



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 21 2008

4APT-PTSB

Certified Mail – Return Receipt Requested

Chris Howard, Corporate Counsel
Syngenta Crop Protection, Inc.
410 S. Swing Road
Greensboro, NC 27409

SUBJ: Docket No. FIFRA-04-2008-3029(b)
Syngenta Crop Protection, Inc.

Dear Mr. Howard:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section IV of the CAFO, the assessed penalty of \$196,300 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Cheryn Jones at (404) 562-9006.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure

Internet Address (URL) • <http://www.epa.gov>

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Requirements.” This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Sincerely,



Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Shannon Joyner
NC Department of Agriculture
and Consumer Services

Tony Cofer
AL Department of Agriculture
& Industries

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
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In the Matter of:)
)
Syngenta Crop Protection, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-04-2008-3029(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Syngenta Crop Protection, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9006.
5. Respondent is Syngenta Crop Protection, Inc., incorporated in the State of Delaware, and doing business in North Carolina. Respondent is located at 410 S. Swing Road, Greensboro, NC 27409.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), in that it is a corporation, and as such is subject to FIFRA and the regulations promulgated thereunder.
7. Respondent is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y) in that it is a person who has registered pesticides pursuant to the provisions of FIFRA.
8. Respondent is a "producer" as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), in that it is a person who manufactures, prepares, compounds, propagates, or processes any pesticide.
9. "Pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. “Restricted Use Pesticide” means a pesticide the Administrator (or designee) has determined that, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, as set forth in Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).
11. Respondent produces pesticides, including restricted use pesticides, “to distribute or sell” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), in that the pesticides are held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver.
12. Respondent produces the restricted use pesticide “Lumax Selective Herbicide, EPA Registration No. 100-1152.
13. On or about September 22, 2006, Complainant sent Respondent a letter to its office located at 410 S. Swing Road, Greensboro, NC 27409, requesting information regarding the airing of television advertisements for Lumax Selective Herbicide which did not include the classification of the pesticide as a restricted use pesticide.
14. Respondent provided information that on or about February 27, 2006, through March 26, 2006, television advertisements which failed to include the classification of the Lumax Selective Herbicide as a restricted use pesticide were aired a total of 365 times in the states of Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

15. Under Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), it is unlawful for a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under FIFRA for restricted use without giving the classification of the product assigned to it under Section 3 of FIFRA, 7 U.S.C. § 136a.
16. Respondent violated Section 12(a)(2)(E) of FIFRA, 7 U.S.C. § 136j(a)(2)(E), on at least 365 separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
17. On or about July 12, 2006, an inspector with the Alabama Department of Agriculture and an authorized representative of the EPA conducted an inspection at the Syngenta Crop Protection, Inc., facility located at 13500 U.S. Highway 43 North, Bucks, AL 36512.
18. During the aforementioned inspection, the product Mesotrione Wet Paste, EPA Registration No. 100-1150, was identified as being produced and distributed by the Respondent.
19. The inspector documented five shipments of Mesotrione Wet Paste from the Respondent to Syngenta Crop Protection facilities located in St. Gabriel, Louisiana (Bill-of-Lading No. 4229075, shipped February 8, 2006); Omaha, Nebraska (Bill-of-Lading No. 4227492, shipped January 24, 2006; Bill-of-Lading No. 4228008, shipped February 1, 2006; and Bill-of-Lading No. 4227501, shipped January 20, 2006); and Brazil (Bill of Lading No. 2915475, shipped May 26, 2006).
20. At the time of the inspection, the inspector collected samples of Mesotrione Wet Paste.
21. Analysis of the samples of Mesotrione Wet Paste confirmed the presence of a chemical impurity of toxicological significance which was not included in the statement submitted in connection with the product's registration.

22. Under Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), 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.
23. Respondent violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), on at least five separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
24. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA proposes to assess total civil penalty of ONE HUNDRED NINETY-SIX THOUSAND THREE HUNDRED DOLLARS (\$196,300). Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. Consent Agreement

25. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
26. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
27. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
28. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
29. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United

States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

30. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

31. Respondent is assessed a civil penalty of ONE HUNDRED NINETY-SIX THOUSAND THREE HUNDRED DOLLARS (\$196,300), which shall be paid within 30 days from the effective date of this CAFO.
32. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

The check shall reference the name and the Docket Number of the CAFO

[“Syngenta Crop Protection, Inc., FIFRA-04-2008-3029(b)”].

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

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

Cheryn L. Jones
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

34. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondent, its successors and assigns.


38. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

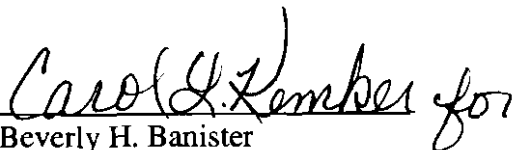
39. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

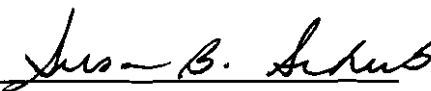
Syngenta Crop Protection, Inc.

By:  (Signature) Date: 06-17-2008
Name: CHRIS HOWARD (Typed or Printed)
Title: CORPORATE COUNSEL (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 8/13/08
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 21st day of August 2008.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

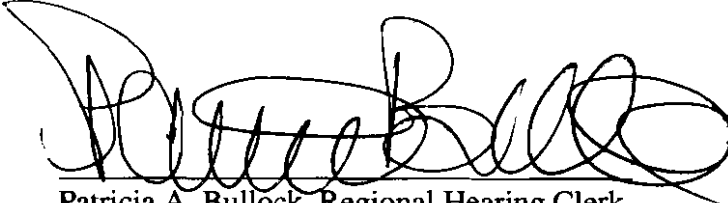
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Syngenta Crop Protection, Inc., Docket Number: FIFRA-04-2008-3029(b), to the addressees listed below.

Chris Howard, Corporate Counsel (via Certified Mail, Return Receipt Requested)
Syngenta Crop Protection, Inc.
410 S. Swing Road
Greensboro, NC 27409

Cheryn Jones (via EPA's internal mail)
Pesticides Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Michiko Kono (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

Date: 8-21-08


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/15/08
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Syngenta Crop Protection Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 196,300
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2008 3029 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |