



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

JAN 12 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF:

Moe Ellerman  
Owner/Operator  
Crop Tech Seed Company, Inc.  
1200 Willow Street  
Vincennes, Indiana 47591

Re: Crop Tech Seed Company, Inc., Vincennes, Indiana  
Consent Agreement and Final Order, Docket Number: **EPCRA-05-2016-0004**

Dear Mr. Ellerman:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on January 12, 2016.

Please pay the EPCRA civil penalty in the amount of \$47,000 in the manner prescribed in paragraphs 51, 52 and 53, and reference your checks with the docket number:  
**EPCRA-05-2016-0004**.

Your payments are due as follows:

30 days from the effective date of the Order	\$11,789.17
140 days from the effective date of the Order	\$11,857.71
250 days from the effective date of the Order	\$11,821.81
360 days from the effective date of the Order	\$11,785.90

Please feel free to contact Ruth McNamara at (312) 353-3193 or by email at [mcnamara.ruth@epa.gov](mailto:mcnamara.ruth@epa.gov) if you have any questions regarding the enclosed documents. Please direct any legal questions to Jose C. de Leon, Associate Regional Counsel, at (312) 353-7456 or by email at [deleon.jose@epa.gov](mailto:deleon.jose@epa.gov). Thank you for your assistance in resolving this matter.

Sincerely,

Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Crop Tech Seed Company, Inc.  
Vincennes, Indiana

Respondent.



Docket No. EPCRA-05-2016-0004

Proceeding to Assess a Civil Penalty Under  
Section 325(c)(2) of the Emergency Planning  
and Community Right-to-Know Act of 1986

Consent Agreement and Final Order  
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(2) 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, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Crop Tech Seed Company, Inc., a corporation doing business in the State of Indiana.

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 the terms of the 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.

**Statutory and Regulatory Background**

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a)] of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § [11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

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

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 1200 Willow Street, Vincennes, Indiana (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

20. Endosulfan CAS# 115-29-7 is classified as a health hazard.

21. Endosulfan CAS# 115-29-7 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

22. Endosulfan CAS# 115-29-7 has a minimum threshold level of 10 pounds, as provided in 40 C.F.R. Part 370.

23. OSHA requires Respondent to prepare, or have available, a MSDS for endosulfan.

24. Paraquat dichloride CAS# 1910-42-5 is classified as a health hazard.

25. Paraquat dichloride CAS# 1910-42-5 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

26. Paraquat Dichloride CAS# 1910-42-5 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. Paraquat dichloride CAS# 1910-42-5 has a minimum threshold level of 10 pounds, as provided in 40 C.F.R. Part 370.

28. OSHA requires Respondent to prepare, or have available, a MSDS for paraquat dichloride.

29. During at least one period of time in calendar year 2011 endosulfan and paraquat dichloride were present at the facility in an amount equal to or greater than the minimum threshold level.

30. During at least one period of time in calendar year 2012 endosulfan and paraquat dichloride were present at the facility in an amount equal to or greater than the minimum threshold level.

31. During at least one period of time in calendar year 2013 endosulfan and paraquat dichloride were present at the facility in an amount equal to or greater than the minimum threshold level.

32. Respondent was required to submit to the state emergency response commission, local emergency planning committee and fire department on or before March 1, 2012, a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride for calendar year 2011.

33. Respondent was required to submit to the state emergency response commission, local emergency planning committee and fire department on or before March 1, 2013, a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride for calendar year 2012.

34. Respondent was required to submit to the state emergency response commission, local emergency planning committee and fire department on or before March 1, 2014, a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride for calendar year 2013.

35. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

36. At all times relevant to this CAFO, the Knox County Local Emergency Planning Committee was the LEPC for Vincennes, Indiana under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

37. At all times relevant to this CAFO, the Vincennes Fire Department was the fire department with jurisdiction over the facility.

38. As of June 2, 2014, Respondent had not submitted to the SERC, LEPC and Vincennes Fire Department a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride for calendar year 2011.

39. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

40. Each day Respondent failed to submit to the LEPC a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

41. Each day Respondent failed to submit to the Vincennes Fire Department a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride by March 1, 2012, for calendar year 2011 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

42. As of June 27, 2014, Respondent had not submitted to the SERC, LEPC and Vincennes Fire Department a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride for calendar year 2012.

43. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride by March 1,

2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

44. Each day Respondent failed to submit to the LEPC a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

45. Each day Respondent failed to submit to the Vincennes Fire Department a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride by March 1, 2013, for calendar year 2012 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

46. As of June 27, 2014, Respondent had not submitted to the SERC, LEPC and Vincennes Fire Department a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride for calendar year 2013.

47. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including endosulfan and paraquat dichloride by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

48. Each day Respondent failed to submit to the LEPC a completed emergency and hazardous chemical inventory form including endosulfan and paraquat dichloride by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

49. Each day Respondent failed to submit to the Vincennes Fire Department a completed emergency and hazardous chemical inventory form including endosulfan and paraquat



dichloride by March 1, 2014, for calendar year 2013 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

50. Complainant has determined that an appropriate civil penalty to settle this action is \$47,000 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

51. Respondent must pay a \$47,000 civil penalty in four installments with interest as follows:

	<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment #1		Within 90 days of effective date of CAFO	\$11,867.50	\$11,750.00	\$117.50
Payment #2		Within 180 days of effective date of CAFO	\$11,838.13	\$11,750.00	\$88.13
Payment #2		Within 270 days of effective date of CAFO	\$11,808.75	\$11,750.00	\$58.75
Payment #2		Within 360 days of effective date of CAFO	\$11,779.38	\$11,750.00	\$29.38

52. Respondent must pay the installment penalties by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the following: In the Matter of Crop Tech Seed Company, Inc., and docket number **EPCRA-05-2016-0004**.

53. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, and the case docket number, must accompany each installment payment.

Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk, (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3511

Ruth McNamara, (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Jose C. de Leon, (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

55. If Respondent does not timely pay any installment payment as set forth in paragraph 51 the entire unpaid balance of the civil penalty shall become due and owing upon written notice by U.S. EPA to Respondent of the delinquency. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the

United States enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

56. 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 the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

57. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

59. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

61. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

63. Each person signing this consent 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.

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

65. This CAFO constitutes the entire agreement between the parties

**Crop Tech Seed Company, Inc., Respondent**

12-4-2015  
Date

Moe Ellerman  
Moe Ellerman  
Owner/Operator  
Crop Tech Seed Company, Inc.

**U.S. Environmental Protection Agency, Complainant**

12/21/15  
Date

Lawrence Schmitt  
for M. Cecilia Moore, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

1/6/2016  
Date

Richard C. Karl  
for Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Crop Tech Seed Company, Inc., Vincennes, Indiana**  
**Docket No. EPCRA-05-2016-0004**

**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.

11 January 2016  
Date



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Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Crop Tech Seed Company, Inc., Vincennes, Indiana  
Docket No.**

**Certificate of Service**

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on January 12, 2016 in the following manner to the addressees:

Copy by Certified Mail

Return Receipt Requested: Moe Ellerman  
Owner/Operator  
Crop Tech Seed Company, Inc.  
1200 Willow Street  
Vincennes, Indiana 47591

Copy by E-mail to

Attorney for Complainant: Jose C. de Leon  
E-mail Address

Copy by E-mail to

Regional Judicial Officer: Ann Coyle  
Coyle.ann@epa.gov

Dated: January 12, 2016

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

CERTIFIED MAIL RECEIPT NUMBER: 7011 1150 0000 2640 6493