



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

JUL 29 2008

4APT-PTSB

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Joe L. Cline  
d/b/a East-West Convenience Store  
1294 U.S. 70 West  
Valdese, NC 28690

SUBJ: Docket No. FIFRA-04-2008-3031(b)  
Joe L. Cline d/b/a East-West Convenience Store

Dear Mr. Cline:

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 CFR Part 22.

Please make note of the provisions in Section IV of the Final Order, with respect to payment of the assessed penalty of \$8,874, which is due within 30 days from the effective date of the CAFO. As required by paragraph 31 of this CAFO, please ensure that the face of your cashier's or certified check includes the name of the company and docket number of this case.

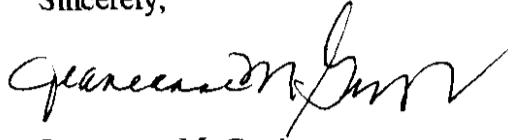
Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document notifies you of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. EPA, Cincinnati Finance Center address identified in Section 31 of the CAFO. Should you have any questions about your compliance status in the future, please call me or Ms. Patricia Livingston at (404) 562-9171.

Sincerely,



Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures (2)

cc: Shannon Joyner  
NC Department of Agriculture &  
Consumer Services

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION 4  
2008 JUN 29 PM 2:10  
HEARINGS CLERK

In the Matter of: )  
)  
**Joe L. Cline** )  
**d/b/a East-West Convenience Store** )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. **FIFRA-04-2008-3031(b)**

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) (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 Joe L. Cline, d/b/a East-West Convenience Store.
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:

Patricia Livingston  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9171.
5. Respondent is Joe L. Cline, d/b/a East-West Convenience Store, located at 1294 U.S. 70 West, Valdese, NC 28690.
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 August 22, 2006, an authorized representative of the EPA conducted an inspection at East-West Convenience Store, located at 1294 U.S. 70 West, Valdese, NC.
8. During the aforementioned inspection, the product "Roundup Pro," EPA Registration No. 524-475, was identified as being repackaged and sold by the Respondent.
9. Roundup Pro is a pesticide 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.
10. 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).

11. At the time of the inspection, the Roundup Pro was misbranded in that the containers into which the Roundup Pro was repackaged did not bear accepted pesticide labels.
12. According to FIFRA 12(a)(1)(E), a pesticide is misbranded if its label does not bear the name and address of the producer, registrant, or other person for whom the product was produced; the net weight; the net contents; the product registration number; the producing establishment number; an ingredient statement; hazard and precautionary statements; directions for use; and the pesticide use classification.
13. Under 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.
14. Respondent violated 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.
15. At the time of the inspection, Respondent produced the pesticide Roundup Pro in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
16. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
17. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

18. Based on information obtained during the aforementioned inspection, the registered pesticide, Roundup Pro, was being used in a manner inconsistent with its labeling. The label on the Roundup Pro product clearly states: "THIS IS AN END-USE PRODUCT. MONSANTO DOES NOT INTEND AND HAS NOT REGISTERED IT FOR REFORMULATION OR REPACKAGING."
19. It is a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), to use any registered pesticide in a manner inconsistent with its labeling.
20. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. 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.
22. 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.
23. 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 EIGHT THOUSAND EIGHT HUNDRED SEVENTY-FOUR DOLLARS (\$8,874.00) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

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

25. 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.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. 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.
29. 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

30. Respondent is assessed a civil penalty of EIGHT THOUSAND EIGHT HUNDRED SEVENTY-FOUR DOLLARS (\$8,874.00) which shall be paid within 30 days from the effective date of this CAFO.
31. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

**The check shall reference the name and the Docket Number of the CAFO [“Joe L. Cline d/b/a East-West Convenience Store, FIFRA-04-2008-3031(b)”].**

32. 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 30303-8960;

Patricia Livingston  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

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

33. 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.



34. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
35. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
36. This CAFO shall be binding upon the Respondent, its successors and assigns.
37. 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.

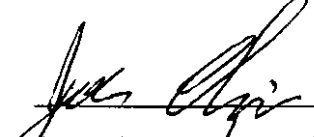
The rest of this page was intentionally left blank.

V. Effective Date


38. 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:**

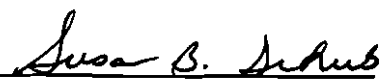
**JOE L. CLINE d/b/a EAST-WEST CONVENIENCE STORE**

By:  (Signature) Date: 7-25-08  
Name: JOE CLINE (Typed or Printed)  
Title: OWNER (Typed or Printed)

**U.S. Environmental Protection Agency**

By:  Date: 7/16/08  
Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 29<sup>th</sup> day of July 2008.

  
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: Joe L. Cline d/b/a East-West Convenience Store, FIFRA Docket No. 04-2008-3031(b), on the parties listed below in the manner indicated.

For Complainant:

Patricia Livingston  
Pesticides Management Section  
U.S. EPA - Region 4, 4APT-PTSB  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Robert Caplan, Senior Attorney  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960.

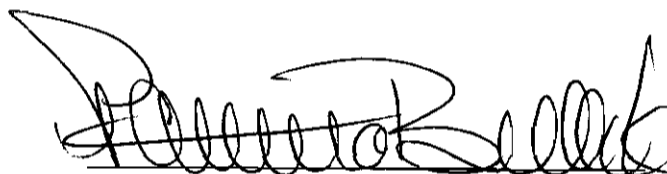
(Via EPA's internal mail)

For Respondent:

Joe L. Cline  
d/b/a East-West Convenience Store  
1294 U.S. 70 West  
Valdese, NC 28690.

(Via Certified Mail - Return Receipt  
Requested)

Date: 7-29-08



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: Saundi Wilson on 7/23/08  
(Name) (Date)

in the Region 4, ORC, OEA 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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Joe L. Cline d/b/a East West Convenience Store  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 8874  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2008 3031(b)

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

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

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

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

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** 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 (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

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