BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:	:	
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	:	
Bayer CropScience	:	
	:	**Docket No. CWA-RCRA-CAA-**
Respondent;	:	**CERCLA-EPCRA-03-2009-0011**
	:	
Bayer CropScience	:	
Route 25	:	
Institute, WV 25112	:	

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement ("CA") is entered into by the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") and Bayer CropScience ("BCS" or "Respondent"), pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6928(a) and (g), Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, including, specifically 40 C.F.R. §§ 22.13(b) and .18(b)(2) and (3).

This CA and the accompanying Final Order (collectively "CAFO") simultaneously commence and conclude an administrative proceeding against Respondent to resolve alleged violations of the CWA., 33 U.S.C. §§ 1251, et seq., RCRA, 42 U.S.C. §§ 6901, et seq., CAA, 42 U.S.C. §§ 7401, et seq., CERCLA, 42 U.S.C. §§ 9601, et seq., and EPCRA, 42 U.S.C. §§ 11001, et seq., in connection with Respondent's facility in Institute, West Virginia.

CWA Background

Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of "pollutants" from a point source within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), into the waters of the United States by any person except in accordance with certain sections of the CWA, or in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. §

1342. Under Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Administrator of EPA may issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such a permit, including effluent limitations, but only upon compliance with applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or under such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.

Section 402(k) of the CWA, 33 U.S.C. § 1342(k), provides that compliance with the terms and conditions of a permit issued pursuant to that section shall be deemed compliance with, *inter alia*, Section 301 of the CWA, 33 U.S.C. § 1311. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), authorizes EPA to delegate permitting and inspection authority to states that meet certain requirements. The State of West Virginia is authorized by the Administrator of EPA, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), to administer the NPDES permit program for discharges into navigable waters within its jurisdiction. The West Virginia Department of Environmental Protection ("WVDEP") is the "approval authority" as defined in 40 C.F.R. § 403.3.

Notice to the State

Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA provided public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the State of West Virginia regarding this action, and in addition will mail a copy of this document to the appropriate West Virginia official.

RCRA Background

On May 29, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of West Virginia was granted final authorization to administer a state hazardous waste management program *in lieu* of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. The provisions of the West Virginia hazardous waste management program, through this final authorization, became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). An amended West Virginia hazardous waste management program was reauthorized by EPA on May 10, 2000, and became effective as requirements of RCRA Subtitle C on July 10, 2000, *see* 65 *Fed Reg.* 29973 (May 10, 2000). (These regulations will be subsequently referred to as the 2000 West Virginia Hazardous Waste Management Regulations or WVHWMR (2000).)

Notice to the State

EPA has given the State of West Virginia, through the WVDEP, prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

CAA Background

EPA is authorized by Section 113 of the CAA, 42 U.S.C. § 7413, to take action to ensure that air pollution sources comply with all federally applicable air pollution control requirements. These include requirements promulgated by EPA and those contained in federally enforceable state implementation plans ("SIP") or permits. The West Virginia SIP, approved by EPA at 40 C.F.R. Part 52, Subpart XX, provides for the issuance of installation and non-attainment operating permits for stationary sources of air pollution.

Section 112 of the CAA, 42 U.S.C. § 7412, establishes a list of hazardous air pollutants and requires that EPA issue emissions standards for sources of these pollutants. EPA has issued a national emission standard for hazardous air pollutants ("NESHAP") for the synthetic organic chemical manufacturing industry, known as the hazardous organic NESHAP, or "HON." (*See* 40 C.F.R. Part 63, Subparts F, G, and H.)

Notice to the State

Respondent BCS was previously issued a notice of the violation regarding the CAA allegations recited herein under cover letter dated December 22, 2005. EPA has notified the State of West Virginia of EPA's intent to enter into a CAFO with Respondent to resolve the alleged CAA violations set forth herein.

EPCRA/CERCLA Emergency Notification Background

Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any hazardous substance the release of which shall be required to be reported under Section 103(a) of CERCLA ("Reportable Quantity" or "RQ"). The list of RQs is codified at 40 C.F.R. Part 302.

Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, requires that any person in charge of a facility notify the National Response Center ("NRC") as soon as such person has knowledge of any release (other than a federally permitted release) of a hazardous substance from such facility in quantities equal to or greater than the RQ set forth in 40 C.F.R. Part 302. In addition, Section 103(f) of CERCLA, 42 U.S.C. § 9603(f), requires that the NRC be notified of any continuous releases, which are stable in quantity and rate, of a hazardous substance from a facility.

Pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), EPA published a list of Extremely Hazardous Substances ("EHSs") which, when released into the environment, may present a substantial danger to public health or welfare or the environment, and further promulgated regulations establishing the "Reportable Quantity" or "RQ" for such EHSs. The list of RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

Section 304 of EPCRA, 42 U.S.C. § 11004, provides that when a release of an EHS in excess of the RQ occurs at a facility at which hazardous chemicals are produced, used or stored, the owner or operator of such facility is required to immediately notify the NRC, the State

Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") and file, as soon as practicable thereafter, a written follow-up report with the SERC and LEPC. In addition, this Section provides that the owner or operator of a facility required to report a release of a hazardous substance to the NRC under CERCLA Section 103(a), 42 U.S.C. § 9603(a), is also required to notify the SERC and LEPC. (*See* Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.40.)

EPCRA Toxics Release Inventory Background

Section 313 of EPCRA, 42 U.S.C. § 11023, as implemented by 40 C.F.R. Part 372, requires the owner or operator of a facility that: 1) has 10 or more full time employees; 2) has a primary Standard Industrial Classification (SIC) code (as in effect on July 1, 1985) between 20 and 39; and 3) has manufactured, processed or otherwise used a toxic chemical listed pursuant to Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a toxic chemical release form (Form R) or alternate threshold report (Form A) for each such toxic chemical to EPA and the state in which the facility is located, by July 1 of the following calendar year. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define "facility" to mean, in relevant part, all buildings, equipment, structures and other stationary items that are located on a single site and that are owned or operated by the same person.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.

3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CAFO.

4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying Final Order.

5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.

6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

7. Respondent certifies to EPA by its signature herein that it is presently in compliance with the specific regulatory sections and subsections of the CWA, RCRA, CAA, CERCLA and EPCRA referenced in the claims and allegations herein.

8. The provisions of this CAFO shall be binding upon Complainant and Respondent, its officers, directors, employees, successors and assigns.

9. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit; nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, RCRA, CAA, CERCLA, EPCRA or any regulations promulgated thereunder.

