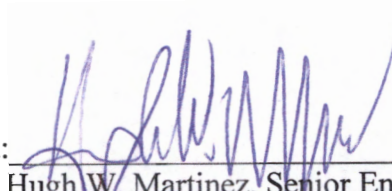
Originals and One Copy by Hand Delivery to: Wanda I. Santiago  
Regional Hearing Clerk  
Environmental Protection Agency  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

One Copy by Certified Mail – Return Receipt Requested to: Eileen B. Salathé Gernhard, Lead Counsel  
Regulatory and EH&S – Dow AgroSciences LLC  
9330 Zionsville Road  
Indianapolis, IN 46268

Date:

2-25-15

Signed:



Hugh W. Martinez, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1 (Mail Code: OES 04-3)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
Phone (617) 918-1867  
Fax (617) 918-0867  
[martinez.hugh@epa.gov](mailto:martinez.hugh@epa.gov)

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND REGION

RECEIVED

FEB 25 2015

EPA ORC  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )

Dow AgroSciences LLC )  
9330 Zionsville Road )  
Indianapolis, IN 46268, )

Respondent. )

Proceedings under Section 14(a) )  
of the Federal Insecticide, Fungicide, )  
and Rodenticide Act, as amended, )  
7 U.S.C. Section 136l(a). )  
\_\_\_\_\_ )

Docket No. FIFRA-01-2014-0027

**CONSENT AGREEMENT  
and  
FINAL ORDER**

**I. INTRODUCTION**

1. The United States Environmental Protection Agency (“EPA”), as Complainant, and Dow AgroSciences LLC, as Respondent (“Dow” or “Respondent”), enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent. The CAFO informs Respondent of EPA’s intention to assess a penalty against Dow for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 (“FIFRA Regulations”), including 40 C.F.R. § 152.132 [supplemental distribution]. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, and with no admission of liability, the Parties agree to comply with the terms of this CAFO.

## II. PRELIMINARY STATEMENT

### A. RESPONDENT

4. Dow is a limited liability corporation organized under the laws of Delaware with its principal place of business located at 9330 Zionsville Road in Indianapolis, Indiana. EPA's national office in Washington, DC ("EPA Headquarters") has assigned to Respondent the Office of Pesticide Program company number 62719.

5. Respondent *produces*,<sup>1</sup> *distributes*, and *sells* various kinds of *pesticides*, including herbicides that are registered for use when blended with fertilizers.

6. Respondent is a *registrant* for pesticide products that are distributed or sold pursuant to the *supplemental distribution* provisions of the FIFRA Regulations, 40 C.F.R. § 152.132.

7. Among the *distributor products* containing pesticides registered by Dow under Section 3 of FIFRA, 7 U.S.C. § 136a, are those that Respondent, under contract with Harrell's, LLC ("Harrell's") of Lakeland, Florida, has agreed may be produced, distributed, and sold by Harrell's under 40 C.F.R. § 152.132, using the Harrell's brand name (the "Distributor Products").

8. By agreement with Respondent and under 40 C.F.R. § 152.132, Harrell's

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<sup>1</sup> Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

produces Distributor Products with pesticides registered by Dow under FIFRA Section 3, in pesticide-producing *establishments* owned or operated by Harrell's located at 720 Kraft Road in Lakeland, Florida and at 151 Stewart Boulevard in Sylacauga, Alabama (the latter referred to hereinafter as the "Sylacauga Establishment"). As supplemental distributor, Harrell's distributes or sells various Distributor Products containing the pesticides referenced in Paragraph 39 of this CAFO.

9. Dow is a *person* as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

**B. STATUTORY AND REGULATORY AUTHORITY**

10. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean, in pertinent part, "any insect, rodent, nematode, fungus, weed" or "any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms" declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

13. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term "registrant" to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.

14. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to 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.

15. Under the FIFRA Regulations, pesticide registrants may distribute or sell a registered pesticide product under another person's name and address instead of (or in addition to) their own. Such distribution or sale is called “supplemental distribution” and such pesticides are called “distributor products.” Furthermore, under 40 C.F.R. § 152.132, the “distributor is considered an agent of the registrant for all intents and purposes under [FIFRA], and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.”

16. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any *State* to distribute or sell to any person any pesticide which is *adulterated* or *misbranded*.

17. Under FIFRA Section 2(q)(1), 7 U.S.C. § 136(q)(1), a pesticide is “misbranded” if: (a) its *labeling* bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular [Sec. 2(q)(1)(A)]; (b) its label does not bear the registration number assigned under FIFRA Section 7, 7 U.S.C. § 136e, to each establishment in which it was produced [Sec. 2(q)(1)(D)]; (c) any word, statement, or other information required by FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use [Sec. 2(q)(1)(E)]; (d) the labeling accompanying the pesticide 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 required use classification(s) under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)), are adequate to *protect health and the environment* [Sec. 2(q)(1)(F)]; or, (e) the label does not contain a warning or caution statement which may be necessary and, if complied with (together with any required use classification(s) under Section 3(d) of FIFRA), is adequate to protect health and the environment [Sec. 2(q)(1)(G)].

