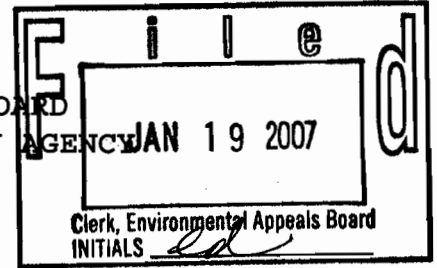


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_) )  
In the Matter of: ) )  
 ) )  
Syngenta Seeds, Inc., ) Docket No. FIFRA-HQ-2007-5007  
 ) )  
Respondent. ) )  
\_\_\_\_\_)

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), it is hereby ORDERED THAT:

1. Respondent shall comply with all of the terms of the Consent Agreement, incorporate herein by reference;
2. Respondent is assessed a civil penalty in the sum of \$1,517,875 pursuant to the terms of the Consent Agreement;
3. Respondent shall, within sixty (60) calendar days of the execution of the Final Order, either: (a) dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of \$1,517,875 and bearing the notation "Docket No. FIFRA HQ-2007-5007" to the following address:

U.S. Environmental Protection Agency  
Headquarters Hearing Clerk  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

or (b) affect a wire transfer in the amount of \$1,517,875 with the notation "Syngenta Civil Penalty Docket No. FIFRA HQ-2007-5007," by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010099
Bank Holding Account:	Treas_NYC
ABA Routing Number:	021030004

4. This order shall be in effect forthwith.

It is so ordered.

ENVIRONMENTAL APPEALS BOARD

By: Kathie A. Stein  
Kathie A. Stein  
Environmental Appeals Judge

Dated: January 19, 2007

**In the Matter of Syngenta Seeds, Inc.**

Docket No. FIFRA-HQ-2007-5007

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Consent Agreement and Final Order **In the Matter of Syngenta Seeds, Inc.**, Docket No. FIFRA-HQ-2007-5007, has been filed with the EPA Environmental Appeals Board and that copies were sent accordingly:

**Certified Mail, Return Receipt Requested**

Warren U. Lehrenbaum, Esq.  
Pillsbury, Winthrop, Shaw, Pittman, L.L.P.  
2300 N Street, NW  
Washington, DC 20037-1128

**EPA Interoffice Mail Delivery**


Sybil Anderson (Mail Code: 1900L)  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
1099 14<sup>th</sup> Street NW, Suite 350 Franklin Court  
Washington, DC 20005

**EPA Interoffice Mail Delivery**

Brian T. Dyer (Mail Code: 2245A)  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460-0001

JAN 23 2007

Date



Annette Duncan (Mail Code: 1103B)  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20460-0001

RECEIVED  
U.S. E.P.A.

2007 DEC 21 AM 9:03

ENVIR. APPEALS BOARD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD  
WASHINGTON, D.C.

In the Matter of:

Syngenta Seeds, Inc.,

Respondent.

)  
)  
)  
) Docket No. FIFRA-HQ-2007-5007  
)  
)  
)

**CONSENT AGREEMENT**

The United States Environmental Protection Agency (EPA), as Complainant, and Syngenta Seeds, Inc. (Syngenta), as Respondent (collectively, the Parties), wish to settle this case. Therefore, before the Parties offer any testimony or other evidence and without adjudication of any issues of law or fact, the Parties consent to the entry of, and agree to comply with the terms and conditions of, this Consent Agreement and the proposed Final Order (Final Order).

**I. PRELIMINARY STATEMENT**

- A. Complainant initiates this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA, or the Act), 7 U.S.C. §136 l(a).
- B. The Parties agree to commence and conclude this case by issuing this Consent Agreement and Final Order as prescribed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.
- C. The Parties consent to entry of this Consent Agreement and Final Order and agree to comply with its terms.
- D. Respondent certifies that, with respect to the violations alleged in this Consent Agreement, it has returned to full compliance.
- E. Respondent stipulates that Complainant has jurisdiction over the subject matter of this Consent Agreement. Respondent waives any defenses it might have as to venue and jurisdiction.
- F. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order and its right to request a

judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.

- G. Respondent neither admits nor denies the findings of fact and conclusions of law set forth in Sections II and III of this Consent Agreement.

## II. EPA'S FINDINGS OF FACTS

- A. Respondent is a corporation doing business in Golden Valley, Minnesota.
- B. Respondent had revenue in excess of \$1,000,000 in all calendar years relevant to this matter.
- C. Respondent is a registrant, producer and manufacturer of plant-incorporated protectants (PIPs), which EPA regulates as pesticides under FIFRA.
- D. Respondent is the registrant of a plant-incorporated protectant for corn, Bt11, which was registered by EPA for full commercial use in field corn in August 1996 (EPA Reg. No. 67979-1) and in sweet corn in February 1998 (EPA Reg. No. 65268-1).
- E. In the early 1990s, during the initial development of Bt corn, Northrup King Co. (a corporate predecessor of Syngenta) developed several different PIP "events" from the same genetic material (cry1Ab). Two of these events were what is now the registered PIP Bt11, and the related unregistered PIP Bt10. A new event is created each time identical genetic material is introduced into a different location within the genome. EPA requires each PIP event to be separately registered under FIFRA prior to being distributed or sold.
- F. In a self-disclosure letter dated December 15, 2004, Respondent alerted EPA to a possible distribution of an unidentified unregistered PIP (later identified to EPA as Bt10). In the letter, Respondent informed EPA that results of a voluntary investigation: "indicate[] that small scale plantings of corn containing this event occurred in 2002, 2003 and 2004 ..." The letter went on to state that "Syngenta is continuing to investigate these plantings and the underlying processes that may have allowed them to occur ..." Finally, Syngenta committed to "keep EPA apprised of pertinent developments as this investigation progresses."

