



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 15 2020

REPLY TO THE ATTENTION OF

ECP-17J

VIA EMAIL

Ms. Tracy Heinzman
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

theinzman@wileyrein.com

RCRA-05-2020-0004

Consent Agreement and Final Order In the Matter of Nufarm Americas, Inc.
Docket Number MM-05-2020-0001 EPCRA-05-2020-0003 FIFRA-05-2020-0014

Ms. Heinzman:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on January 15, 2020 with the Regional Hearing Clerk.

The civil penalty in the amount of \$602,791.50 is to be paid in the manner described in paragraphs 552 and 553. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

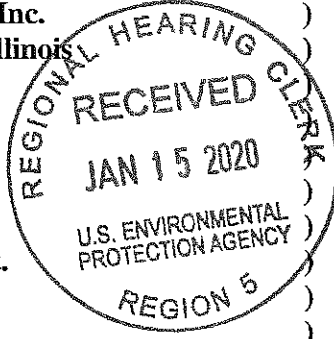
MM-05-2020-0001

EPCRA-05-2020-0003

In the Matter of:)

Nufarm Americas Inc.)
Chicago Heights, Illinois)
ILD059446153)
and)
Alsip, Illinois)
ILR000175695)

Respondent.)



) Docket No. FIFRA-05-2020-0014 RCRA-05-2020-0004

) Proceeding to Assess a Civil Penalty
) Under Section 325(c) of the Emergency
) Planning and Community Right-to-Know
) Act of 1986, 42 U.S.C. § 11045(c); Section
) 14(a) of the Federal Insecticide,
) Fungicide, and Rodenticide Act, 7 U.S.C.
) § 136l(a); and Section 3008(a) of the
) Resource Conservation and Recovery
) Act, 42 U.S.C. § 6928(a)

Consent Agreement and Final Order

PRELIMINARY STATEMENT

1. This is an administrative action to assess a civil penalty under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c); Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a); and Section 3008(a) of the Solid Waste Disposal Act, as amended, also known as the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. § 6928(a).
2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.
3. EPA provided notice of commencement of this action to the State of Illinois pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
4. Jurisdiction for this action is conferred upon EPA by Section 325 of EPCRA, 42 U.S.C. § 11045(c); Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); and Sections 2002(a)(1),

3006(b), and 3008 of RCRA, 42 U.S.C. §§ 6912(a)(1), 6926(b), and 6928.

5. Respondent is Nufarm Americas, Inc., a corporation doing business in the State of Illinois.

6. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

7. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

8. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

10. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

11. Respondent certifies that it is complying with Section 313 of EPCRA, 42 U.S.C. § 11023, FIFRA, 7 U.S.C. §§ 136 to 136y, and 3006(b) and 3008 of RCRA, 42 U.S.C. §§ 6926(b) and 6928.

STATUTORY AND REGULATORY BACKGROUND

EPCRA

12. EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372 pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048.

13. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that the requirements of Section 313 and Part 372 apply to owners and operators of facilities that have 10 or more full-time employees, a certain Standard Industrial Classification (SIC), and that manufacture, import, process, or otherwise use a toxic chemical identified at Section 313(c) and listed at 40 C.F.R. § 372.65 in an amount that exceeds the threshold for reporting, as set forth in Section 313(f) and in 40 C.F.R. §§ 372.25, 372.27 and 372.28, during the calendar year for which a release form is required under Section 313(a) of EPCRA, 42 U.S.C. §11023(a), and 40 C.F.R. § 372.30.

14. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide that in order for Section 313 and Part 372 to apply to a facility, the facility is within SICs 20 through 39 or meets other specific SIC criteria. The first two digits of the SIC identifies the major group or industry code; further digits may identify the industry group or specific industry.

15. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.30 require the owner or operator of a facility subject to the requirements of Section 313 and Part 372 to complete and submit to the Administrator of EPA and to the state in which the facility is located, no later than July 1, 1988 and each July 1 thereafter, a chemical release form published pursuant to Section 313(g) for each toxic chemical listed under Section 313(c) that was manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold established by Section 313(f).

16. EPA published the Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (Form R) at 40 C.F.R § 372.85 pursuant to Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and the Alternate Threshold and Certification, EPA Form 9350-2 (Form A) at 40 C.F.R § 372.95.

17. All persons required to report pursuant to Section 313(b) must use Form R according to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), or may elect to use Form A if the requirements at 40 C.F.R. § 372.27 are met.

18. The Administrator of EPA may prescribe regulations as may be necessary to carry out EPCRA. 42 U.S.C. § 11048.

19. 40 C.F.R. § 372.3, in part, defines the term “manufacture” to mean to produce, prepare, import, or compound a toxic chemical.

20. 40 C.F.R. § 372.3, in part, defines the term “process” to mean the preparation of a toxic chemical, after its manufacture, for distribution in commerce: 1) in the same form or physical state as, or in a different form of physical state from, that which it was received by the person so preparing such substance, or 2) as a part of an article containing the toxic chemical. Process also applies to the processing of a toxic chemical contained in a mixture or trade name product.

21. 40 C.F.R. § 372.3, in part, defines the term “toxic chemical” to mean a chemical or chemical category listed in 40 C.F.R. § 372.65.

22. Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), authorizes the Administrator of EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA, 42 U.S.C. § 11023. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that may be assessed pursuant to each agency’s statutes. EPA may assess a civil penalty of up to \$37,500 per day for each violation of Section

313 that occurred after January 12, 2009, pursuant to Section 325(c)(1) and (3) of EPCRA, 42 U.S.C. § 11045(c)(1) and (3), and 40 C.F.R. Part 19.

FIFRA

23. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), states it is unlawful for any person in any State to distribute or sell to any person any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

24. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

25. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), states that the term “adulterated” applies to any pesticide if 1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold; 2) any substance has been substituted in whole or in part for the pesticide; or 3) any valuable constituent of the pesticide has been wholly or in part abstracted.

26. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.

27. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that 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 complied 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.

28. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied 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.

29. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. The product is referred to as a "distributor product."

30. 40 C.F.R. § 152.132 and its subparagraphs state that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met:

(a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product.

(b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product.

(c) The distributor product is not repackaged (remains in the producer's unopened containers).

(d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the

registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary.

(e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

31. 40 C.F.R. § 156.10(a)(1)(vii) requires that every pesticide product bear a label containing hazard and precautionary statements as prescribed in 40 C.F.R. Part 156, Subparts D and E.

32. 40 C.F.R. § 156.10(d)(2) requires that every pesticide product bear a label containing the net weight or measure of content, in fluid ounces, pints, quarts and gallons if the pesticide is a liquid.

33. 40 C.F.R. § 156.10(i)(2) and its subparagraphs specify the required contents of directions for use on a pesticide product's label. *See also* 40 C.F.R. § 156.10(a)(1)(viii).

34. 40 C.F.R. § 156.10(i)(2)(ix) requires directions for use to include specific directions concerning the storage, residue removal and disposal of the pesticide and its container, in accordance with 40 C.F.R. Part 156, Subpart H.

35. 40 C.F.R. § 156.68(a) requires that a pesticide product must bear a first aid statement if the product has systemic effects in Category I, II, or III, or skin or eye irritation effects in Category I or II.

36. 40 C.F.R. § 156.70(a) states that required precautionary statements must appear together on the label or labeling under the general heading "Precautionary Statements" and under appropriate subheadings similar to "Humans and Domestic Animals," and "Environmental Hazards." *See also* 40 C.F.R. Part 156, Subpart E.

37. 40 C.F.R. § 156.70(b) states that when data or other information show that an acute hazard may exist to humans or domestic animals, the label must bear precautionary statements describing the particular hazard, the route(s) of exposure and the precautions to be taken to avoid accident, injury or toxic effect or to mitigate the effect.

38. 40 C.F.R. § 156.80 requires each pesticide product to bear hazard and precautionary statements for environmental hazards, as prescribed in 40 C.F.R. Part 156, Subpart E.

39. 40 C.F.R. § 156.140 and its subparagraphs require that the label or container of a pesticide product state whether that product's container is refillable or nonrefillable.

40. 40 C.F.R. § 158.320 states that an applicant for a pesticide registration must provide information on the composition of the product.

41. To provide information about product composition, applicants for pesticide registration use an EPA form called a Confidential Statement of Formulation (CSF).

42. 40 C.F.R. § 158.320(a) requires that for each active ingredient in a pesticide product, the applicant must provide among other things that ingredient's common name; either that ingredient's 1) chemical name, or 2) Chemical Abstracts Society (CAS) nomenclature and CAS Registry Number, depending on whether that ingredient is itself an EPA-registered product; the nominal concentration of that ingredient in the product; and the upper and lower certified limits of that ingredient's concentration in the product. See 40 C.F.R. § 158.350.

43. 40 C.F.R. § 158.320(b) requires that for each inert ingredient in a pesticide product, the applicant must provide among other things that ingredient's common name if known; that ingredient's CAS nomenclature and CAS Registry Number; the nominal concentration of that ingredient in the product; the upper and lower certified limits of that

ingredient's concentration in the product (see 40 C.F.R. § 158.350); and that ingredient's purpose in the formulation.

44. A pesticide product may have multiple CSFs: one "basic" CSF and the rest "alternate" CSFs.

45. Producing a pesticide with a composition that does not match any EPA-accepted CSF for that pesticide violates Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C).

46. 40 C.F.R. § 158.335 states that an applicant for a pesticide registration must provide information on the formulation process of the product, as required by:

40 C.F.R. § 158.330(b)(2), pertaining to characterization of the process;

40 C.F.R. § 158.330(b)(4), pertaining to ingredients used in the process;

40 C.F.R. § 158.330(b)(5), pertaining to process equipment;

40 C.F.R. § 158.330(b)(6), pertaining to the conditions of the process; and

40 C.F.R. § 158.330(b)(8), pertaining to quality control measures.

47. 40 C.F.R. § 158.330(b)(4) requires an applicant for registration to submit to EPA the identity of the materials used to produce the product, their relative amounts, and the order in which they are added.

48. The term "active ingredient," as defined in Section 2(a) of FIFRA, 7 U.S.C. § 136(a), means in the case of a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer, an ingredient which will prevent, destroy, repel or mitigate any pest.

49. The term "Administrator," as defined in Section 2(b) of FIFRA, 7 U.S.C. § 136(b), means the Administrator of the Environmental Protection Agency.

50. The term "distribute or sell," as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), means "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.”

51. The term “inert ingredient,” as defined in Section 2(m) of FIFRA, 7 U.S.C. § 136(m), means a pesticide ingredient which is not active.

52. A product becomes “released for shipment” when the producer has packaged and labeled it in the manner in which it will be distributed or sold or has stored it in an area where finished products are ordinarily held for shipment. 40 C.F.R. § 152.3.

53. The term “person,” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

54. A “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

55. A “pest,” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

56. The term “producer,” as defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.

57. The term “registrant,” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), means a person who has registered any pesticide pursuant to the provisions of FIFRA.

58. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA, of up to \$7,500 for each offense that occurred after January 12, 2009, through November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R. Part 19.

RCRA

59. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and owners and operators of facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3002, 3003, and 3004 of RCRA, 42 U.S.C. §§ 6922, 6923, and 6924.

60. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

61. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of EPA granted the State of Illinois final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective January 31, 1986. 51 Fed. Reg. 3,778 (January 31, 1986). The State of Illinois regulations pertaining to management of hazardous waste are set forth at 35 Ill. Admin. Code (IAC) §§ 700-739 (2014).

62. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both.

63. The Administrator of U.S. EPA may assess a civil penalty of up to \$25,000 per day for each violation of Subtitle C of RCRA according to Section 3008 of RCRA, 42 U.S.C. § 6928. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note (1996), required federal agencies to adjust its penalties for inflation on a periodic basis. EPA may assess a civil penalty of up to \$32,500 per day for each violation of Subtitle C of RCRA that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day for each violation of Subtitle C of RCRA that occurred after January 12, 2009, pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928; and 40 C.F.R. Part 19.

GENERAL ALLEGATIONS

64. At all times relevant to this CAFO, Respondent was a corporation doing business in the State of Illinois.

65. At all times relevant to this CAFO, Respondent was and is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7); Section 2(s) of FIFRA, 7 U.S.C. § 136(s); 35 IAC § 720.110; 40 C.F.R. § 260.10; and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

66. At all times relevant to this CAFO, Respondent was a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

67. At all times relevant to this CAFO, Respondent was a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

68. At all times relevant to this CAFO, Respondent was and is an “owner” or “operator,” as those terms are defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10, of a facility located at 220 East 17th Street, Chicago Heights, Illinois (Chicago Heights Facility) during the calendar year 2012 to the present.

