



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 26 2019

UNITED PARCEL SERVICE

Mr. Jonathan Janis  
North America Regulatory Affairs Lead  
Arysta Lifescience North America, LLC  
15401 Weston Parkway, Suite 150  
Carey, North Carolina 27513

Re: Arysta Lifescience North America, LLC  
Ratified Consent Agreement and Final Order  
Docket No. FIFRA-04-2018-3015(b)

Dear Mr. Janis:

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's 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 Kimberly Tomczak of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-8987.

Sincerely,

A handwritten signature in blue ink that reads "Anthony G. Toney".

Anthony G. Toney  
Chief  
Chemical Safety and Enforcement Branch

Enclosure

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

2019 FEB 26 AM 7:47  
HEARING OFFICE  
OFFICE OF REGIONAL  
ADMINISTRATION

In the Matter of: )  
)  
Arysta Lifescience North America, LLC )  
)  
Respondent. )  
)  
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Docket No.: FIFRA-04-2018-3015(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) (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 Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Arysta Lifescience North America, LLC (Arysta).
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by the EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director of the Air, Pesticides and Toxics Management Division, by the EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an

enforcement action as the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between the EPA and Respondent.

3. 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**

4. Respondent Arysta is licensed to do business in the State of North Carolina.
5. 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.
6. Respondent is a "producer" as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w), as the person who manufactures, prepares, compounds, propagates, or processes any pesticide.
7. 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.
8. 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).

9. 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.
10. 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.
11. 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 import pesticides 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] or, alternatively, to submit a U. S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System Entry, prior to the arrival of the shipment(s) into the United States.
12. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136(q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
13. 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 a misbranded pesticide.

### **III. Specific Allegations**

14. On February 13, 2018, the licensed customs broker BDP International (BDP) submitted an ACE Entry, under Entry Number 916-35186991, via the ACE Data Processing System on behalf of Arysta for the importation of a shipment of forty (40) drums, each drum weighing 225 kilograms, of the pesticide product Terrazole Technical (EPA Reg. No. 400-413) that arrived at the Port of Savannah on or around February 11, 2018.

15. A copy of the label on the drums of pesticides submitted by BDP to the EPA for review through ACE Document Imaging System did not fully match the pesticide's most current EPA-approved pesticide master label. Specifically, the label on the drums included incorrect language in the Storage and Disposal Section. More specifically, the imported product label stated, "Once cleaned, some agriculture plastic containers can be taken to a container collection site or picked up for recycling," whereas the EPA master label states "Triple rinse (or equivalent). Then offer for recycling..." In addition, the imported product label states "Fungicide" under the brand name of the product, but the EPA master label does not contain that language.
16. On February 14, 2018, the EPA Region 4 informed BDP by phone that the label submitted into the ACE Document Imaging System for the imported Terrazole Technical pesticide product did not fully match the pesticide's most current EPA-approved pesticide master label. Subsequently, on February 15, 2018, Arysta advised the EPA Region 4 that it would make a Notification submission to the EPA's Registration Division to correct the product label. On February 28, 2018, the EPA's Registration Division advised Arysta that its Notification for a change to the label would not be accepted.
17. On March 15, 2018, Arysta's broker, BDP, submitted an ACE Entry, under Entry Number 916-35795239, via CBP's ACE Data Processing System on behalf of Arysta for the importation of a shipment of twenty-four (24) drums, each drum weighing 3,086.40 pounds, of the pesticide product Ethephon Technical (EPA Reg. No. 66330-369) that arrived at the Port of Savannah on or around March 13, 2018.

18. The product label submitted for the EPA's review through the ACE Document Imaging System for the shipment of the above-referenced pesticide did not fully match the pesticide's most current EPA-approved pesticide master label. Specifically, the Caution Statement in Spanish did not match the EPA Master Label, and the pesticide label included incorrect language in the Storage and Disposal Section. More specifically, under container disposal, the label, stated: "non-refillable containers. Do not reuse or refill this container. Triple rinse container (or equivalent) promptly after emptying. Triple rinse as follows..." whereas the EPA master label states: "Do not reuse empty container Triple rinse (or equivalent). Then offer for recycling..."
19. On March 16, 2018, the EPA Region 4 informed Arysta by email that the label submitted into the ACE Document Imaging System for the imported Ethephon Technical pesticide product did not fully match the pesticide's most current EPA-approved pesticide master label. Subsequently, on March 20, 2018, Arysta contacted the EPA's Registration Division by email to discuss whether Arysta could submit a Notification change to modify the labels for Ethephon Technical. On or around April 4, 2018, the EPA's Registration Division advised the EPA Region 4 that their office would be notifying Arysta that a Notification change to modify the labels would not suffice and that Arysta could submit instead a proposed "amendment change" for review.
20. On March 29, 2018, Arysta notified the EPA Region 4 by email that another shipment of the pesticide product Ethephon Technical was expected to arrive at the Port of Savannah on or around April 10, 2018, that bore the same incorrect label as the Ethephon Technical pesticide product referenced above in paragraph 18.