EPA's Findings of Fact and Conclusions of Law

10. In accordance with the Consolidated Rules at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

11. Respondent is a Delaware limited partnership and is doing business in West Virginia. Respondent is a "person" within the meaning of:

A. Section 502(5) of the CWA, 33 U.S.C. § 1362(5);

B. Section 1004(15) of RCRA, 42 U.S.C. § 6903(15);

C. Section 302(e) of the CAA, 42 U.S.C. § 7602(e);

D. Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3; and

E. Section 329(7) of EPCRA,.42 U.S.C. § 11049(7), 40 C.F.R. § 355.20, and 40 C.F.R. § 370.2.

12. Respondent is the owner and operator of a chemical manufacturing plant located at Route 25, Institute, West Virginia ("Facility").

13. EPA conducted multimedia inspections of Respondent's Facility on May 15 through 24, August 13 through 16, and November 6 through 9, 2001. Collectively, these inspections will be referred to herein as the "EPA inspection."

CWA Allegations

Count I (NPDES Permit Exceedance)

14. The allegations contained in Paragraphs 1 through 13 of this CAFO are incorporated by reference herein as though fully set forth at length.

15. On June 30, 1994, the WVDEP issued NPDES Permit Number WV 0000086 to Respondent, then known as Aventis CropScience USA LP. WVDEP subsequently extended the expiration date of that permit to June 29, 2002. This permit was in effect at the time of the EPA inspection. Section A of the permit provides that discharges from the Facility from its various outfalls shall be limited and monitored as specified by the terms of the NPDES permit.

16. According to Discharge Monitoring Reports from January 1999 through April 2001, Respondent exceeded its permit limitations on thirty-five occasions. The following table sets forth each permit exceedance.

Outfall	Date	Parameter DM=daily maximum MA=monthly average	Reported Value	Discharge Limitation
001	Jan. 1999	BOD, 5-day (DM)	13,441 lbs/day	6,003 lbs/day
001	Jan. 1999	BOD, 5-day (MA)	3,566 lbs/day	1,808 lbs/day
001	Jan. 1999	Toluene (DM)	4.10 lbs/day	3.22 lbs/day
001	Jan. 1999	Toluene (MA)	4.10 lbs/day	1.05 lbs/day
001	Jan. 1999	Isophorone (DM)	14.1 lbs/day	10.0 lbs/day
105	Jan. 1999	Total Suspended Solids (DM)	70 mg/L	60 mg/L
105	Jan. 1999	Total Suspended Solids (MA)	49 mg/L	30 mg/L
001	Feb. 1999	BOD, 5-day (DM)	7,961 lbs/day	6,003 lbs/day
005	Mar. 1999	Total Organic Carbon (DM)	36 mg/L	6 mg/L
005	Mar. 1999	Total Organic Carbon (DM)	Greater than 6 mg/L	6 mg/L
105	June 1999	pH	3.5 s.u.	6.0 to 9.0 s.u.
001	July 1999	Chloroform (DM)	11.76 lbs/day	1.86 lbs/day
001	July 1999	Chloroform (MA)	11.76 lbs/day	0.85 lbs/day
001	Sept. 1999	Chloroform (MA)	1.40 lbs/day	0.85 lbs/day
002	Sept. 1999	Ammonia-nitrogen (DM)	0.8 mg/L	0.6 mg/L
008	Sept. 1999	Total Suspended Solids (MA)	36 mg/L	30 mg/L

001	Oct. 1999	pH	pH greater than 9.0 s.u. for 356 minutes	pH not to exceed greater than 9.0 s.u. for more than 60 minutes
001	Nov. 1999	BOD, 5-day (DM)	7,868 lbs/day	6,003 lbs/day
401	Dec. 1999	Carbofuran (DM)	0.023 lbs/day	0.008 lbs/day
401	Dec. 1999	Carbofuran (MA)	0.023 lbs/day	0.002 lbs/day
001	Jan. 2000	Fecal Coliform (DM)	1,600/100 ml	400/100 ml
001	Jan. 2000	Fecal Coliform (MA)	1,600/100 ml	200/100 ml
001	Jan. 2000	BOD, 5-day (DM)	6,991 lbs/day	6,003 lbs/day
401	Jan. 2000	Carbofuran (MA)	0.003 lbs/day	0.002 lbs/day
401	Feb. 2000	Carbofuran (MA)	0.003 lbs/day	0.002 lbs/day
001	Mar. 2000	Un-ionized ammonia (DM)	97.5 lbs/day	36.6 lbs/day
001	Mar. 2000	Chloroform (DM)	3.34 lbs/day	1.86 lbs/day
001	Mar. 2000	Chloroform (MA)	3.34 lbs/day	0.85 lbs/day
001	Apr. 2000	Chloroform (DM)	5.65 lbs/day	1.86 lbs/day
001	Apr. 2000	Chloroform (MA)	5.65 lbs/day	0.85 lbs/day
001	Apr. 2000	Methylene chloride (MA)	2.35 lbs/day	1.61 lbs/day
001	June 2000	Total cyanide	14.67 lbs/day	10.64 lbs/day
001	Aug. 2000	Total cyanide	10.80 lbs/day	10.64 lbs/day
001	Feb. 2001	Chloroform (MA)	1.0 lbs/day	0.85 lbs/day
003	Mar. 2001	pH	pH less than 6.0 s.u. for 210 minutes	pH not to be less than 6.0 s.u. for more than 60 minutes

17. As set forth in Paragraph 16, above, Respondent violated Section A of its NPDES permit by discharging pollutants in excess of the permit effluent limitations in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, because these discharges are not in compliance with the Facility's NPDES permit.

Count II (NPDES Failure to Monitor)

18. The allegations contained in Paragraphs 1 through 17 of this CAFO are incorporated by reference herein as though fully set forth at length.

19. Parts A.6 and A.8 of Respondent's NPDES Permit WV0000086 provide that discharges from the Facility shall be limited and monitored as specified by the terms of the permit.

20. Based upon a review of Facility records by EPA, Respondent failed to report measured flow from outfalls 002, 003, and 005 from October 2000 to December 2000 as required by its NPDES Permit WV0000086, Parts A.6. and A.8.

21. Respondent violated Parts A.6 and A.8 of its NPDES permit by failing to measure flow for the time period set forth in Paragraph 20, above, in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count III (Failure to Update Best Management Practices Plan)

22. The allegations contained in Paragraphs 1 through 21 of this CAFO are incorporated by reference herein as though fully set forth at length.

23. Section G.7 of Respondent's NPDES Permit WV0000086 and 40 C.F.R. § 122.44(k) require Respondent to update, as necessary, and maintain its Best Management Practices Plan.

24. Based upon a review of Respondent's Best Management Practices Plan at the time of the EPA inspection, Respondent had not updated and maintained its Best Management Practices Plan, which did not reflect the current conditions at the Facility at the time of the EPA inspection.

25. Respondent violated Section G.7 of its NPDES permit and 40 C.F.R. § 122.44(k) by failing to timely update and maintain its Best Management Practices Plan. The failure to timely update and maintain the Facility's Best Management Practices Plan is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

RCRA Allegations

Count IV (Operating without a Permit)

26. The allegations contained in Paragraphs 1 through 25 of this CAFO are incorporated by reference herein as though fully set forth at length.