69. At all times relevant to this CAFO, Respondent was and is an “owner” or “operator,” as those terms are defined under 35 Ill. Adm. Code 720.110 and 40 C.F.R. §260.10, of a facility located at 11901 South Austin Avenue, Alsip, Illinois (Alsip Facility) during calendar year 2012 to the present (the Chicago Heights Facility and the Alsip Facility are hereinafter referred to collectively as the “Facilities”).

70. At all times relevant to this CAFO, Respondent’s Facilities consisted of land, buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned by the same person, entity, or corporation and used for treating, storing, or disposing of hazardous waste.

71. At all times relevant to this CAFO, Respondent’s Facilities are each a “facility,” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10; Respondent’s Chicago Heights Facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.

72. At all times relevant to the CAFO, Jacobson Warehouse Co. (Jacobson) owned or operated a place of business at 21399 South Torrence Avenue, Sauk Village, Illinois 60411 (the Jacobson warehouse).

73. At all times relevant to the CAFO, Respondent contracted with Jacobson for Jacobson to, among other things, store and hold for shipment pesticide products on Respondent’s behalf at the Jacobson warehouse.

74. Between February 25, 2014 and March 7, 2014, EPA conducted a multimedia Compliance Evaluation Inspection of the Facilities (the inspection) and the Jacobson warehouse, including inspectors authorized and qualified to conduct inspections under EPCRA, FIFRA, and RCRA.

75. On or about March 28, 2018, EPA issued an Opportunity to Confer letter to Respondent alleging certain violations of EPCRA, FIFRA, and RCRA discovered during the inspection.

EPCRA

76. At all times relevant to this CAFO, Respondent's Chicago Heights Facility had 10 or more full-time employees as that term is defined in 40 C.F.R. § 372.3. During the calendar year 2012, Respondent employed at its Chicago Heights Facility the equivalent of at least 10 employees whose combined total paid hours were equal to or more than 20,000 hours per calendar year.

77. At all times relevant to this CAFO, Respondent's Chicago Heights Facility was covered by SIC Code 2879, and the corresponding North American Industry Classification Code 325320. The major group or industry code for SIC 2879 is 28, within the range of 20 through 39 provided by Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22.

78. During the calendar year 2012, Respondent "manufactured," "processed," or otherwise used," as defined by 40 C.F.R. § 372.3, toxic chemicals identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65, in quantities exceeding the thresholds for reporting set forth at Section 313(f) and at 40 C.F.R. § 372.25.

FIFRA

79. At all times relevant to this CAFO, in at least some cases after producing a batch (lot) of pesticide at the Facilities Respondent rinsed out the production equipment and thereby generated rinsate water (rinsate).

80. At all times relevant to this CAFO, rinsate generally consisted of a mixture of water, and pesticide ingredients.

81. At all times relevant to this CAFO, in at least some cases Respondent collected and stored the rinsate.

82. At all times relevant to this CAFO, in at least some cases Respondent used stored rinsate as an ingredient in pesticide production.

83. During the inspection, EPA inspectors collected a copy of Respondent's written procedures for collecting, storing and using rinsate at the Chicago Heights Facility.

84. During the inspection, EPA inspectors collected a copy of Respondent's written procedures for collecting, storing and using rinsate at the Alsip Facility.

RCRA (CHICAGO HEIGHTS FACILITY)

85. At all times relevant to this CAFO, Respondent, at its Chicago Heights Facility, used amines; 2,4-D Isoocotyl ester; diquat dibromide; fluroxypr; dichlorprop-P 2-EHET; bromoxynil-octanoate; and glyphosate to manufacture pesticides.

86. The pesticides manufacturing processes generated rinsate containing 2,4-D, which Respondent collected in totes and stored in product storage areas of the facility; waste materials containing 2,4-D, which Respondent collected in 55-gallon drums and stored in the hazardous waste storage area of the facility; and sludge which contained 2,4-D, which Respondent collected in totes and 55-gallon drums and stored in the hazardous waste storage area of the facility.

87. At all times relevant to this CAFO, Respondent held 2,4-D-containing wastes for temporary periods in totes and 55-gallon drums before the material was treated within the facility or transported from the facility for treatment, storage, disposal, burning or incineration elsewhere.

88. Respondent characterized its wastes containing 2,4-D as hazardous waste with the toxicity characteristic number D016; or the commercial chemical product, manufacturing chemical intermediate, or off-specification commercial product number U240.

89. Respondent stored, transported, disposed of, or otherwise handled its 2,4-D containing wastes in “containers” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

90. At all times relevant to this CAFO, Respondent’s 2,4-D waste was a “solid waste” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 261.2.

91. At all times relevant to this CAFO, Respondent’s 2,4-D waste was a “hazardous waste” as that term is defined under 35 IAC § 720.03 and 40 C.F.R. § 261.3.

92. At all times relevant to this CAFO, Respondent’s holding of 2,4-D waste in totes and 55-gallon drums constituted hazardous waste “storage,” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

RCRA (ALSIP FACILITY)

93. At all times relevant to this CAFO, Respondent, at its Alsip Facility, used esters and acids to manufacture non-herbicide products, including fungicides, insecticides and plant growth formulations.

94. The non-herbicide manufacturing processes generated rinsate containing carbamic acid; [1,2-phenylenebis (iminocarbonothioyl)] bis-dimethyl ester, which Respondent collected in

totes and containers and stored in the hazardous waste storage area of the facility; and spent halogenated solvents, which Respondent collected in totes and containers and stored in the hazardous waste storage area of the facility.

95. At all times relevant to this CAFO, Respondent held carbamic acid containing wastes for temporary periods in totes and 55-gallon drums before the material was transported from the facility for treatment, storage, disposal, burning or incineration elsewhere.

96. At all times relevant to this CAFO, Respondent held spent halogenated solvent containing wastes for temporary periods in totes and 55-gallon drums before the material was transported from the facility for treatment, storage, disposal, burning or incineration elsewhere.

97. Respondent characterized its wastes containing carbamic acid as hazardous waste with the commercial chemical product, manufacturing chemical intermediate, or off-specification commercial product number U409.

98. Respondent characterized its spent halogenated solvent-containing wastes as hazardous waste with the spent halogenated solvent waste number F003.

99. Respondent stored, transported, disposed of, or otherwise handled its carbamic-containing wastes and its spent halogenated solvents in “containers” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

100. At all times relevant to this CAFO, Respondent’s carbamic acid and spent halogenated solvent waste were each a “solid waste” as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 261.2.

101. At all times relevant to this CAFO, Respondent’s carbamic acid and spent halogenated solvents waste were each a “hazardous waste” as that term is defined under 35 IAC § 720.03 and 40 C.F.R. § 261.3.

102. At all times relevant to this CAFO, Respondent's holding of carbamic and spent halogenated solvent waste in totes and 55-gallon drums constituted hazardous waste "storage," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

RCRA (BOTH FACILITIES)

103. Complainant incorporates paragraphs 85 through 102 of this CAFO as if set forth in this paragraph.

104. Respondent is a "generator," as that term is defined under 35 IAC § 720.110 and 40 C.F.R. § 260.10.

105. Respondent generated and managed hazardous waste at its Facilities after November 19, 1980. 40 C.F.R Part 264.

106. At all times relevant to this CAFO, the State of Illinois had not issued a permit to Respondent to treat, store, or dispose of hazardous waste at its Facilities.

107. At all times relevant to this CAFO, Respondent did not have interim status for the treatment, storage, or disposal of hazardous waste at its Facilities.

108. On or about March 4, 2003, Respondent submitted a Hazardous Waste Notification, dated February 28, 2003 to EPA for the Chicago Heights Facility.

109. In its Hazardous Waste Notification dated February 28, 2003, Respondent identified the Chicago Heights Facility as a large quantity generator.

110. On or about January 22, 2013, Respondent submitted a Hazardous Waste Notification, dated January 10, 2013, to EPA for Alsip Facility.

111. In its Hazardous Waste Notification dated January 10, 2013, Respondent identified the Alsip Facility as a large quantity generator.

112. At all times relevant to this CAFO, Respondent generated during each calendar month more than 1000 kilograms (kg) of hazardous waste at each of the Facilities.

ALLEGED VIOLATIONS OF EPCRA

COUNT 1

(Failure to File Form R: lactofen)

113. Paragraphs 1 through 112 are incorporated by reference.
114. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is manufactured or processed during the 2012 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. § 372.25(a).
115. During the 2012 calendar year, Respondent's Chicago Heights Facility manufactured or processed approximately 45,203 pounds of lactofen, CAS No. 77501-63-4.
116. Lactofen, CAS No. 77501-63-4, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.
117. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30 required Respondent to submit to the Administrator of EPA and to Illinois a Form R or Form A for lactofen for the 2012 calendar year on or before July 1, 2013.
118. Respondent failed to submit to the Administrator of EPA and to Illinois a Form R or Form A for lactofen for the 2012 calendar year on or before July 1, 2013.
119. Respondent has not yet submitted to the Administrator of EPA a Form R or Form A for lactofen for the 2012 calendar year.
120. Respondent's failure to timely submit to the Administrator of EPA a Form R or Form A for lactofen for the 2012 calendar year violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

COUNT 2

(Failure to File Accurate Form R: dimethylamine dicamba)

121. Paragraphs 1 through 120 are incorporated by reference.
122. The reporting threshold for a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65 that is manufactured or processed during the 2012 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. §372.25(a).
123. During the 2012 calendar year, Respondent's Chicago Heights Facility manufactured and/or processed approximately 2,151,664 pounds of dimethylamine dicamba, CAS No. 2300-66-5.
124. Dimethylamine dicamba, CAS No. 2300-66-5, is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. § 372.65.
125. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §372.30 required Respondent to submit to the Administrator of EPA and to Illinois a Form R for dimethylamine dicamba for the 2012 calendar year on or before July 1, 2013.
126. On July 2, 2013, Respondent submitted a Form R to the Administrator of EPA and to Illinois for calendar year 2012.
127. Respondent's July 2, 2013 Form R indicated that Respondent did not transfer dimethylamine dicamba to off-site locations for purposes of disposal, treatment, energy recovery, or recycling from Respondent's Chicago Heights Facility during calendar year 2012.
128. According to the EPA EPCRA inspector's calculations, Respondent's facility transferred approximately 5,148 pounds of dimethylamine dicamba to off-site locations for purposes of disposal, treatment, energy recovery, or recycling during calendar year 2012.

129. Respondent's failure to accurately report its total releases of dimethylamine dicamba on its Form R for calendar year 2012 violated Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.85(b).

ALLEGED VIOLATIONS OF FIFRA

Count 3

Unlawful Distribution or Sale of Misformulated Pesticide
Adonis 2F PPC Insecticide, EPA Reg. No. 87276-21

130. Paragraphs 1-129 above, are incorporated by reference.
131. On or about November 13, 2006, EPA approved the registration for the Etigra, LLC (Etigra) pesticide product "Imida E-Pro 2 F -- Pre/Post Construction Insecticide" (Adonis 2 F).
132. On or about November 13, 2006, EPA assigned EPA Registration Number (EPA Reg. No.) 81959-28 to Adonis 2 F.
133. On or about July 24, 2006, Etigra submitted to EPA a basic Confidential Statement of Formula (CSF) for Adonis 2 F.
134. On or about April 30, 2008, Etigra submitted to EPA an alternate CSF for Adonis 2 F.
135. On or about June 25, 2009, the registration of Adonis 2 F PPC was transferred from Etigra to Respondent under brand name "Adonis 2 F PPC Insecticide."
136. On or about June 25, 2009, EPA assigned EPA Reg. No. 228-699 to Adonis 2 F.
137. On or about March 21, 2012, the registration of Adonis 2 F was transferred from Respondent to Envincio, LLC under brand name "Adonis 2F PPC Insecticide."
138. On or about March 21, 2012, EPA assigned EPA Reg. No. 87276-21 to Adonis 2 F.

139. At all times relevant to this CAFO, Adonis 2 F was a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

140. At all times relevant to this CAFO between on or about June 25, 2009 and on or about March 20, 2012, Respondent was the “registrant” of Adonis 2 F, as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

141. On or about February 19, 2014, at the Alsip Facility, Respondent repackaged and/or relabeled at least 25 totes of the pesticide product “Nuprid 2SC,” EPA Reg. No. 228-572 (Nuprid 2SC), as at least 25 totes of Adonis 2 F, lot numbers including 2082712GIF, 2112814GIF, 2112815GIF, 2112816GIF, 2112917GIF and 2112918GIF.

142. At all times relevant to this CAFO, the basic and alternate CSFs of Adonis 2 F did not provide for or allow Adonis 2 F to be repackaged from Nuprid 2SC.

143. At all times relevant to this CAFO, Adonis 2 F and Nuprid 2SC had different EPA-accepted formulations including but not limited to different EPA-accepted ingredients.

