



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT 17 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Caroline Nasrallah Belk, Esq.
Bayer CropScience LP
BCS-LAW-LAW
2 TW Alexander Drive
Research Triangle Park, NC 27709

Re: *In the Matter of Bayer CropScience LP*
Docket No. FIFRA-02-2013-5305

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 OCT 17 A 10:31
REGIONAL HEARING
CLERK

Dear Ms. Belk:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the U.S. Environmental Protection Agency - Region 2.

Please note the payment provisions of the Agreement. Please arrange for payment of the penalty according to the instructions given.

Sincerely,

Naomi P. Shapiro
Assistant Regional Counsel

cc: Miguel Ortiz
Director, Agrological Laboratory
Puerto Rico Department of Agriculture
#7 Carr. 693
Dorado, Puerto Rico 00646-3445

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 OCT 17 A 10:31
REGIONAL HEARING
CLERK

----- X
In the Matter of :
 :
Bayer CropScience LP : CONSENT AGREEMENT AND
 : FINAL ORDER
 :
Respondent. :
 : Docket No. FIFRA-02-2013-5305
 :
Proceeding Under the Federal :
Insecticide, Fungicide and :
Rodenticide Act, as amended. :
----- X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to 7 U.S.C. § 1361(a), of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* (“FIFRA” or “the Act”). On April 2, 2013, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, (“EPA”), Region 2, issued a Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-02-2013-5305, to Respondent Bayer CropScience LP. The Complaint alleges ten violations of FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), use of a registered pesticide in a manner inconsistent with its labeling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is Bayer CropScience LP (hereinafter alternatively referred to as “BCS” or “Respondent”).

2. Respondent is a limited partnership organized pursuant to the laws of the State of Delaware.
3. Respondent is an agricultural business that *inter alia* develops seeds, fungicides, herbicides, insecticides, and crop management strategies.
4. Respondent is the registrant, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, of more than 300 active pesticide registrations with EPA.
5. Respondent operates, and at all times pertinent to this Complaint operated, a nursery and research farm located at Road No. 121, Km 5.9, Sabana Grande, Puerto Rico (“SG Farm” or “Respondent’s farm”).
6. Respondent grows plants at the SG Farm for commercial and research purposes.
7. The SG Farm is, and at all times pertinent to this Complaint has been, an “agricultural establishment” as that term is defined by 40 CFR § 170.3.
8. Respondent hires, and at all times pertinent to this action has hired, persons to perform activities related to the production of agricultural plants on the SG Farm.
9. Respondent is, and at all times pertinent to this action has been, an “agricultural employer” as that term is defined by 40 CFR § 170.3.
10. Respondent has, and at all times pertinent to this action has had, “workers” as that term is defined by 40 CFR § 170.3.

11. Pursuant to Section 25(a) of FIFRA, 7 U.S.C. § 136w(a), EPA promulgated the Worker Protection Standards (“WPS”), codified at 40 CFR Part 170, “to reduce or eliminate exposure to pesticides” for agricultural workers and pesticide handlers.
12. The WPS apply whenever pesticide products are used or handled on the SG Farm.
13. The labels of EPA registered agricultural pesticide products display the requirement to comply with the WPS.
14. A failure to comply with the WPS in the application of a pesticide is a use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).
15. On or about April 11, 2012, duly authorized Puerto Rico Department of Agriculture (“PRDA”) and EPA pesticides inspectors visited the SG Farm to inspect it for compliance with FIFRA and its implementing regulations, including the WPS (the “Inspection”).
16. During the Inspection, “workers,” within the meaning of 40 CFR § 170.3, were present at the farm.
17. During the Inspection, the inspectors reviewed Respondent’s pesticide application records for the previous 30 days.
18. During the Inspection, the inspectors interviewed agricultural workers and observed them at work.

19. During the Inspection, the inspectors observed and the Complaint subsequently alleged that Respondent failed to post required application information for seven applications at the SG Farm as required by the WPS.

