

ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2018 MAY -3 PM 1:52  
REGIONAL OFFICE CLERK  
EPA REGION VI

**IN THE MATTER OF:**

**Syngenta Crop Protection, LLC,**

**Respondent**

**Saint Gabriel, Louisiana**

**CONSENT AGREEMENT AND FINAL  
ORDER**

**EPA DOCKET NO. CAA-06-2018-3307**

**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency, Region 6 ("EPA" or "Complainant"), and Syngenta Crop Protection, LLC located in Saint Gabriel, Louisiana ("Respondent" or "Syngenta"), in the above referenced action, have agreed to simultaneously commence and resolve this matter, through issuance of this Consent Agreement and Final Order ("CAFO").

**I. PRELIMINARY STATEMENT**

1. This proceeding for the assessment of civil penalties pursuant to Section 113(d) of the Clean Air Act, as amended ("CAA" or the "Act"), 42 U.S.C. § 7413(d), is simultaneously commenced and concluded by the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), 22.18(b)(3), and 22.34. EPA and Respondent, having agreed that settlement of this action in the public interest, consent to entry of this CAFO without adjudication of any issues of fact or law.

2. This CAFO serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A).

3. For purposes of this proceeding, Respondent admits the jurisdictional allegations of this CAFO; however, Respondent neither admits nor denies the specific factual allegations or the conclusions of law contained in this CAFO.

4. Respondent waives any right to contest the allegations in the CAFO and its right to appeal the Final Order set forth herein.

5. Respondent does not waive any rights or defenses which have been raised or could be raised in any state law proceeding. This CAFO may not be used in any Federal or state proceeding except proceedings by EPA to enforce this CAFO.

6. Compliance with all the terms and conditions of this CAFO shall only resolve Respondent's liability for Federal civil monetary penalties for the violations and facts alleged in the CAFO.

7. Respondent consents to the issuance of this CAFO, and consents to the assessment and payment of the stated Federal civil monetary penalty in the amount and by the method set out in this CAFO.

8. Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting for violations not alleged in this CAFO.

9. Respondent represents that the undersigned representative is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this CAFO, to execute this CAFO, and to legally bind the Respondent to the terms and conditions of this CAFO.

## **II. STATUTORY AND REGULATORY BACKGROUND**

10. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), provides that the objective of the regulations and programs authorized under Section 112(r) shall be to prevent the accidental release of regulated substances or other extremely hazardous substances and to minimize the consequences of any such release that does occur.

11. Pursuant to CAA § 112(r)(7), 42 U.S.C. § 7412(r)(7), the Administrator is authorized to promulgate regulations dictating release prevention, detection, and correction requirements.

12. On June 20, 1996, the EPA promulgated a final rule known as the Chemical Accident Prevention Provisions, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Act.

13. Pursuant to 40 C.F.R. § 68.10(a), an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process ("Covered Process"), as determined under 40 C.F.R. § 68.115, shall comply with the requirements of 40 C.F.R. Part 68 no later than the latest of the following dates: (1) June 21, 1999; (2) three years after the date on which a regulated substance is first listed under Section 68.130; or (3) the date on which a regulated substance is first present above a threshold quantity in a process.

14. Pursuant to 40 C.F.R. § 68.12(a), an owner or operator of a stationary source subject to Part 68 requirements must submit a Risk Management Plan ("RMP") as provided in 40 C.F.R. Part 68 Subpart G (§§ 68.150-68.185) that reflects all covered processes at the stationary source.

15. 40 C.F.R. Part 68 provides general requirements applicable to owners or operators of a stationary source subject to Part 68.

16. 40 C.F.R. Part 68 also establishes requirements that apply to an owner or operator depending on whether the stationary source operates processes subject to one of three “Programs” -- Program 1, Program 2, and Program 3, as these program levels are defined in 40 C.F.R. § 68.10.

17. Pursuant to 40 C.F.R. § 68.12(d), the owner or operator of a stationary source with a process subject to the “Program 3” requirements of the Part 68 regulations, as determined pursuant to 40 C.F.R. § 68.10(d), must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87).

18. Pursuant to Sections 113(a)(3) and 113(d)(1)(B) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1)(B), whenever the Administrator finds that any person has violated or is violating a requirement of the CAA including, but not limited to, a requirement or prohibition of any rule promulgated under the CAA, other than those requirements specified in Sections 113(a)(1), 113(a)(2) or 113(d)(1)(A) of the CAA, 42 U.S.C. § 7413(a)(1), 7413(a)(2), or 7413(d)(1)(A), the Administrator may issue an order assessing a civil administrative penalty.

19. As adjusted by the Civil Penalty Inflation Adjustment Rule of January 10, 2018 (83 Fed. Reg. 1190, 1193), 40 C.F.R. § 19.4, the Administrator may assess a civil administrative penalty of up to \$46,192 per day of violation for a violation occurring after November 2, 2015, where penalties are assessed on or after January 15, 2018.

