



Department of Pesticide Regulation



Edmund G. Brown Jr.

September 14, 2011

Arthur L. Lawyer, Ph.D.
Technology Sciences Group Inc.
712 Fifth Street, Suite A
Davis, California 95616

Re: Bifenthrin – Label Amendment Memorandum of Agreement

Dear Dr. Lawyer:

This letter is a follow up to our earlier discussion regarding the Department of Pesticide Regulation's (DPR) review of the Bifenthrin Label Amendment Memorandum of Agreement, effective September 1, 2011, that was signed by those registrants who have pesticide registrations for specific bifenthrin-containing products (the "Registrants"). I am sending this letter to you since you represent these Registrants on this matter. Pursuant to that agreement, the Registrants of the products listed in Schedule A of the agreement will apply to the Environmental Protection Agency (EPA) for modification of their labels to incorporate changes in use as described in Schedule B of the agreement, and, upon receiving EPA approval, also promptly seek modification of their California labels in the same manner. Under this agreement, the Registrants commit to a timely introduction of the properly approved labels into the marketplace coupled with the timely removal of existing labeling.

The Department has considered the agreement, and we confirm that, if the Registrants perform under that agreement, then the Department's current concerns regarding potential impact of bifenthrin on waters in California should be adequately addressed. Based upon this understanding, DPR will not pursue the incorporation of additional bifenthrin-specific restrictions into or relating to its rulemaking package that is being developed on Surface Water Protection in Outdoor Nonagricultural Settings (initially proposed on April 11, 2011 as Title 3 CCR § 6970 and 6972).



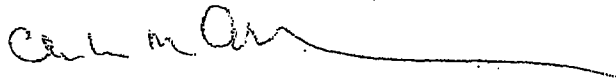
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You have our permission to share this letter with the Registrants. If you have any questions, please contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles M. Andrews", followed by a long horizontal line extending to the right.

Charles M. Andrews
Associate Director
916-445-3984

Enclosures

BIFENTHRIN LABEL AMENDMENT MEMORANDUM OF AGREEMENT

29 July 2011

September 1 4/4
As of August, 2011, this Bifenthrin Label Amendment Memorandum of Agreement ("Agreement") is entered into by and between the bifenthrin pesticide registrants ("Registrants") whose names are listed on the signature pages attached hereto and to be effective on the Effective Date, as hereafter defined.

BACKGROUND

WHEREAS, the California Department of Pesticide Regulation ("DPR") is considering development of certain new restrictions on pyrethroids (including bifenthrin), and is considering additional restrictions on existing uses of bifenthrin-containing products ("Products") under DPR's surface water regulations, and is planning to propose such restrictions for adoption by DPR as Title 3, California Code of Regulations (CCR), Sections 6970 and 6972 (the "Proposed Rulemaking"); and

WHEREAS, Registrants have been in discussions with DPR on such new additional restrictions on existing uses of bifenthrin-containing products and in the interest of promoting environmental health and safety as expressed by DPR, Registrants are willing to implement certain label amendments to address DPR's concerns on a voluntary basis, as described further herein; and

WHEREAS, DPR has advised Registrants that it would continue to develop certain new restrictions on pyrethroids (including bifenthrin), but cease its plans to adopt any such new additional restrictions on existing uses of bifenthrin-containing products into the "Proposed Rulemaking" to amend the CCR if the Registrants' covenants herein are met; and

WHEREAS, the proposed label restrictions are not being mandated by the U.S. Environmental Protection Agency ("EPA"), but rather, are being incorporated voluntarily and contemporaneously by the Registrants of all applicable products, as listed below, and that the additional label restrictions for the subject bifenthrin products will be incorporated into the labels and made available to users within California as soon as possible within the regulatory constraints of the Federal Insecticide, Fungicide and Rodenticide Act, and associated federal regulations; as administered by EPA, and that the proposed procedures will be put into place to ensure that current labels for the subject products are removed from the California marketplace in a timely manner;

WHEREFORE, the Registrants hereby agree as follows:

1. Name and Purpose

The name of this joint endeavor shall be the "Bifenthrin Label Amendment Task Force ("Task Force"). The Task Force shall be formed on the Effective Date for the sole and exclusive purpose of amending registrations and labels for the Products to reflect the use restrictions and other changes described on **Schedule B**. The Task Force membership shall initially consist of the Registrants.

