



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

JUN 06 2011

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7665 9475

Mr. Brian Reeve
Syngenta Crop Protection LLC
410 Swing Road
Greenboro, North Carolina 27409

Consent Agreement and Final Order FIFRA-05-2011-0013


Dear Mr. Reeve:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on June 6, 2011 with the Regional Hearing Clerk.

The civil penalty in the amount of \$28,125.00 is to be paid in the manner described in paragraphs 49 thru 50. Please be certain that the number BD 2751145P013 and the docket number are written on both the transmittal letter and on the check. Payment is due by July 6, 2011 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for/ Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2011-0013
)	
Syngenta Crop Protection LLC)	Proceeding to Assess a Civil Penalty
Greensboro, North Carolina)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)

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Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), 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 the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Syngenta Crop Protection LLC, a limited liability corporation doing business at 410 Swing Road, Greensboro, North Carolina 27409.
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 to the terms of this 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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Section 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), defines a pesticide as “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

14. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), defines a pesticide as “misbranded” if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing (i) the name and address of the producer, registrant, or person for whom produced; (ii) the name, brand or trademark under which the pesticide is sold; (iii) the net weight or measure of the content; and (iv) the registration number assigned to the pesticide under FIFRA, and the use classification.

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

16. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living 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(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

19. 40 C.F.R. § 156.10(a)(1) states, in pertinent part, that every pesticide product shall bear a label containing (i) the name, brand, or trademark under which the product is sold; (ii) the

name and address of the producer, registrant, or person for whom produced; (iii) the net contents; (iv) the product registration number; (v) the producing establishment number; (vi) an ingredient statement; (vii) hazard and precautionary statements; (viii) the directions for use; and (ix) the use classification(s).

20. The Administrator of EPA may assess a civil penalty against any registrant or other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. On or about April 8, 2011, Respondent informed EPA that it imported three shipments (Entry Numbers 916-2086654-0; 916-2086979-1 and 916-2086845-4) of the pesticide product, “Pinoxaden Technical,” EPA Reg. No. 100-1198, into the United States, on or about April 4, 2011, but that all the three shipments did not include any labels on the pesticide products, as required by FIFRA.

23. Each of the three imported shipments of “Pinoxaden Technical” consisted of 20 bulk sacks of pesticide product.

24. “Pinoxaden Technical” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about April 4, 2011, Respondent, on three separate occasions, distributed or sold the pesticide product “Pinoxaden Technical,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

26. On or about April 9, 2011, Respondent imported another shipment of “Pinoxaden Technical” into the United States (Entry Number 916-2087056-7).

27. This imported shipment of “Pinoxaden Technical” consisted of 20 bulk sacks.

28. On or about April 18, 2011, Respondent imported two additional shipments of “Pinoxaden Technical” into the United States (Entry Numbers 916-2087740-6 and 916-2087357-9).

29. Each of the two imported shipments of “Pinoxaden Technical” consisted of 20 bulk sacks of pesticide product.

30. Each bulk sack had an international label affixed to it that contained information on it that was false or misleading because it conflicted with the language required on the label by FIFRA.

31. In particular, the international label included the signal word “warning.”

32. The FIFRA accepted label, dated July 27, 2005 which was subsequently amended on June 15, 2010, requires the product label to include the more stringent signal word “danger.”

33. The international label also included the following language: “causes serious eye irritation.”

34. The accepted label requires the product label to include the following language: “causes irreversible eye damage.”

35. On or about April 9, 2011, Respondent distributed or sold the pesticide product “Pinoxaden Technical,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

36. On or about April 18, 2011, Respondent, on two separate occasions, distributed or sold the pesticide product “Pinoxaden Technical,” as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Counts 1 through 3

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this Complaint.

38. On or about April 4, 2011, Respondent distributed or sold the pesticide product “Pinoxaden Technical,” on three separate occasions, which constitutes three separate unlawful acts, each in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

39. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on three separate occasions, subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) for each separate unlawful act.

Count 4

40. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this Complaint.

41. On or about April 9, 2011, Respondent distributed or sold the pesticide product “Pinoxaden Technical,” in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

42. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 5 through 6

43. Complainant incorporates by reference the allegations contained in paragraphs 1 through 36 of this Complaint.

44. On or about April 18, 2011, Respondent distributed or sold the pesticide product

“Pinoxaden Technical,” on two separate occasions, which constitutes two separate unlawful acts, each in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

45. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on two separate occasions, subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) for each separate unlawful act.

Civil Penalty And Other Relief

46. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

47. Based upon Respondent’s self-disclosure of the violations alleged in paragraph 22, above, Complainant has determined that Respondent has satisfied eight of the nine Self-Disclosure Policy criteria. Complainant has determined that there was minimal economic benefit associated with the alleged violations.

48. Based on an evaluation of the facts alleged in this complaint, Respondent’s self-disclosure of three of the alleged violations, the factors in Section 14(a)(4) of FIFRA and EPA’s Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$28,125.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$28,125 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

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

The check must note "In the Matter of Syngenta Crop Protection LLC," the docket number of this CAFO and the billing document (BD) number.

50. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

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

Estrella Calvo (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

52. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

53. 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

payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

54. On April 27, 2010, Respondent labeled the 60 bulk sacks of “Pinoxaden Technical,” that were imported into the United States on or about April 4, 2011 , as required by FIFRA.

55. Respondent will also correct the labels on the bulk sacks of “Pinoxaden Technical” that were imported into the United States on or about April 9, 2011 and on or about April 18, 2011, as required by FIFRA before the product can be further distributed or sold.

56. Respondent has prepared and implemented a Compliance Plan which was provided to the EPA on May 4, 2011. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Section 12(a)(1)(E) of FIFRA.

General Provisions

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

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

59. This CAFO does not affect Respondent’s responsibility to comply with FIFRA and other applicable federal, state, and local laws.

60. This CAFO is a “final order” for purposes of EPA’s Enforcement Response Policy for FIFRA.

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

62. Each person signing this 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.

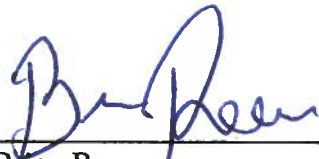
63. Each party agrees to bear its own costs and attorney's fees, in this action.

64. This CAFO constitutes the entire agreement between the parties.

**In the Matter of:
Syngenta Crop Protection LLC**

Syngenta Crop Protection LLC, Respondent

May 17, 2011
Date

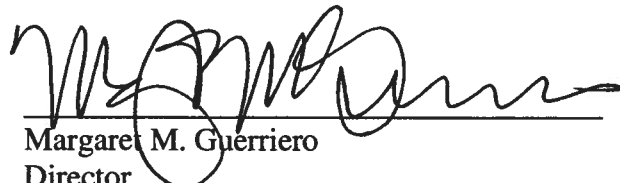


Brian Reeve
Regulatory Counsel
Syngenta Crop Protection LLC

**In the Matter of:
Syngenta Crop Protection LLC**

United States Environmental Protection Agency, Complainant

May 27, 2011
Date




Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Syngenta Crop Protection LLC
Docket No. FIFRA-05-2011-0013

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.

6-1-11
Date



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

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CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in the resolution of the civil administrative action involving Syngenta Crop Protection LLC, was filed on June 6, 2011 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7665 9475, a copy of the original to the Respondent:

Mr. Brian Reeve
Syngenta Crop Protection LLC
410 Swing Road
Greenboro, North Carolina 27409

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2011-0013

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