- G. On January 7, 2005, Respondent provided EPA with information to follow up on the company's December 15, 2005 initial self-disclosure letter. In that follow-up submission, Syngenta: (i) apprised EPA of the progress of its investigation; (ii) described the mitigation measures that had been implemented by the company to date; (iii) provided detailed location and acreage information for all of the company's known current plantings of affected corn; and (iv) outlined the company's strategy for further investigation and mitigation. Among other things, respondent informed EPA that its investigation thus far had identified Bt10 in two (2) lines of corn used for breeding purposes. Respondent also stated that it was working to identify and quarantine all existing seed stocks derived from those two breeding lines and it was continuing to test its remaining breeding lines.
- H. On January 31, 2005, Respondent provided EPA with a further update on the status of its investigation. In that submission, Respondent notified EPA that its investigation had identified a total of three additional breeding lines containing the Bt10 event, although not all of those breeding lines had been commercialized by the company.
- I. On March 7, 2005, Respondent submitted by e-mail to EPA, a copy of a document dated February 18, 2005, addressed to Mr. Francis W. Keyser, of the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS). That document contains records of the sale and distribution of Bt10 corn seed. That document is attached to this Consent Agreement as Attachment 1.
- J. In a submission dated March 10, 2005, Respondent provided EPA with documentation of the import and export sales and distribution of Bt10 corn seed. That document is attached to this Consent Agreement as Attachment 2.
- K. Respondent asserts that Attachment 1 and Attachment 2 contain confidential business information (CBI). Therefore, in accordance with 40 C.F.R. § 22.5, EPA has identified Attachment 1 and Attachment 2 as CBI. These documents may only be released to the public as authorized under 40 CFR Part 2.
- L. Because this information was provided to EPA as it was being developed by the

Respondent, information contained in the documents described in paragraphs F, G, H, I, J, and K, above, may have been revised or updated from its original date of submission by subsequent submissions to the Agency.

### III. EPA'S CONCLUSIONS OF LAW

- A. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
- B. Respondent is a "registrant" as that term is defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
- C. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in pertinent part, that, "it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered ...."
- D. Bt10 is intended to destroy, repel, or mitigate "pests" as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
- E. Therefore, Bt10 is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
- F. Bt10 is not registered pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
- G. Based on the information disclosed in Attachment 1, Respondent distributed or sold Bt10 on 1,037 occasions between February 2002 and June 2004.
- H. Therefore, on 1,037 separate occasions, as documented in Attachment 1, Respondent distributed or sold an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
- I. Based on the information disclosed in Attachment 2, Respondent imported Bt10 into the United States on seven (7) occasions between March 2002 and March 2005.
- J. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in pertinent part, that, "it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered ..."
- K. Therefore, on seven (7) occasions, Respondent distributed or sold an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

- L. Pursuant to regulations promulgated under Section 17(c) of FIFRA, 7 U.S.C. § 136o(c), when pesticides are imported to the United States, the importer must submit to EPA a Notice of Arrival of Pesticides and Devices form (NOA).
- M. Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N), provides, in pertinent part, that, "it shall be unlawful for any person ...who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act."
- N. Respondent failed to submit to EPA an NOA prior to importing Bt10 on seven (7) occasions.
- O. Therefore, on seven (7) occasions, Respondent failed to file reports in violation of Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N).
- P. Section 17(a) of FIFRA, 7 U.S.C. § 136o(a), allows the export of unregistered pesticides provided that the exporter meets the requirements promulgated under FIFRA Section 17(a) including submitting to EPA, prior to exportation, a signed notification from the foreign purchaser acknowledging that the pesticide is not registered for use in the United States.
- Q. Based on the information disclosed in Attachment 2, Respondent exported Bt10 on two (2) separate occasions, between March 2002 and March 2005.
- R. On each occasion, the Respondent failed to file a foreign purchaser acknowledgment statement prior to exporting Bt10, as required under FIFRA Section 17(a).
- S. Therefore, on two (2) occasions, Respondent failed to file reports in violation of Section 12(a)(1)(N) of FIFRA, 7 U.S.C. § 136j(a)(1)(N).

