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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

IN THE MATTER OF:	§	
	§	DOCKET NO. FIFRA 06-2015-0308
Crop Production Services	§	
103 E Mill Road	§	
Artesia, NM 88211	§	
	§	COMPLAINT
	§	CONSENT AGREEMENT AND
	§	FINAL ORDER
<u>RESPONDENT</u>	§	

COMPLAINT  
CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Crop Production Services located in Artesia, New Mexico (Respondent) in the above referenced action, have consented to the terms of this Complaint Consent Agreement and Final Order (Complaint CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint CAFO.

I.  
PRELIMINARY STATEMENT

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136/(a) (FIFRA) which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500<sup>1</sup>

<sup>1</sup>The Civil Penalty Inflation Adjustment Rule (62 Fed Reg. 13514, March 20, 1997 and 69 Fed Reg. 7121, February 13, 2004) provides for increases in the statutory penalty provisions for violations which occur after the date the increases take effect. For violations after March 14, 2004, the potential maximum penalty for such violations changed from \$5,500 to \$6,500. The Agency is required to review its penalties once every four years and adjust them for inflation. The Final Rule published at 73 Fed Reg. 75340 raised the FIFRA penalty to \$7,500 for

for each violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) (to violate any regulation issued under section 3(a) or 19). This proceeding is initiated by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to FIFRA.

3. For purposes of this proceeding, Respondent admits to the jurisdiction of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this Complaint CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint CAFO in settlement of the violations alleged in this Complaint CAFO.

5. By signature on this Complaint CAFO, Respondent waives any right to a hearing and/or any appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this Complaint CAFO and that the party signing this Complaint CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint CAFO.

7. Respondent agrees that the provisions of this Complaint CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

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violations occurring after December 11, 2008.

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

8. Section 2(s) of FIFRA defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under Section 3(a) or 19 of FIFRA, 7 U.S.C. § 136a(a) or 136q.

11. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

12. Pursuant to Section 19(e) of FIFRA, 7 U.S.C. § 136(q)(e), the U.S. Environmental Protection Agency promulgated the Pesticide Management and Disposal Standards for Pesticide Containers and Containment Rule in 40 C.F.R. Part 165 (the "Rule").

13. Under 40 C.F.R. § 165.80(b)(1), owners or operators of pesticide refilling establishments who repackage agricultural pesticides, and whose principal business is retail sale, and who also have a stationary pesticide container or a pesticide dispensing area, are subject to the secondary containment requirements of the Rule.

14. Under 40 C.F.R. § 165.82(a)(3), pesticide dispensing areas that are subject to the containment requirements of the Rule and must have a containment pad that complies with the requirements of the Rule, include areas where agricultural pesticides are dispensed from a transport vehicle, for purposes of filling a refillable container

15. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any

provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$7,500<sup>2</sup> for each offense.

**III.**  
**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16. The Respondent is Crop Production Services located at 103 E Mill Road, Artesia, New Mexico 88211.

17. Respondent's business is a refilling establishment that repackages agricultural pesticides and whose principal business is retail sale. The facility has a pesticide dispensing area located at 60 Compress Rd Artesia, NM 88211, which agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container and therefore is subject to the containment requirements of the Rule.

18. The facility's containment structure is defined as an existing containment structure for purposes of the Rule because installation began on or before November 16, 2006.

19. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under Section 3(a) or 19 of FIFRA, 7 U.S.C. § 136a(a) or 136q.

20. Under 40 C.F.R. § 165.80(b)(1), owners or operators of pesticide refilling establishments who repackage agricultural pesticides, and whose principal business is retail sale, and who also have a stationary pesticide container or a pesticide dispensing area, are subject to the containment requirements of the Rule

21. Under 40 C.F.R. § 165.82(a)(3), pesticide dispensing areas that are subject to the containment requirements of the Rule and must have a containment pad that complies with the

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<sup>2</sup>See footnote 1.

requirements of the Rule include areas where agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

22. Under 40 C.F.R. § 165.83(b), an existing containment structure is defined as one whose installation began on or before November 16, 2006.

