

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA**

USEPA, REGION 4  
OFFICE OF REGIONAL  
COUNSEL

2016 SEP 15 PM 2:04

HEARING CLEER

**In the Matter of:** )  
 )  
Syngenta Crop Protection, LLC )  
 )  
 )  
 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**Docket No.:** FIFRA-04-2016-3000(b)  
FIFRA-05-2016-0015  
FIFRA-07-2016-0019  
FIFRA-08-2016-0010

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is collectively the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4; Director of the Land and Chemicals Division, United States Environmental Protection Agency Region 5; Director of the Water, Wetlands and Pesticides Division, United States Environmental Protection Agency Region 7, and the Supervisors of the Technical and Legal Enforcement Programs, Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency Region 8. Respondent is Syngenta Crop Protection, LLC (Syngenta).

2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the EPA. The undersigned EPA officials from Regions 4, 5, 7 and 8, have each been re-delegated the authority to enter into this Consent Agreement under FIFRA.
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individuals are authorized to receive service for the EPA in this proceeding:

Phillip Beard  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
(404) 562-9012.

Mardi Klevs  
U.S. EPA Region 5  
Chemicals Management Branch  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

Jamie Green  
U.S. EPA Region 7  
Office of Pesticide Program  
Kansas City Office  
11201 Renner Boulevard  
Lenexa, Kansas 66219

David Cobb  
U.S. EPA Region 8 (ENF-AT)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

5. Respondent is headquartered in the State of North Carolina and does business in the States of Colorado, Iowa, Kansas, Michigan, Missouri and Ohio.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), in part, to mean any substance (or mixture of substances) intended for a pesticide purpose, *i.e.*, use for the preventing, destroying, repelling, or mitigating any pest.
8. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
9. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
10. Pursuant to 40 C.F.R. §§ 165.67(b)(3) and 165.67(d), registrants who distribute and/or sell pesticide products to refillers for repackaging into refillable containers are required to enter into a written contract (Repackaging Agreement) with each refiller to repackage the pesticide product(s) prior to distribution or sale of the pesticide product(s).
11. Pursuant to 40 C.F.R. § 165.67(h), registrants are required to maintain records of the Repackaging Agreements for the current operating year and three years after that and

must furnish the records for inspection and copying upon the request of an employee of EPA or any entity designated by EPA.

12. Pursuant to 40 C.F.R. § 165.67(g)(3), registrants who distribute or sell pesticide products in refillable containers are required to provide refillers with their pesticide product's labels and labeling. The labels provided by the registrant(s) are subject to the provisions of the "Labeling Requirements for Pesticides and Devices" set forth in 40 C.F.R. Part 156.
13. Pursuant to 40 C.F.R. § 165.67(c), registrants who sell or distribute pesticide products to refillers for repackaging under its existing registration without a repackaging agreement in place or without accurate labels, are in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).
14. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), a pesticide is misbranded if any word, statement, or other information required by or under the authority of the Act to appear on the label or labeling is not prominently placed thereon and also if its labeling bears any statement, design or graphic matter that is false or misleading in any particular.
15. 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 to any person any pesticide that is misbranded.
16. The term "producer" is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean the person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide.
17. Pursuant to FIFRA Section 12(a)(2)(B)(i), 7 U.S.C. § 136j(a)(2)(B)(i) and the regulations set forth at 40 C.F.R. § 169.2(k), all producers of pesticides and active ingredients are

required to maintain records containing research data relating to registered pesticides, submitted to the Agency in support of the registration. The records shall be retained as long as the registration is valid and the producer is in business.

### **III. ALLEGATIONS OF VIOLATIONS**

#### **VIOLATION 1**

##### *Failure to have Repackaging Agreements and/or Maintain Records*

18. On August 13, 2012, the EPA Region 7 sent a letter to the Respondent requesting information regarding Respondent's compliance with 40 C.F.R. Part 165, Subpart D (Pesticide Container and Containment Rule).
19. On September 28, 2012, in response to the EPA Region 7's letter, the Respondent provided information which documented that on numerous and separate occasions between October 3, 2011, and September 28, 2012, Respondent distributed and/or sold approximately nineteen (19) registered pesticides including, but not limited to, Expert Herbicide (Restricted Use Pesticide), EPA Reg. No 100-116; Dual II G Magnum, EPA Reg. No. 100-1146; and Touchdown CT, EPA Reg. No. 100-1212, to approximately 138 refillers. The database information submitted by the Respondent documented that the Respondent distributed and/or sold the above-referenced pesticides for repackaging to refillers prior to having written repackaging agreements in place with such refillers and/or failed to maintain records of the respective repackaging agreements with such refillers.
20. On November 25, 2014, the EPA Region 4 also sent a letter to the Respondent requesting information regarding Respondent's compliance with the Pesticide Container and Containment Rule.
21. On January 20, 2015, in response to the EPA Region 4's letter, the Respondent provided information which documented that between August 5, 2013, and December 10, 2014,

the Respondent distributed and/or sold several pesticides on numerous and separate occasions to approximately 84 additional refillers. The database information and the repackaging agreements submitted by the Respondent documented that the Respondent distributed and/or sold some of the above-referenced pesticides to the refillers prior to having written repackaging agreements in place and/or failed to maintain records of the respective repackaging agreements with such refillers.

22. Based on the EPA's review of all the above-referenced information submitted by the Respondent, the EPA determined that the Respondent distributed and/or sold numerous pesticide products referenced in paragraph 19, to approximately two hundred twenty-two (222) refillers, prior to having written repackaging agreements with such refillers, as required by 40 C.F.R. §§ 165.67(b)(3) and 165.67(d) and/or failed to maintain records of the repackaging agreements with the refillers, as required by 40 C.F.R. § 165.67(h).
23. Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) and 40 C.F.R. §§ 165.67(b)(3), 165.67(d), and 165.67(h) by failing to have written repackaging agreements in place with the refillers prior to distribution/or sale of the pesticides with such refillers, and/or failing to maintain records of the repackaging agreements, and is therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

## **VIOLATION TWO**

### *Distributing and/or Selling Misbranded Pesticides*

24. On or about June 2, 2011, an authorized representative of the EPA conducted an inspection at Sunrise Cooperative (Sunrise) located in Attica, Ohio. The inspection documented that the Respondent's registered pesticide product, Warden RTA (EPA

Registration Number 100-1146-1381), was sold by Sunrise on two separate occasions with the affixed label provided by the Respondent. On each occasion that the pesticide was sold, the label bore two different EPA Producer Establishment Numbers.

25. The pesticide product, Warden RTA identified above in paragraph 24 was misbranded because the label contained two different EPA Producer Establishment Numbers, one of which was not the correct EPA Producer Establishment Number that identified the final establishment at which the pesticide was produced, as required by 40 C.F.R. § 156.10. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q), the label bore false or misleading information.
26. On or about April 18, 2013, an authorized representative of the EPA conducted an inspection at Roggen Farmers Elevator Association (Roggen) located in Roggen, Colorado. At the time of the inspection, Roggen was a refiller for Respondent. The inspection documented that the refillable containers of Touchdown CT Herbicide (EPA Reg. No. 100-1212), bore an outdated 2005 label and not the most recent label which was approved by EPA on March 15, 2011. The affixed label was missing certain required information in the "Container Disposal" section. The inspection also documented the sale of the pesticide product bearing the outdated 2005 label described above, on at least five separate occasions.
27. On or about April 20, 2012, an authorized representative of the EPA conducted an inspection at Helena Chemical Company (Helena) located in Conklin, Michigan. The inspection documented that the refillable container holding Touchdown 11 Total Herbicide (EPA Reg. No. 100-1169), bore an outdated 2007 label and not the most recent label which was approved by EPA on March 15, 2011. The affixed label was missing

certain required information in the “Storage and Disposal” section. The inspection also documented the sale of the pesticide product bearing the outdated 2007 label described above, on at least one occasion.