20. During the Inspection, the inspectors observed and the Complaint subsequently alleged that Respondent failed to remove a posted warning sign within three days after the end of the restricted entry interval as required by the WPS.

21. During the Inspection, the inspectors observed and the Complaint subsequently alleged that Respondent failed to provide required decontamination supplies to workers in a treated area of Respondent's farm as required by the WPS.

22. During the Inspection, the inspectors observed and the Complaint subsequently alleged that Respondent failed to display a safety poster in a central location of the SG Farm as required by the WPS.

23. Based on the Inspection, EPA alleged in the Complaint a total of ten instances of use of a registered pesticide in a manner inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

24. The parties participated in settlement discussions prior to Respondent's submission of an Answer.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed as follows:

1. Respondent certifies that it is now in compliance with all applicable requirements of FIFRA and its implementing regulations at the SG Farm.

2. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.

3. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of **Fifty-Three Thousand dollars (\$53,000)**. All payments specified herein shall be made according to the methods specified in this paragraph.

- a. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." All checks shall be identified with the notation of the name and docket number of this case as follows: In the Bayer CropScience LP, Docket No. FIFRA-02-2013-5305.

Checks shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- i. Amount of Payment

- ii. SWIFT address:
FRNYUS33
33 Liberty Street
New York, N.Y. 10045
- iii. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- iv. Federal Reserve Bank of New York ABA routing number: 021030004
- v. Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
- vi. Name of Respondent: Bayer CropScience LP
- vii. Case Docket Number: FIFRA-02-2013-5305

c. Respondent shall also send proof of each payment, whether by check or EFT, to:

Naomi Shapiro
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

and

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

4. Respondent consents to the issuance of the Consent Agreement and the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies the factual allegations in the Complaint.

6. Respondent consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.

7. The civil penalty provided for herein is a penalty within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal law.

8. This Consent Agreement is entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

9. Respondent waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

10. The Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order ("CA/FO") in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

11. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

12. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an

action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

14. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, Commonwealth of Puerto Rico or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, Commonwealth of Puerto Rico or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

15. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

16. The provisions of this Consent Agreement and Final Order shall be binding both upon Respondent, its officers/officials, agents, authorized representatives and successors or assigns, and upon EPA.

17. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

18. Each party hereto agrees to bear its own costs and fees in this matter.

19. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

20. Each signatory of this Consent Agreement certifies that he or she is duly and fully authorized to enter into the terms of this Consent Agreement and to legally bind the party on behalf of which he or she signs this Consent Agreement.

RESPONDENT:

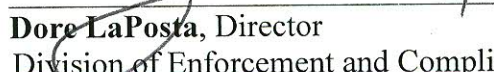


Lee Rivenbark, VP
Global Cotton
Bayer CropScience, LP

DATE: _____

9/19/13

COMPLAINANT:



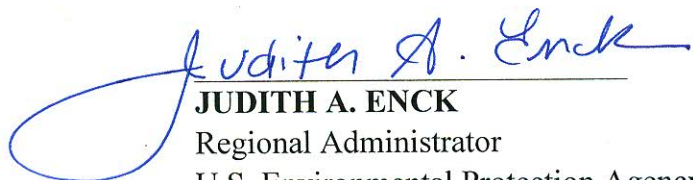
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2

DATE: _____

SEPTEMBER 24, 2013

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b)



JUDITH A. ENCK
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

DATE: 9/26/13

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the below-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Hand:

Regional Hearing Clerk
Office of Regional Counsel
U.S. Environmental Protection Agency –Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

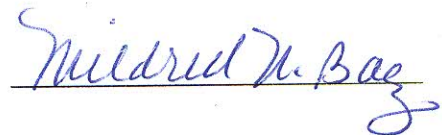
Copy by Hand:

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail,
Return Receipt Requested:

Caroline Nasrallah Belk, Esq.
Bayer CropScience LP
BCS-LAW-LAW
2 TW Alexander Drive
Research Triangle Park, NC 27709

Dated: OCT 17 2013

A handwritten signature in blue ink, appearing to read "Mildred M. Bag", written over a horizontal line.