



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Syngenta Seeds, LLC,) **Docket No. FIFRA-09-2017-0001**
d/b/a/ Syngenta Hawaii, LLC,)
)
Respondent.)

ORDER ON MOTION FOR LEAVE TO AMEND THE COMPLAINT

The Complainant, Kathleen H. Johnson, Director of the Enforcement Division, Region IX, U.S. Environmental Protection Agency (“Agency” or “EPA”), initiated this proceeding on December 14, 2016, by filing a Complaint pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 1361(a), for the assessment of a civil administrative penalty against Syngenta Seeds, LLC (“Respondent”) for the alleged use of a registered pesticide in manners inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard (“WPS”) regulations, as set forth at 40 C.F.R. Part 170. Respondent filed an Answer to the Complaint on March 10, 2017. Soon thereafter, the parties entered into an Alternative Dispute Resolution (“ADR”) process offered by this office.

On January 18, 2018, the Agency filed an Unopposed Motion for Leave to Amend the Complaint (“Motion”). According to the Agency, the parties for the past year have been negotiating a resolution to this case and have now come to an agreement. The Agency filed its Motion in light of this agreement “to ensure the Complaint and our agreement conform.” Mot. at 3. Most significantly, the Amended Complaint includes an additional 127 counts alleging noncompliance with WPS regulations.¹ Mot. at 3. In its Motion, the Agency further represents that Respondent has (1) reviewed and been served with the Amended Complaint, which is attached to the Motion; (2) consented to the granting of the Motion; and (3) provided an Amended Answer to the proposed Amended Complaint for simultaneous filing and served the Amended Answer on the Agency. Mot. at 1, 5-6.

On January 19, 2018, after the Agency had submitted its Motion, the ADR neutral transferred this case to me. *See* Order Returning Case to Chief Administrative Law Judge.

¹ These additional counts arise out of a second incident involving use of a restricted pesticide alleged to have occurred on January 12, 2017 – after the original Complaint was filed but before Respondent filed its Answer. Mot. at 2.

Once an Answer has been filed, “the complainant may amend the complaint only upon motion granted by the Presiding Officer.” 40 C.F.R. 22.14(c). However, this Tribunal freely gives leave to amend a complaint when justice so requires. *See, e.g., Summit, Inc.*, EPA Docket No. RCRA-05-2014-0006, 2016 EPA ALJ LEXIS 29, at *4 (citing Fed. R. Civ. P. 15(a)); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend should be freely given in the absence of any apparent or declared reason not to). The Agency’s proposed Amended Complaint will allow the parties to mutually resolve their dispute and execute a settlement agreement. Therefore, justice requires that the Complaint be amended.

Accordingly, the Agency’s Motion is **GRANTED**. Additionally, the Amended Complaint and Amended Answer enclosed with the Agency’s Motion are accepted for filing as of the date of this Order.

SO ORDERED.



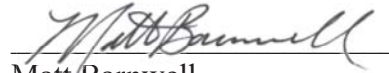
Susan L. Biro
Chief Administrative Law Judge

Dated: February 1, 2018
Washington, D.C.

In the Matter of *Syngenta Seeds, LLC, d/b/a/ Syngenta Hawaii, LLC*, Respondent. Docket No. FIFRA-09-2017-0001

CERTIFICATE OF SERVICE

I certify that the foregoing **Order on Motion for Leave to Amend the Complaint**, dated February 1, 2018, and issued by Chief Administrative Law Judge Susan L. Biro, was sent this day to the following parties in the manner indicated below.


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Dated: February 1, 2018
Washington, D.C.