28. On or about May 28, 2013, an authorized representative of the EPA conducted an inspection at Omnium, a Division of Winfield Solutions, LLC (Omnium), located in Hampton, Iowa. The inspection documented that the refillable containers of Dual II G Magnum Granular Herbicide (EPA Reg. No. 100-910), bore an outdated 2002 label and not the most recent label which was approved by EPA on July 28, 2011. The affixed label was missing certain required information in the “Storage and Disposal” and “Precautionary Statements” sections. The inspection also documented the sale of the pesticide product bearing the label described above, on at least five separate occasions.
29. On or about November 5, 2013, an authorized representative of the EPA conducted an inspection at Mid-State Farmers’ Cooperative, Inc. (Mid-State), located in Rush Center, Kansas. The inspection revealed that both the shuttle bulk and a stationary bulk tanks containing Expert Herbicide, a restricted use pesticide (EPA Reg. No. 100-1161), bore an outdated 2004 label, and not the most recent label which was approved by EPA on February 7, 2012. The affixed label was missing required information in the “Precautionary Statements,” “Directions for Use” and the “Storage and Disposal Statement” sections. The inspection also documented the sale of the pesticide product bearing the label described above, on at least five separate occasions.
30. On October 7, 2014, an authorized representative of the EPA conducted an inspection at Saint Charles County Cooperative (Saint Charles) located in Saint Charles, Missouri. The inspection revealed that both the shuttle and the stationary bulk tanks containing Lexar



Herbicide, a restricted use pesticide (EPA Reg. No. 100-1201), bore an outdated 2008 label and not the most recent label which was approved by EPA on February 7, 2012. The affixed label was missing required information in the “Precautionary Statements,” “Application Procedures,” “Storage and Disposal,” “General Information,” “Agriculture Use Requirements,” “Product Information,” and the “Other Directions for Use” sections. The inspection also documented the sale of the pesticide product bearing the label described above, on at least two separate occasions.

31. The pesticide products identified in paragraph 24 through 30, were misbranded because as described above, the affixed labels were not the most recent EPA approved labels and were missing substantial information for refillable containers, as required by 40 C.F.R. §§ 156.10 and 156.140.
32. Respondent was the registrant of all the pesticide products identified above in paragraphs 24 through 30, and the Respondent provided the refillers with the labels for repackaging the pesticide products in refillable containers and/or bulk tanks, as described in the paragraphs above.
33. Under 40 C.F.R. § 165.67(c), the registrant of a pesticide may be liable for violations relating to a repackaged pesticide product, including any violations of the labeling requirements set forth at 40 C.F.R. §§ 156.10 and 156.140.
34. On at least 19 separate occasions above referenced, in paragraphs 24 through 30, the misbranded pesticide products were repackaged, and sold by the Respondent’s refillers identified above.
35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) and 40 C.F.R. § 165.67(c), by distributing or selling mislabeled pesticides on at least 19

separate occasions, and is therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