27. Respondent is and has been at all times relevant to this CAFO the "owner" and "operator" of a "facility," as those terms are defined in 40 C.F.R. § 260.10 (as in effect on July 1, 1997), as incorporated by reference into WVHWMR (2000) § 33-20-2.1.a.

28. Respondent is a Delaware limited partnership and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and as defined in 40 C.F.R. § 260.10 (1997) and incorporated by reference into WVHWMR (2000) § 33-20-2.1.a.

29. On or about April 13, 2000, Respondent, then known as Aventis CropScience USA LP, submitted a notification of Hazardous Waste Activity for the Facility, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, identifying the Facility as a large quantity generator of greater than 1,000 kg per month of hazardous waste. The Facility was assigned EPA ID Number WVD005005509.

30. In addition to being a large quantity generator, Respondent is also the owner and operator of permitted hazardous waste and storage units at its Facility.

31. Respondent is and, at all times relevant to this CAFO, has been a "generator" of, and has engaged in the "storage" in "containers" of, materials that are "solid wastes" and "hazardous waste" at the Facility, as those terms are defined in 40 C.F.R. § 260.10 (1997), as incorporated by reference into WVHWMR (2000) § 33-20-2.1.a.

32. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. Part 270 (1997), as incorporated by reference into WVHWMR (2000) § 33-20-11, provides that no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

33. Pursuant to 40 C.F.R. § 262.34 (1997), as incorporated by reference into WVHWMR (2000) § 33-20-5.1, generators of hazardous waste may accumulate hazardous waste on-site for 90 days or less without a permit or interim status, provided that:

a. The waste is placed in containers and the generator complies with 40 C.F.R. § 265, Subparts I, AA, BB and CC;

b. The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

c. While being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste;" and

d. The generator complies with the requirements for owners or operators set forth in 40 C.F.R. Part 265, Subparts B, C, and D, § 265.16, and § 268.7(a)(5).

Open Containers

34. WVHWMR (2000) § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a) (1997), provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

35. At the time of the EPA inspection, an EPA inspector observed that de-watered sludge characterized as listed hazardous waste F039 was collected and stored in trailers that were open, even though, at the time of the observation, it was not necessary have the trailers open in order to add or remove hazardous waste.

36. At the time of the EPA inspection, an EPA inspector observed that three (3) containers in the environmental protection laboratory, containing hazardous waste, were open even though, at the time of the observation, it was not necessary have the containers open in order to add or remove hazardous waste. One of the containers was labeled as containing DCM-contaminated sodium sulfate and the two other containers were labeled as containing liquid methylene chloride.

Container Labeling

37. 40 C.F.R. § 262.34(a)(3) (1997), as incorporated by reference into WVHWMR (2000) § 33-20-5.1, requires that, while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste."

38. At the time of the EPA inspection, an EPA inspector observed that a one (1) gallon container used to accumulate laboratory vials, characterized as listed waste F001, and one (1) 55-gallon drum containing baghouse dust, characterized as listed waste K156 and characteristic waste D001, were not labeled or clearly marked with the words "hazardous waste."

Failure to Make Waste Determination

39. 40 C.F.R. § 262.11 (1997), as incorporated by reference into WVHWMR (2000) § 33-20-5.1, provides in relevant part that a person who generates solid waste must determine if that solid waste is a hazardous waste.

40. At the time of the EPA inspection, an EPA inspector observed that Respondent did not have a current waste determination with respect to paper towels and rags used in the maintenance shop which were contaminated with EPA Hazardous Waste No. F001.

41. Because of Respondent's activities as set forth in Paragraphs 34 through 40, Respondent failed to satisfy the conditions set forth at WVHWMR (2000) § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.34 (1997), for a generator to qualify for an exemption from the permit and/or interim status requirements of RCRA Section 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. Part 270 (1997), as incorporated by reference into WVHWMR (2000) § 33-20-11.

42. The Facility was, at the time of the violations alleged herein, a hazardous waste management facility and Respondent was required to have a permit or interim status for treatment, storage and or disposal activities. Respondent does not have, and at the time of the violations alleged herein, did not have, a permit or interim status for the activities described in Paragraphs 34 to 40 as required by 40 C.F.R. § 270.1(b) (1997), as incorporated by reference into WVHWMR (2000) § 33-20-11, and Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e).

43. Because of the activities alleged in Paragraphs 34 through 40, above, Respondent violated 40 C.F.R.§ 270.1(b) (1997), as incorporated by reference into WVHWMR (2000) § 33-20-11, by operating a hazardous waste storage facility without a permit or interim status.

Count V (Open Containers)

44. The allegations contained in Paragraphs 1 through 43 of this CAFO are incorporated by reference herein as though fully set forth at length.

45. Respondent violated WVHWMR (2000) § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.173(a) (1997), by failing to keep the trailers referred to in Paragraph 35, above, containing listed waste F039 closed during storage, even though it was not necessary to add or remove waste and by failing to keep the three one-gallon containers referred to in Paragraph 36, above, in the laboratory closed during storage, even though it was not necessary to add or remove waste.

Count VI (Failure to Make a Waste Determination)

46. The allegations contained in Paragraphs 1 through 45 of this CAFO are incorporated by reference herein as though fully set forth at length.

47. Respondent violated WVHWMR (2000) § 33-20-5.1, which incorporates by reference 40 C.F.R. § 262.11 (1997), by failing to make a waste determination on the paper towels and rags described in Paragraph 40, above.

Count VII (Land Disposal Restrictions)

48. The allegations contained in Paragraphs 1 through 47 of this CAFO are incorporated by reference herein as though fully set forth at length.

49. WVHWMR (2000) § 33-20-10, which incorporates by reference 40 C.F.R. § 268.7(a) (1997), provides in relevant part that except as provided in 40 C.F.R. § 268.32 (which is not applicable in this case), a generator must test its waste, or an extract of its waste using test method 1311 (Toxicity Characteristic Leaching Procedure) or use its knowledge of the waste to determine if the waste is restricted from land disposal under 40 C.F.R. Part 268.

50. At the time of the EPA inspection, since Respondent had not completed a waste determination with respect to the rags and paper towels described in Paragraph 40, above, Respondent also failed to comply with the requirements of WVHWMR (2000) § 33-20-10, which incorporates by reference 40 C.F.R. § 268.7(a).

51. Respondent violated WVHWMR (2000) § 33-20-10, which incorporates by reference 40 C.F.R. § 268.7(a) (1997), by failing to determine whether the hazardous waste described in Paragraph 40, above, was restricted from land disposal under 40 C.F.R. Part 268.

