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**\*\* FILED \*\***

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U.S.EPA - Region 09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA

In the Matter of:	)	
	)	
Dow AgroSciences LLC	)	Docket No. FIFRA-09- <u>2016-0021</u>
	)	
	)	CONSENT AGREEMENT AND FINAL
	)	ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.	)	
_____	)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Dow AgroSciences LLC (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Assistant Director of the Water and Pesticides Branch of the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is an Indiana corporation whose principal offices are located at 9330 Zionsville Road, Indianapolis, Indiana.

#### B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA, 7 U.S.C. § 136o(e), by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that "all imported pesticides are required to be registered under the provisions of section 3 of the Act."
6. 19 C.F.R. § 12.112 provides that "an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices prior to the arrival of the shipment to the United States."
7. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), provides that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as required as a part of the statement required in connection with its registration under section 3.

#### C. ALLEGATIONS

8. Respondent is a corporation and therefore, a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

9. Sichuan Leshan Fuhua Tongda Agro-Chemical Technology Co., Ltd., manufactures “Glyphosate Technical FH” at its facility in People’s Republic of China for Respondent.
10. “Glyphosate Technical FH” is used to control or kill weeds.
11. Weeds are “pests” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
12. “Glyphosate Technical FH” is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
13. On or about May 10, 2013, Respondent registered the pesticide “Glyphosate Technical FH” with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, under EPA Registration Number 62719-674.
14. In the statement submitted for the registration of “Glyphosate Technical FH” with EPA, Respondent claimed that the registered “Glyphosate Technical FH” would be produced solely in the United States.
15. On or about May 16, 2016, Respondent imported 216 bags of the registered “Glyphosate Technical FH” to the United States from People’s Republic of China that arrived at the Port of Los Angeles in California in two separate shipments.
16. According to the Notice of Arrival that Respondent filed with EPA, Respondent stated that the two shipments of the registered “Glyphosate Technical FH” that Respondent imported to the United States from People’s Republic of China on or about May 16, 2016, were produced by Sichuan Leshan Fuhua Tongda Agro-Chemical Technology Co., Ltd., in People’s Republic of China.
17. Under section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), it shall be unlawful for any person in any State to distribute or sell to any person “any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims

made for it as a part of the statement required in connection with its registration under section 3.”

18. The term “distribute or sell” means 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.”
19. The two shipments of registered “Glyphosate Technical FH” that were produced in People’s Republic of China that Respondent imported to the United States from People’s Republic of China on or about May 16, 2016, constitute two separate violations of section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), in that Respondent claimed that the registered pesticide would be solely produced in the United States in the statement submitted for its registration with EPA.

#### D. RESPONDENT’S ADMISSIONS

20. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

#### E. CIVIL ADMINISTRATIVE PENALTY

21. Respondent agrees to the assessment of a penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C. of the CAFO.

22. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashiers or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular Mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary = US Environmental Protection Agency

c. Certified or Overnight Mail:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

d. Automated Clearinghouse (ACH) (also known as REX or Remittance Express):

Automated Clearinghouse (ACH) payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/ Cashlink ACH Receiver  
ABA = 051036706  
Account Number = 31006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking

Physical location of US Treasury Facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX) = 1-866-234-5681

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov  
Enter "SFO1.1" in the search field  
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed,  
Please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall  
be accompanied by a transmittal letter identifying the case name, the case docket number,  
and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent  
shall send a copy of the check or notification that the payment has been made by one of  
the other methods listed above, including proof of the date payment was made, and  
transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Allison Watanabe  
SDWA/FIFRA Section (ENF-3-3)  
U.S. Environmental Protection Agency, Region IX  
Southern California Field Office  
600 Wilshire Blvd., Suite 1460  
Los Angeles, CA 90017

23. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
24. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 22, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 22 may lead to any or all of the following actions:
  - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
  - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.
  - c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 22. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. RETENTION OF RIGHTS

25. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and



remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

26. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

#### G. ATTORNEYS' FEES AND COSTS

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

#### H. EFFECTIVE DATE

28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

#### I. BINDING EFFECT

29. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
30. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, DOW AGROSCIENCES LLC:

2 Sep 16  
DATE

Kenneth D. Isley  
Kenneth D. Isley  
Vice President, General Counsel & Secretary



FOR COMPLAINANT, EPA REGION IX:

9/16/16  
DATE

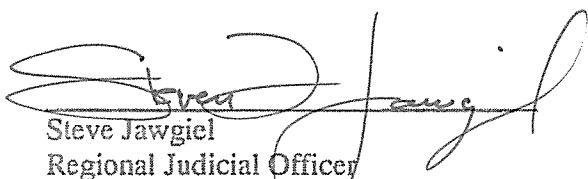
*acting for*  
Claire Trombadore  
Claire Trombadore  
Assistant Director  
Water and Pesticides Branch  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

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

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-<sup>2016-</sup>0021) be entered, and that Respondent shall pay a civil administrative penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) and comply with the terms and conditions set forth in the Consent Agreement.

09/20/16  
DATE

  
Steve Jawgiel  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. FIFRA-09-2016-0021) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to: *7015 3010 0000 3883 2917*

Eileen Salathe  
Lead Counsel  
Dow AgroSciences LLC  
9330 Zionsville Rd.  
Indianapolis, IN 46268

Certified Mail Number:

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

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

*Steven Armsey*  
Regional Hearing Clerk  
U.S. EPA, Region IX

*Sept. 21, 2016*  
Date