### **VIOLATION 3**

#### *Failure to Maintain Data Submitted for Pesticide Registration*

36. On May 21, 2015, the EPA notified the Respondent and A & L Eastern Laboratories (A & L Eastern) in Richmond, Virginia, about conducting an inspection to review A & L Eastern's compliance status with the Good Laboratory Practice (GLP) requirements (40 C.F.R. Part 160) and to audit the data for the study entitled "*Hampton, M. (2011) "Azoxystrobin/Propiconazole SE (A15909C) – Magnitude of the Residues in or on Wheat."*" A & L Eastern was hired by the Respondent to conduct testing for the non-GLP soil characterization study which was submitted to the EPA on January 4, 2012, in support of the registration of its pesticide product, "Abound Flowable Fungicide."
37. On May 28, 2015, the Respondent informed the EPA that it did not maintain any records or raw data associated with the study above-referenced in paragraph 36. A & L Eastern also confirmed that it did not maintain the records at its facility.
38. On July 21, 2015, the EPA conducted an inspection at Minnesota Valley Testing Laboratory (MVTL) in New Ulm, Minnesota, to review the facility's compliance status with the GLP and to audit another non-GLP soil characterization study entitled "*Hampton, M. (2011) Azoxystrobin/Propiconazole SE (A15909C) – Magnitude of the Residues in or on Oats."*" MVTL was hired by the Respondent to conduct the testing for the study which was also submitted to the EPA on January 4, 2015, in support of the registration for "Abound Flowable Fungicide."

39. Based on the inspection referenced above in paragraph 38, the EPA determined that the soil characterization data was not maintained by MVTL. During the EPA Region 4 Show Cause meeting on February 17, 2016, the Respondent also confirmed that the data for the study was not maintained at its facility.
- 40.. Pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and 40 C.F.R. § 169.2, it is unlawful for any person to fail to maintain records including study data submitted for pesticide registration, required under Section 136f of FIFRA.
41. Respondent violated FIFRA Section 12(a)(2)(B)(i), 7 U.S.C § 136j(a)(2)(B)(i) and the regulations set forth at 40 C.F.R. § 169.2(k), by failing to maintain records for the two studies for its pesticide, “Abound Flowable Fungicide,” above referenced in paragraphs 36 and 38, and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
42. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation.
43. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **SEVEN HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED EIGHT DOLLARS (\$766,508)** against the Respondent for all the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order. In addition, the Respondent will spend a minimum of **FOUR HUNDRED THIRTY SIX THOUSAND NINE HUNDRED NINETY DOLLARS (\$436,990)** to implement a Supplemental

Environmental Project (SEP) discussed below in Section VI and Appendix A, attached herein.

#### **IV. Consent Agreement**

44. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
45. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
46. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
47. Respondent agrees to complete and implement the SEP set forth in this CAFO.
48. Respondent certifies that as of the date of its execution of this CAFO, it has taken appropriate actions to address and correct the alleged FIFRA violation set forth above, and to the best of its knowledge it is in compliance with the requirements of FIFRA that formed the basis of the violations alleged herein.
49. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
50. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

**V. Final Order**

51. Respondent is assessed a civil penalty of **SEVEN HUNDRED SIXTY SIX THOUSAND FIVE HUNDRED EIGHT DOLLARS (\$766,508)**, which shall be paid within thirty (30) days from the effective date of this CAFO.

52. Respondent shall remit the penalty by electronic transfer or by either a cashier's or certified check made payable to the "Treasurer, United States of America."

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

53. Payment of the penalty shall be sent by one of the methods identified below:

Address For payment sent via electronic transfer:

Federal Reserve Bank of New York  
ABA=021030004  
SWIFT address= FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: "US Environmental Protection Agency"

Address for payment submittal using the United States Postal Service (excluding USPS overnight mail):

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

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101  
Contact Number: (314) 425-1819.

54. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960;

Phillip Beard  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Regional Hearing Clerk (E-19J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

Regional Hearing Clerk  
U.S. EPA Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop Street  
Colorado, Denver 80202-1129

55. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

56. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within ninety (90) days of the due date.

#### **VI. Supplemental Environmental Project**

57. Respondent shall complete an environmental compliance promotion SEP within four (4) years of the effective date of this CAFO, which the parties agree is intended to educate the regulated community on the FIFRA requirements pertaining to the Pesticide Container and Containment Rule set forth at 40 C.F.R. Part 165.
58. The SEP will involve a four year unified educational awareness training and campaign to educate the regulated community on FIFRA regulatory compliance requirements pertaining to the Pesticide Container and Containment Rule. The training will specifically focus on the requirements relevant to bulk pesticide containers, containment, labels, storage, transportation, delivery, clean-out, repackaging agreements and record keeping. The SEP is more specifically described in the attachment to this CAFO, Appendix A, which is incorporated herein by reference.
59. The total expenditure for the SEP shall not be less than **FOUR HUNDRED THIRTY SIX THOUSAND NINE HUNDRED NINETY DOLLARS (\$436,990)**. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report set forth herein in paragraph 61.