21. On April 4, 2018, Arysta's broker, BDP, submitted an ACE Entry, under Entry Number 916-3568184, via CBP's ACE Data Processing System on behalf of Arysta for the importation of a shipment of twelve (12) drums, each drum weighing 3,086.40 pounds, of the pesticide product Ethephon Technical that arrived at the Port of Savannah on or around April 3, 2018.
22. The product label submitted to the EPA through the ACE Document Imaging System for the shipment of the Ethephon Technical pesticide did not fully match the pesticide's most current EPA-approved pesticide master label in the same manner as referenced above in paragraph 18.
23. On April 9, 2018, EPA Region 4 issued a Stop Sale, Use, or Removal Order (SSURO) to the Respondent pertaining to the shipment of the pesticide product Terrazole Technical and two shipments of the pesticide product Ethephon Technical after determining that the products were misbranded. The SSURO prohibited the Respondent from further selling, distributing, using or removing the shipments of Terrazole Technical and Ethephon Technical, but also provided the Respondent an opportunity to come into compliance by relabeling the misbranded pesticide products at an EPA-registered establishment.
24. On April 27, 2018, the EPA vacated the SSURO after verifying the pesticide products Terrazole Technical and Ethephon Technical had been properly relabeled and were in compliance with FIFRA.
25. On April 24, 2018, and May 2, 2018, Arysta's broker, BDP, submitted two entries - Entry Numbers 916-35931289 and 916-35969867, via CBP's ACE Data Processing System on behalf of Arysta for the importation of two shipments with each shipment containing

- 1,440 bags, of the pesticide product Maleic Hydrazide Technical (EPA Reg. No. 400-97), that arrived at the Port of Savannah on April 27, 2018, and May 4, 2018, respectively.
26. The product label submitted to the EPA through the ACE Document Imaging System for each shipment of the pesticide product, Maleic Hydrazide Technical, did not fully match the pesticide's most current EPA-approved pesticide master label. More specifically, the statement under the Brand Name of the Product did not match the master label and the label did not include the Important Notice and Formulation Assistance under Directions for Use.
27. On April 30, 2018, and May 10, 2018, the EPA Region 4 informed Arysta by email that the label that was submitted into the ACE Document Imaging System for each of the imported Maleic Hydrazide Technical pesticide product shipments did not fully match the pesticide's most current EPA-approved pesticide master label. Subsequently, on May 3, 2018, Arysta submitted a Notification change to the EPA's Registration Division to revise the label. On or around May 23, 2018, the EPA Region 4 released the two shipments of the Maleic Hydrazide Technical pesticide because the Notification for a label change was approved by the EPA's Registration Division.
28. On April 26, 2018, and May 5, 2018, Arysta's broker, BDP, submitted two entries - Entry Numbers 916-35986341 and 916-35941684, via CBP's ACE Data Processing System on behalf of Arysta for the importation of two shipments that contained a total of three (3) bulk tanks, each tank weighing 21,000 liters, containing the pesticide product, C8-C10 Fatty Alcohol Technical (EPA Reg. No. 400-585), that arrived at the Port of Savannah on or around April 29, 2018 and May 6, 2018, respectively.



29. The product label submitted to the EPA through the ACE Document Imaging System for the three bulk tanks of the C8-C10 Fatty Alcohol Technical pesticide did not fully match the pesticide's most current EPA-approved pesticide master label. Specifically, under Directions for Use, "Use on Tobacco" was used instead of "Use as a Tobacco Sucker Control." In addition, under Formulation Assistance, the label stated "...may be obtained by writing or calling the company" instead of listing the company name and address.
30. On April 30, 2018, and May 7, 2018, the EPA Region 4 informed Arysta by email that the label for both shipments that were submitted into the ACE Document Imaging System for the imported Maleic Hydrazide Technical pesticide did not fully match the pesticide's most current EPA-approved pesticide master label. Subsequently, on May 15, 2018, Arysta submitted a Notification change to the EPA Headquarters to revise the label. On or around May 24, 2018, the EPA Region 4 released the shipments to Arysta and the broker because the Notification for a label change was approved by the EPA's Registration Division.
31. By importing the mislabeled pesticide products as described in this CAFO, the Respondent distributed misbranded pesticides, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
32. The EPA alleges that the Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least seven occasions, and is therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
33. 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.

34. 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).
35. 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 **THIRTY-THREE THOUSAND EIGHT HUNDRED DOLLARS (\$33,800)** 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.

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

36. 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.
37. 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.
38. 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.
39. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
40. 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.

41. 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**

42. Respondent is assessed a civil penalty of **THIRTY-THREE THOUSAND EIGHT HUNDRED DOLLARS (\$33,800)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
43. 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, Missouri 63197-9000.

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

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.

44. 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;

Kimberly Tomczak  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960.

45. For the purposes of state and federal income taxation, the 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 the Respondent to deduct any such payments shall constitute a violation of this CAFO.
46. 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.
47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
48. This CAFO shall be binding upon the Respondent, its successors and assigns.

49. 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**

50. 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:** Arysta Lifescience North America, LLC

**Docket No.:** FIFRA-04-2018-3015(b)

By:  (Signature) Date: 13 December 2018

Name: Donald Warren (Typed or Printed)

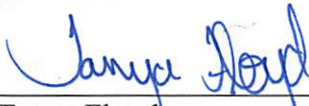
Title: Manager (Typed or Printed)

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

By:  Date: February 13, 2019

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

**APPROVED AND SO ORDERED** this 22<sup>nd</sup> day of February 2018.

  
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 Arysta Lifescience North America, LLC**. Docket Number: FIFRA-04-2018-3015(b), to the addressees listed below.

Mr. Jonathan Janis  
North America Regulatory Affairs Lead  
Arysta Lifescience North America, LLC  
15401 Weston Parkway, Suite 150  
Cary, North Carolina 27513

(via Certified Mail, Return Receipt Requested)

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

(via EPA's internal mail)

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

(via EPA's internal mail)

2-26-19  
DATE



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