

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA 07-2010-0028
	)	
Cargill AgHorizons	)	
	)	CONSENT AGREEMENT
	)	AND
	)	FINAL ORDER
	)	
Respondent	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Cargill AgHorizons (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules).

**FACTUAL ALLEGATIONS**

**Jurisdiction and Statutory Requirements**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C.

§ 136j.

**Parties**

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

4. The Respondent is Cargill AgHorizons which operates a grain storage facility located at 340 Southwest Boulevard, Kansas City, Kansas. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

**General Allegations**

5. Section 12 (a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

6. On January 26 and 30, 2006, the Kansas Department of Agriculture conducted inspections at Respondent's facility located at 340 Southwest Boulevard, Kansas City, Kansas.

7. The inspections documented the use by Respondent of the pesticide Phosfume, EPA Registration No. 70506-14-1015, for numerous fumigations of grain at its facility including fumigation of grain transferred to Bin 465 on January 10, 2006.

8. The Applicator's Manual for PhosFume is part of the accepted labeling for the pesticide Phosfume, EPA Reg. No. 70506-14-1015

9. Section 15 of the PhosFume Applicator's Manual requires that all entrances to fumigated structures must be placarded. The placards must bear the following wording:

- a. The signal word DANGER/PELIGRO and the SKULL AND CROSSBONES symbol in red.

- b. The Statement “Area/Structure and/or commodity under fumigation, DO NOT ENTER/NO ENTRE”.
- c. The statement, “ This sign may only be removed by a certified applicator or a person with documented training after the commodity is completely aerated (contains 0.3 ppm or less of phosphine gas). If completely aerated commodity is transferred to a new structure, the new structure must also be placarded if it contains more than 0.3 ppm. Worker exposure during this transfer must not exceed allowable limits.”
- d. The date the fumigation begins.
- e. Trade name of the fumigant used and EPA Registration Number.
- f. Name, address and telephone number of the fumigation company and/or applicator.
- g. A 24-hour emergency response telephone number.

10. Section 18.1 of the PhosFume Applicator’s Manual requires that the storage used for the fumigant must be marked with signs containing the following information:

- a. Danger, Poison (with skull and cross bones)
- b. Authorized Personnel Only
- c. Pesticide Storage National Fire Protection Association (NFPA) Symbols

11. Section 18.1 of the PhosFume Applicator’s Manual states the NFPA Symbols for PhosFume (aluminum phosphide) are:

<u>Category</u>	<u>Degree of Hazard</u>
Health	4 (Severe Hazard)
Flammability	4 (Severe Hazard)
Reactivity	2 (Moderate)
Special Notice Key	W

**Violations**

**Count 1**

12. The facts stated in paragraphs 5-11 are realleged and incorporated as if fully stated

herein.

13. Information obtained during the January 26 and 30, 2006, inspections, referenced above, showed a placard had been posted between the two disc openings to Bin 465 at Respondent's facility.

14. The placard posted at Bin 465 did not contain the following information as required by Section 15 of the PhosFume Applicator's Manual:

- a. The date the fumigation began;
- b. The trade name of the fumigant used and the EPA Registration number;
- c. The name, address and telephone number of the fumigation company and/or operator; and
- d. A 24-hour emergency response telephone number.

15. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §136j(a)(2)(G), by using a registered pesticide in a manner inconsistent with label directions.

Count 2

16. The facts stated in paragraphs 5-11 are realleged and incorporated as if fully stated herein.

17. Information obtained during the January 26 and 30, 2006, inspections, referenced above, showed a fumigation placard had been posted on the cabinet used to store the PhosFume pesticide and an NFPA symbol of 3-4-1-W.

18. The signage placed on the storage cabinet did not contain the following information required by Section 18 of the PhosFume Applicator's Manual:

- a. The statement "Authorized Personnel Only"; and
- b. The correct NFPA symbol of 4-4-2-W for aluminum phosphide.

19. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §136j(a)(2)(G), by using a registered pesticide in a manner inconsistent with label directions.

### **CONSENT AGREEMENT**

It is hereby agreed and accepted by the parties, that:

1. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final

Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in the Final Order. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty described in Paragraph 1 of the Final Order below, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and accrued interest are both paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

#### **FINAL ORDER**

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified check, a civil penalty, for the violations cited herein, in the amount

of Ten Thousand Four Hundred Dollars (\$10,400.00). Payment will be made within thirty (30) days of the effective date of this Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

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

3. The payment shall reference Docket Number, FIFRA 07-2010-0028 and In the Matter of Cargill AgHorizons Copies of the check shall be forwarded to:

Kent Johnson  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional

Judicial Officer.

6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

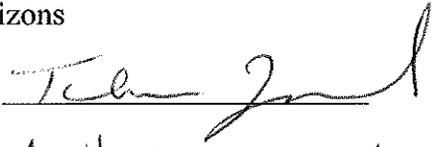
By: William A. Spratlin  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date: 5/26/10

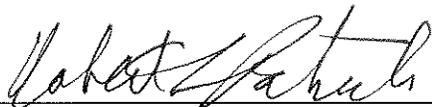
By: Kent Johnson  
Kent Johnson  
Attorney  
Office of Regional Counsel

Date: 5/20/10

RESPONDENT:  
Cargill AgHorizons

By:   
Title: AgHorizons Operations Leader.  
Date: 5-18-2010.

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII

Date: June 1, 2010

IN THE MATTER OF Cargill AgHorizons, Respondent  
Docket No. FIFRA-07-2010-0028

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dennis Klein  
Cargill AgHorizons  
P.O. Box 9300/Dept. 1  
Minneapolis, Minnesota 55440-9300

Dated: 6/1/10

  
Kathy Robinson  
Hearing Clerk, Region 7