Count VIII (Treatment Standards)

52. The allegations contained in Paragraphs 1 through 51 of this CAFO are incorporated by reference herein as though fully set forth at length.

53. WVHWMR (2000) § 33-20-10, which incorporates by reference 40 C.F.R. § 268.40(a) (1997), provides in relevant part that a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in such table.

54. A review of records concerning the analysis of wastewater treatment sludge from the Facility, which is classified as hazardous waste No. F039 and which is disposed by Respondent at the Goff Mountain Landfill, a hazardous waste landfill owned and operated by Respondent, reveals that in the year 2000, Respondent disposed of this wastewater treatment sludge without meeting the applicable land disposal restriction treatment standards with respect to p-cresol or 4-Methylphenol.

55. Respondent failed to meet the applicable treatment standards for the hazardous waste which was land disposed as described in Paragraph 54, above, in a violation of WVHWMR (2000) § 33-20-10, which incorporates by reference 40 C.F.R. § 268.40(a) (1997).

Count IX (Used Oil)

56. The allegations contained in Paragraphs 1 through 55 of this CAFO are incorporated by reference herein as though fully set forth at length.

57. WVHWMR (2000) § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.46(a) (1997), provides in relevant part that used oil transporters must keep a record of each used oil shipment accepted for transport.

58. WVHWMR (2000) § 33-20-14.1, which incorporates by reference 40 C.F.R. § 279.74(b), as referenced by 40 C.F.R. § 279.11, provides in relevant part that a generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil which is delivered to a used oil burner.

59. At the time of the EPA inspection, a review by the EPA inspector of Respondent's "residue monthly [receiving] log" and "bum ticket" revealed that Respondent was not maintaining the records required WVHWMR (2000) § 33-20-14.1, which incorporates the requirements of 40 C.F.R. § 279.46(a) and 40 C.F.R. § 279.74(b) (1997).

60. Respondent violated WVHWMR (2000) § 33-20-14.1, which incorporates the requirements of 40 C.F.R. § 279.46(a) (1997) and 40 C.F.R. § 279.74(b) (1997), by failing to maintain the required records described in Paragraph 59, above.

Count X (Waste Analysis Plan)

61. The allegations contained in Paragraphs 1 through 60 of this CAFO are incorporated by reference herein as though fully set forth at length.

62. WVHWMR (2000) § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.13(b) (1997), requires, in relevant part, that an owner or operator of a treatment, storage, or disposal facility develop and follow a Waste Analysis Plan.

63. At the time of the EPA inspection, Respondent operated a permitted hazardous waste disposal and storage facility. The Facility's permit delineates which portion of the Facility was subject to the permit.

64. At the time of the EPA inspection, a review of the Facility's Waste Analysis Plan revealed that Respondent was not following its Waste Analysis Plan by failing to correct its flash point data for barometric pressure as outlined in ASTM Method D93-80 (SW-846 Method 1010) and by failing to used 100g of a sample for TCLP extractions as outlined for SW-846 Method 1311.

65. Respondent violated WVHWMR (2000) § 33-20-7.2, which incorporates by reference 40 C.F.R. § 264.13(b) (1997), by not following its Waste Analysis Plan.

CAA Allegations

Count XI (Process Vent Bypasses)

66. The allegations contained in Paragraphs 1 through 65 of this CAFO are incorporated by reference herein as though fully set forth at length.

67. 40 C.F.R. Part 63, Subpart G, provides, in relevant part, specific control, monitoring, reporting, and recordkeeping requirements for process vents. A process vent, for purposes of these regulations, means a gas stream that is continuously discharged during the operation of the unit from an air oxidation reactor, other reactor, or distillation unit within a Synthetic Organic Chemical Manufacturing Industry ("SOCMI") chemical manufacturing process unit. In order to assure that collected vapors from the manufacturing process actually reach a control device without being diverted to the atmosphere, the regulations provide for the use of flow indicators in bypass lines (or valve) that could divert the vent stream.

68. 40 C.F.R. § 63.114(d)(1) requires, in relevant part, that the owner or operator of a process vent using a vent system that contains bypass lines properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. This provision is intended to monitor for bypasses to the atmosphere.

69. At the time of the EPA inspection, an EPA inspector observed that Respondent had three process vents in the Carbaryl process which were bypassed to the atmosphere during startup, shutdown, and malfunction events by diversion valves; these valves were located

near the process thermal oxidizer ("PTO"), at the centrifuge, and at the dryer at the Facility.

70. At the time of the EPA inspection, an EPA inspector observed that Respondent did not maintain a flow indicator that took readings at least once every fifteen minutes at the process vents located near the PTO, at the centrifuge, and at the dryer.

71. Respondent violated 40 C.F.R. § 63.114(d)(1) by failing to maintain a flow indicator that took readings at least once every fifteen minutes at the process vents located near the PTO, at the centrifuge, and at the dryer at the Facility.

Count XII (Bypass Records)

72. The allegations contained in Paragraphs 1 through 71 of this CAFO are incorporated by reference herein as though fully set forth at length.

73. 40 C.F.R. Part 63, Subpart G, requires that certain records be kept related to process vents and any bypass lines that they may contain.

74. 40 C.F.R. § 63.118(a)(3) requires, in relevant part, that each owner or operator shall keep hourly records of whether the flow indicator specified under 40 C.F.R. § 63.114(d)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times and durations of all periods when the gas stream was diverted to the atmosphere or the monitor was not operating.

75. At the time of the EPA inspection, a review by an EPA inspector of Respondent's records, including its log sheets, revealed that Respondent was not maintaining records of whether the flow indicator was operating, whether a diversion was detected, whether the gas stream was diverted to the atmosphere, or whether the monitor was operating at the following locations within the Carbaryl process: near the PTO, at the centrifuge, and at the dryer at the Facility.

76. Respondent violated 40 C.F.R. § 63.118(a)(3) by failing to maintain the records described in Paragraph 75, above.

Count XIII (Periodic Reports)

77. The allegations contained in Paragraphs 1 through 76 of this CAFO are incorporated by reference herein as though fully set forth at length.

78. 40 C.F.R. § 63.118(f)(2) and (3) require, in relevant part, that owners or operators who elect to comply with 40 C.F.R. § 63.113, shall submit "Periodic Reports" to the Administrator of EPA, or his or her authorized representative, of: (1) the duration of periods when monitoring data is not collected for each excursion caused by insufficient monitoring data (as required by 40 C.F.R. § 63.118(f)(2)), and (2) reports of the times and durations of all periods recorded when the gas stream is diverted to the atmosphere through a bypass line (as required by 40 C.F.R. § 63.118(f)(3)).

79. 40 C.F.R. § 63.152(c)(2) requires, in relevant part, that the owner or operator of a source submit Periodic Reports, which shall include the information specified in 40 C.F.R. § 63.118 with respect to process vents.

80. Based upon a review of the Facility's records, there were a number of time periods during which the PTO was shut down for which no records were maintained. Because monitoring data was not submitted to the Administrator of EPA, or his or her authorized representative, these events are considered excursions.

81. Respondent did not provide Periodic Reports to the Administrator of EPA, or his or her authorized representative, for the following time periods with respect to the PTO: December 22, 2000, January 2, 2001, February 18, 2001, March 10, 2001, April 24, 2001, April 27, 2001, and April 29, 2001.

82. Respondent violated 40 C.F.R. § 63.118(f)(2) and (3) by failing to provide Periodic Reports to EPA for the time periods set forth in Paragraph 81, above. Respondent also violated the requirements of 40 C.F.R. § 63.152(c) by failing to submit the required records.

Count XIV (Startup, Shutdown, Malfunction Plan)

83. The allegations contained in Paragraphs 1 through 82 of this CAFO are incorporated by reference herein as though fully set forth at length.

84. 40 C.F.R. § 63.6(e)(3) requires, in relevant part, that the owner or operator of an affected source must develop and implement a written startup, shutdown and malfunction plan that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown and malfunction; and a program of corrective action for malfunctioning process, air pollution control and monitoring equipment used to comply with the relevant standard.

85. 40 C.F.R. § 63.102(a)(4) provides, in relevant part, that during startups, shutdowns and malfunctions the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practicable.

86. Although Respondent had a startup, shutdown and malfunction plan in place at the time of the EPA inspection, it was not effective in minimizing and preventing emissions, as evidenced by the frequency of shutdowns referenced in Count XIII, above.

87. Respondent violated 40 C.F.R. § 63.6(e)(3) and 40 C.F.R. § 63.102(a)(4) by failing to have an implemented startup, shutdown and malfunction plan which prevented excess emissions to the extent practicable.

Count XV (Startup, Shutdown and Malfunction Records)

88. The allegations contained in Paragraphs 1 through 87 of this CAFO are incorporated by reference herein as though fully set forth at length.

89. 40 C.F.R. § 63.103(c)(2)(i) and (ii) provide in relevant part that the owner or operator subject to Subparts F, G and/or H of 40 C.F.R. Part 63 shall keep: (i) Records of the occurrence and duration of each startup, shutdown and malfunction of operation of process equipment or of air pollution control equipment during which excess emissions occur, and (ii) For each startup, shutdown and malfunction during which excess emissions occur, records that the procedures specified in the source's startup, shutdown and malfunction plan were followed.

90. During the EPA inspection, a review of the operator logs kept by Respondent used to meet the requirements of 40 C.F.R. § 63.103(c)(2)(i) and (ii) revealed that such records were not adequate to meet the requirements of 40 C.F.R. § 63.103(c)(2)(i) and (ii).

91. Respondent violated 40 C.F.R. § 63.103(c)(2)(i) and (ii) by failing to keep the required records pertaining to startup, shutdown and malfunction.

EPCRA Claims

COUNT XVI (EPCRA Section 313)

92. The allegations contained in Paragraphs 1 through 91 of this CAFO are incorporated by reference herein as though fully set forth at length.

93. At the time of the violations alleged herein, Respondent's Facility had 10 or more full-time employees.

94. At the time of the violations alleged herein, the Facility had a primary SIC code of 2869. This SIC code falls between the primary SIC codes of 20 and 39 (as in effect on July 1, 1985).

95. For toxic chemicals manufactured, processed or otherwise used in excess of the threshold reporting quantity during the 1999 reporting year, Respondent was required to complete and submit a Form R for each toxic chemical listed in 40 C.F.R. § 372.65 which was manufactured, processed or otherwise used in excess of the threshold quantity established pursuant to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), to EPA and the State of West Virginia by July 1 of the next calendar year.

96. Section 313(b)(l)(C)(i) of EPCRA, 42 U.S.C. § 11023(b)(1)(C)(i), defines "manufacture" to mean, in relevant part, to produce, prepare, import, or compound a toxic chemical. 40 C.F.R. § 372.3 further defines "manufacture" to apply to a toxic chemical that is produced coincidentally during the manufacture, processing, use or disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity.

97. Section 313(b)(1)(C)(ii) of EPCRA, 42 U.S.C. § 11023(b)(1)(C)(ii), and 40 C.F.R. § 372.3 define "process" to mean, in relevant part, the preparation of a toxic chemical, after its manufacture, for distribution in commerce in the same form or physical state as, or in

a different form or physical state from, that in which it was received by the person so preparing such chemical or as part of an article containing the toxic chemical.

98. 40 C.F.R. § 372.3 defines "otherwise use" a toxic chemical to mean, in relevant part, "any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms 'manufacture,' or 'process'...."

99. The chemical substances 2-ethoxycthanol, methanol, methyl isobutyl ketone, and naphthalene are "toxic chemicals" as defined by 40 C.F.R. § 372.3 and because they are listed in 40 C.F.R. § 372.65.

100. For the 1999 calendar year, the threshold quantity for a toxic chemical which was manufactured/processed at a facility was 25,000 pounds, as set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii).

101. The Facility manufactured and/or processed more than 25,000 pounds of 2-ethoxyethanol, methanol, methyl isobutyl ketone, and naphthalene during calendar year 1999.

102. Respondent submitted a toxic chemical release form (Form R) for 2-ethoxyethanol, methanol, methyl isobutyl ketone, and naphthalene covering the 1999 calendar year by July 1, 2000.

103. Based upon a review of the Facility's records, Respondent's Form R report for 2-ethoxyethanol, methanol, methyl isobutyl ketone, and naphthalene for the 1999 calendar year underreported water releases for these substances.

104. Based upon a review of the Facility's records, Respondent's Form R for calendar year 1999 underreported 2-ethoxyethanol by 463 pounds.

105. Based upon a review of the Facility's records, Respondent's Form R for calendar year 1999 underreported methanol by 411 pounds.

106. Based upon a review of the Facility's records, Respondent's Form R for calendar year 1999 underreported methyl isobutyl ketone by 130 pounds.

107. Based upon a review of the Facility's records, Respondent's Form R for calendar year 1999 underreported naphthalene by 12 pounds.

108. Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.85(b), by failing to accurately calculate and report the amount of 2-ethoxyethanol, methanol, methyl isobutyl ketone, and naphthalene the Facility manufactured, processed or otherwise used during the 1999 calendar year.

Count XVII (EPCRA Section 313)

109. The allegations contained in Paragraphs 1 through 108 of this CAFO are incorporated by reference herein as though fully set forth at length.

110. The chemical substances 2-ethoxyethanol, aldicarb, aniline, carbaryl, chloroform, ethylbenzene, methanol, methyl isobutyl ketone, methyl isocyanate, n-hexane, naphthalene, thiodicarb, toluene, triethylamine, and xylene are "toxic chemicals" as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.