60. Respondent shall submit all promotional material for the SEP including articles, brochures advertisement, training material and all information posted on-line to the EPA no later than 30 days prior to the release of any of the information. Respondent shall submit this information by first class mail or overnight delivery service to the EPA contact identified below in paragraph 63.
61. The Respondent shall submit the following Reports to the EPA regarding the progress and completion of the SEP:
- a. During the first year after the SEP has commenced, Respondent shall submit quarterly Periodic Reports to the EPA, the first of which is due within one hundred and twenty (120) calendar days from the effective date of the CAFO, and each subsequent report thereafter shall be due every quarter at the end of the month. During the second and third years, Respondent shall submit bi-annual Periodic Reports to the EPA, the first of which shall be due within six months of the last quarterly report and every six months thereafter at the end of the month. The SEP Completion Report discussed below in paragraph 61(b) shall be due within thirty (30) days after the end of the fourth year. The Periodic Reports shall contain the following information:
    - (i). a detailed description of the status of the SEP including, but not limited to, the training webinars, eblasts, articles featured and weekly talks, advertisement (print and digital), and the list of training webinar attendees.
  - b. Respondent shall submit a SEP Completion Report to the EPA within thirty (30) days after the date of completion of the SEP. The SEP Completion Report shall contain the following information:



- (i). a detailed description of the SEP as implemented;
- (ii). an affidavit from an authorized company official, attesting that the SEP has been completed in accordance to the terms agreed upon or explaining in detail any failure to complete the SEP; and
- (iii). copies of appropriate cost documentation, including invoices, receipts, etc., and copies of the publication, articles, videos, advertisement and all distributed material, and all the lists of training webinar attendees and agricultural industry organizations that were contacted.

62. Respondent agrees that the failure to submit the SEP Completion Report or any Periodic Report required as set herein above shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 67 below.

63. Respondent shall submit all Reports required by this CAFO by first class mail or overnight delivery service to the following:

Phillip Beard  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960.

64. Upon request, Respondent shall send the EPA any additional documentation requested by the EPA relating to the SEP.

65. Respondent agrees that the failure to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 59 above, and Appendix A, Respondent shall be liable for stipulated penalties according to the provisions set forth below.

- a. Except as provided in subparagraph (b) immediately below, in the event that Respondent fails to timely and fully complete any part of the SEP, including failing to spend the minimum amount of **Four Hundred Thirty Six Thousand Nine Hundred Ninety Dollars (\$436,990)** for the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between **Four Hundred Thirty Six Thousand Nine Hundred Ninety Dollars (\$436,990)** and the amount actually spent.
- b. If this SEP is not fully and timely completed, but the Complainant determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documentation, that at least 90 percent of the minimum amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- c. If the SEP is fully and timely completed, and Respondent expended at least 90 percent of the minimum amount of money required to be spent for the SEP, Respondent shall not be liable for any stipulated penalty.
- d. For failure to timely submit any Periodic Report required by paragraph 61(a) above, Respondent shall pay a stipulated penalty in the amount of **One Hundred Dollars (\$100)** for each day the Report is late.
- e. For failure to timely submit a SEP Completion Report required by paragraph 61(b) above, Respondent shall pay a stipulated penalty in the amount of **One Hundred Dollars (\$100)** for each day the Report is late.

66. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the EPA. The EPA shall notify the Respondent if and when the EPA determines, in its sole discretion, that the Respondent has not timely and fully complied with any of the terms or provisions of this CAFO relating to the performance of the SEP. After receiving the EPA's notification, the Respondent may respond within thirty (30) days and in its response (i) provide additional information and supporting documentation regarding the Respondent's good faith efforts and performance of the SEP, for the EPA's consideration and (ii) propose any actions that the Respondent will take in response to EPA's notification. The EPA shall notify the Respondent within thirty (30) days after receiving and considering the Respondent's response, whether (i) the EPA has any questions or wishes to meet with the Respondent to discuss its response or (ii) the EPA accepts the Respondent's response and proposed actions, and/or (iii) the EPA does not accept the Respondent's response and proposed actions.
67. Subject to paragraph 66, the Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by the EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 53 and 54 above.
68. Respondent certifies that, as of the date this CAFO is signed,
- a. Respondent is not required to perform or develop the SEP by any federal, state or local law, regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

- b. Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
  - c. Respondent further certifies that it has not received and will not receive credit for the SEP in any other enforcement action;
  - d. All cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **Four Hundred Thirty Six Thousand Nine Hundred Ninety Dollars (\$436,990)**; and
  - e. The SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree.
69. 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 SEP.
70. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Agreement/Decree from the date of its execution of this Agreement/Decree shall include the following language:
- “This project was undertaken in connection with the settlement of an enforcement action against Respondent, taken by the U.S. Environmental Protection Agency for alleged violations of FIFRA”
71. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
72. This CAFO shall be binding upon the Respondent, its successors and assigns.
73. Each undersigned representative of the parties to this CAFO certifies that he or she is

fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.


**INTENTIONALLY LEFT BLANK**

**VII. Effective Date**

74. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent: Syngenta Crop Protection, LLC**

BR By:  (Signature) Date: 8/24/16

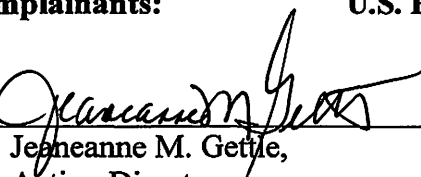
Name: VERN HAWKINS (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

**Complainants:**

**U.S. Environmental Protection Agency**

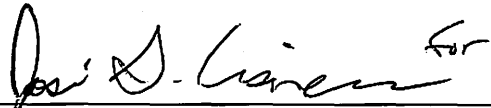
By:



Jeanne M. Gettle,  
Acting Director  
Air, Pesticides and Toxics Management Division  
U.S. EPA Region 4

Date:

8-26-16

By:  for

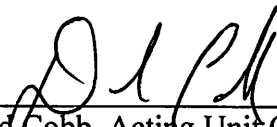
Margaret M. Guerriero  
Director  
Land and Chemicals Division  
U.S. EPA Region 5

Date: 09/13/16

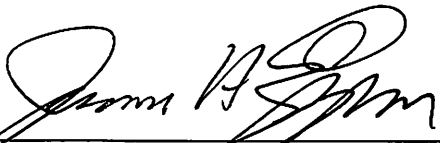


By: Karen Flournoy  
Karen Flournoy, Director,  
Water, Wetlands and Pesticides Division  
U.S. EPA Region 7

Date: 8-29-16

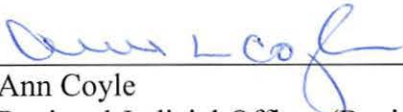
By:  \_\_\_\_\_  
David Cobb, Acting Unit Chief  
Technical Enforcement Program  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA – Region 8

Date: 9/7/16

By:  \_\_\_\_\_  
Jim Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA – Region 8

Date: 9/7/16

APPROVED AND SO ORDERED this 14<sup>th</sup> day of September 2016.

  
\_\_\_\_\_  
Ann Coyle  
Regional Judicial Officer (Region 5)

*Tanya Floyd*

Tanya Floyd  
Regional Judicial Officer (Region 4)

*September 13, 2016*

APPROVED AND SO ORDERED this 12<sup>th</sup> day of September 2016.