#### IV. TERMS OF SETTLEMENT

- A. Respondent consents to issuance of this Consent Agreement and consents, for the purposes of settlement, to the payment of the civil penalty set forth in Section V.
- B. Respondent's compliance with the terms of this Consent Agreement and Final Order shall fully settle all civil claims or civil causes of action under FIFRA Section 12(a) alleged in Section III, and documented in Respondent's submissions to the Agency as described in Section II.
- C. This settlement is conditioned upon the accuracy of the Respondent's submissions to EPA in this matter. EPA acknowledges that during the course of the company's



investigation, it provided EPA with extensive documentation, comprising well over one thousand pages, detailing the results of the company's investigation. Because this information was provided to EPA as it was being developed by the Respondent, information contained in the documents referenced in Section II, paragraphs F, G, H, I, J, and K in this Consent Agreement and Final Order may have been revised or updated in subsequent submissions to the Agency.

- D. Compliance with this Consent Agreement and Final Order shall not be a defense to any subsequent action EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of FIFRA not resolved by this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
- E. Nothing in this Consent Agreement or the Final Order is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent.

#### V. CIVIL PENALTY

- A. Pursuant to the statutory penalty factors listed in Section 14(a)(3) of FIFRA, 7 U.S.C. §1361(a)(3), and EPA's FIFRA Enforcement Response Policy ("FIFRA ERP"), Complainant proposes a \$6,071,500 unadjusted gravity-based penalty, the statutory maximum for the 1,053 violations.
- B. Based upon Respondent's voluntary self-reporting of the violations referenced in Section II, and in accordance with the Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618 (April 11, 2000) (Audit Policy), Complainant agrees to reduce the gravity-based penalty by 75 percent (75%) (\$4,553,625).
- C. Therefore, the penalty agreed upon by the Parties for settlement purposes is \$1,517,875.
- D. Not more than sixty (60) calendar days following execution of the Final Order by the Environmental Appeals Board, respondent shall *either*:
  - 1. Dispatch a cashier's or certified check in the amount of \$1,517,875, made payable to the order of the "Treasurer of the United States of America," and bearing the case docket number FIFRA HQ-2007-5007, to the following address:

U.S. Environmental Protection Agency

Headquarters Hearing Clerk  
P.O. Box 360277  
Pittsburgh, PA 15251-6277

*or*

2. Affect a wire transfer in the amount of \$1,517,875 with the notation "Syngenta Civil Penalty Docket No. FIFRA HQ-2007-5007," by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for Deposit:	68010099
Bank Holding Account:	Treas_NYC
ABA Routing Number:	021030004

- E. To ensure a record of compliance with this Consent Agreement, Respondent shall forward a copy of the check or wire transfer to EPA to the attention of:

Brian Dyer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 2245A)  
Washington, DC 20460-0001

*and*

Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 1900C)  
Washington, DC 20460-0001

- F. If Respondent fails to pay the civil penalty of \$1,517,875, within sixty (60) calendar days of the execution of the Final Order, then Respondent shall pay an additional stipulated penalty of \$5,000 per calendar day, plus interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, as in effect on the date of execution of the Final Order, unless Complainant in writing excuses or mitigates the stipulated penalty. Complainant may excuse or mitigate the stipulated penalty if Complainant determines in its sole discretion, that failure to comply occurred

despite Respondent's exercise of good faith and due diligence. If additional stipulated penalties are due, Complainant will dispatch to Respondent a demand letter via certified mail, return receipt requested, which specifies the total amount due and owed by Respondent, including any interest allowed by law. Within fourteen (14) calendar days following Respondent's receipt of such demand letter, Respondent shall pay the stipulated penalty in the manner specified in this Section.

- G. Failure to remit the civil penalty, or any stipulated penalty plus interest provided herein, may result in this matter being forwarded to the United States Department of Justice for collection.

#### VI. OTHER MATTERS

- A. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and with other federal, state, tribal, and local laws and regulations.
- B. This Consent Agreement and Final Order shall bind both Parties. This includes each Party's officers, directors, employees, successors, and assigns. The undersigned representative of each Party to this Consent Agreement and Final Order certifies that he or she is duly authorized to represent and bind the Party whom he or she claims to represent.
- C. This Consent Agreement shall bind the Parties in full effect upon execution of the Final Order by EPA's Environmental Appeals Board.
- D. Respondent's obligations under this Consent Agreement shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section V of the Consent Agreement in accordance with the Final Order.
- E. Each Party agrees to bear their own costs and attorney fees in this matter.

WE AGREE TO THIS:

FOR COMPLAINANT:

FOR RESPONDENT:

Stephanie Brown

Stephanie Brown, Acting Director  
Toxics and Pesticides Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assistance  
United States Environmental Protection Agency

Date: Dec. 20, 2006

Ginny Phillips  
Ginny Phillips, Attorney

Toxics and Pesticides Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assistance  
United States Environmental Protection Agency

Date: December 20, 2006

Edward C. Resler

Edward C. Resler, Vice President  
& General Counsel - Plant Science  
Syngenta Seeds, Inc.

Date: 12/18/2006

Warren U. Lehrenbaum

Warren U. Lehrenbaum  
Counsel for Syngenta Seeds, Inc.  
Pillsbury Winthrop Shaw Pittman

LLP

Date: 19 December 2006