111. For the 1999 calendar year, the threshold quantity for a toxic chemical which was manufactured at a facility was 25,000 pounds, as set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii).

112. Respondent submitted a toxic chemical release form (Form R) for 2-ethoxyethanol, aldicarb, aniline, carbaryl, chloroform, ethylbenzene, methanol, methyl isobutyl ketone, methyl isocyanate, n-hexane, naphthalene, thiodicarb, toluene, triethylamine, and xylene covering the 1999 calendar year by July 1, 2000.

113. Respondent's Form R incorrectly reported off-site transfers as disposal in a RCRA Subtitle C on-site landfill with respect to 2-ethoxyethanol, aldicarb, aniline, carbaryl, chloroform, ethylbenzene, methanol, methyl isobutyl ketone, methyl isocyanate, n-hexane, naphthalene, thiodicarb, toluene, triethylamine, and xylene.

114. Respondent's Form R for calendar year 1999 listed 16 pounds of 2-ethoxyethanol as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 16 pounds of 2-ethoxyethanol as an off-site transfer.

115. Respondent's Form R for calendar year 1999 listed 251 pounds of aldicarb as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 251 pounds of aldicarb as an off-site transfer.

116. Respondent's Form R for calendar year 1999 listed 1 pound of aniline as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 1 pound of aniline as an off-site transfer.

117. Respondent's Form R for calendar year 1999 listed 8,405 pounds of carbaryl as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 8,405 pounds of carbaryl as an off-site transfer.

118. Respondent's Form R for calendar year 1999 listed 141 pounds of chloroform as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 141 pounds of chloroform as an off-site transfer.

119. Respondent's Form R for calendar year 1999 listed 86 pounds of ethylbenzene as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 86 pounds of ethylbenzene as an off-site transfer.

120. Respondent's Form R for calendar year 1999 listed 4,377 pounds of methanol as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 4,377 pounds of methanol as an off-site transfer.

121. Respondent's Form R for calendar year 1999 listed 6,527 pounds of methyl isobutyl ketone as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 6,527 pounds of methyl isobutyl ketone as an off-site transfer.

122. Respondent's Form R for calendar year 1999 listed 1 pound of methyl isocyanate as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 1 pound of methyl isocyanate as an off-site transfer.

123. Respondent's Form R for calendar year 1999 listed 394 pounds of n-hexane as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 394 pounds of n-hexane as an off-site transfer.

124. Respondent's Form R for calendar year 1999 listed 677 pounds of naphthalene as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 677 pounds of naphthalene as an off-site transfer.

125. Respondent's Form R for calendar year 1999 listed 6,843 pounds of thiodicarb as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 6,843 pounds of thiodicarb as an off-site transfer.

126. Respondent's Form R for calendar year 1999 listed 1,593 pounds of toluene as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 1,593 pounds of toluene as an off-site transfer.

127. Respondent's Form R for calendar year 1999 listed 16,437 pounds of triethylamine as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 16,437 pounds of triethylamine as an off-site transfer.

128. Respondent's Form R for calendar year 1999 listed 167 pounds of xylene as a RCRA Subtitle C on-site landfill disposal. Respondent's Form R should have listed the 167 pounds of xylene as an off-site transfer.

129. The Facility manufactured and/or processed more than 25,000 pounds of 2-ethoxyethanol, aldicarb, aniline, carbaryl, chloroform, ethylbenzene, methanol, methyl isobutyl ketone, methyl isocyanate, n-hexane, naphthalene, thiodicarb, toluene, triethylamine, and xylene during calendar year 1999.

130. Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.85(b) by failing to accurately report the amount of 2-ethoxyethanol, aldicarb, aniline, carbaryl, chloroform, ethylbenzene, methanol, methyl isobutyl ketone, methyl isocyanate, n-hexane, naphthalene, thiodicarb, toluene, triethylamine, and xylene the Facility manufactured, processed or otherwise used during the 1999 calendar year.

COUNT XVIII (CERCLA Section 103)

131. The allegations contained in Paragraphs 1 through 130 of the CAFO are incorporated herein by reference as though fully set forth at length.

132. At all times relevant to Count XVIII, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the Facility.

133. Carbosulfan is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with a reportable quantity ("RQ"), at the time of the violations alleged herein, of one (1) pound, as listed in 40 C.F.R. Part 302, Table 302.4.

134. Based upon a review of the Facility's records, beginning on or about February 5, 2001 at or about 10:30 p.m. (2230 hours), greater than one (1) pound of carbosulfan was released from the Respondent's Facility.

135. The February 5, 2001 release of carbosulfan from Respondent's Facility constitutes a release of a hazardous substance in a quantity equal to or greater than the RQ for that hazardous substance.

136. Based upon a review of the Facility's records and NRC records, Respondent did not immediately notify the NRC of the February 5, 2001 release of carbosulfan, as soon as the Respondent had knowledge of the release, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

137. Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6, by failing to immediately notify the NRC of the February 5, 2001 release of carbosulfan.

COUNT XIX (EPCRA Section 304)

138. The allegations contained in Paragraphs 1 through 137 of this CAFO are incorporated by reference herein as though fully set forth at length.

139. Based upon a review of the Facility's records, beginning on or about February 5, 2001 at or about 10:30 p.m. (2230 hours), greater than one (1) pound of carbosulfan was released from the Respondent's Facility.

140. The February 5, 2001 release of carbosulfan from the Respondent's Facility constitutes a release of a hazardous substance in a quantity equal to or greater than its RQ, requiring immediate notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and consequently Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), and 40 C.F.R. § 355.40(b)(3).

141. Based upon a review of the Facility's records and State Emergency Response Commission records, Respondent did not immediately notify the State Emergency Response Commission of the occurrence of the February 5, 2001 release of carbosulfan

as soon as the Respondent had knowledge of the release, as required by Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), and 40 C.F.R. § 355.40(b)(1).

142. Respondent violated Section 304(b)(1) of EPCRA, 42 U.S.C. § 11004(b)(1), by failing to immediately notify the State Emergency Response Commission of the February 5, 2001 release of carbosulfan.

Count XX (EPCRA 304)

143. The allegations contained in Paragraphs 1 through 142 of this CAFO are incorporated by reference herein as though fully set forth at length.

144. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), provides that, if a release requires notice under section 304(a) of EPCRA, 42 U.S.C. § 11004(a), then the owner or operator shall as soon as practicable provide a written follow up emergency notice as described in section 304(c).

145. Based upon a review of the Facility's records, Respondent did not provide written follow-up emergency notice to the State Emergency Response Commission and the Local Emergency Planning Committee regarding the February 5, 2001 release of carbosulfan until April 19, 2001.

146. Respondent violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide written follow up emergency notice as soon as practicable to the State Emergency Response Commission and the Local Emergency Planning Committee.