144. On or about March 3, 2014, Respondent held Adonis 2 F, lot numbers 2082712GIF, 2112814GIF, 2112815GIF, 2112816GIF, 2112917GIF and 2112918GIF, for distribution or sale at the Alsip Facility.

145. On or about March 3, 2014, Respondent “distributed or sold” Adonis 2 F at the Alsip Facility, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

146. Respondent’s distribution or sale of Adonis 2 F set forth in paragraphs 144-145, above, constituted an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), because the pesticide’s composition at the time of its distribution or sale differed from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

147. Respondent's violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 4

Unlawful Distribution or Sale of Misformulated Pesticide
Armortech IP 233 Fungicide, EPA Reg. No. 228-684

148. Paragraphs 1-147, above, are incorporated by reference.

149. On or about April 13, 2006, EPA approved the registration for the Etigra pesticide product "ET-005" (Armortech IP 233).

150. On or about April 13, 2006, EPA assigned EPA Reg. No. 81959-4 to Armortech IP 233.

151. On or about September 12, 2006 Etigra submitted to EPA an alternate CSF for Armortech IP 233.

152. On or about September 27, 2007 Etigra submitted to EPA an alternate CSF for Armortech IP 233.

153. On or about September 23, 2008 Etigra submitted to EPA a basic and alternate CSF for Armortech IP 233.

154. On or about June 25, 2009, the registration of Armortech IP 233 was transferred from Etigra to Respondent under brand name "Nufarm Iprodione SPC Fungicide".

155. On or about June 25, 2009, EPA assigned EPA Reg. No. 228-684 to Armortech IP 223.

156. "Armortech IP 223 Fungicide" is an alternate brand name of "Nufarm Iprodione SPC Fungicide."

157. At all times relevant to this CAFO, Armortech IP 233 was a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

158. At all times relevant to this CAFO beginning on or about June 25, 2009, Respondent was the “registrant” of Armortech IP 223 as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

159. On or about November 18, 2013, at the Alsip Facility, Respondent repackaged and/or relabeled 396 cases of the pesticide product “Raven,” EPA Reg. No. 81943-13 (Raven), as 396 cases of Armortech IP 233, lot number 2031401GIP.

160. At all times relevant to this CAFO, the basic and alternate CSFs of Armortech IP 233 did not provide for or allow Armortech IP 233 to be repackaged from Raven.

161. At all times relevant to this CAFO, Armortech IP 233 and Raven had different EPA-accepted formulations including but not limited to different EPA-accepted ingredients.

162. On or about March 3, 2014, Respondent held Armortech IP 233, lot number 2031401GIP, for distribution or sale at the Alsip Facility.

163. On or about March 3, 2014, Respondent “distributed or sold” Armortech IP 233 at the Alsip Facility, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

164. Respondent’s distribution or sale of Armortech IP 233 set forth in paragraphs 162-163, above, constituted an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), because the pesticide’s composition at the time of its distribution or sale differed from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

165. Respondent's violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 5-6

Unlawful Distribution or Sale of Misbranded Pesticide
Dissolve Optical MC, EPA Reg. No. 35935-91

166. Paragraphs 1-165, above, are incorporated by reference.

167. On or about August 3, 2011, EPA approved the registration for the pesticide product "Dissolve Optical MC."

168. On or about August 3, 2011, EPA assigned EPA Reg. No. 35935-91 to Dissolve Optical MC.

169. At all times relevant to this CAFO, Dissolve Optical MC was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

170. At all times relevant to this CAFO, Respondent was the "registrant" of Dissolve Optical MC as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

171. On or about August 3, 2011, EPA accepted a label, with comments, as part of the registration of Dissolve Optical MC under FIFRA (EPA-accepted label for Dissolve Optical MC).

172. On or about February 12, 2014, Respondent distributed or sold Dissolve Optical MC.

173. On or about March 3, 2014, Respondent held Dissolve Optical MC for distribution or sale at the Jacobson warehouse.

174. On two separate occasions on or about February 12, 2014 and March 3, 2014, Respondent “distributed or sold” Dissolve Optical MC (subject distributions or sales of Dissolve Optical MC), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

175. The EPA-accepted label for Dissolve Optical MC states in part, under the heading “DIRECTIONS FOR USE”:

Only for formulation as an herbicide . . .

176. The label affixed to the containers of Dissolve Optical MC in the subject distributions or sales of Dissolve Optical MC stated in part, under the heading “DIRECTIONS FOR USE”:

Only for formulation into an herbicide or plant growth regulator . . .

177. The label affixed to the containers of Dissolve Optical MC in the subject distributions or sales of Dissolve Optical MC contained storage and disposal instructions for both refillable and nonrefillable containers, stating in part:

CONTAINER HANDLING: (NOTE: This product is available in multiple containers. Refer to the Net Contents section of this product’s labeling for the applicable “Nonrefillable” or “Refillable” designation. Follow the container disposal [handling] instructions below that apply to your container type/size.)

Nonrefillable Containers 5 Gallons or Less: . . .

Nonrefillable containers larger than 5 gallons: . . .

Refillable containers larger than 5 gallons: . . .

OR

Refillable container: . . .

178. The label affixed to the containers of Dissolve Optical MC in the subject distributions or sales of Dissolve Optical MC did not state the net weight or measure of contents in any unit of liquid measure, e.g., fluid ounces, pints, quarts or gallons.

179. The label affixed to the containers of Dissolve Optical MC in the subject distributions or sales of Dissolve Optical MC did not state whether those containers were refillable or nonrefillable.

180. Respondent's failure described in paragraphs 167-179, above, violated requirements set forth at 40 C.F.R. § 156.140 and its subparagraphs.

181. At all times relevant to this CAFO, the Dissolve Optical MC in the subject distributions or sales of Dissolve Optical MC was "misbranded" as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

182. Each of the subject distributions or sales of Dissolve Optical MC constituted a separate unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

183. Each of Respondent's two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 7-8

Unlawful Distribution or Sale of Adulterated Pesticide
Dyna-Shield Foothold, EPA Reg. No. 34704-1049

184. Paragraphs 1-183, above, are incorporated by reference.

185. On or about January 27, 2010, EPA approved the registration for the Loveland Products, Inc. (Loveland) pesticide product "Dyna-Shield Foothold."

186. On or about January 27, 2010, EPA assigned EPA Reg. No. 34704-1049 to Dyna-Shield Foothold.

187. At all times relevant to this CAFO, Dyna-Shield Foothold was a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
188. At all times relevant to this CAFO, Loveland was the “registrant” of Dyna-Shield Foothold as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).
189. On or about October 20, 2009, Loveland submitted to EPA a basic CSF for Dyna-Shield Foothold.
190. On or about November 26, 2012, Loveland submitted to EPA alternate CSFs for Dyna-Shield Foothold.
191. On or about January 21-31, 2014, at the Alsip Facility, Respondent produced and packaged Dyna-Shield Foothold, lot number 14017AL001.
192. At all times relevant to this CAFO, the EPA-accepted formulation of Dyna-Shield Foothold, as reflected on EPA-accepted labeling for Dyna-Shield Foothold, was that Dyna-Shield Foothold consists of consists of 0.668% Metalaxyl.
193. On or about February 27, 2014, during the 2014 EPA inspection, EPA inspectors collected a sample of Dyna-Shield Foothold, lot number 14014AL001 (Dyna-Shield Foothold inspection sample), at the Alsip Facility.
194. Based on testing conducted on the sample at a U.S. EPA laboratory, the average concentration of Metalaxyl in the Dyna-Shield Foothold inspection sample was determined to be 0.514%.
195. On or about January 24, 2014, Respondent distributed or sold Dyna-Shield Foothold, lot number 14017AL001.
196. On or about March 3, 2014, Respondent held Dyna-Shield Foothold, lot number 14017AL001, for distribution or sale at the Alsip Facility.

197. On two separate occasions on or about January 24, 2014 and March 3, 2014, Respondent “distributed or sold” Dyna-Shield Foothold, lot number 14017AL001 (subject distributions or sales of Dyna-Shield Foothold), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

198. At all times relevant to this CAFO, the Dyna-Shield Foothold in the subject distributions or sales of Dyna-Shield Foothold had strength or purity that fell below the professed standard of quality as expressed on its labeling under which it is sold.

199. At all times relevant to this CAFO, the Dyna-Shield Foothold in the subject distributions or sales of Dyna-Shield Foothold was adulterated, as that term is defined at Section 2(c)(1) of FIFRA, 7 U.S.C. § 136(c)(1).

200. Each of the subject distributions or sales of Dyna-Shield Foothold constituted a separate unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was adulterated. Each of Respondent’s two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 9-10
Unlawful Distribution or Sale of Misformulated Pesticide
Dyna-Shield Foothold, EPA Reg. No. 34704-1049

201. Paragraphs 1-200, above, are incorporated by reference.

202. At all times relevant to this CAFO, the use of rinsate in the formulation of Dyna-Shield Foothold had not been submitted to EPA as part of the formulation process submitted as part of the product’s registration under any of 40 C.F.R. §§ 152.43, 158.330 or 158.335.

203. In producing Dyna-Shield Foothold, lot number 14017AL001, Respondent substituted rinsate wholly or in part for the pesticide.

204. At all times relevant to this CAFO, rinsate did not appear on any EPA-accepted CSF for Dyna-Shield Foothold.

205. Each of the subject distributions or sales of Dyna-Shield Foothold constituted a separate unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the composition of the pesticide differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under FIFRA.

206. Each of Respondent's two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 11-12

Unlawful Distribution or Sale of Adulterated Pesticide
Dyna-Shield Foothold Extra, EPA Reg. No. 34704-1046

207. Paragraphs 1-206, above, are incorporated by reference.

208. On or about January 12, 2010, EPA approved the registration for the Loveland Products, Inc. (Loveland) pesticide product "Dyna-Shield Foothold Extra."

209. On or about January 12, 2010, EPA assigned EPA Reg. No. 34704-1046 to Dyna-Shield Foothold Extra.

210. At all times relevant to this CAFO, Dyna-Shield Foothold Extra was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

211. At all times relevant to this CAFO, Loveland was the “registrant” of Dyna-Shield Foothold Extra as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

212. On or about May 10, 2013, Loveland submitted to EPA a basic and alternate CSFs for Dyna-Shield Foothold Extra.

213. On or about April 19, 2013, at the Alsip Facility, Respondent produced and packaged Dyna-Shield Foothold Extra, lot number 13077AL001.

214. At all times relevant to this CAFO, the EPA-accepted formulation of Dyna-Shield Foothold Extra, as reflected on EPA-accepted labeling for Dyna-Shield Foothold Extra, was that Dyna-Shield Foothold Extra consists of 11.374% imidacloprid.

215. On or about February 27, 2014, during the 2014 EPA inspection, EPA inspectors collected a sample of Dyna-Shield Foothold Extra, lot number 13077AL001 (Dyna-Shield Foothold Extra inspection sample), at the Alsip Facility.

216. Based on testing conducted on the sample at a U.S. EPA laboratory, the average concentration of imidacloprid in the Dyna-Shield Foothold Extra inspection sample was determined to be 8.873%.

217. On or about July 30, 2013, Respondent distributed or sold Dyna-Shield Foothold Extra, lot number 13077AL001.

218. On or about March 3, 2014, Respondent held Dyna-Shield Foothold Extra, lot number 13077AL001, for distribution or sale at the Alsip Facility.

219. On two separate occasions on or about July 30, 2013 and March 3, 2014, Respondent “distributed or sold” Dyna-Shield Foothold Extra (subject distributions or sales of Dyna-Shield Foothold Extra), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

220. At all times relevant to this CAFO, the Dyna-Shield Foothold Extra in the subject distributions or sales of Dyna-Shield Foothold Extra had strength or purity that fell below the professed standard of quality as expressed on its labeling under which it is sold.

221. At all times relevant to this CAFO, the Dyna-Shield Foothold Extra in the subject distributions or sales of Dyna-Shield Foothold Extra was adulterated, as that term is defined at Section 2(c)(1) of FIFRA, 7 U.S.C. § 136(c)(1).

222. Each of subject distributions or sales of Dyna-Shield Foothold Extra constituted a separate unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was adulterated.

223. Each of Respondent's two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 13-14

Unlawful Distribution or Sale of Misbranded Pesticide Dyna-Shield Foothold Extra, EPA Reg. No. 34704-1046

224. Paragraphs 1-223, above, are incorporated by reference.

225. The label affixed to the containers of Dyna-Shield Foothold Extra in the subject distributions or sales of Dyna-Shield Foothold Extra contained storage and disposal instructions for both refillable and nonrefillable containers.

226. The label affixed to the containers of Dyna-Shield Foothold Extra in the subject distributions or sales of Dyna-Shield Foothold Extra did not state whether those containers were refillable or nonrefillable.