2. Membership

Membership in the Task Force initially shall be the following Registrants: FMC Corporation, Nufarm Americas Inc., Loveland Products, Inc., United Phosphorus, Inc., Mahkteshim-Agan of North America, Inc., Control Solutions, Inc., AMVAC Chemical Corp., Arysta Lifescience North America, LLC, Univar USA Inc., Nippon Soda Co., Ltd., Phoenix Environmental Care, LLC, Ensystex II, Inc., Ensystex IV Inc., and Tacoma Ag, LLC. The foregoing shall not in any way restrict the Registrants who may join this Agreement. Membership in the Task Force shall be open to companies holding California registrations for bifenthrin-containing products and shall be conferred by execution of this Agreement.

3. Party Representatives

- (a) Each Party shall appoint a business representative and a technical representative and an alternate business representative and an alternate technical representative simultaneously with its execution of this Agreement by inscribing the name and address of such representatives and alternates where indicated on the signature page hereof. Each business representative shall be authorized to act for and bind its Party with respect to all matters related to the implementation and administration of the activities of the Task Force. Any Party may, at any time, change his business or technical representative or alternate by filing with the other Parties a notice and duly executed appointment of a new representative.
- (b) Nothing herein, however, shall restrict a Party from communicating with DPR or EPA or any other regulatory authority or submitting to DPR or EPA or any other regulatory authority data concerning his individual registrations or subregistrations, including any amendments or deletions to such registrations or subregistrations.

4. Amendment of Product Registrations

- (a) The Registrants are owners of the bifenthrin-based pesticide registrations listed on **Schedule A** (the "Registrations").
- (b) Each Registrant individually agrees to modify and amend the label of each bifenthrin-containing product listed in **Schedule A**, unless there are no sales of the product within the USA, to reflect the use restrictions and other changes described on **Schedule B**.

Each Registrant individually covenants to file and apply for such amendment with EPA promptly and certainly not later than sixty (60) days after the Effective Date of this Agreement. Each Registrant shall inform all other Registrant parties within 3 business days of its filing the amendment application and shall provide a copy of such filing to DPR within five business days after filing.

- (c) Each Registrant agrees to request expedited review and approval by EPA of the amendment application. It is understood that DPR will contact EPA to also seek such expedited review and approval of the applications for amendment, as well as EPA's simultaneous action on all such amendment applications by all Registrants rather than in seriatim.
- (d) Within 30 days of receiving approval from the EPA, each registrant will submit the applications for amendment to California and each other state considered necessary by the Registrants ("necessary states") to ensure uninterrupted sales of the subject products. It is understood that DPR will provide an expedited evaluation and approval of these same applications for amendment when they are submitted to DPR.
- (e) If requested by EPA or DPR, the Registrants shall make themselves or their representatives available for any meeting or conference call requested by EPA or DPR.
- (f) The Registrants have advised DPR that, despite all such efforts above, the label amendments must be approved by EPA before any changes can be made to the commercial label. The parties thus recognize that there is no set timetable for such approval and implementation of such label amendments and that the ultimate timing of the approval process by DPR and other necessary states is not under the control of the Registrants.
- (g) Upon EPA, DPR, and other necessary states' approvals of such label amendments, the Registrants shall promptly implement such label changes, at a minimum, at the next label printing cycle.
- (h) The Registrants will further agree to ensure that for products sold in California following the above approvals, current labeling will be removed from the marketplace in an expedited reasonable manner such as through preferential redirection of any remaining current labeled inventory owned by Registrants into states other than California, through requests to customers that distribute into California to similarly reasonably redirect remaining inventories of the current labeling, or through relabeling and/or supplemental labeling of any containers that have the current labeling to the extent that such relabeling is technically and economically feasible.
- (i) The Registrants covenant not to seek to remove or relax such amended uses after the amendment is approved; further, the Registrants covenant that, once such amendments are approved, all future bifenthrin-containing products that meet the criteria of Schedule B shall incorporate such label language until such time that the Parties agree on revised labeling based, in part, on discussions with DPR.

- (j) A copy of this Agreement shall be provided to the DPR before execution and the Parties shall request that DPR provide a letter of assurance that, upon entry into this Agreement, DPR shall agree that the actions to be taken by the Registrants are sufficient to respond to currently identified potential concerns regarding the impact of bifenthrin on surface waters in California and that DPR shall not pursue the incorporation of additional bifenthrin-specific restrictions into or directly relating to the rulemaking package that is being developed by DPR on Surface Water Protection in Outdoor Nonagricultural Settings (initially proposed on April 11, 2011 as Title 3 CCR § 6970 and 6972).