CIVIL PENALTY

147. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of ONE HUNDRED TWELVE THOUSAND FIVE HUNDRED DOLLARS ($112,500.00), and perform the Supplemental Environmental Projects ("SEPs") described in the attached Scope of Work. Respondent must pay the civil penalty no later than **THIRTY (30) calendar** days after the effective date of this CAFO. In addition to the factors recited in Paragraphs 148-153, below, Respondent's agreement to perform SEPs was considered in reaching this civil penalty amount.

148. For the violations alleged in Counts I - III, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), *i.e.*, the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. EPA considered the *Interim Clean Water Act Settlement Penalty Policy* (1995). EPA also considered the *Adjustments of Civil Penalties for Inflation and implementing the Debt Collection Improvement Act of 1996* ("DCIA"), as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("2004 Skinner Memorandum"), which

specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the Interim Clean Water Act Settlement Policy were increased 10% above the statutory maximum amount to account for inflation.

149. For the violations alleged in Counts IV - X, EPA considered a number of factors including, but not limited to, the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of RCRA, the authorized WVHWMR, and the *RCRA Civil Penalty Policy* (2003). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum, which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the statutory maximum amount to account for inflation.

150. For the violations alleged in Counts XI - XV, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), including the seriousness of Respondent's violations and Respondent's good faith efforts to comply, and the *Clean Air Act Stationary Source Civil Penalty Policy* (1991). EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum, which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the Clean Air Act Stationary Source Civil Penalty Policy, were increased 10% above the statutory maximum amount to account for inflation.

151. For the violations alleged in Counts XVI - XVII, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 325 of EPCRA, 42 U.S.C. § 11045, *i.e.*, the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. EPA also considered the *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Known Act (1986) and Section 6607 of the Pollution Prevention Act (1990)*, dated April 12, 2,001. In addition, EPA considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum, which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the EPCRA Enforcement Response Policy were increased 10% above the statutory maximum amount to account for inflation.

152. For the violation alleged in Count XVIII, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), *i.e.*, the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. EPA also took into account the *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 (ERP)*, dated September 30,

1999. In addition, EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum, which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the EPCRA and CERCLA Enforcement Response Policy were increased 10% above the statutory maximum amount to account for inflation.

153. For the violations alleged in Counts XIX - XX, EPA considered a number of factors, including, but not limited to, the penalty assessment criteria in Section 325 of EPCRA, 42 U.S.C. § 11045, *i.e.*, the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. EPA also took into account the *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 (ERP)*, dated September 30, 1999. In addition, EPA also considered the DCIA, as set forth in 40 C.F.R. Part 19, and the 2004 Skinner Memorandum, which specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the EPCRA Enforcement Response Policy were increased 10% above the statutory maximum amount to account for inflation.

154. Payment of the civil penalty amount of $107,348.00, shall be made by cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. CWA-RCRA-CAA-CERCLA-EPCRA-03-2009-0011);

b. All checks shall be made payable to "**United States Treasury**;"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency, Fines and Penalties
U.S. Bank
1005 Convention Plaza

Mail Station SL-MO-C2GL
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

f. All payments through the Automated Clearinghouse shall be directed to:

PNC Bank
808 17th Street NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

The Customer Service contact for the above method of payment is Jesse White at 301-887-6548.

g. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy
Regional Hearing Clerk (3R000)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

Daniel L. Isales (3EC10)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

155. Payment of the civil penalty amount of $5,152.00, shall be made by cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. CWA-RCRA-CAA-CERCLA-EPCRA-03-2009-0011);

b. All checks shall be made payable to "**EPA-Hazardous Substances Superfund**"

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency
ATTENTION: Superfund Payments

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

f. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy
Regional Hearing Clerk (3R000)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

Daniel L. Isales (3EC10)
Environmental Science Center
U.S. Environmental Protection Agency, Region III
701 Mapes Road
Fort Meade, MD 20755-5350

156. Pursuant to 31 US.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) days after the effective date of this Consent Agreement and Final Order. Interest on the portion of the civil penalty not paid within thirty (30) days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid. A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

157. Respondent shall complete each of the six (6) SEPs described in the Scope of Work, which is attached hereto as Attachment A and incorporated herein by reference, which the parties agree are intended to secure significant environmental benefits or public health protection and improvements. Respondent shall complete each of the six (6) SEPs in accordance with the schedule set forth in the Scope of Work; the six (6) SEPs are the following:

a. Kanawha Valley Emergency Preparedness Training Center;

b. Emergency Equipment Donation;

c. Kanawha Valley Emergency Responder Training Courses;

d. Kanawha Valley Emergency Response Coordination Project;

e. VGI Scrubber Tails Stream SBS Injection System Installation; and

f. Real-Time Wastewater Monitoring Project.

158. The total expenditure for each of the six (6) SEPs shall be not less than the amounts specified for each in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

159. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop any of the SEPs by any federal, state or local law or regulation; nor is Respondent required to perform or develop any of the SEPs by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the SEPs.

160. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs.

161. **Reporting**

a. **SEP Completion Report.** Respondent shall submit a SEP Completion Report to EPA for each of the six (6) SEPs in accordance with the Scope of Work and the schedule set forth therein. Pursuant to the Scope of Work, for the purpose of determining when a SEP Completion Report is due, each SEP shall be completed within one year after the effective date of this CAFO. A SEP Completion Report shall be due to EPA within sixty (60) days after completion of a SEP. Each SEP Completion Report shall contain the following information:

(i) A detailed description of the SEP as implemented;

(ii) A description of any operating problems encountered and the solutions thereto;

(iii) Itemized costs for the entire project; and

(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO.

b. Respondent agrees that failure to submit a SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for additional civil penalties pursuant to Paragraph 163, below.

c. Respondent shall submit all notices and reports pertaining to the SEPs required by this Consent Agreement and Final Order by overnight mail to:

Paul Dressel (3EC10)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

and

Daniel L. Isales
Environmental Science Center (3EC10)
U.S. Environmental Protection Agency
701 Mapes Road
Fort Meade, MD 20755-5350

d. In itemizing its costs in a SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where a SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. Eligible SEP costs include the costs of purchasing the equipment, but do not include overhead, additional employee time and salary expended in purchasing the equipment, administrative expenses, and legal fees. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Cancelled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

e. In each SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall sign and certify, by a responsible corporate officer as defined at 40 C.F.R. § 270.11(a)(1), under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

162. EPA Acceptance of SEP Completion Report

a. After receipt of a SEP Completion Report described in Paragraph 161, above, EPA will notify the Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed in accordance with the CAFO; or (iii) determine that the project has not been completed in accordance with the CAFO and seek additional civil penalties in accordance with Paragraph 163 below.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of the SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA, additional civil penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 163, below.