18. The FIFRA prohibition against the distribution or sale of misbranded pesticides is important because it helps ensure that end users and members of the public have the most accurate, up-to-date, and compliant information available about pesticides in the marketplace—including ingredients, directions for use, potential hazards and safety precautions—and about the establishments in which they are produced.

19. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA under FIFRA Section 7. For any producer operating a registered establishment, Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires that, among other things, the producer submit to EPA annual pesticide production reports detailing the amount of pesticides being produced and the amount produced, sold, and distributed during the prior year.

20. The FIFRA requirements to produce pesticides in registered establishments and for registered establishments to submit reports of pesticide production, distribution, and sales are important because they help maintain the integrity of the federal pesticide program EPA implements, a primary purpose of which is to ensure that no pesticide is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The requirements to



properly register pesticide-producing establishments and for registered establishments to report production and sales information help EPA carry out compliance, risk assessment, and risk reduction functions important for protecting human health and the environment because without proper establishment registrations, EPA cannot determine where and in what manner pesticides are being produced, sold, and distributed.

21. Under Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA is authorized to issue orders prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe that, *inter alia*, the pesticide is in violation of any provision of FIFRA, or the pesticide is intended to be distributed or sold in violation of any provision of FIFRA.

22. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA and duly-designated state partners are authorized, among other things and upon presentation of credentials and written notice, to conduct inspections at producer and distributor establishments and to collect information required to be maintained by FIFRA regarding pesticide distribution or sales, including samples of pesticides that are packaged, labeled, and released for shipment.

23. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701 note, and EPA’s Civil Monetary Penalty Inflation Adjustment Rule (“Penalty Inflation Rule”) at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and \$7,500 for violations occurring after January 12,

2009.

**C. GENERAL ALLEGATIONS**

24. On or about April 3, 2009, duly-authorized inspectors from the Michigan Department of Agriculture (now known as the Michigan Department of Agriculture and Rural Development (“MIDARD”)) inspected a Harrell’s distribution facility located at 53410 Grand River Avenue in New Hudson, Michigan (“New Hudson MI Facility”). Based on findings arising out of that inspection, on or about April 9, 2009, MIDARD issued an “Order to Stop Prohibited Conduct” [Case No. PCT09-710-04-09-01] (the “2009 MIDARD Order”) to Harrell’s which, in Michigan at that time, was doing business as “Harrell’s, LLC of Florida.” The 2009 MIDARD Order, among other things, cited five (5) separate Distributor Products with missing label information including, but not limited to, Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Requirements, Directions for Use, Environmental Hazards Statement, and Storage and Disposal Directions. The 2009 MIDARD Order directed the distributor (Harrell’s) to stop “selling misbranded pesticides” and specifically identified the following violative Distributor Products containing pesticides registered by Respondent, Dow:

- a. Harrell's 19-0-5 with Dimension 0.10 %, EPA Reg. 62719-486-52287;
- b. Harrell's 19-0-10 with Dimension 0.10 %, EPA Reg. 62719-486-52287;
- c. Harrell's 28-3-13 with Dimension 0.08 %, EPA Reg. 62719-487-52287;
- d. Harrell's 25-0-18 with Dimension 0.08 %, EPA Reg. 62719-487-52287;  
and,
- e. Harrell's 30-2-12 Polyon 42 Fairway Formulation with Dimension 0.08%,  
EPA Reg. 62719-487-52287.

25. Under Section 7(a) of FIFRA and 40 C.F.R. § 167.20, Harrell’s first

registered the Sylacauga Establishment as a pesticide-producing establishment, on or about May 15, 2012, subsequently identified as “EPA Est. No. 52287-AL-001.”

26. At times relevant to the violations alleged herein, Harrell’s was authorized by Dow to act as Dow’s agent and to engage in supplemental distribution by distributing and selling under the Harrell’s name, *inter alia*, the following Distributor Products, each produced at the Sylacauga Establishment and identified by the product name and supplemental registration number assigned thereto:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287;
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287;
- e. Harrell's 22-0-5 with Dimension .10%, EPA Reg. 62719-486-52287;
- f. Harrell's 10-0-5 with Dimension .125%, EPA Reg. 62719-483-52287;
- g. Harrell's 19-0-10 with Dimension .10%, EPA Reg. 62719-486-52287;
- h. Harrell's 22-0-10 with Dimension .125%, EPA Reg. 62719-483-52287;
- and,
- i. Harrell's 30-0-4 with Dimension .125%, EPA Reg. 62719-483-52287.

27. On March 15, 2012 and on March 29, 2012, one or more duly-authorized inspectors from the Connecticut Department of Energy and Environmental Protection (“CTDEEP”) conducted FIFRA compliance inspections at a Harrell’s distribution facility located at 34 Executive Drive in Danbury, Connecticut (“Danbury CT Facility”).