227. Respondent's failure described in paragraphs 225 and 226, above, violated requirements set forth at 40 C.F.R. § 156.140 and its subparagraphs.

228. At all times relevant to this CAFO, the Dyna-Shield Foothold Extra in the subject distributions or sales of Dyna-Shield Foothold Extra was "misbranded" as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

229. Each of the subject distributions or sales of Dyna-Shield Foothold Extra constituted a separate unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

230. Each of Respondent's two violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 15-18
Unlawful Distribution or Sale of Misbranded Pesticide
Lazer MC, EPA Reg. No. 35935-87

231. Paragraphs 1-230, above, are incorporated by reference.

232. On or about August 1, 2011, EPA approved the registration for the pesticide product "Lazer MC."

233. On or about August 1, 2011, EPA assigned EPA Reg. No. 35935-87 to Lazer MC.

234. At all times relevant to this CAFO, Lazer MC was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

235. At all times relevant to this CAFO, Respondent was the "registrant" of Lazer MC as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

236. On or about January 13, 2014, Respondent distributed or sold Lazer MC.

237. On or about January 13, 2014, Respondent distributed or sold Lazer MC.

238. On or about February 27, 2014, Respondent distributed or sold Lazer MC.

239. On or about March 3, 2014, Respondent held Lazer MC for distribution or sale at the Jacobson Warehouse.

240. On four separate occasions on or about January 13, 2014, February 27, 2014, and March 3, 2014, Respondent “distributed or sold” Lazer MC (subject distributions or sales of Lazer MC), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

241. The label affixed to the containers of Lazer MC in the subject distributions or sales of Lazer MC contained storage and disposal instructions for both refillable and nonrefillable containers, stating in part:

CONTAINER HANDLING: This product is available in multiple containers. Refer to the Net Contents section of this products [sic] labeling for the applicable “Nonrefillable” or “Refillable” designation. Follow the container disposal [handling] instructions below that apply to your container type/size.

Nonrefillable Containers 5 Gallons or Less: . . .

Nonrefillable containers larger than 5 gallons: . . .

Refillable containers larger than 5 gallons: . . .

OR

Refillable container:

242. The label affixed to the containers of Lazer MC in the subject distributions or sales of Lazer MC did not state the net weight or measure of contents in any unit of liquid measure, e.g., fluid ounces, pints, quarts or gallons.

243. The label affixed to the containers of Lazer MC in the subject distributions or sales of Lazer MC did not state whether those containers were refillable or nonrefillable.

244. Respondent's failure set forth at paragraphs 242 and 243 above, violated requirements set forth at 40 C.F.R. § 156.140 and its subparagraphs.

245. At all times relevant to this CAFO, the Lazer MC in the subject distributions or sales of Lazer MC was "misbranded" as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F).

246. Each of the subject distributions or sales of Lazer MC constituted a separate unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

247. Each of Respondent's four violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 19
Unlawful Distribution or Sale of Adulterated Pesticide
Maestro D, EPA Reg. No. 71368-39

248. Paragraphs 1-247, above, are incorporated by reference.

249. On or about February 27, 2003, EPA approved the registration for the pesticide product "Maestro D Herbicide" (Maestro D).

250. On or about February 27, 2003, EPA assigned EPA Reg. No. 71368-39 to Maestro D.

251. At all times relevant to this CAFO, Maestro D was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

252. At all times relevant to this CAFO, Respondent was the "registrant" of Maestro D as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

253. On or about November 14, 2007, Respondent submitted to EPA a basic and two alternate CSFs for Maestro D.

254. On or about March 21, 2013, at the Chicago Heights Facility, Respondent produced and packaged Maestro D, lot number 13US0004.

255. At all times relevant to this CAFO, the EPA-accepted formulation of Maestro D, as reflected on EPA-accepted labeling for Maestro D, was that Maestro D consists of 31.2% isocytl (2-ethylhexyl) ester of 2,4-Dichlorophenoxyacetic acid.

At all times relevant to this CAFO, EPA-accepted formulation of Maestro D, as reflected on EPA-accepted labeling for Maestro D, was that Maestro D consists of 30.1% octanoic acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzotrile).

256. On or about February 27, 2014, during the 2014 EPA inspection, EPA inspectors collected a sample of Maestro D, lot number 13US0004 (Maestro D inspection sample), at the Alsip Facility.

257. Based on testing conducted on the sample at a U.S. EPA laboratory, the average concentration of isocytl (2-ethylhexyl) ester of 2,4-Dichlorophenoxyacetic acid in the Maestro D inspection sample was determined to be 24.3%.

258. The testing also determined that the average concentration of octanoic acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzotrile) in the Maestro D inspection sample was 24.5%.

259. On or about March 3, 2014, Respondent held Maestro D, lot number 13US0004, for distribution or sale at the Jacobson Warehouse.

260. On or about March 3, 2014, Respondent distributed or sold Maestro D, lot number 13US0004 (subject distribution or sale of Maestro D), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

261. At all times relevant to this CAFO, the Maestro D in the subject distribution or sale of Maestro D had strength or purity that fell below the professed standard of quality as expressed on its labeling under which it is sold.

262. At all times relevant to this CAFO, the Maestro D in the subject distribution or sale of Maestro D was adulterated, as that term is defined at Sections 2(c)(1) and 2(c)(2) of FIFRA, 7 U.S.C. §§ 136(c)(1) and 136(c)(2).

263. The subject distribution or sale of Maestro D constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was adulterated. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Count 20

Unlawful Distribution or Sale of Misbranded Pesticide
Maestro D, EPA Reg. No. 71368-39

264. Paragraphs 1-263, above, are incorporated by reference.

265. On or about March 18, 2008, EPA accepted a label with comments as part of the registration of Maestro D under FIFRA (EPA-accepted label for Maestro D).

266. The EPA-accepted label for Maestro D states in part, under the headings "HAZARDS TO HUMANS AND DOMESTIC ANIMALS" and "CAUTION":

Prolonged or frequently repeated skin contact may cause allergic reaction in some individuals.

267. The label affixed to the containers of Maestro D in the subject distribution or sale of Maestro D lacked the warning or caution statement at paragraph 266 above.

268. The EPA-accepted label for Maestro D states in part, under the headings “HAZARDS TO HUMANS AND DOMESTIC ANIMALS,” “CAUTION” and “PERSONAL PROTECTIVE EQUIPMENT (PPE)”:

If you want more options, follow the instructions for category F on an EPA chemical-resistance category selection chart.

269. The label affixed to the containers of Maestro D in the subject distribution or sale of Maestro D stated in part, under the headings “HAZARDS TO HUMANS AND DOMESTIC ANIMALS,” “CAUTION” and “PERSONAL PROTECTIVE EQUIPMENT (PPE)”:

If you want more options, follow the instructions for category G on an EPA chemical-resistance category selection chart.

270. The EPA-accepted label for Maestro D states in part, under the headings “HAZARDS TO HUMANS AND DOMESTIC ANIMALS,” “CAUTION” and “ENGINEERING CONTROLS STATEMENTS”:

DURING AERIAL APPLICATION, human flaggers are prohibited unless in enclosed vehicles.

271. The label affixed to the containers of Maestro D in the subject distribution or sale of Maestro D lacked the warning or caution statement at paragraph 270, above.

272. At all times relevant to this CAFO, the Maestro D in the subject distribution or sale of Maestro D was “misbranded” as that term is defined at Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

273. The subject distribution or sale of Maestro D constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

274. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Count 21
Unlawful Distribution or Sale of Misformulated Pesticide
Mallet 2F T&O, EPA Reg. No. 228-695

275. Paragraphs 1-274, above, are incorporated by reference.

276. On or about July 17, 2006, EPA approved the registration for the Etigra pesticide product "ET-022" (Mallet 2F).

277. On or about July 17, 2006, EPA assigned EPA Reg. No. 81959-22 to Mallet 2F.

278. On or about June 25, 2009, the registration of Mallet 2F was transferred from Etigra to Respondent under brand name "ET-022".

279. On or about January 8, 2010, Respondent submitted to EPA a name change for Mallet 2F from "ET-022" to "Mallet 2F T&O Insecticide."

280. On or about June 25, 2009, EPA assigned EPA Reg. No. 228-695 to Mallet 2F.

281. At all times relevant to this CAFO, Mallet 2F was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

282. At all times relevant to this CAFO beginning on or about June 25, 2009, Respondent was the "registrant" of Mallet 2F as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

283. On or about November 4, 2010, Respondent submitted to EPA an alternate CSF for Mallet 2F.

284. On or about April 20, 2012, Respondent submitted to EPA a basic CSF for Mallet 2F.

285. On or about September 17, 2012, Respondent submitted to EPA three alternate CSFs for Mallet 2F.

286. On or about December 16, 2013, at the Alsip Facility, Respondent repackaged and/or relabeled at least three totes of Nuprid 2SC, EPA Reg. No. 228-572 (Nuprid 2SC), as at least 439 cases of Mallet 2F, lot numbers 2082611GIF and 2112814GIF.

287. At all times relevant to this CAFO, the basic and alternate CSFs of Mallet 2F did not provide for or allow Mallet 2F to be repackaged from Nuprid 2SC.

288. At all times relevant to this CAFO, Mallet 2F and Nuprid 2SC had different EPA-accepted formulations including but not limited to different EPA-accepted ingredients.

289. On or about February 27, 2014, Respondent held Mallet 2F, lot number 2112814GIF, for distribution or sale at the Alsip Facility.

290. On or about February 27, 2014, Respondent "distributed or sold" Mallet 2F, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

291. Respondent's distribution or sale of Mallet 2F set forth in paragraphs 289 and 290 above, constituted an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), because the pesticide's composition at the time of its distribution or sale differed from its composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

292. Respondent's violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in this count, subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 22
Unlawful Distribution or Sale of Adulterated Pesticide
Ortho Weed B Gon Pro Southern, EPA Reg. No. 228-262

293. Paragraphs 1-292, above, are incorporated by reference.
294. On or about August 17, 1990, EPA approved the registration for the pesticide product "Riverdale CL/DAP Selective Herbicide" (Ortho Weed B Gon Pro Southern).
295. On or about August 17, 1990, EPA assigned EPA Reg. No. 228-262 to Ortho Weed B Gon Pro Southern.
296. On or about August 17, 1990, EPA approved Ortho Weed B Gon Pro Southern changing its name to "Riverdale Tri-Power Selective Herbicide".
297. "Ortho Weed B Gon Pro Southern" is an alternate brand name of "Riverdale Tri-Power Selective Herbicide".
298. At all times relevant to this CAFO, Ortho Weed B Gon Pro Southern was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
299. At all times relevant to this CAFO, Respondent was the "registrant" of Ortho Weed B Gon Pro Southern as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
300. On or about February 8, 2007, Respondent submitted to EPA a basic CSF for Ortho Weed B Gon Pro Southern.
301. On or about July 18, 2011, Respondent submitted to EPA two alternate CSFs for Ortho Weed B Gon Pro Southern.
302. On or about April 30, 2012, Respondent submitted to EPA an alternate CSF for Ortho Weed B Gon Pro Southern.
303. On or about September 5, 2013, at the Chicago Heights Facility, Respondent produced Ortho Weed B Gon Pro Southern, lot number 13US0010.

304. At all times relevant to this CAFO, EPA-accepted formulation of Ortho Weed B Gon Pro Southern, as reflected on EPA-accepted labeling for Ortho Weed B Gon Pro Southern, was that Ortho Weed B Gon Pro Southern consists of 40.42% MCPA dimethylamine salt.

305. On or about March 6, 2014, during the 2014 EPA inspection, EPA inspectors collected a sample of Ortho Weed B Gon Pro Southern, lot number 13US0010 (Ortho Weed B Gon Pro Southern inspection sample), at the Jacobson warehouse.

306. Based on testing conducted on the sample at a U.S. EPA laboratory, the average concentration of MCPA dimethylamine salt in the Ortho Weed B Gon Pro Southern inspection sample was determined to be 38.99%.

307. On or about March 3, 2014, Respondent held Ortho Weed B Gon Pro Southern, lot number 13US0010, for distribution or sale at the Jacobson Warehouse.

308. On or about March 3, 2014, Respondent "distributed or sold" Ortho Weed B Gon Pro Southern, lot number 13US0010 (subject distribution or sale of Ortho Weed B Gon Pro Southern), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

309. At all times relevant to this CAFO, the Ortho Weed B Gon Pro Southern in the subject distribution or sale of Ortho Weed B Gon Pro Southern had strength or purity that fell below the professed standard of quality as expressed on its labeling under which it is sold.

310. At all times relevant to this CAFO, the Ortho Weed B Gon Pro Southern in the subject distribution or sale of Ortho Weed B Gon Pro Southern was adulterated, as that term is defined at Sections 2(c)(1) and 2(c)(2) of FIFRA, 7 U.S.C. § 136(c)(2).

