UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
March 12, 2015

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8357
RETURN RECEIPT REQUESTED
Mr. Toyokazu Matsumoto
Arysta Lifescience America, Inc.
d/b/a Veto-Pharma
New York, New York 10019

Consent Agreement and Final Order In the Matter of
Arysta Lifescience America, Inc. d/b/a Veto-Pharma
Docket No. **FIFRA-05-2015-0031**

Mr. Matsumoto:

Enclosed pleased find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on March 12, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of $7,500 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

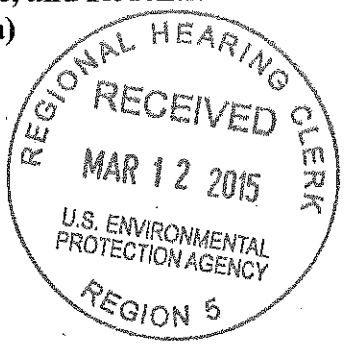
Sincerely,

for Meghan Dunn
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. FIFRA-05-2015-0031**
	)	
Arysta Lifescience America, Inc.	)	**Proceeding to Assess a Civil Penalty**
d/b/a Veto-Pharma	)	**Under Section 14(a) of the Federal**
1450 Broadway, Suite 2011,	)	**Insecticide, Fungicide, and Rodenticide**
New York, New York,	)	**Act, 7 U.S.C. § 136*l*(a)**
	)	
Respondent.	)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Arysta Lifescience America, Inc. (d/b/a Veto-Pharma), a corporation doing business in the State of New York.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell" as 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.

12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See also* 40 C.F.R. § 152.15.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "pest" as (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms 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.

14. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term "label" as the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.

15. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines "labeling," in part, as all labels and all other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label.

16. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

17. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as "misbranded" if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

Factual Allegations and Alleged Violations

18. Arysta Lifescience America, Inc., d/b/a Veto-Pharma (Arysta) is a company doing business in the State of New York.

19. This Order refers to Arysta and all of its divisions, offices, branches and subsidiaries, collectively, as "the Respondent."

20. Respondent is a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. At all times relevant to this CAFO, Apivar was an EPA-registered pesticide, with EPA Registration Number 87243-1.

22. At all times relevant to this CAFO, Apivar was a "pesticide", as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. On or about October 17, 2013, EPA accepted labeling for Apivar (EPA-accepted labeling).

24. On or about December 17, 2014, Respondent submitted a Notice of Arrival of Pesticides and Devices (NOA) to EPA Region 5 for the import of one shipment of Apivar.

25. The December 17, 2014 NOA related to a shipment of Apivar that arrived in the United States on or about December 22, 2014 at the Port of Minneapolis in Minnesota.

26. At all times relevant to this CAFO, Respondent owned, controlled, or had custody of the containers of Apivar associated with the December 17, 2014 NOA.

27. The label on containers of Apivar associated with the December 17, 2014 NOA referenced the website www.apivar.net (Respondent's website).

28. Respondent's website constitutes "labeling" as defined at FIFRA § 2(p), 7 U.S.C. § 136(p).

29. At all times relevant to this CAFO, Respondent's website claimed that Apivar:

- "Kills up to 99% of mites in one application."
- "Proven safe and effective for more than 15 years."
- "A new and effective tool against Varroa mite."
- "After 15 years of use, Apivar has proven a uniquely safe and effective solution because it delivers a powerful active ingredient – amitraz – via controlled release technology in the form of a plastic polymer strip."
- "[…] a sub-lethal miticide: paralyzes varroa mites – leading to their starvation."
- "Competitors short-acting treatments effective for only 1-2 days after the administration of a high dose of active ingredient […] Apivar's controlled-release treatment effective for an extended period of time after the administration of a single low dose of active ingredient that is released over six weeks. Kills many successive generations of mites without leaving significant residues."