Karina Borromeo

Karina Borromeo  
Regional Judicial Officer (Region 7)

**APPROVED AND SO ORDERED** this 12<sup>th</sup> day of September 2016.



Elyana R. Sutin  
Regional Judicial Officer (Region 8)

**APPENDIX A**  
**Supplemental Environmental Project (SEP)**

The SEP involves promoting awareness of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements pertaining to the Pesticide Container Containment Rule within the regulatory business community. Syngenta Crop Protection, LLC (Respondent) will be solely responsible for the implementation of the SEP.

The SEP will be in the form of a four year multimedia training program on FIFRA regulatory compliance requirements with a particular focus on the regulations relevant to the Pesticide Container Containment Rule set forth at 40 CFR Part 165, as described in the CAFO. The SEP is intended to increase awareness and improve FIFRA compliance among the regulated community, which includes a broad array of businesses that handle pesticides (registrants, refillers, retailers, commercial applicators and custom blenders of pesticides).

The SEP Project will consist of the following components:

1. **Custom Website**

The SEP website will be built for the exclusive use of the SEP and includes the following components:

2. **Interactive (I/A) Training Modules (Total 5)**

Five interactive Training Modules will be based on the American Agronomic Stewardship Association (AASA) Top Ten List and other sources. Each I/A module will have relevant terminology (Glossary) defined to assure the viewer's understanding of each session. Each program will be initiated in Microsoft PowerPoint and will be transferred to Adobe Captivate for final development and presentation on the site. The first module will be delivered within one year of the effective date of the CAFO and thereafter, one will be delivered every six months over a two and a half year period. The modules will cover the following:

a. **Documentation for Pesticide Re-fill Establishments**

- Registration Re-pack / Re-fill agreements
- Written description of acceptable containers
- Product specific container cleaning instruction
- Refill container inspection (Stationary and Portable containers and containment)
- Refill (production) recordkeeping

b. **Labeling According to EPA Pesticide Container and Containment Rule**

- Importance of proper product labeling
- How to properly label bulk tanks and repack containers (including "net contents" and "EPA est. number" inclusion)
- Managing label inventories

- c. Achieving Proper Bulk Tank Containment Areas
  - Proper anchoring or elevating tanks within containment
  - Proper containment capacity
  - Stationary tank containment design requirements
- d. Design, Managing and Cleaning Bulk Tanks
  - Container integrity
  - Identification code or number
  - Vent and lockable shut-off valve
- e. Loading Pad Design Requirements and Managing Filled Portable Refillable Containers (PRCs)
  - Loading pad design requirements (capacity, compatible with pesticides and rigid)
  - Loading pad inspection
  - PRC storage, inspection, and authorization for use

### 3. Webinars

There will be five webinars included in the I/A training. Each webinar will be 20 minutes long and will cover each of the five topics in the I/A modules. Respondent will coordinate with CropLife Magazine (owned by Meister Media) to promote the webinars on the magazine's website including posting a link to view the webinar live. Meister Media will also provide Respondent with the list of webinar attendees and visitors to the site for post live event interaction (follow-up discussions, feedback and questions and answers session). (Respondent will include the list of attendees in the SEP reports discussed below).

### 4. Visuals Development

The content definition and development will include videography, photography and production for interactive and on-line training programs.

#### **Other SEP Components:**

#### 1. PSA Campaign - Print and Digital to Support Viewership of Training Modules

The PSA campaign promoting the training modules will include four print advertisements to be published in CropLife Magazine (different sizes: full page, 1/2 page, 1/4 page and 1/3 page). The content of each advertisement will change every six months to reflect new topics (bulk pesticide containers, containment, labels, storage, transportation, delivery, clean-out, repackaging agreements and record keeping). The campaign will also be featured digitally on CropLife Magazine's website with direct link to the SEP website. Each advertisement will be published prior to each training session.