20. “Covered process” is defined in 40 C.F.R. § 68.3 as a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

21. “Owner or operator” shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

22. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

23. "Process" is defined in 40 C.F.R. § 68.3 as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

24. "Regulated substance" is defined in 40 C.F.R. § 68.3 as any substance listed pursuant to Section 112(r)(3) of the CAA as amended, in § 68.130.

25. "RMP" is defined in 40 C.F.R. § 68.3 as the risk management plan required under subpart G of 40 C.F.R. Part 68.

26. "Stationary source" is defined in Section 112(r)(2)(C) of the CAA and 40 C.F.R. § 68.3 as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

27. "Threshold quantity" is defined in 40 C.F.R. § 68.3 as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the CAA as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

### **III. ALLEGATIONS**

28. Respondent is a limited liability company and authorized to do business in the State of Louisiana.

29. Respondent is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the Act, 42 U.S.C. § 7413(d).

30. At all times relevant to this CAFO, Respondent owned and operated a pesticide and specialty chemical manufacturing plant, which is located at 3905 Highway 75, Saint Gabriel, Louisiana 70776 ("Facility").

31. Syngenta's Risk Management Plan (RMP) lists covered processes subject to Program 3 requirements, including the Herbicide Production Facility ("HPF").

32. In the HPF, Respondent produces, processes, handles, or stores substances listed in, or pursuant to CAA § 112(r)(3), 42 U.S.C. § 7412(r)(3), including but not limited to: chlorine and hydrocyanic acid.

33. Because the HPF is a Program Level 3 process, Syngenta must comply with the chemical accident prevention requirements of 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program, at 40 C.F.R. §§ 68.65-68.87), including the requirement in 40 C.F.R. § 68.69(d) to develop and implement safe work practices to provide for the control of hazards during operations.

34. The HPF consists of two manufacturing units. The first unit is the Cyanuric Chloride ("CC") Unit, which manufactures cyanuric chloride from hydrogen cyanide and chlorine received via pipeline. The second unit is the triazine unit, which reacts the produced cyanuric chloride with various amines to produce s-triazine herbicides.

35. In the CC Unit, cyanogen chloride ("CNCl") is first produced by the reaction of hydrogen cyanide and chlorine. The CNCl is then dried and trimerized to produce CC. The CC

vapors are condensed to separate it from the remaining gases. The condensed, molten CC is dissolved in toluene and transferred to storage. The remaining gases, including unreacted CNCl, are absorbed in carbon tetrachloride, then stripped and returned to the process.

36. CNCl is identified at 40 C.F.R. § 68.130 as a toxic regulated substance with a threshold quantity of 10,000 pounds.

37. On May 4, 2017, Facility personnel were conducting maintenance activities on a constituent of the CC Unit, the 304D pre-dryer.

38. During these maintenance activities, an unsecured vent hose became forcibly separated from the 304D pre-dryer.

39. Subsequent investigation determined that the vent hose became dislodged after desiccant in the dryer collapsed during maintenance activities, which forced trapped vapors, including unreacted CNCl, through the vent hose.

40. The release was discovered when Facility personnel detected a chemical odor which was later determined to be CNCl.

41. Personnel reattached the vent hose and vapors were routed to an appropriate pollution abatement device.

42. Respondent determined that the release included approximately one pound of CNCl.

43. The release of CNCl at the Facility on May 4, 2017, constituted an "accidental release" as that term is defined by Section 112(r)(2)(A) of the CAA, 42 U.S.C. § 7412(r)(2)(A).

44. The release caused several employees and contractors in the area to seek first aid.

**Count 1. Failure to Develop and Implement Safe Work Practices**

45. Complainant hereby restates and incorporates by reference Paragraphs 1 through 44 above.

46. Pursuant to 40 C.F.R. § 68.69(d), the owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations.

47. EPA alleges that Respondent failed to develop and implement safe work practices to prevent an accidental release of a regulated substance by failing to follow proper procedures during maintenance operations at the CC Unit.

48. EPA alleges that Respondent's failure to develop and implement safe work practices at the CC Unit constitutes a violation of 40 C.F.R. § 68.69(d).

#### **IV. CIVIL PENALTY AND TERMS OF SETTLEMENT**

49. Upon consideration of the entire record herein, including the Respondent's willingness to take measures to prevent a recurrence of the above described incident, and upon consideration of the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation, payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, specific facts and equities, litigation risks, and other factors as justice may require, the parties agree that **forty-six thousand one-hundred and ninety-two dollars (\$46,192)** is an appropriate penalty to resolve this matter.

50. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

51. EPA agrees to notify Respondent Promptly of the filing of the fully-executed CAFO with the Regional Hearing Clerk.

52. Within thirty (30) days of this fully executed CAFO, Respondent shall pay \$46,192 by cashier's check, certified check, or wire transfer made payable to" Treasurer, United States of



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America, EPA - Region 6." Payment shall be remitted in one of five (5) ways: regular U.S. Postal Service mail, to include certified mail; overnight mail; wire transfer; Automated Clearinghouse for receiving US currency; or On Line Payment. For regular U.S. Postal Service mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check(s) should be remitted to:

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

For overnight mail (non-U.S. Postal Service, e.g. FedEx), the check(s) should be remitted to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

For Automated Clearinghouse (also known as REX or remittance express):

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

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Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact – Jesse White (301) 887-6548

For On Line Payment:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

Enter sfo 1.1 in search field

Open form and complete required fields.

53. PLEASE NOTE: The docket number CAA 06-2018-3307 shall be clearly typed on the check to ensure proper credit. The payment shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative complaint and CAFO. Respondent's adherence to this request will ensure proper credit is given when penalties are received for the Region. Respondent shall also send a simultaneous notice of such payment, including a copy of the money order, or check, and the transmittal letter to the following:

Tony Robledo  
Enforcement Officer (6EN-AS)  
Chemical Accident Enforcement Section  
Compliance Assurance and Enforcement Division  
U.S. EPA, Region 6  
1445 Ross Avenue Suite 1200  
Dallas, Texas 75202-2733;

Lorena Vaughn  
Region 6 Hearing Clerk (6RC-D)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

54. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

55. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

56. EPA will also assess a fifteen dollar (\$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 fifteen dollars (\$15.00) for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

57. Pursuant to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten (10) percent of the aggregate amount of such

person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

58. This CAFO shall not relieve the 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 shall it be construed to constitute EPA approval of any equipment or technology installed by the Respondent in connection with any additional settlement terms undertaken pursuant to this CAFO. Nothing in this CAFO shall be construed to prohibit or prevent the federal, state, or local government from developing, implementing, and enforcing more stringent standards through rulemaking, the permit process, or as otherwise authorized or required.

59. This document constitutes a "Final Order" as that term is defined in the CAA Penalty Policy for the purpose of demonstrating a history of "prior such violations."

#### **V. RETENTION OF ENFORCEMENT RIGHTS**

60. EPA does not waive any rights or remedies available to EPA for any violations by the Respondent of Federal or state laws, regulations, statutes, or permitting programs, except with respect to the claims that have been resolved in this CAFO.

61. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of Section 112(r) of the CAA.

62. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, or regulated or other extremely hazardous substances at, on, or from the Respondent's facility. Furthermore, except as specifically set forth herein, nothing in this CAFO

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shall be construed to prevent or limit EPA's civil, injunctive, or criminal authorities, or that of other Federal, state, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws, regulations, or subparts thereof.

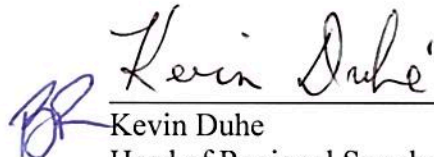
**VI. COSTS**

63. Each party shall bear its own costs and attorney's fees.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER:**

For the Respondent:

Date: May 2, 2018

  
\_\_\_\_\_  
Kevin Duhe  
Head of Regional Supply Operations NA  
Syngenta Crop Protection, LLC

For United States Environmental Protection Agency, Region 6:

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

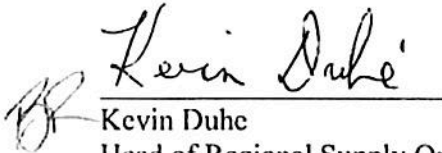
\_\_\_\_\_  
Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA Region 6

IN THE MATTER OF Syngenta Crop Protection, LLC  
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**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT  
AGREEMENT AND FINAL ORDER:**

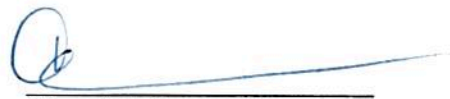
For the Respondent:

Date: May 2, 2018

  
Kevin Duhe  
Head of Regional Supply Operations NA  
Syngenta Crop Protection, LLC

For United States Environmental Protection Agency, Region 6:

Date: May 3, 2018

  
Cheryl T. Seager  
Director  
Compliance Assurance and  
Enforcement Division  
U.S. EPA Region 6

FINAL ORDER

Pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in this CAFO. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement, including the assessment of civil penalties. In accordance with 40 C.F.R. Part 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 5/3/18



Thomas Rucki  
Regional Judicial Officer  
U.S. EPA, Region 6

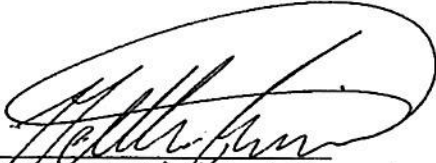


CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of May, 2018, the original and one copy of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual(s) by the method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED and ELECTRONIC COPY

Tokesha Collins-Wright  
400 Convention Street, Suite 700  
Post Office Box 3513 (70821-3513)  
Baton Rouge, Louisiana 70802

  
~~Paralegal~~ Assistant Regional Counsel  
U.S. EPA Region 6, Dallas, Texas