5. Execution and Effective Date

- (a) This Agreement may be executed in counterparts, all of which shall be considered one and the same agreement. Each Party shall send its executed signature page to:

Arthur L. Lawyer, Ph.D.
Technology Sciences Group Inc. ("TSG")
712 Fifth Street, Suite A
Davis, CA 95616

- (b) This Agreement shall be effective on the last date when signed by the Registrants at a minimum ("Effective Date"). TSG shall circulate a full copy of the Agreement along with all signature pages to each Party, as well as a cover letter declaring the date upon which the Agreement became Effective.
- (c) If this Agreement does not become Effective by September 2, 2011, then this Agreement shall have not force or effect and the signatures of any Parties delivered prior to such date shall not be binding. In that event, TSG shall issue a letter informing all such Parties.

6. Termination

Notwithstanding the foregoing, if EPA should impose new or different requirements as a condition to approval of the requested amendment that are solely and directly a result of the amended label language required by this Agreement, including but not limited to data generation, monitoring or more restrictions on uses, any affected Registrant may withdraw its application for amendment and upon doing so shall notify the other parties of that event – in so doing, this Agreement shall terminate automatically if such Registrant is among those listed in Section 2. For the avoidance of doubt, any EPA request for label modification, data generation or other requirements on matters other than the amending label language set forth in Schedule B, shall not be grounds for withdrawing the amendment application.

7. Miscellaneous

- (a) Nothing herein shall grant any Party the right to use, cite or otherwise rely on data owned by any other Party.
- (b) This Agreement shall be binding upon all successors of any Party; in the event that a Party should sell or transfer its Registration, this Agreement shall be assigned along with such Registration and be bound hereby.
- (c) This Agreement, including its schedules, constitutes the entire agreement with reference to the subject matter hereof. No statements or agreements, oral or written, made prior to or at the signing of this Agreement, shall vary or modify the written terms hereof.
- (d) This Agreement may be amended, and such amendments will become effective, with the written agreement of two-thirds of the members.
- (e) This Agreement shall be governed by the laws of the State of District of Columbia. Any disputes hereunder shall be resolved by the federal courts sitting in Washington, DC, and all Parties agree to the exclusive personal jurisdiction of such courts for any dispute hereunder.
- (f) The relationship between each Party shall be that of independent contractors. Nothing herein shall be construed to authorize any Party to act as an agent for any other Party.

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Schedule A

Products under Bifenthrin Label Amendment Memorandum of Agreement

Product Name	EPA Reg. No.
<u>ALPHARMA INC.</u>	
ACTISHIELD LIQUID INSECTICIDE	279-3206-AA-346
<u>AMVAC CHEMICAL CORPORATION</u>	
WISDOM TC FLOWABLE	5481-520-AA
<u>CONTROL SOLUTIONS, INC.</u>	
BIFEN I/T INSECTICIDE/TERMITICIDE	53883-118-AA
SURRENDER BRAND TERMITE KILLER 5	53883-178-AA
TERMITE KILLER 5	53883-178-ZA
BIFEN XTS INSECTICIDE/TERMITICIDE	53883-189-ZA
<u>ENSYSTEX II, INC.</u>	
MAXXTHOR SC	81824-5-AA
<u>FARMSAVER.COM, LLC</u>	
QUALI PRO BIFENTHRIN I/T 7.9 F INSECTICIDE/TERMITICIDE	53883-118-AA-73220
<u>FMC CORP.</u>	
ONYX INSECTICIDE	279-3177-ZA
BASELINE INSECTICIDE	279-3177-ZC
TALSTAR TERMITICIDE/INSECTICIDE	279-3206-AA
TALSTARONE MULTI-INSECTICIDE	279-3206-ZA
ORTHO MAX PRO	279-3206-ZB
TALSTAR PROFESSIONAL INSECTICIDE	279-3206-ZC
TRANSPORT TERMITICIDE INSECTICIDE	8033-96-AA-279
TRANSPORT GHP INSECTICIDE	8033-96-ZA-279
<u>LESCO, INC.</u>	
LESCO CROSSCHECK PLUS GC INSECTICIDE/MITICIDE	279-3156-AA-10404
LESCO CROSSCHECK PLUS MULTI-INSECTICIDE	279-3206-AA-10404
<u>LOVELAND PRODUCTS, INC.</u>	
BISECT L	34704-955-AA
<u>MAKHTESHIM-AGAN OF NORTH AMERICA INC.</u>	
QUALI-PRO BIFENTHRIN I/T 7.9 F	66222-190-AA
<u>NUFARM AMERICAS INC.</u>	
MENACE 7.9% FLOWABLE	228-451-AA
<u>PHOENIX ENVIRONMENTAL CARE LLC</u>	
FIREBIRD PRO	81943-9-AA
<u>SPECKOZ, INC.</u>	
SPECKOZ BIFENTHRIN TERMITICIDE/INSECTICIDE	279-3206-AA-72113
<u>UNITED PHOSPHORUS, INC.</u>	
UP-STAR SC LAWN & NURSERY INSECTICIDE/MITICIDE	70506-23-AA

Product Name
UP-STAR GOLD INSECTICIDE

EPA Reg. No.
70506-24-AA

UNIVAR USA INC.