28. On April 2, 2012, one or more duly-authorized inspectors from the Massachusetts Department of Agricultural Resources (“MADAR”) conducted a FIFRA compliance inspection at a Harrell’s distribution facility located at 19 Technology Drive in Auburn, Massachusetts (“Auburn MA Facility”).

29. On or about April 12, 2012, CTDEEP issued a “Notice of Violation” [No. NOVWSPST12-032] to Harrell’s (the “CTDEEP NOV”) citing violations for, among

other things, selling and/or distributing at least four (4) separate Distributor Products with missing label information such as “a statement to keep out of reach of children, precautionary, first-aid and environmental hazard statements, directions for use and instructions for storage and disposal.” The CTDEEP NOV specifically identified the following violative Distributor Products containing pesticides registered by Respondent, Dow:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287; and
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

30. On April 18, 2012, EPA issued a Stop Sale, Use, or Removal Order [Case No. SSURO-2012-003] to Harrell’s pursuant to FIFRA Section 13 (the “First Harrell’s SSURO”), alleging FIFRA violations and ordering Harrell’s to immediately stop the distribution, sale, use, or removal of at least the following four (4) separate, misbranded Distributor Products containing pesticides registered by Dow:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287; and,
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

31. On April 30, May 2, May 3, and May 8, 2012 one or more duly-authorized inspectors from the CTDEEP conducted further compliance inspections and gathered additional information at the Danbury CT Facility.

32. On May 1, May 17, June 1, and June 22, 2012, one or more duly-authorized inspectors from Alabama Department of Agriculture (“ALDA”) conducted compliance inspections and gathered information at the Sylacauga, AL Establishment.

33. On June 4, 2012, one or more duly-authorized inspectors from the U.S. Environmental Protection Agency's Region 1 office in Boston, Massachusetts ("EPA Region 1") conducted a compliance inspection at the Danbury CT Facility under Sections 8 and 9 of FIFRA.

34. On June 11, 2012, one or more duly-authorized inspectors from the U.S. Environmental Protection Agency's Region 5 office in Chicago, Illinois ("EPA Region 5") conducted a compliance inspection at a Harrell's distribution facility located at 260 Eisenhower Lane in Lombard, Illinois ("Lombard IL Facility") under Sections 8 and 9 of FIFRA.

35. On September 20, 2012, one or more duly-authorized inspectors from MIDARD conducted a FIFRA compliance inspection at the New Hudson MI Facility under Sections 8 and 9 of FIFRA.

36. On September 24, 2012, EPA issued a second Stop Sale, Use, or Removal Order [Case No. SSURO-2012-014] to Harrell's pursuant to FIFRA Section 13 (the "Second Harrell's SSURO"), alleging FIFRA violations and ordering Harrell's to immediately stop the distribution, sale, use, or removal of the following three (3) separate, misbranded Distributor Products containing pesticides registered by Dow:

- a. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 22-0-5 with Dimension .10%, EPA Reg. 62719-486-52287; and,
- c. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287.

37. On September 24, 2012, EPA issued a Stop Sale, Use, or Removal Order [Case No. SSURO-2012-013] to Dow pursuant to FIFRA Section 13 (the "Dow Order"), alleging FIFRA violations and ordering Dow, as a registrant liable for the actions of its

supplemental distributor (Harrell's) under the FIFRA Regulations at 40 C.F.R. § 152.132, to immediately stop any distribution, sale, use, or removal of the following five (5) separate, misbranded Distributor Products containing pesticides registered by Dow:

- a. Harrell's 30-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- b. Harrell's 29-0-7 with Dimension .10%, EPA Reg. 62719-486-52287;
- c. Harrell's 24-0-12 with Dimension .10%, EPA Reg. 62719-486-52287;
- d. Harrell's 18-0-7 with Dimension .17%, EPA Reg. 62719-485-52287; and,
- e. Harrell's 22-0-5 with Dimension .10%, EPA Reg. 62719-486-52287.

### **III. EPA FINDINGS**

38. Based upon information collected during or as a result of the inspections conducted by EPA Regions 1 and 5, CTDEEP, MADAR, ALDA, and MIDARD as well as further investigation by EPA Region 1, the FIFRA violations documented by EPA and alleged in this CAFO include the following: distributing or selling misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. Part 156, as further detailed below.

39. Upon information and belief, each of the violations alleged in Section IV of this CAFO involved one or more Distributor Products containing pesticides registered by Dow identified by the following EPA Registration Numbers and registered pesticide product names:

	<b><u>EPA Reg. No.</u></b>	<b><u>Product Name</u></b>
<b>1.</b>	EPA Reg. 62719-262-52287	0.68% Confront
<b>2.</b>	EPA Reg. 62719-483-52287	0.125% Dimension
<b>3.</b>	EPA Reg. 62719-485-52287	0.17% Dimension
<b>4.</b>	EPA Reg. 62719-486-52287	0.10% Dimension
<b>5.</b>	EPA Reg. 62719-487-52287	0.08% Dimension
<b>6.</b>	EPA Reg. 62719-488-52287	0.19% Dimension
<b>7.</b>	EPA Reg. 62719-494-52287	0.25% Dimension
<b>8.</b>	EPA Reg. 62719-504-52287	0.15% Dimension

40. At all times relevant to the violations alleged in Section IV of this CAFO, below, Respondent's agent (Harrell's), pursuant to 40 C.F.R. § 152.132, produced, distributed, sold, offered for sale, shipped, and/or delivered for shipment one or more Distributor Products containing the above-listed pesticides registered by Respondent and identified by the EPA Registration Numbers and registered pesticide product names indicated, each of which is a "pesticide" as defined by FIFRA.

