EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez (Name of Case Attorney) 12/8/14 (Date)

in the ORC (RAA) (Office & Mail Code) at 918-1113 (Phone number)

Case Docket Number FIFRA-01-2014-0028

Site-specific Superfund (SF) Acct. Number _____

✓ This is an original debt ____ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Bayer CropScience LP
2 T.W. Alexander Drive
Research Triangle Park, NC 27709

Total Dollar Amount of Receivable $ 85,500 Due Date: 11/8/15

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST $ _____ on _____

2nd $ _____ on _____

3rd $ _____ on _____

4th $ _____ on _____

5th $ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____ _____
in the Financial Management Office Phone Number

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100 (OES 04-3)
Boston, Massachusetts 02109-3912

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
SENIOR ENFORCEMENT COUNSEL
(direct: 617-918-1867)

BY HAND

December 8, 2014

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Re: *In Re: Bayer CropScience LP*, Docket No. FIFRA-01-2014-0028; Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) resolving the above-referenced pre-filing enforcement case. Also enclosed is the original and one copy of a Certificate of Service documenting that, on this date, a copy of the CAFO and this cover letter were sent to Respondent's legal counsel, Kathryn E. Szmuszkovicz, Esquire.

Thank you for your assistance in this matter.

Sincerely,

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA Region 1

Enclosure

cc: Kathryn E. Szmuszkovicz, Esquire

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND REGION

RECEIVED
DEC 08 2014
EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of: Bayer CropScience LP 2 T.W. Alexander Drive Research Triangle Park, NC 27709, Respondent. Proceedings under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. Section 136*l*(a).	)	Docket No. FIFRA-01-2014-0028 **CONSENT AGREEMENT** **and** **FINAL ORDER**

I. INTRODUCTION

1. The United States Environmental Protection Agency ("EPA"), as Complainant, and Bayer CropScience LP as Respondent ("Bayer" or "Respondent"), enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Bayer for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 ("FIFRA Regulations"), including 40 C.F.R. § 152.132 [supplemental distribution]. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

II. PRELIMINARY STATEMENT

A. RESPONDENT

4. Bayer is a limited partnership organized under the laws of Delaware with its principal place of business located at 2 T.W. Alexander Drive in Research Triangle Park, North Carolina. EPA's national office in Washington, DC ("EPA Headquarters") has assigned to Respondent the Office of Pesticide Program company number 432.

5. Respondent *produces*,[1] *distributes, and sells* various kinds of *pesticides*, including insecticides and herbicides, that are blended with fertilizers for use in the golf course, sports turf, landscape management, and horticultural industries.

6. Respondent is a *registrant* for pesticide products that are distributed or sold pursuant to the *supplemental distribution* provisions of the FIFRA Regulations, 40 C.F.R. § 152.132.

7. Among the *distributor products* containing pesticides registered by Bayer under Section 3 of FIFRA, 7 U.S.C. § 136a, are those that Respondent, under contract with Harrell's, LLC ("Harrell's") of Lakeland, Florida, has agreed may be produced, distributed, and sold by Harrell's under 40 C.F.R. § 152.132, using the Harrell's brand name (the "Distributor Products").

[1] Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

8. By agreement with Respondent and under 40 C.F.R. § 152.132, upon information and belief, Harrell's produces Distributor Products with pesticides registered by Bayer under FIFRA Section 3, in pesticide-producing *establishments* owned or operated by Harrell's located at 720 Kraft Road in Lakeland, Florida and at 151 Stewart Boulevard in Sylacauga, Alabama (the latter referred to hereinafter as the "Sylacauga Establishment"). As supplemental distributor, Harrell's distributes or sells various Distributor Products containing the pesticides referenced in Paragraph 39 of this CAFO.

9. Bayer is a *person* as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

B. STATUTORY AND REGULATORY AUTHORITY

10. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "pest" to mean, in pertinent part, "any insect, rodent, nematode, fungus, weed" or "any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms" declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

12. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

13. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term "registrant" to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.

14. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

15. Under the FIFRA Regulations, pesticide registrants may distribute or sell a registered pesticide product under another person's name and address instead of (or in addition to) their own. Such distribution or sale is called "supplemental distribution" and such pesticides are called "distributor products." Furthermore, under 40 C.F.R. § 152.132, the "distributor is considered an agent of the registrant for all intents and purposes under [FIFRA], and both the registrant and the distributor may be held liable for violations pertaining to the distributor product."

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

17. Under FIFRA Section 2(q)(1), 7 U.S.C. § 136(q)(1), a pesticide is "misbranded" if: (a) its *labeling* bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular [Sec. 2(q)(1)(A)]; (b) its label does not bear the registration number assigned under FIFRA Section 7, 7 U.S.C. § 136e, to each establishment in which it was produced [Sec. 2(q)(1)(D)]; (c) any word, statement, or other information required by FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use [Sec. 2(q)(1)(E)]; (d) the labeling accompanying the pesticide does not contain directions for use which are necessary for

effecting the purpose for which the product is intended and, if complied with (together with any required use classification(s) under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)), are adequate to *protect health and the environment* [Sec. 2(q)(1)(F)]; or, (e) the label does not contain a warning or caution statement which may be necessary and, if complied with (together with any required use classification(s) under Section 3(d) of FIFRA), is adequate to protect health and the environment [Sec. 2(q)(1)(G)].

18. The FIFRA prohibition against the distribution or sale of misbranded pesticides is important because it helps ensure that end users and members of the public have the most accurate, up-to-date, and compliant information available about pesticides in the marketplace —including ingredients, directions for use, potential hazards and safety precautions— and about the establishments in which they are produced.

19. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA under FIFRA Section 7. Under the FIFRA Regulations at 40 C.F.R. 156.10(f), the registration number for the establishment where a pesticide is produced must appear on the pesticide label. For any producer operating a registered establishment, Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires that, among other things, the producer submit to EPA annual pesticide production reports detailing the amount of pesticides being produced and the amount produced, sold, and distributed during the prior year.

20. The FIFRA requirements to produce pesticides in registered establishments, to display the relevant establishment number on the pesticide label, and for registered establishments to submit reports of pesticide production, distribution, and

sales are important because they help maintain the integrity of the federal pesticide program EPA implements, a primary purpose of which is to ensure that no pesticide is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The requirements to properly register pesticide-producing establishments and for registered establishments to report production and sales information help EPA carry out compliance, risk assessment, and risk reduction functions important for protecting human health and the environment because without proper establishment registrations and associated labelling, EPA cannot determine where and in what manner pesticides are being produced, sold, and distributed.

21. Under Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), EPA is authorized to issue orders prohibiting the sale, use, or removal of any pesticide by any person who owns, controls, or has custody of such pesticide whenever there is reason to believe that, *inter alia,* the pesticide is in violation of any provision of FIFRA, or the pesticide is intended to be distributed or sold in violation of any provision of FIFRA.

22. Under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, EPA and duly-designated state partners are authorized, among other things and upon presentation of credentials and written notice, to conduct inspections at producer and distributor establishments and to collect information required to be maintained by FIFRA regarding pesticide distribution or sales, including samples of pesticides that are packaged, labeled, and released for shipment.

23. Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a), authorizes the assessment of civil penalties of up to $5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA

Regulations. Under the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule") at 40 C.F.R. Part 19, this amount was increased to $6,500 for violations occurring after March 15, 2004 and $7,500 for violations occurring after January 12, 2009.

C. GENERAL EPA ALLEGATIONS

24. On or about April 3, 2009, duly-authorized inspectors from the Michigan Department of Agriculture (now known as the Michigan Department of Agriculture and Rural Development ("MIDARD")) inspected a Harrell's distribution facility located at 53410 Grand River Avenue in New Hudson, Michigan ("New Hudson MI Facility"). Based on findings arising out of that inspection, on or about April 9, 2009, MIDARD issued an "Order to Stop Prohibited Conduct" [Case No. PCT09-710-04-09-01] (the "2009 MIDARD Order") to Harrell's which, in Michigan at that time, was doing business as "Harrell's, LLC of Florida." The 2009 MIDARD Order, among other things, cited two (2) separate Distributor Products with missing label information including, but not limited to, Precautionary Statements, Personal Protection Equipment (PPE) requirements, User Safety Requirements, Directions for Use, Environmental Hazards Statement, and Storage and Disposal Directions. The 2009 MIDARD Order directed the distributor (Harrell's) to stop "selling misbranded pesticides" and specifically identified the following violative Distributor Products containing pesticides registered by Respondent, Bayer:

a. Harrell's 28-2-14 with Merit 0.15% Mini Grade, EPA Reg. 432-1353-52287; and,
b. Harrell's 18-0-18 with Merit 0.20%, EPA Reg. 432-1344-52287.

25. Under Section 7(a) of FIFRA and 40 C.F.R. § 167.20, Harrell's first registered the Sylacauga Establishment as a pesticide-producing establishment, on or about May 15, 2012, subsequently identified as "EPA Est. No. 52287-AL-001."

26. At times relevant to the violations alleged herein, Harrell's was authorized by Bayer to act as Bayer's agent and to engage in supplemental distribution by distributing and selling under the Harrell's name, *inter alia*, the following Distributor Products, each produced at the Sylacauga Establishment and identified by the product name and supplemental registration number assigned thereto:

a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287;
b. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287;
c. Harrell's 7-0-0 with Merit 0.20%, EPA Reg. 432-1349-52287; and,
d. Harrell's 28-2-14 with Merit 0.15%, EPA Reg. 432-1353-52287.

27. On March 15, 2012 and on March 29, 2012, one or more duly-authorized inspectors from the Connecticut Department of Energy and Environmental Protection ("CTDEEP") conducted FIFRA compliance inspections at a Harrell's distribution facility located at 34 Executive Drive in Danbury, Connecticut ("Danbury CT Facility").

28. On April 2, 2012, one or more duly-authorized inspectors from the Massachusetts Department of Agricultural Resources ("MADAR") conducted a FIFRA compliance inspection at a Harrell's distribution facility located at 19 Technology Drive in Auburn, Massachusetts ("Auburn MA Facility").

29. On or about April 12, 2012, CTDEEP issued a "Notice of Violation" [No. NOVWSPST12-032] to Harrell's (the "CTDEEP NOV") citing violations for, among other things, selling and/or distributing several Distributor Product with missing label

information such as "a statement to keep out of reach of children, precautionary, first-aid and environmental hazard statements, directions for use and instructions for storage and disposal." The CTDEEP NOV specifically identified the following violative Distributor Product containing pesticides registered by Respondent, Bayer:

a. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287.

30. On April 18, 2012, EPA issued a "Stop Sale, Use, or Removal Order" [Case No. SSURO-2012-003] to Harrell's pursuant to FIFRA Section 13 (the "First Harrell's SSURO"), alleging FIFRA violations and ordering Harrell's to immediately stop the distribution, sale, use, or removal of the following misbranded Distributor Product containing pesticides registered by Bayer:

a. Harrell's 0-0-7 with Merit 0.20%, EPA Reg. 432-1349-52287.

31. On April 30, May 2, May 3, and May 8, 2012 one or more duly-authorized inspectors from the CTDEEP conducted further compliance inspections and gathered additional information at the Danbury CT Facility.

32. On May 1, May 17, June 1, and June 22, 2012, one or more duly-authorized inspectors from Alabama Department of Agriculture ("ALDA") conducted compliance inspections and gathered information at the Sylacauga, AL Establishment.

33. On June 4, 2012, one or more duly-authorized inspectors from the U.S. Environmental Protection Agency's Region 1 office in Boston, Massachusetts ("EPA Region 1") conducted a compliance inspection at the Danbury CT Facility under Sections 8 and 9 of FIFRA.

34. On June 11, 2012, one or more duly-authorized inspectors from the U.S.

Environmental Protection Agency's Region 5 office in Chicago, Illinois ("EPA Region 5") conducted a compliance inspection at a Harrell's distribution facility located at 260 Eisenhower Lane in Lombard, Illinois ("Lombard IL Facility") under Sections 8 and 9 of FIFRA.