MASTERLINE BIFENTHRIN 7.9 TERMITICIDE/INSECTICIDE

73748-7-AA

Schedule B

Bifenthrin

Label Restrictions to Specific Products

July 29, 2011

Products that are included include the following characteristics:

- 1) **Active Ingredient.** Contain bifenthrin as an active ingredient.
- 2) **Outdoor Structural Sites.** Include directions for outdoor applications to structural, residential, industrial and institutional sites.
- 3) **Non-porous Surfaces.** Include directions that allow (or don't otherwise prohibit) applications to non-porous outdoor surfaces, either vertical or horizontal (e.g., foundations or sidewalks).
- 4) **Professional Use.** Intended for use by persons performing pest control for hire. (Note: products that may be occasionally used by professionals for small jobs are not included)

Summary of label restrictions:

- 1) **Horizontal Impervious Surfaces.** Prohibit applications to horizontal impervious surfaces (e.g., driveways, walkways) unless the surface is protected from rainfall and spray from sprinklers.
- 2) **Vertical Impervious Surfaces.** Prohibit applications to vertical impervious surfaces (e.g., foundations) that abut horizontal impervious surfaces (e.g., driveways, walkways), unless either:
 - a. The vertical surfaces are protected from rainfall or spray from sprinklers, or
 - b. The horizontal surfaces do not drain into sources of stormwater (e.g., the abutted driveways/walkways do not drain into streets).

Details of Labeled Restrictions

The following are the detailed language restrictions that are applicable to most covered bifenthrin products. Some covered products contain language that will require more extensive construction in order to ensure that the same intent is clearly stated in the label language.

General Outdoor Applications, Including Non-porous Surfaces

Current labeling should include the following EPA-mandated language:

"Application is prohibited directly into sewers or drains, or to any area like a gutter where drainage to sewers, storm drains, water bodies, or aquatic habitat can occur. Do not allow the product to enter any drain during or after application.

Additional Application Restrictions for Residential Outdoor Surface and Space Sprays:

All outdoor applications must be limited to spot or crack-and-crevice treatments only, except for the following permitted uses:

- (1) Treatment to soil or vegetation around structures;
- (2) Applications to lawns, turf, and other vegetation;
- (3) Applications to building foundations, up to a maximum height of 3 feet.

Other than applications to building foundations, all outdoor applications to impervious surfaces such as sidewalks, driveways, patios, porches and structural surfaces (such as windows, doors, and eaves) are limited to spot and crack-and-crevice applications, only."

For the section of the labels that provide general requirements for "Pest Control on Outside Surfaces and Around Buildings", add the following:

"Follow Additional Application Restrictions for Residential Outdoor Surface and Space Sprays under DIRECTIONS FOR USE."

Applications to Horizontal Non-porous Surfaces

Proposed additional restrictions for applications to horizontal surfaces would include the following language (examples that will apply to most bifenthrin labels)

For applications to outdoor pests such as ants, change to read:

"The following procedures must be followed to help achieve maximum control of the pest is generally achieved using the following procedure:

1) Treat non-porous surfaces only in areas protected from rainfall and spray from sprinklers with low volume applications using 0.5 to 1.0 fluid oz. of product per gallon of water and applying this dilution at the rate of one gallon per 1,000 square feet."

Applications to Vertical Non-porous Surfaces

For the section of the label that provides general requirements for "Pest Control on Outside Surfaces and Around Buildings", add the following:

"Applications to vertical exterior surfaces (e.g., foundations) are permitted to a maximum height of 3 feet from ground level. Sections of vertical exterior surfaces that abut non-porous horizontal surfaces can only be treated if either 1) these sections are protected from rainfall and spray from sprinklers or 2) they do not drain into a sewer, storm drain, or curbside gutter (e.g., not to sections that abut driveways or sidewalks that drain into streets)."

For the "Perimeter Treatment" paragraph within the "Pest Control on Outside Surfaces and Around Buildings" section of the label, add the following

"For sections of foundation that abut non-porous horizontal surfaces, the treated areas must be protected from rainfall and spray from sprinklers or they do not drain into a sewer, storm drain, or curbside gutter (e.g. not to sections that abut driveways or sidewalks that drain into streets)."