#### **IV. ALLEGATIONS OF VIOLATION**

##### **COUNT 1**

##### *Distributing or Selling Misbranded Pesticides (Absent or Illegible Labels)*

41. Upon information and belief, on numerous occasions between June 1, 2011 and September 20, 2012, Respondent's agent under 40 C.F.R. § 152.132 distributed or sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 39, above, that was misbranded in that the EPA-approved labels required for such pesticide products under the FIFRA Regulations at 40 C.F.R. § 156.10 were either entirely absent or illegible.

42. Accordingly, on numerous occasions between June 1, 2011 and September 20, 2012, Respondent's agent under 40 C.F.R. § 152.132 violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed against Dow pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the FIFRA Regulations.

##### **COUNT 2**

##### *Distributing or Selling Misbranded Pesticides (Labels without Valid EPA Establishment Number)*

43. Upon information and belief, on numerous occasions between May 1, 2010 and April 30, 2012, Respondent's agent under 40 C.F.R. § 152.132 distributed or

sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 39, above, with labels that did not bear a valid establishment registration number assigned under FIFRA Section 7 to the establishment in which the pesticide products were produced, as required by 40 C.F.R. § 156.10.

44. Accordingly, on numerous occasions between May 1, 2010 and April 30, 2012, Respondent's agent under 40 C.F.R. § 152.132 violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed against Dow pursuant to FIFRA Section 14(a)(1) and the FIFRA Regulations.

### **COUNT 3**

#### *Distributing or Selling Misbranded Pesticides (Labels with Missing Information)*

45. Upon information and belief, on numerous occasions between April 30, 2012 and June 18, 2012, Respondent's agent under 40 C.F.R. § 152.132 distributed or sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 39, above, with labels that did not include important precautionary language on the front panel, such as "Caution" and "Keep Out of Reach of Children," required under 40 C.F.R. § 156.10.

46. Accordingly, on numerous occasions between April 30, 2012 and June 18, 2012, Respondent's agent under 40 C.F.R. § 152.132 violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed against Dow pursuant to FIFRA Section 14(a)(1) and the FIFRA Regulations.



**V. TERMS OF SETTLEMENT**

**A. GENERAL**

47. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

48. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's findings or allegations of violation herein, consents to the issuance of this CAFO and to the payment of the civil penalty specified, below.

49. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

50. By signing this CAFO, Respondent certifies that, to the best of its knowledge and belief, it is presently operating in compliance with FIFRA and the FIFRA Regulations and that it has fully addressed the violations alleged by EPA herein including, but not limited to, those associated with each of the pesticide products listed or otherwise referenced in Paragraph 39, above. By signing this CAFO, Respondent also certifies that any information it has provided to EPA during the course of its investigation of this matter is true and complete, to the best of its knowledge and belief.

**B. PENALTY**

51. In light of the above, and taking into account the factors enumerated in

Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA and Penalty Inflation Rule, EPA's Supplemental Environmental Projects Policy, Respondent's agreement to implement the Supplemental Environmental Project ("SEP") specified in Section V.C. and Attachment A of this Consent Agreement, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of one hundred eighty-two thousand six hundred forty dollars (\$182,640) in settlement of the violations alleged herein.

52. Respondent shall pay the penalty of \$182,640 within thirty (30) days of the effective date of this CAFO.

53. Respondent agrees to pay the civil penalty of \$182,640 in the manner described below:

- a. Payment shall be in a single payment of \$182,640 due within 30 calendar of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard time to be considered as received that day.
- b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case (*In the Matter of Dow AgroSciences LLC*, FIFRA-01-2014-0027), be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

**If remitted by regular U.S. mail:**

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

**If remitted by any overnight commercial carrier:**

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

**If remitted by wire transfer:** Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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 remitted on-line with a debit card, credit card, or bank account transfer:**

No user name, password, or account number is necessary for this option. On-line payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES 04-3)  
Boston, MA 02109-3912

54. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

55. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not

be deductible for the purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

**C. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

56. Respondent shall satisfactorily complete the environmental compliance promotion SEP described below and in Attachment A to this CAFO (the SEP Scope of Work or “SOW”) which the Parties agree is intended to secure significant environmental and/or public health benefits. As a SEP, Respondent will develop and make freely available a web-based training module to raise awareness of the requirements under FIFRA and the FIFRA Regulations, including those pertaining to supplemental distribution at 40 C.F.R. § 152.132. As described in Attachment A, which is incorporated herein by reference and is enforceable by this CAFO, Respondent will provide written notice of the availability of the Training by disseminating the web link to the Training (i.e., the URL), along with a summary explanation of the nature and intended purpose of the Training, to appropriate contacts for the entities and organizations identified therein. Respondent will also require supplemental distributors duly authorized by Dow to produce, import, distribute or sell distributor products containing Dow-registered pesticides to successfully complete the web-based training. The SEP shall be implemented according to the terms and schedule set forth in this CAFO and in Attachment A.

