



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

NOV 15 2019

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. E. David Lewis  
Lewis & Harrison, LLC  
2461 South Clark Street, Suite 710  
Arlington, Virginia 22202

Re: Shikoku International Corporation  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2019-9730(b)

Dear Mr. Lewis:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Ms. Kanoelehua Ho of the EPA Region 4 staff at (404) 562-9162.

Sincerely,

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

Larry L. Lamberth  
Chief  
Chemical Safety and Land Enforcement Branch

Enclosures

cc: Audrey Moore, EPA Region 2  
Allison Watanabe, EPA Region 9  
Chad Schulze, EPA Region 10

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

**In the Matter of:** )  
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Shikoku International Corporation )  
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Respondent. )  
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**Docket No.: FIFRA-04-2019-9730(b)**

2019 NOV 15 AM 10:02  
HEARINGS DIVISION  
U.S. EPA REGION 4  
ATLANTA, GEORGIA

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Enforcement and Compliance Assurance Division who has been delegated the authority to settle administrative penalty proceedings under Section 14(a) of FIFRA. Respondent is Shikoku International Corporation (hereinafter Shikoku or Respondent).
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

3. Respondent Shikoku is licensed to do business in the State of California.
4. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
5. The term "pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
6. 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).
7. The term "establishment" is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
8. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
9. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer desiring to ship pesticides or pesticide devices into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United States, or, as an alternative to submitting an NOA, the importer or its agent may file an entry via the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) Data Processing

System.

10. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling which does not contain a warning or caution statement which may be necessary and if complied with is adequate to protect human health and the environment.
11. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

### **III. Specific Allegations**

12. On or around January 30, 2019, James J. Boyle & Company, the licensed customs broker for Shikoku, filed an electronic NOA in the CBP ACE system for the importation of 36 bags of NEO-CHLOR 55 (EPA Reg. No. 33980-3), each weighing 1000.17 kilograms, which arrived at the Port of Jacksonville, Florida under entry number 221-61382761 on or around January 31, 2019.
13. A copy of the product label uploaded by James J. Boyle & Company into the ACE system for the shipment of the above-referenced pesticide did not fully match the pesticide’s most current EPA-approved master label. More specifically, the label provided by James J. Boyle & Company did not include the phrase “and before eating, drinking, chewing gum, using tobacco or using the toilet” after the phrase “wash thoroughly with soap and water after handling,” as required by the EPA-approved Master label and outlined in the EPA Label Review Manual.
14. The EPA asked James J. Boyle & Company on January 30, 2019, to confirm that the label uploaded to ACE was a true and accurate representation of the label affixed to the pesticide bags. James J. Boyle & Company confirmed that the label, uploaded to ACE, was the correct label affixed to the bags of the pesticide product.
15. Based on the EPA’s determination that the shipment of 36 bags of NEO-CHLOR 55 associated with entry number 221-61382761 was misbranded as described above, the EPA placed the

shipment on a Hold Intact status through the ACE System on January 30, 2019. The EPA also advised James J. Boyle & Company on January 30, 2019, that the status in CBP's ACE system would remain held intact and the shipment could not be moved until further notice.

16. On or around January 31, 2019, the EPA Region 4 informed Shikoku that the 36 bags of NEO-CHLOR 55 that were scheduled to arrive at the Port of Jacksonville on the same date appeared to be misbranded. The EPA Region 4 also requested that Shikoku provide entry numbers, ports of entry, locations and current condition for all the other shipments of NEO-CHLOR 55 recently imported into the United States.
17. On or around February 15, 2019, counsel for Shikoku submitted to the EPA Region 4 a letter outlining all the recent shipments of NEO-CHLOR 55 and their current locations. The letter identified five additional shipments of NEO-CHLOR 55, which were scheduled to arrive between January and February 2019 at the Ports of Tacoma, Washington and New York/Newark, New Jersey.
  - a. On or around January 22, 2019, James J. Boyle & Company, filed NOAs in the CBP's ACE system for the importation of two shipments, each containing 36 bags of NEO-CHLOR 55, each bag weighing 1000.17 kilograms, through the Port of Tacoma, Washington under entry numbers 221-61386051 and 221-61386077. The shipments arrived on or around January 24, 2019. The shipment identified under entry number 221-61386051 was later moved to Haviland Consumer Products located at 2168 Avastar Parkway, Garden Rapids, Michigan 49544. The other shipment identified under entry number 221-61386077 was later moved to KMI located at 815 South Front Street, Belding, Michigan 48809.
  - b. On or around January 29, 2019, James J. Boyle & Company, filed an NOA in the CBP's ACE system for the importation of 36 bags of NEO-CHLOR 55, each bag weighing

1000.17 kilograms, through the Port of New York/Newark, New Jersey under entry number 221-61389709. The shipment of 36 bags arrived on or around January 31, 2019, and was later moved to G&A Warehouse, Inc., located at 3800 Marshall Lane, Bensalem, Pennsylvania.