#### **IV.** **VIOLATIONS**

23. Complainant incorporates by reference the allegations contained in paragraphs 1-22 of this Complaint CAFO.

24. Respondent is a "person" under Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. An EPA-credentialed inspector inspected the facility on December 19, 2013.

26. On December 19, 2013, Respondent failed to meet the material requirements for existing containment structures because the containment structure was not liquid-tight with cracks, seams, and joints appropriately sealed in violation of 40 C.F.R. § 165.87(a)(1).

27. On December 19, 2013, Respondent failed to meet the design requirements for containment pads in pesticide dispensing areas because the containment pad was not designed and constructed to intercept leaks and spills of pesticides in violation of 40 C.F.R. § 165.87(e)(1).

28. On December 19, 2013, Respondent failed to meet the design requirements for containment pads in pesticide dispensing areas because the containment pad did not allow for the removal and recovery of spilled, leaked, or discharged material or precipitation in violation of 40 C.F.R. § 165.87(e)(3).

29. On December 19, 2013, Respondent failed to manage the containment structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure in violation of 40 C.F.R. § 165.90(a)(1).

30. Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to meet the requirements of the Rule.

31. Under FIFRA Section 14(a)(1), 7 U.S.C. § 1361(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

v.  
**CIVIL PENALTY AND**  
**TERMS OF SETTLEMENT**

32. For the reasons set forth above, Respondent has agreed to pay a civil penalty, which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), and the Civil Penalty Inflation Adjustment Rule<sup>3</sup> which authorizes EPA to assess a civil penalty of up to SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)<sup>3</sup> for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA ERP)" dated December 3, 2009 located at: <http://www.epa.gov/Compliance/resources/policies/civil/erp/index.html>, a copy of which is enclosed with this Complaint CAFO. The FIFRA ERP requires the Complainant to consider the

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<sup>3</sup> See footnote 1.

appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. It is ORDERED that Respondent be assessed a civil penalty of **THREE THOUSAND FOUR HUNDRED DOLLARS AND NO CENTS (\$3,400.00)**.

33. Within thirty (30) days of Respondent's receipt of this fully executed Complaint CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

Payment shall be remitted in one of the alternatives provided in the collection information section below:

**COLLECTION INFORMATION**

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-900

**WIRE TRANSFERS:**

Wire transfers should 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"

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

**WWW.PAY.GOV**

Enter "sfo 1.1" in the search field;

Open form and complete required fields following directions for EPA Miscellaneous payments.

**EPA Miscellaneous Payments - Cincinnati Finance Center**

Form Number: **SFO Form Number 1.1**

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket number FIFRA-06-2015-0308 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Blake Sieminski  
Pesticides Section (6PD-P)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733



The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given to the matter at hand.

34. 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.

35. 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).

36. The EPA will also 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) 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.


**VI.**  
**COSTS**

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

IT IS SO AGREED: \*


FOR THE RESPONDENT:

Date: 8/12/15

  
\_\_\_\_\_  
Gary Beverage  
Crop Production Services,  
103 E Mill Road  
Artesia, NM 88211

FOR THE COMPLAINANT:

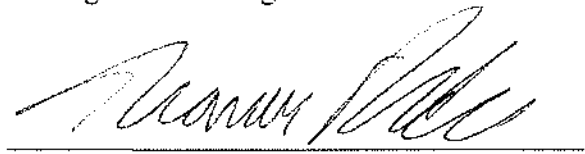
Date: 08/19/15

  
\_\_\_\_\_  
Craig G. Carroll  
Chief  
Pesticides Section

**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, 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 and/or violations alleged in the Complaint. 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 and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated 8-27-15

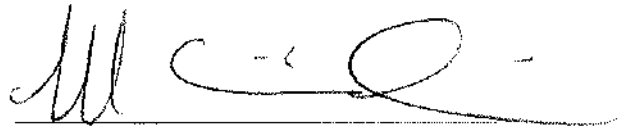
  
\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, the original and one copy of the foregoing Complaint Consent Agreement and Final Order ("Complaint CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Gary W. Beverage  
Crop Production Services  
103 E Mill Road  
Artesia, New Mexico 88211



Blake Sieminski  
Enforcement Officer  
Pesticides Section