57. The SEP is anticipated to cost approximately \$231,000. “Satisfactory

completion” of the SEP shall mean: (a) designing and developing the web-based training module covering all of the content specified in Attachment A (the SOW); (b) posting the training on Dow’s website within 6 to 12 months after the effective date of this CAFO and maintaining it until at least 4 years after the effective date; (c) disseminating the web link to the Training (i.e., the URL), along with a summary explanation of the nature and intended purpose of the Training, to appropriate contacts for the entities and organizations specified in the SOW; (d) making the training available, on-line, at no cost and without proprietary content; and, (e) spending approximately \$231,000 to carry out the SEP.

58. SEP Implementation Reports.

(a) Quarterly SEP Reports. Respondent shall submit quarterly written reports outlining work completed to date and any funds spent to date. The reports shall be submitted to EPA by the 30th day of the month following each calendar quarter (January, April, July, October), beginning with the first full calendar quarter following the effective date of this CAFO and continuing for the next three full calendar quarters thereafter.

(b) Annual SEP Reports. Beyond 12 months from the effective date of this CAFO, and after Respondent has submitted four full Quarterly SEP Reports under the preceding subparagraph, Respondent shall submit Annual SEP Reports no later than 30 days from the dates of 2 years, 3 years, and 4 years, respectively, after the effective date of this CAFO. The Annual Reports will outline work completed to date and funds spent to date and will include copies of invoices documenting funds spent towards completion of the SEP. The final Annual Report may include, or be submitted with, the SEP Completion Report.

59. SEP Completion Report.

(a) Respondent shall submit a SEP Completion Report within 60 days of completion of the SEP. The SEP Completion Report shall contain the following information:

- i. detailed description of the SEP as implemented;
- ii. a list of itemized costs for implementing the SEP;
- iii. a certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- iv. a description of the environmental and public health benefits resulting from implementation of the SEP; and,
- v. a statement that no tax returns filed or to be filed by Respondent will contain deductions or depreciations for any expense associated with the SEP.

(b) In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Eligible SEP costs include the costs of designing, developing, and implementing the SEP, but do not include Dow's overhead, Dow employee time and salary, internal administrative expenses, legal fees (unless directly and specifically associated with SEP content development), and contractor oversight. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do

not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

(c) Respondent shall maintain legible copies of documentation of the underlying documents or reports submitted to EPA pursuant to this CAFO and shall provide the documentation of any such underlying research and data to EPA not more than fourteen days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this CAFO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

*“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”*

60. Respondent agrees that failure to submit the reports required by Paragraph 58 and 59 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to Paragraph 63 below.

61. Respondent shall submit all notices, submissions, and reports required by this CAFO to the FIFRA Enforcement Coordinator for EPA Region 1, Kan S. Tham, by First Class Mail or any other commercial delivery service at the following address:



Kan S. Tham  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 (OES 05-4)  
Boston, MA 02109-3912

Except where the terms of this CAFO expressly indicate otherwise, the foregoing requirements for submitting notices, submissions, and reports required by this CAFO may be satisfied by transmitting an electronic copy thereof, provided that telephone notice be given at the time of transmission, to Mr. Tham at:

[tham.kan@epa.gov](mailto:tham.kan@epa.gov)  
phone: 617-918-1872

62. After receipt of the SEP Completion Report described in Paragraph 59 above, EPA will notify Respondent in writing: (a) that EPA concludes that the SEP has been completed satisfactorily; (b) that EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (c) that EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 63 herein. If EPA notifies Respondent pursuant to subparagraph 62(b) that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA. If EPA notifies Respondent pursuant to subparagraph 62(c) that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with Paragraph 63 herein.

63. Stipulated Penalties.

(a) In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- i. For failure to meet any required interim deadlines, submit any required SEP Implementation Reports, or submit the SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$200 for each day that Respondent is late;
- ii. For a SEP that has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States of \$288,750, plus interest from the effective date of the CAFO. The definition of “satisfactory completion” is set out in Paragraph 57. However, if Respondent spends less than \$231,000 but otherwise satisfactorily completes the SEP, Respondent shall only be required to pay a stipulated penalty to the United States in the amount equal to the difference between \$231,000 and the actual amount of eligible costs spent on the Project.

(b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

(c) Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

(d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 53. Interest and late charges shall be paid as stated in Paragraph 54.

(e) Payment of stipulated penalties shall be in addition to any other relief available under federal law.

