



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

FEB 05 2009

Certified Mail - Return Receipt Requested

Ms. Becky Rhodes  
Head of Regulatory Affairs  
Arysta LifeScience North America, LLC  
15401 Weston Parkway, Suite 150  
Cary, North Carolina 27513

SUBJ: Docket No. FIFRA-04-2009-3016(b)  
Arysta LifeScience North America, LLC

Dear Ms. Rhodes:

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.

As stated in Section IV of the CAFO, the total assessed penalty of \$24,960 is due within 30 days from the effective date. Please ensure that the face of the cashier's or certified check includes the company name and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Mr. Mark Bloeth at (404) 562-9013.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION 4  
2009 FEB -5 AM 9:55  
REMARKS CLEAN

In the Matter of: )  
)  
Arysta LifeScience North America, LLC )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2009-3016(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "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 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Arysta LifeScience North America, LLC (Arysta), 15401 Weston Parkway, Suite 150, Cary, NC 27513.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 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 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Mark D. Bloeth  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303.
5. Respondent is Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
6. Respondent is a registrant of pesticides for sale and distribution in the United States and is assigned EPA Company Number 66330.
7. 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.
8. On or about May 1, 2007, EPA sent a referral to the Georgia Dept. of Agriculture (GADA) to conduct a pesticide import inspection relative to a Notice of Arrival of Pesticides (NOA) form where Arysta imported (20)-600kg Bags {12,000kg} of unregistered Chlorothalonil Technical fungicide (Entry No. 554-6540311-5) from China through the port of Savannah, Georgia on April 2, 2007.
9. On April 3, 2007, EPA signed the NOA release for this entry of this Chlorothalonil Technical (Entry No. 554-6540311-5) on the basis of Arysta's claim that the importation

met the allowable regulatory exemptions for the transfer of unregistered pesticides at 40 CFR § 152.30.

10. On April 23, 2007, EPA Region 4 sent a letter to Arysta denying a subsequent import shipment of (40)-600kg Bags (24,000kg) of Chlorothalonil Technical fungicide (Entry No. 554-6540900-5) from China, with an entry date of April 13, 2007.
11. The NOA of April 13, 2007, listed the EPA Reg. No. as "66330-352". EPA determined this registration number to be false, since "66330-352" specifically identifies a "Clethodim Technical" 95.3% herbicide product and not a Chlorothalonil Technical fungicide.
12. EPA also determined that the product labels affixed to the imported bags of Chlorothalonil Technical for the April 2, 2007 and April 13, 2007, importations listed EPA Reg. No. 66330-352, which is false information.
13. On May 8, 2007, GADA conducted an import inspection relative to EPA's referral. During the inspection, it was determined that a total of (40)-600kg Bags of Chlorothalonil Technical was imported by Arysta and not the (20)-600kg Bags as listed on the NOA of April 2, 2007.
14. In July of 2007, EPA learned from Arysta that contrary to EPA's denial letter, the subsequent import shipment was released by US Customs & Border Protection and arrived at BASF Sparks LLC, 3524-C Highway 41 South, Tifton, Georgia 31794.
15. "Chlorothalonil Technical" is a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

16. 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).
17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term "distribute or sell" to include: 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.
18. Respondent "distributes or sells" pesticides as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
19. At the time of the importations, "Chlorothalonil Technical" was not a registered pesticide with EPA.
20. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
21. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for the importation and further distribution of each of the aforementioned pesticides, and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
22. It is unlawful according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for any person to distribute or sell to any person any pesticide which is misbranded.

23. Section 2(q) of FIFRA, 7 U.S.C. § 136(q) defines the term “misbranded”, in part, when its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
24. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
25. It is unlawful according to Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), in part, for any person to falsify any records required to be maintained or any report filed under FIFRA.
26. Respondent violated Section 12(a)(2)(M) of FIFRA, 7 U.S.C. § 136j(a)(2)(M), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
27. Section 14 of FIFRA, 7 U.S.C. § 136l, in conjunction with the Civil Monetary Inflation Adjustment Rule, 40 CFR Part 19, authorizes EPA to assess a civil penalty of not more than \$6,500 for each offense that occurs on or after March 15, 2004.
28. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires 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.
29. EPA proposes to assess a total civil penalty of TWENTY FOUR THOUSAND NINE HUNDRED SIXTY DOLLARS (\$24,960) against the Respondent for the above violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

30. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth but neither admits nor denies any findings of fact or conclusion of law contained herein.
31. 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.
32. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.
33. Respondent certifies that it is in compliance with all relevant requirements of FIFRA as of the effective date of this CAFO.
34. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
35. 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.

### IV. Final Order

36. Respondent is assessed a civil penalty of TWENTY FOUR THOUSAND NINE HUNDRED SIXTY DOLLARS (\$24,960) which shall be paid within thirty (30) days of the effective date of this CAFO. Respondent shall pay the penalty by forwarding a

cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**The check shall reference on its face the name and the Docket Number of the CAFO "Arysta LifeScience North America, LLC FIFRA-04-2009-3016(b)."**

37. 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  
Atlanta, Georgia 30303;

Mark D. Bloeth  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303;

and

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303.

38. For the purposes of state and federal income taxation, 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 Respondent to deduct any such payments shall



constitute a violation of this CAFO. Pursuant to 31 U.S.C. § 3717, 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 date of entry 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 principle amount not paid within 90 days of the due date.

39. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
40. This CAFO shall be binding upon the Respondent, its successors and assigns.
41. The undersigned representatives of the parties to this CAFO certify that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**The remainder of this page was intentionally left blank.**

V. Effective Date

42. 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:**

**Arysta LifeScience North America, LLC**

By: Becky Rhodes

Date: 12/10/08

Name: Becky Rhodes (Typed or Printed)

Title: Head of Regulatory Affairs (Typed or Printed)

**U.S. Environmental Protection Agency**

By: Beverly H. Banister

Date: 1/16/2009

Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303

**APPROVED AND SO ORDERED** this 4<sup>th</sup> day of February 2009.

Susan B. Schub

Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: **Arysta LifeScience North America, LLC, FIFRA Docket No. 04-2009-3016(b)**, on the parties listed below in the manner indicated.

Ms. Becky Rhodes  
Head of Regulatory Affairs  
Arysta LifeScience North America, LLC  
15401 Weston Parkway, Suite 150  
Cary, North Carolina 27513

(via Certified Mail - Return Receipt Requested)

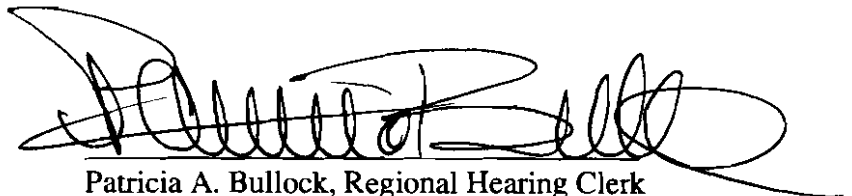
Mark Bloeth  
Chemical Products  
& Asbestos Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

Robert Caplan  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

Date: 2-5-09



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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 2/2/09  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Arysta Life Science North America LLC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 24,960  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFth of 2009 3016(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)<br>3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |  |   |
|--|---|
| 1. Originating Office<br>2. Regional Hearing Clerk | 3. Designated Program Office<br>4. Regional Counsel (EAD) |
|--|---|