311. The subject distribution or sale of Ortho Weed B Gon Pro Southern constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was adulterated.

312. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation

Count 23
Unlawful Distribution or Sale of Misbranded Pesticide
Quincept, EPA Reg. No. 228-531

313. Paragraphs 1-312, above, are incorporated by reference.
314. On or about August 24, 2007, EPA approved the registration for the pesticide product "Quincept" (Quincept).
315. On or about August 24, 2007, EPA assigned EPA Reg. No. 228-531 to Quincept.
316. At all times relevant to this CAFO, Quincept was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
317. At all times relevant to this CAFO, Respondent was the "registrant" of Quincept as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
318. On or about September 16, 2011, EPA accepted a label as part of the registration of Quincept under FIFRA (EPA-accepted label for Quincept).
319. On or about March 3, 2014, Respondent held Quincept for distribution or sale at the Jacobson warehouse.
320. On or about March 3, 2014, Respondent "distributed or sold" Quincept (subject distribution or sale of Quincept), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

321. The EPA-accepted label for Quincept states in part, under the headings “PRECAUTIONARY STATEMENTS”, “HAZARDS TO HUMANS AND DOMESTIC ANIMALS” and “CAUTION”:

Causes moderate eye irritation. Avoid contact with eyes or on clothing.

322. The label affixed to the containers of Quincept in the subject distribution or sale of Quincept stated in part, under the headings “PRECAUTIONARY STATEMENTS”, “HAZARDS TO HUMANS AND DOMESTIC ANIMALS” and “CAUTION”:

Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, or using tobacco. Avoid contact with eyes or on clothing. Wear protective eyewear. Wear long-sleeved shirt and long pants, socks, shoes, and chemical-resistant gloves.

323. The EPA-accepted label for Quincept states in part, under the heading “DIRECTIONS FOR USE”:

SPRAY DRIFT MANAGEMENT

A variety of factors including weather conditions (e.g., wind directions, wind speed, temperature, relative humidity) and method of application (e.g., ground, aerial, airblast, chemigation) can influence pesticide drift. The applicator must evaluate all factors and make appropriate adjustments when applying this product.

Droplet Size

When applying sprays that contain 2,4-D as the sole active ingredient, or when applying sprays that contain 2,4-D mixed with active ingredients that require a coarse or coarser spray, apply only as a coarse or coarser spray (ASAE standard 572) or a volume mean diameter of 385 microns or greater for spinning atomizer nozzles.

When apply [sic] sprays that contain 2,4-D mixed with other active ingredients that require a medium or more fine spray, apply only as a medium or coarser spray (ASAE standard 572) or a volume mean diameter of 300 microns or greater for spinning atomizer nozzles.

Wind Speed

Do not apply at wind speeds greater than 15 mph. Only apply this product if the wind direction favors on-target deposition and there are not sensitive areas (including, but not limited to, residential areas, bodies of water, known habitat for

nontarget species, nontarget crops) within 250 feet downwind. If applying a medium spray, leave one swath unsprayed at the downwind edge of the treated field.

Temperature Inversions

If applying at wind speeds less than 3 mph, the applicator must determine if: a) conditions of temperature inversion exist, or b) stable atmospheric conditions exist at or below nozzle height. Do not make applications into areas of temperature inversions or stable atmospheric conditions.

Susceptible Plants

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include, but are not limited to, cotton, okra, flowers, grapes (in growing stage), fruit trees (foliage), soybeans (vegetative stage), ornamentals, sunflowers, tomatoes, beans, and other vegetables, or tobacco. Small amounts of spray drift that might not be visible may injure susceptible broadleaf plants.

Other State and Local Requirements

Applicators must follow all state and local pesticide drift requirements regarding application of 2,4-D herbicides. Where states have more stringent regulations, they must be observed.

Equipment

All ground application equipment must be properly maintained and calibrated using appropriate carriers or surrogates.

For ground boom application:

Do not apply with a nozzle height greater than 4 feet above the crop canopy.

324. The label affixed to the containers of Quincept in the subject distribution or sale of Quincept did not contain the information set forth at paragraph 323 above.

325. At all times relevant to this CAFO, the Quincept in the subject distribution or sale of Quincept was “misbranded” as that term is defined at Sections 2(q)(1)(F) and 2(q)(1)(G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and 136(q)(1)(G).

326. The subject distribution or sale of Quincept constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

327. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 24

Unlawful Distribution or Sale of Misbranded Pesticide
Riverdale 2,4-D 6 Amine, EPA Reg. No. 228-242

328. Paragraphs 1-327, above, are incorporated by reference.

329. On or about August 26, 1988, EPA approved the registration for the pesticide product "Riverdale Weeddestroy Amine 6D" (Riverdale 2,4-D 6 Amine).

330. On or about August 26, 1988, EPA assigned EPA Reg. No. 228-242 to Riverdale 2,4-D 6 Amine.

331. At the latest on or about March 15, 1996, Riverdale 2,4-D 6 Amine changed its name to Riverdale 2,4-D 6 Amine.

332. At all times relevant to this CAFO, Riverdale 2,4-D 6 Amine was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

333. At all times relevant to this CAFO, Respondent was the "registrant" of Riverdale 2,4-D 6 Amine as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

334. On or about March 3, 2014, Respondent held Riverdale 2,4-D 6 Amine for distribution or sale at the Jacobson warehouse.

335. On or about March 3, 2014, Respondent “distributed or sold” Riverdale 2,4-D 6 Amine (subject distribution or sale of Riverdale 2,4-D 6 Amine), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

336. Respondent had last revised the label affixed to the containers of Riverdale 2,4-D 6 Amine in the subject distribution or sale of Riverdale 2,4-D 6 Amine on or about November 14, 2005.

337. On or about October 22, 2009, EPA accepted a label, with comments, as part of the registration of Riverdale 2,4-D 6 Amine under FIFRA (EPA-accepted label for Riverdale 2,4-D 6 Amine).

338. The label affixed to the containers of Riverdale 2,4-D 6 Amine in the subject distribution or sale of Riverdale 2,4-D 6 Amine did not contain any changes that the EPA-accepted label for Riverdale 2,4-D 6 Amine required.

339. At all times relevant to this CAFO, the Riverdale 2,4-D 6 Amine in the subject distributions or sales of Riverdale 2,4-D 6 Amine was “misbranded” as that term is defined at Sections 2(q)(1)(F) and 2(q)(1)(G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F), 136(q)(1)(G).

340. The subject distribution or sale of Riverdale 2,4-D 6 Amine constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

341. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. §136l(a), for each violation.

Count 25

Unlawful Distribution or Sale of Misformulated Pesticide
Sativa M, EPA Reg. No. 55146-112

342. Paragraphs 1-341, above, are incorporated by reference.
343. On or about March 26, 2009, EPA approved the registration for the pesticide product "Sativa M RTU" (Sativa M).
344. On or about March 26, 2009, EPA assigned EPA Reg. No. 55146-112 to Sativa M.
345. At all times relevant to this CAFO, Sativa M was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
346. At all times relevant to this CAFO, Respondent was the "registrant" of Sativa M as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
347. On or about January 21, 2010, Respondent submitted to EPA a basic and five alternate CSFs for Sativa M.
348. On or about April 12, 2013, Respondent submitted to EPA nine alternate CSFs for Sativa M.
349. On or about February 5-11, 2014, at the Alsip Facility, Respondent produced and packaged Sativa M, lot number 14034AL006.
350. Respondent produced Sativa M, lot number 14034AL006, using as an ingredient Substance A.
351. During February 2014, Substance A did not appear on any EPA-accepted CSF for Sativa M.
352. Respondent produced Sativa M, lot number 14034AL006, using as an ingredient Substance B.

353. During February 2014, Substance B did not appear on any EPA-accepted CSF for Sativa M.

354. On or about February 26, 2014, Respondent held Sativa M, lot number 14034AL006, for distribution or sale at the Alsip Facility.

355. On or about February 26, 2014, Respondent “distributed or sold” Sativa M, lot number 14034AL006 (subject distribution or sale of Sativa M), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

356. The subject distribution or sale of Sativa M constituted an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), because the composition of the pesticide differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under FIFRA.

357. Respondent’s violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Count 26

Unlawful Distribution or Sale of Misbranded Pesticide
Sativa M, EPA Reg. No. 55146-112

358. Paragraphs 1-357, above, are incorporated by reference.

359. On or about March 26, 2009, EPA accepted a label, with comments, as part of the registration of Sativa M under FIFRA (EPA-accepted label for Sativa M).

360. The EPA-accepted label for Sativa M states in part, under the headings “DIRECTIONS FOR USE” and “SEED TREATMENT”:

NOTE: The purchaser of this product is responsible for ensuring that all seed treated with this product are adequately dyed with a suitable color to prevent its accidental use as a food for man or feed for animals.

361. The label affixed to the containers of Sativa M in the subject distribution or sale of Sativa M stated in part, under the headings “DIRECTIONS FOR USE” and “SEED TREATMENT”:

Note: If this product is undyed, the purchaser of this product is responsible for ensuring that all seed treated with this product are adequately dyed with a suitable color to prevent its accidental use as food for man or feed for animals.

362. At all times relevant to this CAFO, the Sativa M in the subject distribution or sale of Sativa M was “misbranded” as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136q(1)(F).

363. The subject distribution or sale of Sativa M constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

364. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Count 27
Unlawful Distribution or Sale of Misbranded Pesticide
Senator 600 FS, EPA Reg. No. 228-522

365. Paragraphs 1-364, above, are incorporated by reference.

366. On or about June 19, 2007, EPA approved the registration for the pesticide product “Senator 600 FS”.

367. On or about June 19, 2007, EPA assigned EPA Reg. No. 228-522 to Senator 600 FS.

368. At all times relevant to this CAFO, Senator 600 FS was a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

369. At all times relevant to this CAFO, Respondent was the “registrant” of Senator 600 FS as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

370. On or about February 26, 2014, Respondent held Senator 600 FS, lot number 13028MS0503, for distribution or sale at the Alsip Facility.

371. On or about February 26, 2014, Respondent “distributed or sold” Senator 600 FS, lot number 13028MS0503 (subject distribution or sale of Senator 600 FS), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

372. Lot number 13028MS0503 identifies the lot as being produced at Nufarm’s toll manufacturer in Marsing, Idaho.

373. The label affixed to the containers of Senator 600 FS in the subject distribution or sale of Senator 600 FS identified the producing establishment number to be 67545-AZ-1.

374. The label affixed to the containers of Senator 600 FS in the subject distribution or sale of Senator 600 FS misstated the producing establishment of that Senator 600 FS.

375. The label affixed to the containers of Senator 600 FS in the subject distribution or sale of Senator 600 FS states in part, under the heading “STORAGE AND DISPOSAL”:

CONTAINER DISPOSAL: Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill or by incineration, or, if allowed by State or local authorities, by burning. If burned, stay out of smoke.

376. The label affixed to the containers of Senator 600 FS in the subject distribution or sale of Senator 600 FS did not state whether those containers were refillable or nonrefillable.

377. Respondent's failure set forth at paragraph 376 above, violated requirements set forth at 40 C.F.R. § 156.140 and its subparagraphs.

378. At all times relevant to this CAFO, the Senator 600 FS in the subject distribution or sale of Senator 600 FS was "misbranded" as that term is defined at Sections 2(q)(1)(D) and 2(q)(1)(F) of FIFRA, 7 U.S.C. §§ 136(q)(1)(D), 136(q)(1)(F).

379. The subject distribution or sale of Senator 600 FS constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

380. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 28

Unlawful Distribution or Sale of Misbranded Pesticide
Signet 480 FS, EPA Reg. No. 45728-26-55416

381. Paragraphs 1-380, above, are incorporated by reference.

382. On or about February 11, 2000, the registration for the Cleary Chemicals, LLC pesticide "Spotrete F Turf Fungicide and Animal Repellent" (Spotrete F) was transferred to UCB Chemicals, under EPA Reg. No. 45728-26.

383. At the latest on or about September 30, 2003, company number 45728 was transferred to Taminco, Inc. (Taminco).

384. On or about January 16, 2009, EPA received from Taminco a Notice of Supplemental Distribution of a Registered Pesticide Product (Signet 480 FS supplemental distributor notice).

385. The Signet 480 FS supplemental distributor notice listed the distributor product name as “Signet 480 FS Seed Treatment” (Signet 480 FS).

386. The Signet 480 FS supplemental distributor notice listed Respondent as the distributor of Signet 480 FS.

387. Per the Signet 480 FS supplemental distributor notice, Signet 480 FS would have EPA Reg. No. 45728-26-55146.

388. At all times relevant to this CAFO, Signet 480 FS was a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

389. At all times relevant to this CAFO, Taminco was the “registrant” of Spotrete F, as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. 136(y).