(f) EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

64. Review of Delays.

(a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this CAFO, Respondent shall notify EPA in writing, by certified mail, return receipt requested, not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph 64 shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

(b) If the Parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

(c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

(d) The burden of demonstrating to EPA that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not in any event, be a basis for changes in this CAFO or extensions of time under this Paragraph 64. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps, unless Respondent demonstrates that such compliance date or dates would necessarily be delayed.

(e) If the Parties agree that compliance with any portion of the SEP cannot be completed due to circumstances beyond the control of Respondent, the SEP may be modified in compliance with the requirements of EPA's SEP Policy, as determined by EPA. In such event, the Parties shall stipulate to any such modification in writing.

(f) Stipulated penalties shall not accrue for any delays approved by EPA under this Paragraph 64.

65. Respondent certifies that as of the date of this Consent Agreement, Respondent is not required to perform the SEP by any federal, state or local law or regulation, nor is Respondent required to perform the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that it has not

received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

66. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

67. Respondent agrees that any public statement, oral or written, in print, film, electronic, or other media, made by Respondent or by any third party implementer of the SEP, making reference to the SEP shall include the following qualifying language:

*“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Federal Insecticide, Fungicide and Rodenticide Act against Dow AgroSciences LLC.”*

68. Respondent agrees that it will not implement the SEP for the purpose of advancing or advocating any Dow sales or marketing strategy. Reference in the SEP to any type of product or technology is not intended and shall not be construed as an endorsement or approval by EPA of any particular brand of such product or technology.

Also, the involvement of any third party in the implementation of the SEP is not intended and shall not be construed as a specific endorsement or approval by EPA of such third party or of any product or service provided by such third party.

**D. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS**

69. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violations alleged in Section IV of this CAFO. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

70. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards.

71. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

72. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

73. Respondent's obligations under the CAFO shall end when Respondent has paid the civil penalty (and any stipulated penalties or interest due) in full, satisfied the conditions specified herein, and submitted to EPA any documentation required by the

terms of this CAFO.


74. Each of the Parties shall bear its own costs and fees in this proceeding, including attorneys' fees, and specifically waives any right to recover such costs from the other party under the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

75. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

76. Each undersigned representative of the Parties certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

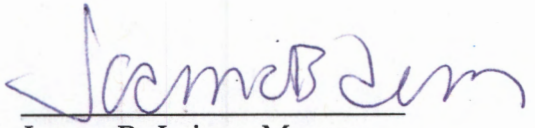
For Respondent, Dow AgroSciences LLC:



  
Kenneth D. Isley  
Vice President, General Counsel, and Secretary  
Dow AgroSciences LLC

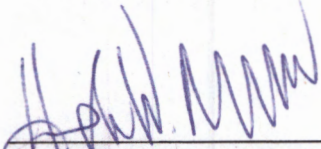
13 Feb 15  
(Date)

For Complainant, United States Environmental Protection Agency:



Joanna B. Jerison, Manager  
Legal Enforcement Office  
U.S. EPA - Region 1

2/20/15  
(Date)



Hugh W. Martinez, Senior Enforcement Counsel  
Regulatory Legal Office  
U.S. EPA - Region 1

2-18-15  
(Date)



**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Dow AgroSciences LLC, is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

2/24/15  
(Date)

  
\_\_\_\_\_  
LeAnn W. Jensen, Acting Regional Judicial Officer  
EPA-Region 1

**Supplemental Environmental Project:  
Environmental Compliance Promotion and Training**

**SCOPE OF WORK**

Dow AgroSciences LLC (“Respondent” or “Dow”) hereby agrees to undertake the below-described Supplemental Environmental Project (“SEP”) in connection with the settlement of the EPA enforcement action further described in the Consent Agreement and Final Order (“Consent Agreement” or “CAFO”). In particular, Dow shall design, develop, and implement an innovative and broadly available web-based training module intended to provide in-depth instruction on FIFRA regulatory compliance requirements with a particular focus on those relevant to supplemental distribution (the “Training”). The Training shall be implemented pursuant to the Consent Agreement and this Scope of Work (“SOW”) and shall be freely accessible to individuals and entities producing, marketing, distributing, importing, or otherwise interested in pesticides and pesticidal products (including devices) regulated by FIFRA.

**A. Background Information**

According to the FIFRA regulations at 40 C.F.R. § 152.132, an entity which has registered a pesticide with EPA under FIFRA Section 3 (the “registrant”) may distribute or sell their registered product under another company’s name and address instead of, or in addition to, their own. Such distribution or sale is called “supplemental distribution” and the product is referred to as a “supplemental registration” or “distributor product.” The regulations only allow supplemental distribution, after notice to EPA, if certain conditions are met. In addition, the distributor (also known as the “subregistrant”) is considered an agent of the registrant, and both the registrant and the subregistrant may be held liable for violations pertaining to the distributor product. Supplemental registrations are an extension of the FIFRA-registered pesticide product and, as a duplication of that “basic” registered product, distributor products must timely reflect any and all changes in formulation, labeling, and registration status made to the basic registered product.

