

2019 JAN 29 PM 1: 17

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219  
BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
Syngenta Crop Protection, LLC ) Docket No. FIFRA-07-2019-0028  
 )  
Respondent. )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Syngenta Crop Protection, LLC (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136f.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is a corporation in good standing under the laws of the state of Delaware and doing business in the state of Missouri and Kansas.

### Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.
6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.
7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
10. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if compiled with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.
12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary if compiled with, together with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), is adequate to protect health and the environment.
13. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.
14. The regulation at 40 C.F.R. § 165.3 defines “refiller” as a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

15. Pursuant to the regulations at 40 C.F.R. § 165.67, a registrant is liable for violations pertaining to its repackaged pesticide product that a refiller has repackaged pursuant to a written contract with the registrant.

16. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$7,500 for violations that occurred before November 2, 2015, and to \$19,446 for violations that occur after November 2, 2015, and are assessed after January 15, 2018.

#### **General Factual Allegations**

17. Respondent is, and at all times referred to herein was, a “person”, within the meaning of FIFRA.

18. Respondent is, and at all times referred to herein was, the registrant of the pesticide Prefix, EPA Registration Number 100-1268 (Prefix).

19. Pursuant to 40 C.F.R. § 165.67, Respondent entered into written contracts for the purpose of repackaging Prefix with the following refillers: MFA Agri Services, located in Levasy, Missouri; Beachner Grain, located in Garnett, Kansas; and Ag Choice – West, located in Weir, Kansas.

20. On or about January 23, 2017, the Missouri Department of Agriculture (MDA) conducted an inspection at MFA Agri Services, under federal credentials and the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. On or about April 11, 2018, the Kansas Department of Agriculture (KDA) conducted an inspection at Beachner Grain, under federal credentials and the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. On or about April 16, 2018, KDA conducted an inspection at Ag Choice – West, under federal credentials and the authority of Section 9 of FIFRA, 7 U.S.C. § 136g, to evaluate compliance with the requirements of FIFRA and the federal regulations promulgated thereunder. These are hereinafter collectively referred to as “the Inspections.”

#### **Allegations of Violations**

21. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

##### **Counts 1 – 6**

22. The facts stated in Paragraphs 17 through 20 above are herein incorporated.

23. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. Pursuant to Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G), a pesticide is misbranded if the label accompanying it does not contain the directions for use or cautionary statements.

24. Information gathered as a result of the Inspections, including but not limited to, photographs, invoices, statements, and labels, revealed that misbranded Prefix was distributed or sold, or held for distribution or sale in that the labeling accompanying the Prefix product did not contain portions of the directions for use and warning or caution statements, as required by the registration for Prefix under Section 3 of FIFRA, 7 U.S.C. § 136a. The misbranded Prefix was held for sale at MFA Agri Services and Beachner Grain, sold or distributed once at MFA Agri Services and Ag Choice – West, and sold or distributed twice at Beachner Grain.

25. Respondent's distribution, sale, and holding for sale or distribution, misbranded Prefix on six (6) occasions are each violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### CONSENT AGREEMENT

26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) Admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

27. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### Penalty Payment

29. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Fifty-One Thousand Three Hundred Forty-Eight Dollars (\$51,348), as set forth below.

30. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

31. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Clarissa Howley Mills, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

32. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

**Effect of Settlement and Reservation of Rights**

33. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

34. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

35. Respondent certifies by the signing of this Consent Agreement that to the best of Respondent's knowledge it is presently in compliance with all requirements of FIFRA and its implementing regulations.

36. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

37. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

**General Provisions**

38. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.


39. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

40. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

41. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**  
**SYNGENTA CROP PROTECTION, LLC**

Date: \_\_\_\_\_

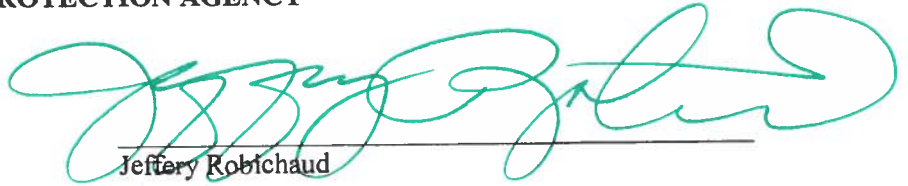
*BCR* By:  12/20/18

Vern Hawkins  
Print Name

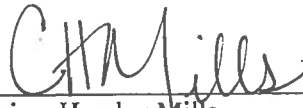
President  
Title

**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12/20/18



\_\_\_\_\_  
Jeffery Robichaud  
Director  
Water, Wetlands and Pesticides Division



\_\_\_\_\_  
Clarissa Howley Mills  
Office of Regional Counsel



**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

Jan. 29, 2019  
Date

**CERTIFICATE OF SERVICE**

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

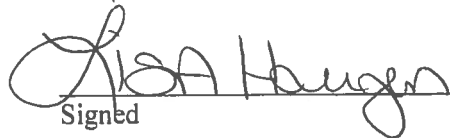
Copy via Email to Complainant:

*mills.clarissa@epa.gov*

Copy via Email to Respondent:

*brian.reeve@syngenta.com*

Dated this 29 day of January, 2019.

  
Signed \_\_\_\_\_