390. On or about December 16, 2011, EPA accepted a label as part of the registration of Spotrete F under FIFRA (EPA-accepted label for Spotrete F).

391. On or about March 3, 2014, Respondent held Signet 480 FS, lot number 13290AL001, for distribution or sale at the Alsip facility.

392. On or about March 3, 2014, Respondent “distributed or sold” Signet 480 FS, lot number 13290AL001 (subject distribution or sale of Signet 480 FS), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

393. The EPA-accepted label for Spotrete F, under the heading “FIRST AID,” provides instructions in the following order:

IF SWALLOWED
IF ON SKIN OR CLOTHING
IF IN EYES
IF INHALED

394. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS, under the heading "FIRST AID," provides instructions in the following order:

IF SWALLOWED
IF IN EYES
IF ON SKIN OR CLOTHING
IF INHALED

395. The EPA-accepted label for Spotrete F states in part, under the headings "PRECAUTIONARY STATEMENTS," "HAZARDS TO HUMANS AND DOMESTIC ANIMALS" and "CAUTION/PRECAUCION":

Harmful if swallowed. Harmful if absorbed through skin. Avoid contact with skin, eyes or clothing. Harmful if inhaled. Causes moderate eye irritation. Avoid breathing spray mist or vapor. Do not take alcohol immediately before or after exposure to this product. The consumption of alcohol by the applicator can increase the toxicity of the product. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.

Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet. Remove and wash contaminated clothing before reuse.

396. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part, under the headings "PRECAUTIONARY STATEMENTS," "HAZARDS TO HUMANS AND DOMESTIC ANIMALS" and "CAUTION/PRECAUCION":

Harmful if swallowed. Harmful if inhaled. Causes moderate eye irritation. Avoid contact with skin, eyes or clothing. Avoid breathing spray mist or vapor. Do not take alcohol immediately before or after exposure to this product. The consumption of alcohol by the applicator can increase the toxicity of the product. Prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.

397. The EPA-accepted label for Spotrete F states in part, under the headings "PRECAUTIONARY STATEMENTS," "HAZARDS TO HUMANS AND DOMESTIC

ANIMALS,” “CAUTION/PRECAUCION” and “PERSONAL PROTECTIVE EQUIPMENT (PPE)”:

Some materials that are chemical-resistant to this product are made of any waterproof material. If you want more options, follow the instructions for category A on an EPA chemical resistance category selection chart.

All mixers, loaders, applicators and other handlers must wear:

- *Long-sleeved shirt and long pants,*
- *Shoes and socks,*
- *Chemical-resistant gloves, except for pilots and for handlers sewing bags of treated seed,*
- *Chemical-resistant apron when mixing, loading, participating in dip treatments, cleaning up spills, cleaning equipment or otherwise exposed to the concentrate,*

398. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part, under the headings “PRECAUTIONARY STATEMENTS,” “HAZARDS TO HUMANS AND DOMESTIC ANIMALS,” “CAUTION/PRECAUCION” and “PERSONAL PROTECTIVE EQUIPMENT (PPE)”:

Some materials that are chemical-resistant to this product are listed below. If you want more options, follow the instructions for category C on an EPA chemical resistance category selection chart.

All mixers, loaders, applicators and other handlers must wear: . . .

- *Long-sleeved shirt and long pants,*
- *Shoes plus socks,*
- *Chemical-resistant gloves, except when flagging to support aerial applications, applying with aircraft, or applying while driving motorized ground equipment, (such as barrier laminate, butyl rubber (≥ 14 mils), nitrile rubber (≥ 14 mils), neoprene rubber (≥ 14 mils), polyvinyl chloride (PVC) (≥ 14 mils), or Viton (≥ 14 mils),*
- *Chemical-resistant apron when mixing loading, cleaning up spills, cleaning equipment or otherwise exposed to the concentrate,*

399. The EPA-accepted label for Spotrete F states in part, under the heading “USER SAFETY RECOMMENDATIONS”:

- *Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet.*

- *Users should remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.*
- *Users should remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.*

400. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part, under the heading “USER SAFETY RECOMMENDATIONS”:

Users Should:

- *Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.*
- *Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.*
- *Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.*
- *Follow manufacturer’s instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.*

401. The EPA-accepted label for Spotrete F states in part, under the heading “ENVIRONMENTAL HAZARDS”:

This chemical is toxic to fish, aquatic invertebrates, oysters and shrimp. Do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not contaminate water by cleaning equipment or disposing of equipment washwaters or rinsate.

Treated seeds and bulbs are hazardous to fish, birds and mammals. Do not plant treated seeds by broadcasting to soil surface. Ensure that all seeds and bulbs are thoroughly covered with soil, especially in turn areas. If seeds and bulbs are not thoroughly incorporated by the planter during planting, additional incorporation may be required to thoroughly cover exposed seeds and bulbs.

Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Elimination Discharge Systems (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance, contact your

State Water Board or Regional Office of the EPA. Do not apply where conditions favor drift from treatment area.

Endangered Species

This product may have effects on federally listed threatened or endangered species or their critical habitat in some counties. It is a violation of Federal law to kill, harm or harass listed animal species without authorization. To limit the potential for such impacts when using this product, consult and follow the instructions provided in the EPA Endangered Species Bulletin for the County or Parish in which you are applying this product. To determine whether your County or Parish has a Bulletin, consult <http://www.epa.gov/espp> before each season's use of this product.

402. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part, under the heading "ENVIRONMENTAL HAZARDS":

This chemical is toxic to fish, aquatic invertebrates, birds, oysters and shrimp. Do not apply directly to water, to areas where surface water is present, or to intertidal areas below the mean high water mark. Drift and runoff from treated areas may be hazardous to aquatic organisms in neighboring areas. Do not contaminate water by cleaning of equipment or disposing of equipment washwaters or rinsate. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Elimination Discharge Systems (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage treatment plant authority. For guidance, contact your State Water Board or Regional Office of the EPA. Do not apply where conditions favor drift from treatment area.

Treated seeds, seed pieces, and bulbs are hazardous to fish, birds and mammals. Do not plant treated seeds, or seed pieces by broadcasting to soil surface. Ensure that all planted seeds, seed pieces, or bulbs are thoroughly covered with soil, especially in turn areas. If seeds, seed pieces, or bulbs are not thoroughly incorporated by the planter during planting, additional incorporation may be required thoroughly cover exposed seeds, seed pieces or bulbs.

403. The EPA-accepted label for Spotrete F states in part, under the heading "DIRECTIONS FOR USE":

Do not graze treated areas or feed clippings to livestock.

404. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS did not contain the information set forth at paragraph 402 above.

405. The EPA-accepted label for Spotrete F does not contain the term "seed pieces."

406. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS contains the term "seed pieces" in multiple places beyond the instances set forth elsewhere in this count.

407. The EPA-accepted label for Spotrete F states in part:

PRODUCT INSTRUCTIONS

Seeds and Bulbs that are treated with this product and are then packaged or bagged for future use must contain the following labeling on the outside of the seed and bulb package or bag:

408. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part:

SEED APPLICATIONS

Seeds, Bulbs, Seed Pieces that are treated with this product and are then packaged or bagged must contain the following labeling on the outside of the package or bag:

409. The EPA-accepted label for Spotrete F states in part:

DIRECTIONS FOR USE AS A COMMERCIAL SEED TREATMENT

Signet 480 FS is a liquid fungicide recommended for the treatment of seeds listed in the following table....

410. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part:

RECOMMENDATIONS FOR USE AS A COMMERCIAL SEED TREATMENT

This product is a liquid fungicide recommended for the treatment of seeds listed in the following table....

411. The EPA-accepted label for Spotrete F contains a table of seed treatment concentrations with the following qualifier:

****Not for use for on-farm treatment.*

412. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS contains a table of seed treatment concentrations without the qualifier at paragraph 411, above.

413. The EPA-accepted label for Spotrete F states in part:

Intended for use by professional applicators only.

414. The label affixed to the containers of Signet 480 FS in the subject distribution or sale of Signet 480 FS states in part:

For sale to and use by professional applicators only.

Not for sale to or use by homeowners/consumers.

415. At all times relevant to this CAFO, the Signet 480 FS in the subject distribution or sale of Signet 480 FS was “misbranded” as that term is defined at Sections 2(q)(1)(F) and 2(q)(1)(G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and 136(q)(1)(G).

416. The subject distribution or sale of Signet 480 FS constituted an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

417. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in this count subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 29-40
Unlawful Distribution or Sale of Misformulated Pesticide
Triamine, EPA Reg. No. 228-178

418. Paragraphs 1-417, above, are incorporated by reference.
419. On or about August 2, 1985, EPA approved the registration for the pesticide product "Riverdale Weeddestroy Triamine" (Triamine).
420. On or about August 2, 1985, EPA assigned EPA Reg. No. 228-178 to Triamine.
421. At all times relevant to this CAFO, Triamine was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
422. At all times relevant to this CAFO, Respondent was the "registrant" of Triamine as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).
423. On or about February 19, 2008, Respondent submitted to EPA a basic CSF and an alternate CSF for Triamine.
424. On or about July 18, 2011, Respondent submitted to EPA two alternate CSFs for Triamine.
425. On or about December 6, 2011, Respondent submitted to EPA an alternate CSF for Triamine.
426. On or about February 21, 2012, Respondent submitted to EPA an alternate CSF for Triamine.
427. On or about May 2, 2013, at the Chicago Heights Facility, Respondent produced Triamine, lot number 13US0001.
428. Respondent produced Triamine, lot number 13US0001, using as an ingredient rinse wastewater from Respondent's production of a pesticide product.

429. At all times relevant to this CAFO, rinsate did not appear on any EPA-accepted CSF for Triamine.

430. At all times relevant to this CAFO, the use of rinsate in the formulation of Triamine was not part of the statement required in connection with Triamine's registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

431. At all times relevant to this CAFO, the use of rinsate in the formulation of Triamine had not been submitted to EPA as part of the formulation process submitted as part of the product's registration under any of 40 C.F.R. §§ 152.43, 158.330 or 158.335.

432. In producing Triamine, lot number 13US0001, Respondent substituted rinsate wholly or in part for the pesticide.

433. On or about June 21, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

434. On or about June 28, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

435. On or about July 10, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

436. On or about August 9, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

437. On or about October 1, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

438. On or about October 2, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

439. On or about December 5, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

440. On or about December 17, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

441. On or about December 20, 2013, Respondent distributed or sold Triamine, lot number 13US0001.

442. On or about January 16, 2014, Respondent distributed or sold Triamine, lot number 13US0001.

443. On or about February 24, 2014, Respondent distributed or sold Triamine, lot number 13US0001.

444. On or about March 3, 2014, Respondent held Triamine, lot number 13US0001, for distribution or sale at Jacobson Warehouse.

445. On 12 separate occasions or about June 21 and 28, 2013, July 10, 2013, August 9, 2013, October 1 and 2, 2013, December 5, 17 and 20, 2013, January 16, 2014, February 24, 2014, and March 3, 2014, Respondent "distributed or sold" Triamine, lot number 13US0001 (subject distributions or sales of Triamine), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

446. At all times relevant to this CAFO, the Triamine in the subject distributions or sales of Triamine was adulterated, as that term is defined at Section 2(c)(2) of FIFRA, 7 U.S.C. § 136(c)(2).

447. Respondent's distribution or sale of Triamine set forth in paragraphs 433-444, above, constituted an unlawful act pursuant to Section 12 (a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a) (1) (C), because the pesticides composition at the time of its distribution or sale differed from its

composition as described in the statement required in connection with its registration under Section 3 of FIFRA, 7 U.S.C. §136a.

448. Each of Respondent's 12 violations of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 41-49

Unlawful Distribution or Sale of Misformulated Pesticide
Trooper 22K, EPA Reg. No. 228-535

449. Paragraphs 1-448, above, are incorporated by reference.

450. On or about December 6, 2007, EPA approved the registration for the pesticide product "Trooper 22K Herbicide" (Trooper 22K).

451. On or about December 6, 2007, EPA assigned EPA Reg. No. 228-535 to Trooper 22K Herbicide.

452. At all times relevant to this CAFO, Trooper 22K was a "pesticide" as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

453. At all times relevant to this CAFO, Respondent was the "registrant" of Trooper 22K as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

454. On or about May 16, 2007, Respondent submitted to EPA a basic CSF and an alternate CSF for Trooper 22K.

455. On or about February 26, 2008, Respondent submitted to EPA an alternate CSF for Trooper 22K.

456. On or about September 5, 2013, at the Chicago Heights Facility, Respondent produced Trooper 22K, lot number 13US0002.