As of July 2011, EPA listed over 54,000 distributor products within EPA national pesticide program databases. With supplemental distribution, a registrant may have dozens or even hundreds of distributor products associated with a single FIFRA-registered pesticide. Since registrants and subregistrants are both responsible for compliance under 40 C.F.R. § 152.132, every regulated party should be motivated to ensure that distributor products are produced, marketed, distributed, sold, and imported in full compliance with FIFRA and the underlying FIFRA regulations at 40 C.F.R. Parts 150-180 (the “Regulations”).

By implementing this environmental compliance promotion SEP and making a web-based training module focused on supplemental distribution available to a large numbers of distributors and other entities interested and active in the area of supplemental distribution within the United States, some of the persistent problems that have been identified with distributor product noncompliance may be reduced or eliminated.

**B. Human Health and Environmental Issues**

Supplemental pesticide registrations (distributor products) have been a continuing source of concern for state and federal regulators in the U.S. Since 2011, EPA's national enforcement office has identified supplemental distribution as a national focus area with a goal of improving FIFRA compliance among producers and other parties dealing with distributor products under supplemental registrations. Historically, distributor labels have been a frequent source of noncompliance during marketplace inspections by state and federal inspectors who routinely document deviations from the EPA-accepted label for the basic registration. Unapproved label content may violate FIFRA, lead to pesticide misapplications, and/or pose significant risks to pesticide users and others who rely on the label for specifics about proper use, safety precautions, and other important information. While EPA does not review distributor product labels under the pesticide registration process of FIFRA Section 3, registrants and subregistrants must provide notice to EPA when supplemental distribution relationships are initiated.

**C. Project**

Respondent is responsible for completion of the SEP described below. Respondent anticipates retaining outside consultants to provide many of the services related to the design, development, and implementation of the SEP, including both web design services (photography, video, HTML coding, etc.) and technical content development and delivery. Even though Dow expects to use third-party implementers (environmental consultants/trainers) to design, develop, and implement the SEP, Respondent remains fully responsible for SEP completion, as follows:

1. Respondent shall design, develop, and implement a web-based FIFRA training module that Dow will disseminate (as described herein), distribute, and make freely available to supplemental distributors and any other interested individuals and entities, as specified by the CAFO and this SOW;
2. Respondent shall commence work on the SEP, in accordance with the CAFO and this SOW, no later than 14 calendar days after the effective date of the CAFO;
3. Respondent shall make the Training widely available to supplemental distributors and others throughout the United States through an online training tool offered and available via Dow's website;
4. Respondent shall provide written notice of the availability of the Training by disseminating the web link to the Training (i.e., the URL), along with a summary

explanation of the nature and intended purpose of the Training, to appropriate contacts for each of the following entities and organizations:

- i. AAPCO (Association of American Pesticide Control Officials);
- ii. AAPCO working committees, EQI (Environmental Quality Issues) and POM (Pesticide Operations and Management);
- iii. SFIREG (State-FIFRA Issues Research and Evaluation Group);
- iv. Tribal Pesticide Program Council;
- v. RISE (Responsible Industry for a Sound Environment);
- vi. CropLife America;
- vii. National Pesticide Information Center;
- viii. National Association of State Departments of Agriculture (NASDA);
- ix. American Association of Pesticide Safety Educators;
- x. National Pest Management Association;
- xi. National Association of Chemical Distributors;
- xii. Council of Producers & Distributors of Agrotechnology;
- xiii. American Nursery & Landscape Association;
- xiv. National Roadside Vegetation Management Association;
- xv. GCSAA (Golf Course Superintendents Association of America);
- xvi. TOCA (Turf & Ornamental Communicators Association);
- xvii. TPI (Turfgrass Producers International);
- xviii. Tree Care Industry Association;
- xix. National Arborist Association;
- xx. Weed Science Society of America (WSSA);
- xxi. Aquatic Plant Management Society;
- xxii. North Central Weed Science Society;
- xxiii. Northeastern Weed Science Society;
- xxiv. Southern Weed Science Society;
- xxv. Western Society of Weed Science;
- xxvi. American Society of Agronomy (ASA);
- xxvii. Crop Science Society of America (CSSA);
- xxviii. Soil Science of America (SSA); and,
- xxix. Entomological Society of America.