2. **Brochure and Feature Sheet**

The brochure and feature sheet containing information about the website, training, and webinars will be designed for easy digital download on the SEP website.

3. **Direct Mail Distribution List - Participant and/or Contact List Creation**

The mailing list will be obtained from Meister Media for the fee specified below. In addition, Respondent has contacted American Agriculture Stewardship Alliance, Ag Retailers Association, and others in an effort to obtain additional mailing lists. Respondent will mail the brochures described above to parties identified on the mailing lists.

4. **eBlasts**

The emails directing viewers to the website to participate in training sessions and webinars will be sent to the agricultural organizations identified below and others on the aforementioned direct mail distribution list obtained from Media Meister. In addition to directing viewers to the site to participate in the I/A training sessions, the eBlasts will allow recipients to download the brochure and information sheet. A total of 12 eBlasts will be sent over a three year period (four times per year).

5. **Feature Articles & Weekly Talks - CropLife Meister Media**

CropLife Magazine has agreed to feature articles and to host five weekly discussions between Paul Schrimpf and Eric Sifilgoj (editors of CropLife Magazine) on topics including Bulk Repackaging on the magazine's website.

6. **Outreach to Agriculture Organizations**

Respondent will contact representatives from the following relevant non-profit organizations to inform them of Respondent's efforts in support of the SEP including:

- ❖ AAEA - American Agricultural Editors Association
- ❖ AAPCO - Association of American Pesticide Control Officials, and working committees
- ❖ EQI - Environmental Quality Issues; POM - Pesticide Operations and Management
- ❖ American Association of Pesticide Safety Educators
- ❖ Council of Producers & Distributors of Agrotechnology
- ❖ CLA - CropLife America
- ❖ NASDA - National Association of State Departments of Agriculture
- ❖ National Association of Chemical Distributors
- ❖ National Pesticide Information Center
- ❖ National Pest Management Association
- ❖ SFIREG - State-FIFRA Issues Research and Evaluation Group

- ❖ Tribal Pesticide Program Council
- ❖ ARA - Agricultural Retailers Association
- ❖ WPHA - Western Plant Health Association
- ❖ TPSA - The Pesticide Stewardship Alliance
- ❖ MACA - Mid-America CropLife Association
- ❖ SCPA - Southern Crop Production Association

## **SEP Reports**

The EPA will require Respondent to submit all the promotional material for the SEP including articles, advertisement, training and all information posted on-line to EPA no later than 30 days prior to the publication of any of the information, as set forth in paragraph 60 of the CAFO.

The EPA will require Respondent to submit a SEP completion report no later than 30 days after the completion of the project. The SEP completion report will include an affidavit from an authorized company official attesting that the SEP was completed in accordance to the terms agreed upon, documentation of the cost (invoices, receipts, etc.), and copies of the publications, articles, advertisement and all distributed material, in accordance with paragraph 61(b) of the CAFO. In the interim before the SEP Completion Report is due; Respondent will be required to submit Periodic Reports as specified in paragraph 61(a) of the CAFO.

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Syngenta Crop Protection, LLC, Docket Numbers: FIFRA-04-2016-3000(b); FIFRA-05-2016-0015; FIFRA-07-2016-0019 and FIFRA-08-2016-0010 to the addressees listed below:

Brian Reeve (via Certified Mail-Return Receipt Requested)  
Syngenta Crop Protection, LLC  
Senior Regulatory Counsel  
Syngenta Crop Protection, LLC  
410 Swing Road, P.O. Box 18300  
Greensboro, North Carolina 27419

Ms. Marlene Tucker (via EPA's internal mail)  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Mr. Robert Caplan (via EPA's internal mail)  
Office of Regional Counsel  
U.S. EPA Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Regional Hearing Clerk (E-19J) (via EPA's internal mail)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3507

Regional Hearing Clerk (via EPA's internal mail)  
U.S. EPA Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

Regional Hearing Clerk (via EPA's internal mail)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

9-15-16  
DATE



Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4