- "This treatment is completely safe for bees and humans and has not led to any known instances of bio-resistance in Varroa."
- "A safe product for bees and beekeepers."
- "Apivar drives dramatic drop in mite population."
- "Apivar tested more effective than other products."
- "That's why Apivar is so effective – it treats several successive generations of mites, instead of just one."
- "The only effective treatment for Varroa mites is one that continues to act over a long period of time, treating multiple generations of mites and thereby reducing their negative impact on the health of the colony."
- "[…] safety studies performed by independent research centers have shown that even when hives are exposed to *five times the recommended dosage*, Apivar is harmless to queens and bees, and does not leave significant residue in hive products."
- "North American beekeepers now have an effective new weapon against Varroa mites."

30. The claims made in paragraph 29, above, do not appear in the EPA-accepted labeling.

31. At all times relevant to this CAFO, Respondent's website depicted a graph titled "Total mite population before and after six-week treatment with Apivar."

32. The graph referenced in paragraph 31, above, does not appear in the EPA-accepted labeling.

33. At all times relevant to this CAFO, Respondent's website depicted a table with the

table column headings, "Treatment" and "Average Efficacy (%),"comparing the efficacy of Apivar to other products listed in the table.

34. The table referenced in paragraph 33, above, does not appear in the EPA-accepted labeling.

35. At all times relevant to this Order, Respondent's website depicted a diagram with title "Apivar's mode of action in the bee colony" that included the claims, "1. Bees walk on the strips, picking up molecules of amitraz. 2. The bees distribute amitraz through contact with each other. 3. Mites on the bees are exposed to the amitraz, which leads to paralysis and starvation. 4. The mite population drops and subsequent mite generations are also killed."

36. The diagram and claims referenced in paragraph 35, above, do not appear in the EPA-accepted labeling.

37. On or about December 22, 2014, Respondent distributed or sold Apivar with labeling bearing a statement, design, or graphic representation relative thereto or to its ingredients which was false or misleading in any particular. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

38. On or about December 22, 2014, Respondent distributed or sold to any person misbranded Apivar.

39. Respondent's December 22, 2014 distribution or sale of Apivar was an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Civil Penalty

40. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136*l*(a)(4), Complainant determined that an appropriate civil penalty to settle this action is $7,500. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of

Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

41. Respondent must pay by one of the following methods:

For checks sent by regular U.S. Postal Service mail: By sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The check must note "Arysta Lifescience America, Inc. d/b/a Veto-Pharma" and the docket number of this CAFO.

For checks sent by express mail: By sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must note "Arysta Lifescience America, Inc. d/b/a Veto-Pharma" and the docket number of this CAFO.

For electronic funds transfer: By electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state "Arysta Lifescience America, Inc. d/b/a Veto-Pharma" and the docket number of this CAFO.

For Automated Clearinghouse (ACH) also known as REX or remittance express: By ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state "Arysta Lifescience America, Inc. d/b/a Veto-Pharma" and the docket number of this CAFO.

For on-line payment: By an on-line payment. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

42. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Meghan Dunn (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Kimberly W. Portnoy (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

43. This civil penalty is not deductible for federal tax purposes.

44. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136*l*(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

46. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

47. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

48. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

49. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

50. The terms of this CAFO bind Respondent, its successors and assigns.

51. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

52. Each party agrees to bear its own costs and attorneys fees, in this action.

53. This CAFO constitutes the entire agreement between the parties.

Arysta Lifescience America, Inc. d/b/a Veto-Pharma, Respondent

2/11/15
Date

Toyokazu Matsumoto
President
Arysta Lifescience America, Inc.

United States Environmental Protection Agency, Complainant

3/3/2015
Date

Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Arysta Lifescience America, Inc. d/b/a Veto-Pharma
Docket No.
FIFRA-05-2015-0031

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-5-2015
Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Arysta Lifescience America, Inc., d/b/a Veto-Pharma
Docket Number: **FIFRA-05-2015-0031**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing ***Consent Agreement and Final Order***, which was filed on March 12, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Toyokazu Matsumoto
Arysta Lifescience America, Inc.
d/b/a Veto-Pharma
New York, New York 10019

Copy by E-mail to
Attorney for Complainant:

Kimberly W. Portnoy
Portnoy.kimberly@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: March 12, 2015

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): **7011 1150 0000 2643 8357**