5. Respondent shall also provide written notice to each of the above-referenced entities and organizations (or to as many as are in existence at the time notice is given under this subparagraph) of any changes made to the above-referenced Training link (i.e., the URL) at any time during the period of SEP implementation, namely, for at least 4 years after the effective date of the CAFO. Such written notice shall be provided within 15 business days of each applicable web link change;
6. Respondent will require completion of the Training by at least one authorized representative of any entity with which it has a supplemental distribution relationship at any time during the 4-year CAFO implementation period (the “CAFO Term”);
7. Respondent shall design the SEP to provide participants with targeted information regarding FIFRA regulatory compliance requirements, including those pertaining to

- distributor products and supplemental distribution, as well as an understanding of the purpose and importance of such requirements;
8. Respondent shall design and implement the SEP so that, by completing the training, participants will have at least a basic understanding of FIFRA requirements pertaining to pesticide production, labeling, importation, marketing, distribution, and sale and why the requirements are important. At a minimum, the Training shall cover the following FIFRA-related topics (either separately or in appropriate combination):
    - i. Statutory/Regulatory Authority and Applicability;
    - ii. Supplemental Distribution Background and Terminology;
    - iii. Process for Notifying EPA of a Supplemental Distribution Arrangement;
    - iv. Registration of Pesticides;
    - v. Registration Terminations, Cancellations, and Transfers;
    - vi. Labels and Labeling;
    - vii. Production and Establishment Registration/Reporting;
    - viii. Regulation of Pesticidal Devices;
    - ix. Books and Records;
    - x. Imports and Reporting (Notices of Arrival);
    - xi. Product Chemistry Requirements for Distributor Products;
    - xii. Legal Aspects of Distributor, Manufacturer, and Formulator Agreements;
    - xiii. Section 6(a)(2) Adverse Effects Reporting;
    - xiv. Existing Stocks;
    - xv. EPA Civil and Criminal Enforcement Authorities;
    - xvi. Overview of State Role and Regulatory Requirements (including State Product Registration); and,
    - xvii. Guidance on Ensuring Continued Compliance (e.g., building compliance-based business processes/SOPs, performing regular/routine label reviews and other compliance assessments, staying up-to-date/informed about registration and labels changes, etc.).
  9. The SEP shall include one or more tests or “knowledge checks,” designed to evaluate a trainee’s comprehension level after review of the substantive content of the Training;
  10. The SEP shall be designed to permit trainees to print hard copies of all web-based Training materials which shall be non-proprietary and publicly available;
  11. The SEP design shall provide Respondent with the ability to track and record the number of site visitors who access the Training, the number of site visitors who access one or more of the knowledge checks associated with the Training, and the approximate date(s) of each kind of access;
  12. Regarding all content for the Training, Respondent shall give EPA an opportunity to review and comment on the content by providing EPA with a copy of any such anticipated content along with notice of Dow’s intent to post that content via the web-based Training, at least 1 month before posting the content;

13. Respondent agrees to use best efforts to consider and, where necessary or appropriate, incorporate comments submitted by EPA under the preceding subparagraph, *provided* any delay in EPA’s review or comment under the preceding subparagraph shall not require Respondent to delay implementation;
14. Any failure of EPA to provide comments or request changes to content under subparagraph C.12., above, shall in no way indicate any official recommendation or approval by EPA of any statements or representations contained in Training content; and,
15. All Training content developed pursuant to this SOW shall be non-proprietary and publicly available and all Training-related notices or other communications by Respondent to third parties under the CAFO and this SOW shall be accompanied by the qualifying language set forth in Paragraph 67 of the CAFO.

**D. Costs**

Respondent estimates that the cost to complete this SEP will be approximately \$231,000. Respondent’s total anticipated cost is based on the following underlying estimates that are associated with specific phases of the SEP: (1) \$90,000 for design and content development; (2) \$6,000 for participant and/or contact list creation and related activities; (3) \$40,000 for programming; (4) \$15,000 for deployment, measurement/assessment, and reporting; and, (5) \$80,000 for startup and maintenance costs.

**E. Benefits**

Implementation of this SEP is designed to increase awareness and engagement on topics related to FIFRA compliance as that pertains to supplemental distribution. By broadly targeting industry stakeholders and others, overall noncompliance levels may be reduced, thereby positively impacting public health and the environment. The Training is designed to fulfill a need within the pesticide industry for delivery of compliance-related information to those who support or otherwise are interested in supplemental distribution. By delivering the Training virtually, Training content will be widely available, on-demand. Monitoring interest in and accessibility of the Training through knowledge checks and recording numbers of visitors or “hits” to the website will provide valuable assessment data and help facilitate long-term sustainability. Finally, by training large numbers of industry stakeholders on supplemental distribution compliance requirements, the potential for misuse of pesticide products due to noncompliant labeling may also be diminished.

**F. Schedule**

The anticipated components of the Training include design, content creation, development, programming, deployment, monitoring and assessment, recordkeeping, and reporting. Respondent shall substantially complete the initial Training design, content,

dissemination, and launch/deployment within 12 months after the effective date of the CAFO. After the initial Training design, development, and launch, and for at least 3 years beyond that first 12-month period, subject to the content review provisions of the CAFO and this SOW, Respondent shall periodically revise and update Training program content, as necessary and appropriate, to identify substantive and material changes to EPA regulatory requirements and directives relative to the topics covered by the Training. After the initial 12-month SEP implementation period, Respondent shall continue to implement the Training for at least 3 more years by carrying out mostly the monitoring, assessment, updating, recordkeeping, and reporting activities described in the CAFO and this SOW.