457. Respondent produced Trooper 22K, lot number 13US0002, using as an ingredient rinse wastewater from Respondent's production of a pesticide product.

458. At all times relevant to this CAFO, rinsate did not appear on any EPA-accepted CSF for Trooper 22K.

459. At all times relevant to this CAFO, the use of rinsate in the formulation of Trooper 22K was not part of the statement required in connection with Trooper 22K's registration under Section 3 of FIFRA, 7 U.S.C. § 136a.

460. At all times relevant to this CAFO, the use of rinsate in the formulation of Trooper 22K had not been submitted to EPA as part of the formulation process submitted as part of the product's registration under any of 40 C.F.R. §§ 152.43, 158.330 or 158.335.

461. In producing Trooper 22K, lot number 13US0002, Respondent substituted rinsate wholly or in part for the pesticide.

462. On or about August 30, 2013, Respondent distributed or sold three (3) shipments of Trooper 22K, lot number 13US0002.

463. On or about September 3, 2013, Respondent distributed or sold Trooper 22K, lot number 13US0002.

464. On or about September 17, 2013, Respondent distributed or sold Trooper 22K, lot number 13US0002.

465. On or about October 8, 2013, Respondent distributed or sold Trooper 22K, lot number 13US0002.

466. On or about January 15, 2014, Respondent distributed or sold Trooper 22K, lot number 13US0002.

467. On or about February 21, 2014, Respondent distributed or sold Trooper 22K, lot number 13US0002.

468. On or about March 3, 2014, Respondent held Trooper 22K, lot number 13US0002, for distribution or sale at Jacobson Warehouse.

469. On nine separate occasions or about August 30, 2013, September 3 and 17, 2013, October 8, 2013, January 15, 2014, February 21, 2014, and March 3, 2014, Respondent “distributed or sold” Trooper 22K, lot number 13US0002 (subject distributions or sales of Trooper 22K), as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

470. Respondent’s distribution or sale of Trooper 22K set forth in paragraphs 462-468, above, constituted an unlawful act pursuant to Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), because the pesticide differed at the time of its distribution or sale from its composition as described in the statement required in connection with its registration.

471. Each of Respondent’s nine violations of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for each violation.

Counts 50-58
Unlawful Distribution or Sale of Misbranded Pesticide
Trooper 22K, EPA Reg. No. 228-535

472. Paragraphs 1-471, above, are incorporated by reference.

473. On or about December 6, 2007, EPA accepted, with comments, a label as part of the registration of Trooper 22K under FIFRA (EPA-accepted label for Trooper 22K).

474. The EPA-accepted label for Trooper 22K stated in part:

Every 2 years starting March 30, 2008, the registrant will offer training to applicators which will cover application techniques and product stewardship

particular to their use(s) of this product (Name of Product, Registration No. _____-____). Applicators of this product must be able to provide certification of such training on demand to the State, Tribal, or Federal enforcement agent.

475. The label affixed to the containers of Trooper 22K in the subject distributions or sales of Trooper 22K did not contain the statement set forth at paragraph 474, above.

476. The EPA-accepted label for Trooper 22K incorporated the following changes from Respondent's proposed label:

In the heading of each table and anywhere else it appears on the label change "Rate Recommendations" to "Rates".

477. The label affixed to the containers of Trooper 22K in the subject distributions or sales of Trooper 22K contained a table titled "TABLE 1: RATE RECOMMENDATIONS FOR NOXIOUS, INVASIVE, OR OTHER WEED SPECIES PREDOMINANT IN THE PLAINS AND NORTHERN STATES."

478. The label affixed to the containers of Trooper 22K in the subject distributions or sales of Trooper 22K contained a table titled "TABLE 2: RATE RECOMMENDATIONS FOR BROADLEAF WEEDS AND WOODY SPECIES IN THE SOUTHERN U.S."

479. The EPA-accepted label for Trooper 22K incorporated the following changes from Respondent's proposed label:

On page 6 under "Non-Cropland Areas" [sic] Broadcast Treatments for Forest Site Preparation" remove recommended from recommended rate.

480. The label affixed to the containers of Trooper 22K in the subject distributions or sales of Trooper 22K stated in part, under the headings "SPECIFIED NON-CROPLAND AREAS" and "Broadcast Treatments for Forest Site Preparation (Not for Conifer Release)":

For broadcast applications apply the recommended rate of this product

481. The EPA-accepted label for Trooper 22K incorporated the following changes from Respondent's proposed label:

You must provide the registration number of any product that you want to place on the label (that is not already included on the cited label) so that we can verify that the product is registered for this use. You may add Tahoe 3A in a future label amendment by submitting amended labeling and providing the registration number of the tank mix product in your application form or cover letter.

482. At all times relevant to this CAFO, the EPA-accepted label for Trooper 22K did not include the pesticide product "Tahoe 3A" (Tahoe 3A).

483. The label affixed to the containers of Trooper 22K in the subject distributions or sales of Trooper 22K stated in part, under the headings "APPLICATION METHODS" and "Modified High Volume Applications":

To control a wider range of plant species, mix 1 to 3 quarts of this product with 1-3 quarts of Tahoe 4E herbicide or 1 to 4 quarts of Tahoe 3A herbicide

484. At all times relevant to this CAFO, the Trooper 22K in the subject distribution or sale of Trooper 22K was "misbranded" as that term is defined at Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

485. Each of the subject distributions or sales of Trooper 22K constituted a separate unlawful act pursuant to Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), because the pesticide was misbranded.

486. Each of Respondent's nine violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), set forth in these counts subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

ALLEGED VIOLATIONS OF RCRA

COUNT 59

(Storage of Hazardous Waste Without a Permit or Interim Status at Chicago Heights Facility)

486. Complainant incorporates paragraphs 1 through 485 of this CAFO as though set forth in this paragraph.

487. Pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

488. Pursuant to 35 IAC § 722.117 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.117 and 40 C.F.R. § 262.34(a) including, but not limited to, certain requirements for owners and operators in 35 IAC Part 725.

489. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC Part 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121 unless the generator has been granted an extension to the 90-day period. 35 IAC § 722.134(b) and 40 C.F.R. § 262.34(b). Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

490. At all times relevant to this CAFO, neither Illinois nor EPA had granted Respondent an extension to accumulate hazardous waste for more than 90 days.

491. Similarly, the failure to comply with any of the conditions of 35 IAC § 722.117 subjects the generator of hazardous waste to the requirements of 35 IAC Part 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

Count 59A: Storage of Hazardous Waste for over 90 Days

492. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must not store hazardous waste on-site for over 90 days. 35 IAC § 722.117(a) and (b); 40 C.F.R. § 262.34(a) and (b).

493. At the time of the inspection, Respondent stored one container of waste washout water that contained 2,4-D, with an accumulation start date of 11/21/2013 and the toxicity characteristic number of D016, in its less-than 90-day hazardous waste storage area for greater than 90 days without obtaining or applying for a permit.

494. At the time of the inspection, Respondent stored 11 G6 totes of waste washout water that contained 2,4-D, with accumulation dates of 06/30/2009, 09/01/2009, 02/18/2009, and 02/25/2011, and with a hazardous waste commercial chemical product, manufacturing chemical intermediate, or off-specification commercial chemical product number of U240 or the toxicity characteristic number of D016, for greater than 90 days without obtaining or applying for a permit.

495. At the time of the inspection, Respondent stored one Z9 tote of waste washout water that contained 2,4-D, with a testing date of 02/02/2012 for greater than 90 days without obtaining or applying for a permit.

496. At the time of the inspection, Respondent maintained one J5 tote of washout water that contained 2,4-D waste with a testing date of 08/25/2011, for greater than 90 days without obtaining or applying for a permit.

497. Accordingly, by storing hazardous waste for over 90 days, Respondent failed to meet the condition for maintaining its exemption from the requirement that it have an operating permit or interim status and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 59B: Accumulation Start Date

498. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must clearly mark and have visible for inspection on each container the date upon which each period of accumulation begins. 35 IAC § 722.134(a)(2) and 40 C.F.R. § 262.34(a)(2).

499. At the time of the inspection, Respondent maintained one 55-gallon container of hazardous waste with the toxicity characteristic number of D016 in its less-than 90-day hazardous waste storage area that was not marked with the accumulation start date.

500. Accordingly, by failing to clearly mark and have visible for inspection on each container the date upon which each period of accumulation began, Respondent failed to meet the condition in 35 IAC § 722.117(a)(5) and 40 C.F.R. § 262.34(a)(2) for maintaining its exemption from the requirement that it have an operating permit or interim status, and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 59C: Placement of Hazardous Waste in a Non-Compliant Tank

501. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must ensure waste is placed in tanks and the generator complies with 35 IAC 725 Subpart J, *et al.* 35 IAC § 722.117(a)(1).

502. At the time of the inspection, Nufarm placed and conducted thermal treatment on lab waste acetone that met the spent n-n-halogenated solvent definition of F003 in a tank that did not meet 35 IAC § 725 Subpart J, *et al.* requirements by failing to:

a. Keep records that demonstrate that hazardous waste has not been stored for more than 90 days in the hazardous waste storage tank system in accordance with 35 IAC § 722.117(b).

b. Label or mark the tank clearly with the words, "Hazardous Waste" in accordance with 35 IAC § 722.117(a)(5).

c. Secure a hazardous waste tank system assessment and certification in accordance with 35 IAC §§ 725.291(a) or 725.292(a).

d. Document hazardous waste tank system inspections and the results of the inspections in accordance with 35 IAC § 725.295(c).

503. Accordingly, by placing hazardous waste in a tank that did not meet 35 IAC § 725 Subpart J, *et al.*, Respondent failed to meet the condition in 35 IAC § 722.117(a)(1) for maintaining its exemption from the requirement that it have an operating permit or interim status and violated 35 IAC § 722.117(a)-(b).

Count 59D: Contingency Plan

504. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must describe in the contingency plan the arrangements agreed to by local police department(s), fire departments(s), hospital(s), contractor(s), and state and local emergency response teams to coordinate emergency services. 35 IAC §§ 722.117(a)(6) and 725.152(c); 40 C.F.R. §§ 262.34(a)(4) and 265.52(c).

505. At the time of the inspection, Respondent did not describe in its contingency plan the arrangements agreed to by local police department, fire departments, or contractors.

506. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must submit the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services. 35 IAC §§ 722.117 (a)(6) and 725.153(b); 40 C.F.R. §§ 262.34(a)(4) and 265.53(b).

507. At the time of the inspection, Respondent was unable to provide documentation showing that it had submitted its contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

508. Accordingly, by failing to describe arrangements agreed to by local police department(s), fire department(s), hospital(s), and state and local emergency response teams that may be called upon to provide emergency services and provide documentation of such submission as set forth in 35 IAC §§ 725.152(c) and 725.153(b), and 40 C.F.R. §§ 265.52(c) and 265.53(b), Respondent failed to meet the condition in 35 IAC § 722.117 (a)(6) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status, and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 59E: Hazardous Waste Training Program

509. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4). This program must be directed by a person trained in hazardous waste management procedures and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. 35 IAC § 725.116(a) and 40 C.F.R. § 265.16(a). Facility personnel must successfully complete this training program within six months after the date of their employment or assignment to a facility or to a new position at a facility and must take part in an annual review of this initial training thereafter. 35 IAC § 725.116(b) and (c) and 40 C.F.R. § 265.16(b) and (c). With respect to this training program, the owner or operator must maintain

the following documents and records at its facility the job title for each position at the facility: related to hazardous waste management and the name of the employee filling each job; a written job description for each position at the facility related to hazardous waste management; a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management; and records that document that the training or job experience described above has been given to and completed by facility personnel. 35 IAC § 725.116(d) and 40 C.F.R. § 265.16(d).

510. At the time of the inspection, Respondent did not have and was unable to provide in response to a request a written description of the type and amount of required training for personnel filling positions related to hazardous waste management.

511. At the time of the inspection, Respondent did not have and was unable to provide in response to a request a written description for the position of Plant Supervisor.

512. At the time of the inspection, Respondent did not have and was unable to provide in response to a request training documents or records for five personnel.

513. Accordingly, by failing to maintain a written description of the type and amount of required training for personnel responsible for duties related to hazardous waste management, a written description for the position of Plant Supervisor, and training documents or records for five personnel as set forth in 35 IAC §§ 725.11(a), 725.116(d), and 40 C.F.R. § 265.16(a) and (d), Respondent failed to meet the conditions in 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4), for maintaining its exemption from the requirement that it have an operating permit or interim status, and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

514. At the time of inspection, Respondent stored hazardous waste for over 90 days, failing to mark the accumulation start date, placing hazardous waste in a non-compliant tank,

failing to maintain complete documentation in support of its contingency plan, and failing to maintain completed documentation in support of its hazardous waste training system.