35. On September 20, 2012, one or more duly-authorized inspectors from MIDARD conducted a FIFRA compliance inspection at the New Hudson MI Facility under Sections 8 and 9 of FIFRA.

36. On September 24, 2012, EPA issued a second "Stop Sale, Use, or Removal Order" [Case No. SSURO-2012-014] to Harrell's pursuant to FIFRA Section 13 (the "Second Harrell's SSURO"), alleging FIFRA violations and ordering Harrell's to immediately stop the distribution, sale, use, or removal of the following misbranded Distributor Product containing pesticides registered by Bayer:

a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287.

37. On September 24, 2012, EPA issued a "Stop Sale, Use, or Removal Order" [Case No. SSURO-2012-013] to Bayer pursuant to FIFRA Section 13 (the "Bayer Order"), alleging FIFRA violations and ordering Bayer, as a registrant liable for the actions of its supplemental distributor (Harrell's) under the FIFRA Regulations at 40 C.F.R. § 152.132, to immediately stop any distribution, sale, use, or removal of the following misbranded Distributor Product containing pesticides registered by Bayer:

a. Harrell's 15-0-5 with Merit 0.20%, EPA Reg. 432-1349-52287.

III. EPA FINDINGS

38. Based upon information collected during or as a result of the inspections

conducted by EPA Regions 1 and 5, CTDEEP, MADAR, ALDA, and MIDARD as well as further investigation by EPA Region 1, the FIFRA violations documented by EPA and alleged in this CAFO include the following: distributing or selling misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. Part 156, as further detailed below.

39. Upon information and belief, each of the violations alleged in Section IV of this CAFO involved one or more Distributor Products containing pesticides registered by Bayer identified by the following EPA Registration Numbers and registered pesticide product names:

	EPA Reg. No.	**Product Name**
1.	EPA Reg. 432-1349-52287	0.2 % Merit
2.	EPA Reg. 432-1353-52287	0.15% Merit
3.	EPA Reg. 432-1422-52287	0.00572% Top Choice

40. At all times relevant to the violations alleged in Section IV of this CAFO, below, Respondent's agent (Harrell's) pursuant to 40 C.F.R. § 152.132, produced, distributed, sold, offered for sale, shipped, and/or delivered for shipment one or more Distributor Products containing the above-listed pesticides registered by Respondent and identified by the EPA Registration Numbers and registered pesticide product names indicated, each of which is a "pesticide" as defined by FIFRA.

IV. ALLEGATIONS OF VIOLATION

COUNT 1

Distributing or Selling Misbranded Pesticides (Absent or Illegible Labels)

41. Upon information and belief, on multiple occasions between June 1, 2011 and September 20, 2012, Respondent's agent under 40 C.F.R. § 152.132 distributed or

sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 39, above, that was misbranded in that the EPA-approved labels required for such pesticide products under the FIFRA Regulations at 40 C.F.R. § 156.10 were either entirely absent or illegible.

42. Accordingly, on multiple occasions between June 1, 2011 and September 20, 2012, Respondent's agent under 40 C.F.R. § 152.132 violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed against Respondent pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1), and the FIFRA Regulations.

COUNT 2

Distributing or Selling Misbranded Pesticides (Labels without Valid EPA Establishment Number)

43. Upon information and belief, on multiple occasions between May 1, 2010 and April 30, 2012, Respondent's agent under 40 C.F.R. § 152.132 distributed or sold, or offered for sale, one or more of the pesticide products referenced in Paragraph 39, above, with labels that did not bear a valid establishment registration number assigned under FIFRA Section 7 to the establishment in which the pesticide products were produced, as required by 40 C.F.R. § 156.10.

44. Accordingly, on multiple occasions between May 1, 2010 and April 30, 2012, Respondent's agent under 40 C.F.R. § 152.132 violated Sections 12(a)(1)(E) of FIFRA and the FIFRA Regulations at 40 C.F.R. § 156.10, each of which is a violation for which penalties may be assessed against Respondent pursuant to FIFRA Section 14(a)(1) and the FIFRA Regulations.

V. TERMS OF SETTLEMENT

A. GENERAL

45. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors, and assigns.

46. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and that the CAFO states a claim upon which relief can be granted against Respondent. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's findings or allegations of violation herein, consents to the issuance of this CAFO and to the payment of the civil penalty specified, below.

47. Respondent acknowledges that it has been informed of its right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

48. By signing this CAFO, Respondent certifies, to the best of its knowledge and belief, that it is presently operating in compliance with FIFRA and the FIFRA Regulations promulgated thereunder and that it has fully addressed the violations alleged by EPA herein including, but not limited to, those associated with each of the pesticide products listed or otherwise referenced in Paragraph 39, above. By signing this CAFO, Respondent also certifies that any information it has provided to EPA during the course of its investigation of this matter is true and complete, to the best of its knowledge and belief.

B. PENALTY

49. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 FIFRA Enforcement Response Policy issued by the Waste and Chemical Enforcement Division of the EPA Headquarters Office of Enforcement and Compliance Assurance in Washington, D.C., the DCIA and Penalty Inflation Rule, Respondent's agreement to the conditions of settlement set forth herein, including those specified in Section V.C. of this Consent Agreement, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of eighty-five thousand five hundred dollars ($85,500) in settlement of the violations alleged herein.

50. Respondent shall pay the penalty of $85,500 within thirty (30) days of the effective date of this CAFO.

51. Respondent agrees to pay the civil penalty of $85,500 in the manner described below:

a. Payment shall be in a single payment of $85,500 due within 30 calendar days of the effective date of this CAFO. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard time to be considered as received that day.

b. The payment shall be made by remitting a check or making an electronic payment, as described below. The check or other payment shall designate the name and docket number of this case (*In the Matter of Bayer CropScience LP*, FIFRA-01-2014-0028), be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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"

If remitted on-line with a debit card, credit card, or bank account transfer:

No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

c. At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-3)
Boston, MA 02109-3912

52. The failure by Respondent to pay the penalty in full by the due date may subject Respondent to a civil action to collect the assessed penalty (with interest at current prevailing rates from the date of the Final Order), plus enforcement expenses and any nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

53. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of federal taxes. Accordingly, Respondent agrees to treat

all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

C. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

54. This CAFO constitutes a final settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violations alleged in Section IV of this CAFO. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

55. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards.

56. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

57. Except as specifically stated herein, nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

58. Respondent's obligations under the CAFO shall end when Respondent has paid the civil penalty (and any stipulated penalties or interest due) in full and submitted to

EPA any documentation required by the terms of this CAFO.

59. Each of the Parties shall bear its own costs and fees in this proceeding, including attorneys' fees, and specifically waives any right to recover such costs from the other party under the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

60. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

61. Each undersigned representative of the Parties certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

For Respondent, Bayer CropScience LP:

_____ 11/13/2014
(Signature) (Date)
[Print Name, Title] G. GALLION
[Address] Head of BES NA.

_____ _____
(Signature) (Date)
[Print Name, Title]
[Address]

For Complainant, United States Environmental Protection Agency:

Joanna B. Jerison, Manager
Legal Enforcement Office
U.S. EPA - Region 1

11/24/14
(Date)

Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
U.S. EPA - Region 1

11-17-14
(Date)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. The Respondent, Bayer CropScience LP, is ordered to pay the civil penalty amount specified in the Consent Agreement, in the manner indicated.

The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

12/3/14
(Date)

Sharon Wells
Sharon Wells, Regional Judicial Officer
EPA-Region 1

CERTIFICATE OF SERVICE

I hereby certify that this Certificate of Service and the foregoing Consent Agreement and Final Order and cover letter to the Regional Hearing Clerk were delivered in the following manner to the addressees listed below:

Originals and One Copy by Hand Delivery to:

Wanda I. Santiago
Regional Hearing Clerk
Environmental Protection Agency
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

One Copy by Certified Mail – Return Receipt Requested to:

Kathryn E. Szmuszkovicz, Esquire
Beveridge & Diamond, P.C.
1350 I Street, NW
Suite 700
Washington, DC 20005-3311

Date : 12-8-14

Signed: _____

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES 04-3)
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Phone (617) 918-1867
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