- c. On or around February 15, 2019, one shipment of 36 bags of NEO-CHLOR 55, each bag weighing 2,205 pounds arrived through the Port of Tacoma, Washington in container numbers HESU2029734 and HESU2030247. Since the EPA had previously notified James J. Boyle & Company that the NEO-CHLOR 55 products were misbranded, above-described in paragraph 13, they decided not to submit an NOA or file an entry for the shipment, which was immediately held by CBP at the port.
  - d. On or around February 17, 2019, one shipment of 54 bags of NEO-CHLOR 55, each bag weighing 2,205 pounds arrived at the Port of New York/Newark, New Jersey in container numbers NYKU3895763, SEGU1171624, and NYKU9864754. Since the EPA had previously notified James J. Boyle & Company that the NEO-CHLOR 55 products were misbranded, above-described in paragraph 13, they decided not to submit an NOA or file an entry for the shipment, which was immediately held by CBP at the port.
18. On or around February 21, 2019, the EPA explained the options available to address the noncompliant shipments including relabeling with a FIFRA compliant label under a Stop Sale, Use, or Removal Order (SSURO) at an EPA-registered establishment. Shikoku requested that the EPA issue a SSURO to allow it to relabel the misbranded bags of pesticide product.
19. On March 13, 2019, the EPA issued a SSURO to Shikoku which prohibited the sale, use, or removal of 234 misbranded bags of pesticide product NEO-CHLOR 55 (EPA Reg. No. 33980-3) that were imported into the United States in six shipments as described in paragraphs 12 and 17

above. The SSURO allowed Shikoku to relabel all of the bags with the correct label at several EPA-registered establishments as set forth more specifically in paragraph 21 below.

20. On March 22, 2019, at the request of Shikoku, the EPA issued the first amendment to the SSURO to allow Shikoku to transfer 126 of the bags that had been relabeled at two of the registered establishments in Michigan and Pennsylvania to other EPA-registered establishments for temporary storage.
21. In response to, and as allowed by the SSURO, Shikoku relabeled the 234 bags of the NEO-CHLOR 55 in accordance with FIFRA requirements, as outlined below:
  - a. The 36 bags of NEO-CHLOR 55, that arrived at the Port of Jacksonville under entry number 221-61382761, were relabeled and stored at Suncoast Chemicals Company (EPA Est. No. 46043-FL-1) located at 6385 150th Avenue, Clearwater, Florida 33760;
  - b. The 72 bags of NEO-CHLOR 55, that arrived at the Port of Tacoma under entry numbers 221-61386051 and 221-61386077 were relabeled at Haviland Consumer Products (EPA Est. No. 57787-MI-1), located at 421 Ann Street Northwest, Grand Rapids, Michigan 49504 and transferred for storage at Kassouni Manufacturing, Inc.'s (KMI) warehouse located at 815 South Front Street, Belding, Michigan 48809 (EPA Est. No. 82835-MI-1);
  - c. The 36 bags of NEO-CHLOR 55, that arrived at the Port of Tacoma, without entry documentation, in containers HESU2029734 and HESU2030247, were relabeled and stored at Haviland Consumer Products (EPA Est. No. 57787-MI-1), located at 421 Ann Street Northwest, Grand Rapids, Michigan 49504;
  - d. The 36 bags of NEO-CHLOR 55, that arrived at the Port of New York/Newark, New Jersey, under entry number 221-61389709, were relabeled and stored at N. Jonas & Company (EPA Est. No. 3432-PA-1), located at 4525 Adams Circle, Bensalem, Pennsylvania 19020;

- e. The 54 bags of NEO-CHLOR 55, that arrived at the Port of New York/Newark, New Jersey, without entry documentation, in containers NYKU3895763, SEGU1171624, and NYKU9864754, were relabeled and transferred for storage at N. Jonas & Company (EPA Est. No. 3432-PA-1), located at 4525 Adams Circle, Bensalem, Pennsylvania 19020.
22. On May 20, 2019, the EPA issued a Second Amendment to correct two typographical errors in the first Amended SSURO and terminated the SSURO after verifying via photographs that Shikoku had relabeled the 234 bags of pesticide product properly in compliance with FIFRA.
23. The EPA alleges that by importing the bags of misbranded pesticide product as described above in paragraphs 12 and 17, Shikoku distributed a misbranded pesticide on six occasions, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. 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.
25. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation(s).
26. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **TWENTY-THREE THOUSAND AND FIVE HUNDRED DOLLARS (\$23,500)** against the Respondent for the above-described alleged violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

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

27. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.



28. 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.
29. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
30. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to the Neo-Chlor products addressed above.
31. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.
32. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

#### **V. Final Order**

33. Respondent is assessed a civil penalty of **TWENTY-THREE THOUSAND AND FIVE HUNDRED DOLLARS (\$23,500)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
34. Respondent shall remit the penalty by either the electronic method below or a cashier's or certified check made payable to the "Treasurer, United States of America". **The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.** The

penalty shall be sent by one of the methods below.

Address for standard delivery:

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

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

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819.

Electronic Payment:

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

35. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street S.W.  
Atlanta, Georgia 30303

Kanoelehua Ho  
Chemical Safety Section  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

36. 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.

37. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.
40. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

#### **VI. Effective Date**

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

#### **AGREED AND CONSENTED TO:**

**Respondent:** Shikoku International Corporation

**Docket No.:** FIFRA-04-2019-9730(b)

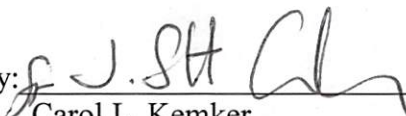
By:  (Signature)

Date: 10/11/2019

Name: Atsushi Yokouchi (Typed or Printed)

Title: General Manager (Typed or Printed)

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

By:   
Carol L. Kemker

Date: 10/28/19

Director  
Enforcement and Compliance Assurance Division

**APPROVED AND SO ORDERED** this 12<sup>th</sup> day of November 2019.

  
Tanya Floyd  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of Shikoku International Corporation, Docket Number: FIFRA-04-2019-9730(b), to the addressees listed below:

Mr. E. David Lewis  
Lewis & Harrison, LLC  
2461 South Clark Street, Suite 710  
Arlington, Virginia 22202

(via Certified Mail, Return Receipt Requested)

Kanoelehua Ho  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan  
Senior Attorney  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: \_\_\_\_\_

11-15-19



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