



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

November 5, 2021

**VIA EMAIL ONLY**

Ofelia Gomez  
Customs Compliance Officer and Trade Manager  
Bayer CropScience LP  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167

[ofelia.gomez@bayer.com](mailto:ofelia.gomez@bayer.com)

Consent Agreement and Final Order  
In the Matter of Bayer CropScience LP  
Docket Number FIFRA-05-2022-0001

Ms. Gomez:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on November 5, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,900 is to be paid in the manner described in paragraphs 30-31. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

ANNA  
NGUYEN

Digitally signed by ANNA  
NGUYEN  
Date: 2021.10.27  
15:21:06 -05'00'

Anna Nguyen  
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	Docket No. FIFRA-05-2022-0001
	)	
<b>Bayer CropScience LP</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Saint Louis, Missouri</b>	)	<b>Under Section 14(a) of the</b>
	)	<b>Federal Insecticide, Fungicide, and</b>
	)	<b>Rodenticide Act, 7 U.S.C. § 136l(a)</b>
<b>Respondent.</b>	)	

**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. § 136l(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 Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Bayer CropScience LP, a corporation doing business at 800 North Lindbergh Drive, Saint Louis, Missouri.

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 to 136y.

### **Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. §§ 12.110-12.117. See also 19 C.F.R. § 12.1(b).

11. 19 C.F.R. § 12.111 states, in pertinent part, that imported pesticides must not bear any statement, design, or graphic representation that is false or misleading in any particular.

12. The term “importer” is defined at 19 C.F.R. § 101.1 as the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be the importer of record.

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

14. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines misbranded to include a pesticide that does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which the pesticide was produced.

15. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as, in pertinent part, any form of virus, bacteria, or other micro-organism. See also 40 C.F.R. § 152.5(d).

16. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

17. The term “person” is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

18. The term “to distribute or sell” is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver.

### **Factual Allegations and Alleged Violations**

19. Respondent is, and was at all times relevant to this CAFO, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent is, and was at all times relevant to this CAFO, an “importer” as that term is defined in 19 C.F.R. § 101.1.

21. **Aminocyclopyrachlor Technical** is a pesticide as defined by FIFRA and its regulations.

22. On or about October 10, 2021, Respondent imported a pesticide, **Aminocyclopyrachlor Technical** (Entry Number 224-32928426) into the United States.

23. On or about October 10, 2021, Respondent distributed or sold a pesticide, **Aminocyclopyrachlor Technical**, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

24. The pesticide identified under the import shipment (Entry Number 224-32928426) did not bear the EPA Establishment Number that was assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to the establishment in which the pesticide was produced.

25. On or about October 15, 2021, EPA requested that U.S. Customs and Border Protection place the import shipment of **Aminocyclopyrachlor Technical**, (Entry Number 224-32928426) under an intensive status for the purpose of relabeling at the Central Examination Station in Channel Distribution Corporation located at 950 Supreme Drive, Bensenville, Illinois 60106.

### **Count 1**

26. Paragraphs 1 through 25 are incorporated by reference.

27. On or about October 10, 2021, Respondent imported a shipment containing misbranded pesticide, **Aminocyclopyrachlor Technical**, on one occasion.

28. Respondent's failure to bear the correct EPA establishment number on the pesticide, **Aminocyclopyrachlor Technical**, (Entry Number 224-32928426) constitutes one violation of Section 12(a)(1)(E) of FIFRA.

29. Respondent's violation of Section 12(a)(1)(E) of FIFRA subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA.

### **Civil Penalty and Other Relief**

30. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$8,900. 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.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,900 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
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 "Bayer CropScience LP" and the docket number of this CAFO.

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

Regional Hearing Clerk  
[whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

Anna Nguyen  
[nguyen.anna@epa.gov](mailto:nguyen.anna@epa.gov)

Robert H. Smith  
[smith.roberth@epa.gov](mailto:smith.roberth@epa.gov)

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

33. If Respondent does not pay the civil penalty in a timely manner, 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. § 136l(a)(5). The

validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. 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**

35. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective representatives: [smith.roberth@epa.gov](mailto:smith.roberth@epa.gov) (for Complainant), and [ofelia.gomez@bayer.com](mailto:ofelia.gomez@bayer.com) (for Respondent).

36. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

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

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

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

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

41. 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.

42. Each party agrees to bear its own costs and attorney's fees, in this action.

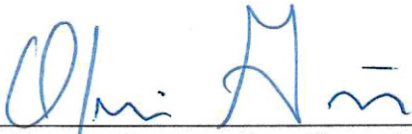
43. This CAFO constitutes the entire agreement between the parties.



**In the Matter of:  
Bayer CropScience LP**

**Bayer CropScience LP**

10/27/21  
Date

  
Ofelia Gomez, Customs Compliance Officer & Trade  
Policy Manager  
Bayer CropScience LP

**In the Matter of:  
Bayer CropScience LP**


**United States Environmental Protection Agency, Complainant**

11/3/21

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Date

**Harris,  
Michael**

 Digitally signed by Harris,  
Michael  
Date: 2021.11.03 12:07:55  
-05'00'

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Michael D. Harris, Director  
Enforcement & Compliance Assurance Division

**In the Matter of:**  
**Bayer CropScience LP**  
**Docket No. FIFRA-05-2022-0001**

**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.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.11.04 10:13:28  
-05'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the Matter of: Bayer CropScience LP  
Docket Number: **FIFRA-05-2022-0001**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2022-0001**, which was filed on November 5 2021, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant:

Mr. Robert H. Smith  
[smith.roberth@epa.gov](mailto:smith.roberth@epa.gov)

Copy by E-mail to  
Respondent:

Ms. Ofelia Gomez  
Bayer CropScience LP  
800 North Lindbergh Boulevard  
St. Louis, Missouri 63167  
[Ofelia.gomez@bayer.com](mailto:Ofelia.gomez@bayer.com)

Copy by E-mail to  
Regional Judicial Officer:

Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_

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