515. Accordingly, Respondent failed to satisfy all of the conditions in 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status.

516. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.117, Respondent became an operator of a hazardous waste treatment, storage, and disposal facility (TSDF).

517. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, 705.121; and 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13.

COUNT 60

(Waste Determination Record(s) at Chicago Heights Facility)

518. Complainant incorporates paragraphs 1 through 517 of this CAFO as though set forth in this paragraph.

519. As a generator of hazardous waste, Respondent must keep records of any test results, waste analyses, or other determinations made in accordance with 35 IAC § 722.111 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal. 35 IAC § 722.140(c) and 40 C.F.R. § 262.40(c).

520. At the time of the inspection, Respondent did not have and was unable to provide in response to the inspector's request, a record of any test results, waste analyses, or other determinations for waste NA3082, hazardous waste, liquid (benzene, lead) D008, D018.

521. Respondent's failure to keep of any test results, waste analyses, or other determinations for waste NA3082, hazardous waste, liquid (benzene, lead) D008, D018 violated 35 IAC § 722.140(c) and 40 C.F.R. § 262.40(c).

COUNT 61

(Storage of Hazardous Waste Without a Permit or Interim Status at Alsip Facility)

522. Complainant incorporates paragraphs 1 through 521 of this CAFO as though set forth in this paragraph.

523. Pursuant to 3005(a) of RCRA, 42 U.S.C. § 6925(a) and the regulations at 40 C.F.R. Part 270, the treatment, storage, or disposal of hazardous waste by any person who has not applied for or received a permit is prohibited.

524. Pursuant to 35 IAC § 722.134 and 40 C.F.R. § 262.34(a), however, and subject to certain exceptions, a generator of hazardous waste may accumulate hazardous waste on-site for 90 days or less without having a permit or interim status, provided that the generator complies with all applicable conditions set forth in 35 IAC § 722.117(a) and 40 C.F.R. § 262.34(a) including, but not limited to, certain requirements for owners and operators in 35 IAC Part 725.

525. A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 35 IAC Part 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121 unless the generator has been granted an extension to the 90-day period. 35 IAC § 722.134(b) and 40 C.F.R. § 262.34(b). Storage for more than 90 days subjects the generator of hazardous waste to the requirement to either obtain a permit or achieve interim status.

526. At all times relevant to this CAFO, neither Illinois nor EPA had granted Respondent had not been granted an extension to accumulate hazardous waste for more than 90 days.

527. A generator's failure to comply with any of the conditions of 35 IAC § 722.134 subjects the generator of hazardous waste to the requirements of 35 IAC Part 725 and the permit requirements of 35 IAC §§ 703.121, 703.180, and 705.121.

Count 61A: Failure to Minimize the Possibility of Fire, Explosion, or Release

528. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must maintain and operate facilities to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. 35 IAC §§ 722.117(a)(6) and 725.131; 40 C.F.R. §§ 262.34(a)(4) and 265.31.

529. At the time of the inspection, Respondent had accidentally or otherwise released a small quantity of Ethephon (2-chloroethyl phosphonic acid), a pesticide, into the secondary containment of the product tank area. The MSDS for Nufarm Ethephon 2 states "[p]esticide wastes acutely hazardous."

530. Accordingly, by failing to remove Ethephon (2-chloroethyl phosphonic acid) in order to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment as set forth in 35 IAC § 725.131 and 40 C.F.R. § 65.31, Respondent failed to meet the condition in 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status and violated 35 IAC § 722.134(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 61B: Contingency Plan

531. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must include in the contents of its

contingency plan must include a description of the arrangements agreed to by local police department(s), fire department(s), hospital(s), contractor(s), and state and local emergency response teams to coordinate emergency services; the names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator; a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment) where this equipment is required. These lists must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities. Respondent must also include in the contents of its contingency plan an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signals to be used to begin evacuation, evacuation routes and alternate routes (in case where the primary routes could be blocked by releases of hazardous waste or fires). 35 IAC § 722.117(a)(6) and 725.152(c)-(f); 40 C.F.R. §§ 262.34(a)(4) and 265.52(c)-(f).

532. At the time of the inspection, Respondent's contingency plan did not contain a home address for the emergency coordinator.

533. At the time of the inspection, Respondent's contingency plan did not describe arrangements agreed to by local police department(s) and fire department(s), and potentially other organizations.

534. At the time of the inspection, Respondent's contingency plan did not contain a list of all emergency equipment at the facility which includes the location and a physical description of each item on the list and a brief outline of its capabilities.

535. At the time of the inspection, Respondent's contingency plan did not contain a viable evacuation plan as two exits led to locked gates.

536. Accordingly, by failing to include a home address for the emergency coordinator, describe arrangements agreed to by local police department(s) and fire department(s), and potentially other organizations, list of all emergency equipment at the facility which includes the location and a physical description of each item on the list and a brief outline of its capabilities, and viable evacuation plan as set forth in 35 IAC § 725.152(c)-(f) and 40 C.F.R. § 265.52(c)-(f), Respondent failed to meet the condition in 35 IAC 722.134(a)(4) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 61C: Communication Devices

537. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must provide a device, such as a telephone (immediately available at the scene of operations) or a hand held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams. 35 IAC §§ 722.117(a)(6) and 725.132; 40 C.F.R. §§ 262.34(a)(4) and 265.32.

538. At the time of the inspection, Respondent did not provide communication devices to workers on the night shift who handle hazardous waste and did not allow its employees to use their personnel cell phones.

539. Accordingly, by failing to provide communication devices to workers on its night shift as set forth in 35 IAC § 725.132 and 40 C.F.R. § 265.32, Respondent failed to meet the condition in 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption

from the requirement that it have an operating permit or interim status and violated 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

Count 61D: Hazardous Waste Training Program

540. In order for a generator of hazardous waste to maintain its exemption from the requirement to have an operating permit or interim status, it must have a program of classroom instruction or on-the-job training that teaches facility personnel to perform their duties in a way that ensures the facility's compliance with requirements of RCRA. 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4). This program must be directed by a person trained in hazardous waste management procedures and must include instruction that teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. 35 IAC 725.116(a) and 40 C.F.R. § 265.16(a). Facility personnel must successfully complete this training program within six months after the date of their employment or assignment to a facility or to a new position at a facility and must take part in an annual review of this initial training thereafter. 35 IAC § 725.116(b) and (c) and 40 C.F.R. § 265.16(b) and (c). With respect to this training program, the owner or operator must maintain the following documents and records at its facility, a written job description for each position at the facility related to hazardous waste management, a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management; and records that document that the training or job experience described above has been given to and completed by facility personnel. 35 IAC § 725.116(d) and 40 C.F.R. § 265.16(d).

541. At the time of the inspection, Respondent did not have and was unable to provide in response to a request a complete written job description for each position at the facility related to hazardous waste management.

542. At the time of the inspection, Respondent did not have and was unable to provide in response to a request a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management.

543. At the time of the inspection, Respondent did not have and was unable to provide in response to a request records that documented that the training or job experience described above has been given to and completed by facility personnel for all facility personnel.

544. Accordingly, by failing to provide written job descriptions for each position at the facility related to hazardous waste management, a written description of the type and amount of both introductory and continuing training that will be given to each person filling a position at the facility related to hazardous waste management, and records that document that the training or job experience described above has been given to and completed by facility personnel for all facility personnel as set forth in 35 IAC § 725.116(a) and (d), and 40 C.F.R. § 265.16(a) and (d), Respondent failed to meet the condition in 35 IAC § 722.117(a)(6) and 40 C.F.R. §§ 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status, in violation of 35 IAC § 722.117(a)-(b) and 40 C.F.R. § 262.34(a)-(b).

545. At the time of the inspection, Respondent failed to minimize the possibility of fire, explosion, or release of hazardous waste; maintain a complete contingency plan; provide communication devices to workers on the night shift; and maintain a complete record related to its hazardous waste training program.

546. Accordingly, Respondent failed to satisfy all of the conditions in 35 IAC § 722.117(a)(6) and 40 C.F.R. § 262.34(a)(4) for maintaining its exemption from the requirement that it have an operating permit or interim status.

Respondent's ability to pay, and Respondent's cooperation in settling this matter and U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

552. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Section 14(a)(4) of FIFRA, and Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle the EPCRA, FIFRA and RCRA counts of this action is \$602,791.50. Within 30 days after the effective date of this CAFO, Respondent must pay a civil penalty of \$602,791.50 by sending a certified or cashier's check payable to the "Treasurer, United States of America," to:

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

Respondent must include the case name and docket number on the check and in the letter transmitting the check.

553. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

547. As a result of Respondent's failure to meet all of the applicable conditions for the generator exemption provided by 35 IAC § 722.117, Respondent became an operator of a hazardous waste TSDF.

548. Respondent's storage of hazardous waste without a permit or interim status violated Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of 35 IAC §§ 703.121, 703.180, and 705.121; and 40 C.F.R. §§ 270.1(c), 270.10(a) and (d), and 270.13.

CIVIL PENALTY

549. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations, and any other matters as justice may require. Complainant also considered EPA's Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) [Amended], dated April 12, 2001 (and amended Feb. 24, 2017).

550. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider 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, when assessing an administrative penalty under FIFRA. Complainant also considered an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

551. In determining the penalty amount, Complainant also considered the seriousness of the violations, any good faith efforts to comply with the applicable requirements, and the nature, circumstances, extent and gravity of the violations. Complainant considered

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

Michael Valentino (ECR-17J)
RCRA Compliance Section 1
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Richard Nagle (C-13J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

554. This civil penalty is not deductible for federal tax purposes.

555. If Respondent does not timely pay this civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States enforcement expenses for the collection action. The validity, amount and appropriateness of these civil penalty are not reviewable in a collection action.

556. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

RCRA COMPLIANCE ORDER

557. Based on the foregoing, Respondent is hereby ordered, pursuant to authority in RCRA § 3008(a), 42 U.S.C. § 6928(a), and 40 C.F.R. § 22.37(b), to comply with the following requirements immediately upon the effective date of this CAFO:

558. Respondent shall not treat, store, or dispose of hazardous waste without a RCRA permit, except as provided for in paragraph 488 of this CAFO.

559. Respondent shall achieve and maintain compliance with all requirements and prohibitions governing the storage of hazardous waste applicable to generators, codified at or incorporated by 35 IAC § 722 and 40 C.F.R. Part 262 by the effective date of this CAFO.

560. Respondent shall notify EPA in writing within 15 days of the effective date of this CAFO either certifying compliance with the CAFO or explaining why it is not in compliance and proposing a date to achieve compliance.

561. Respondent shall submit all reports, submissions, and notifications required by this CAFO the United States Environmental Protection Agency, Region 5, Enforcement and Compliance Assurance Division, RCRA Compliance Section 1, Attention: Michael Valentino (ECR-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

General Provisions

562. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: nagle.richard@epa.gov (for Complainant) and theinzman@wileyrein.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

563. Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties under EPCRA, FIFRA, and RCRA for the violations alleged in above.

564. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

565. This CAFO does not affect Respondent's responsibility to comply with EPCRA, FIFRA, RCRA and other applicable federal, state, local laws or permits.

566. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 313 of EPCRA, EPA's Enforcement Response Policy for FIFRA, 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

567. The terms of this CAFO bind Respondent, its successors, and assigns.

568. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

569. Each party agrees to bear its own costs and attorney's fees in this action.

570. This CAFO constitutes the entire agreement between the parties.

571. The Effective Date of this CAFO shall be the day it is filed with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 5, in accordance with Section 22.18(b)(3) of the Consolidated Rules, 40 C.F.R. § 22.18(b)(3).

RCRA-05-2020-0004

In the Matter of:

Nufarm Americas Inc.

Docket No. MM-05-2020-0001

EPCRA-05-2020-0003

FIFRA-05-2020-0014

For the United States Environmental Protection Agency, Complainant

01/10/2020
Date

Michael D. Harris
Michael D. Harris
Director
Enforcement and Compliance Assurance Division

For Nufarm Americas Inc., Respondent

23rd December 2019
Date

Brendan Deck
Brendan Deck, Regional General Manager – North
America

In the Matter of:

Nufarm Americas Inc.,

Docket No. MM-05-2020-0001

EPCRA-05-2020-0003

FIFRA-05-2020-0014

RCRA-05-2020-0004

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

1/14/20
Date

Ann L Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Nufarm Americas, Inc.
Docket Number: MM-05-2020-0001

EPCRA-05-2020-0003

FIFRA-05-2020-0014

RCRA-05-2020-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number See Above, which was filed on January 15, 2020, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Mr. Richard Nagle
nagle.richard@epa.gov

Copy by E-mail to
Attorney for Respondent:

Ms. Tracy Heinzman
theinzman@wileyrein.com

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Dated:

January 15, 2020



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5