163. Additional Civil Penalties

a. In the event that Respondent fails to comply with any terms or provision of this CAFO relating to the performance of a SEP and/or to the extent that the actual expenditures for a SEP do not equal or exceed the cost of the SEP described in the Scope of Work, Respondent shall be liable for additional civil penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, if a particular SEP (or SEPs) has not been completed in accordance this CAFO, Respondent shall pay an additional civil penalty to the United States as designated for that SEP and as set forth below for each SEP:

Kanawha Valley Emergency Preparedness Training Center: $26,416.00; Emergency Equipment Donation to St. Albans Fire Department:

$23,889.00; Kanawha Valley Emergency Responder Training Courses: $5,363.00; Kanawha Valley Emergency Response Coordination Project: $83,975.00; VGI Scrubber Tails Stream SBS Injection System Installation: $177,500.00; and, Real-Time Wastewater Monitoring Project: $152,500.00.

(ii) If a SEP is not completed in accordance with the CAFO, but EPA determines that Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required to be spent for that SEP was actually expended on the SEP, Respondent shall not be liable for any additional civil penalty.

(iii) If a SEP is completed in accordance with the CAFO, but the Respondent spent less than ninety (90) percent of the amount required to be spent for that SEP, Respondent shall pay an additional civil penalty to the United States as designated for each SEP below:

Kanawha Valley Emergency Preparedness Training Center: $5,283.00; Emergency Equipment Donation to St. Albans Fire Department: $4,777.00; Kanawha Valley Emergency Responder Training Courses: $1,072.00; Kanawha Valley Emergency Response Coordination Project: $16,795.00; VGI Scrubber Tails Stream SBS Injection System Installation: $35,500.00; and, Real-Time Wastewater Monitoring Project: $30,500.00.

(iv) If a SEP is completed in accordance with the CAFO and the Respondent spent at least ninety (90) percent of the amount of money required to be spent for that SEP, Respondent shall not be liable for any additional civil penalty.

(v) For failure to submit a SEP Completion Report required by Paragraph 161, above, Respondent shall pay an additional civil penalty in the following amounts for each day after the date that the report is due until the report is submitted: for days one (1) through ten (10), an additional penalty of $250, and for every day thereafter a penalty of $500.

b. The determination of whether a SEP has been completed in accordance with the CAFO and whether the Respondent has made a good faith, timely effort to implement a SEP shall be in the sole discretion of EPA.

c. The additional civil penalty specified in subparagraph (v) above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of completion of the activity.

d. Respondent shall pay any additional civil penalties not more than thirty (30) days after receipt of a written demand for such penalties by EPA. The method of

payment shall be in accordance with the provisions of Paragraph 154, above. Interest and late charges shall be paid as stated in Paragraph 156 herein.

e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or, excepting matters with respect to which Respondent is released hereunder, of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

164. Any public statement, oral or written, in film or other media, made by Respondent making any reference to any SEP or its resultant environmental benefits in part or in total shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of environmental statutes and regulations."

165. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determinations or, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with any SEP undertaken pursuant to this CAFO.

166. Force Majeure

a. If any event occurs which causes or may cause delays in the completion of any SEP as required under this CAFO, Respondent shall notify EPA in writing not more than fifteen (15) days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

b. If the Respondent and EPA agree that the delay or anticipated delay in compliance with the CAFO has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, Respondent and EPA shall stipulate, in writing, to such extension of time.

c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of the CAFO has been or will be caused by circumstances

beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.

d. The burden of proving that any delay is caused by circumstances beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementations of actions called for by this CAFO shall not, in any event, be a basis for change in this CAFO or extensions of time under section (b) of this Paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

EFFECT OF SETTLEMENT

167. Payment of the penalty specified in Paragraph 147, above, in the manner set forth in Paragraphs 154 and 155, above, and compliance with all other terms of this CAFO shall constitute full and final satisfaction of all civil claims for penalties which EPA may have under the CWA, RCRA, CAA, CERCLA, and EPCRA for the specific violations alleged in Counts I through XX, above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

RESERVATION OF RIGHTS

168. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all available rights and defenses it may have to defend itself in any such action.

FULL AND FINAL SATISFACTION

169. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a), Section 113 of the CAA, 42 U.S.C. § 7413, Section 109 of CERCLA, 42 U.S.C. Section § 9609, Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), for the specific violations alleged in this CAFO.

AUTHORITY TO BIND THE PARTIES

170. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and to bind Respondent to it.

EFFECTIVE DATE

171. EPA will provide public notice and an opportunity to comment in accordance with 40 C.F.R. § 22.45. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), the Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date. Those submitting comments to the CAFO, if any, shall have the rights afforded to them by 40 C.F.R. § 22.45(c)(4).

For Respondent:

11/6/08
Date

Bayer CropScience

Adrian N Crosby
Vice – President
Institute Site Operations

For Complainant:

2/12/09
Date

U.S. Environmental Protection Agency,
Region III

Daniel L. Isales
Assistant Regional Counsel
U.S. EPA - Region III

Accordingly, I hereby recommend that the Regional Administrator issue the Final Order attached hereto.

2.19.09
Date

Samantha P. Beers, Director
Office of Enforcement, Compliance, and
Environmental Justice
U.S. EPA - Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN RE:	:	
	:	
	:	
Bayer CropScience	:	
	:	**Docket No. CWA-RCRA-CAA-**
Respondent;	:	**CERCLA-EPCRA-03-2009-0011**
	:	
Bayer CropScience	:	
Route 25	:	
Institute, WV 25112	:	

FINAL ORDER

Complainant, the Director of the Office of Enforcement, Compliance, and Environmental Justice, U.S. Environmental Protection Agency - Region III, and Respondent, Bayer CropScience, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties set forth in the Consent Agreement, and pursuant to Section 22.18(b)(3) of the Consolidated Rules of Practice, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA's *Interim Clean Water Act Settlement Penalty Policy* (1995), Section 3008(a) of the RCRA, 42 U.S.C. § 6928(a), EPA's *2003 RCRA Civil Penalty Policy*, Section 113(e) of the CAA, 42 U.S.C. § 7413(e), EPA's *Clean Air Act Stationary Source Civil Penalty Policy (1991)*, Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), 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* (1999), Section 325 of EPCRA, 42 U.S.C. § 11045, EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)* (2001), and the Consolidated Rules of Practice. IT IS HEREBY ORDERED that Respondent pay a penalty of ONE HUNDRED TWELVE THOUSAND AND FIVE HUNDRED DOLLARS ($112,500.00), and comply with the terms and conditions of the Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondent's name and address as well as the EPA Docket Number of this Final Order (Docket No. CWA-RCRA-CAA-CERCLA-EPCRA-03-2009-0011).

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), this Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date.

2 4 2009

Date

William T. Wisniewski
Acting Regional Administrator
U.S. Environmental Protection Agency, Region III