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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	Docket No. FIFRA-09-2017-0001
Syngenta Seeds, LLC, d/b/a/ Syngenta Hawaii, LLC,	AMENDED COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
Respondent.	

I. AUTHORITY AND PARTIES

1. This Amended Complaint is filed in a civil administrative action that was initiated on December 14, 2016, by the filing of a Complaint and Notice of Opportunity for Hearing pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136*l*(a), for the assessment of a civil administrative penalty against Syngenta Seeds, LLC ("Respondent") for the use of a registered pesticide in manners inconsistent with its labeling in violation of Section 12 (a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard (WPS) regulations, as set forth at 40 C.F.R. part 170.

2. Complainant is Kathleen H. Johnson, Director of the Enforcement Division, Region IX,

U.S. Environmental Protection Agency (EPA), who has been duly delegated to issue this Amended Complaint.[1]

3. Respondent Syngenta Seeds, LLC, doing business as Syngenta Hawaii, LLC, is headquartered in Minnetonka, Minnesota, and is a wholly owned subsidiary of Syngenta AG.

4. Respondent filed its Answer to Complaint and Request for Hearing on March 10, 2017.

II. STATUTORY AND REGULATORY BACKGROUND

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

6. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" as "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term "pesticide" in relevant part as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest."

8. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term "registrant" as "a person who has registered any pesticide pursuant to the provisions of [the] Act."

9. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), defines the phrase "to use any registered pesticide in a manner inconsistent with its labeling" as meaning "to use any registered pesticide in a manner not permitted by the labeling ..."

10. Pursuant to Section 25(a) of FIFRA, 7 U.S.C. § 136w(a), in 1974 EPA first promulgated the Worker Protection Standard (WPS or "the Standard"), codified at 40 C.F.R. part 170.

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[1] *See* EPA Administrator Delegation 5-14 (May 11, 1994); *see also* Region IX Delegation R9-5-14 (Feb. 2, 2013).

1992 Worker Protection Standard

11. The Standard was revised in 1992, fully implemented in 1995, and in effect until it expired on January 2, 2017. Final Rule, Worker Protection Standard, 57 Fed. Reg. 38,102 (Aug. 21, 1992) ("the 1992 WPS" or "the 1992 Standard"); 40 C.F.R. §§ 170.1 through 170.260.

12. The 1992 Standard is "designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies." 40 C.F.R. § 170.1.

13. Subpart B of the 1992 Standard – Standard for Workers, 40 C.F.R. §§ 170.102-170.160 – applies "when any pesticide product is used on an agricultural establishment in the production of agricultural plants," with some exceptions at 40 C.F.R. §§ 170.103-170.104.

14. Pursuant to 40 C.F.R. § 170.7(a)(1), the agricultural employer shall "[a]ssure that each worker subject to subpart B of [part 170] … receives the protections required by this part."

15. Pursuant to 40 C.F.R. § 170.9(a), when the WPS regulations are referenced on the pesticide label, "users must comply with all of its requirements except those that are inconsistent with product-specific instructions on the labeling."

16. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. part 170, as referenced on the pesticide product label, and who fails to perform that duty, violates Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section 14 of FIFRA, 7 U.S.C. § 136*l*.

2015 Worker Protection Standard

17. The 1992 Standard was revised in 2015 to enhance the protections provided to agricultural workers and others by strengthening elements of the existing regulation involving training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and the provision of supplies for routine washing and emergency decontamination. Final Rule, Pesticides; Agricultural Worker Protection Standard Revisions, 80 Fed. Reg. 67,496 (Nov. 2, 2015) ("the 2015 WPS" or "the 2015 Standard"); 40 C.F.R. §§ 170.301 through 170.609.

18. On January 2, 2017, the 1992 Standard set forth at §§ 170.1 through 170.260 expired, and most provisions of the 2015 Standard became enforceable with respect to any pesticide product bearing the statement, "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170." 40 C.F.R. § 170.2.

19. The 2015 Standard applies "whenever a pesticide product bearing a label requiring compliance with this part is used in the production of agricultural plants on an agricultural establishment," except as provided at 40 C.F.R. § 170.303(b) and (c). 40 C.F.R. § 170.303(a).

20. Pursuant to 40 C.F.R. § 170.309(b), agricultural employers must "[e]nsure that each worker and handler subject to this part receives the protections required by this part."

21. Pursuant to 40 C.F.R. § 170.317, when part 170 is referenced on a label "users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling," and a person who has such a duty to comply and fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under FIFRA section 14.

III. GENERAL ALLEGATIONS

Respondent's Operations in Hawaii

22. At all times relevant to the Amended Complaint, Respondent was a corporation doing business in the state of Hawaii and a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject to FIFRA and the implementing regulations promulgated thereunder.

23. At all times relevant to the Amended Complaint, Respondent was the registrant of MIR604XTC1507X5307 CORN (EPA Reg. No.: 67979-27), seed corn containing plant-incorporated protectants (PIPs) used for commercial and research purposes ("Syngenta PIP Seed Corn"). Therefore, Respondent is a "registrant" as defined by Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

24. At all times relevant to the Amended Complaint, Respondent leased approximately 3,700 acres of land on the Hawaiian island of Kauai, much of which was located around Kekaha and Waimea.

25. At all times relevant to the Amended Complaint, Respondent operated and was responsible for the management and condition of a facility located at 7050 Kaumualii Highway, Kekaha, Hawaii, 96752 (the "Facility"). The main function of the Facility was to develop new varieties of seed corn.

26. The Facility is a "farm" and an "agricultural establishment" as those terms are defined at 40 C.F.R. §§ 170.3 and 170.305.

27. At all times relevant to the Amended Complaint, Respondent grew or maintained Syngenta PIP Seed Corn for commercial and research purposes on the Facility. The Syngenta PIP Seed Corn at the Facility constitutes an "agricultural plant" as that term is defined at 40

C.F.R. §§ 170.3 and 170.305.

28. At all times relevant to the Amended Complaint, Syngenta PIP Seed Corn was planted on the Facility in, among other areas, field 312-A25.

29. At all times relevant to the Amended Complaint, Respondent hired individuals, directly and through contracts with third party employment agencies such as Global Ag Services, Inc. (Global Ag) and Hawaii Employment (HI Employment), to perform tasks relating to the production of agricultural plants on its agricultural establishment for compensation.

30. At all times relevant to the Amended Complaint, the individuals employed by Respondent for the performance of activities relating to the production of agricultural plants at the Facility were "workers" as that term is defined at 40 C.F.R. §§ 170.3 and 170.305.

31. At all times relevant to the Amended Complaint, Respondent was an "agricultural employer" as that term is defined by 40 C.F.R. §§ 170.3 and 170.305.

Products Involved

32. Lorsban Advanced (EPA Reg. No.: 62719-591) and Permethrin (EPA Reg. No.: 34704-873) are pesticides as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and are classified for restricted use by EPA pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).

33. The approved label of Lorsban Advanced states: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. Refer to label booklet under 'Agricultural Use Requirements' in the Directions for Use section for information about this standard."

34. In the Directions for Use, "Agricultural Use Requirements" section, the approved labeling of Lorsban Advanced states in relevant part: "Use this product only in accordance with

its labeling and with the Worker Protection Standard, 40 CFR Part 170 … Do not enter or allow entry into treated areas during the restricted entry interval (REI). The REI for each crop is listed in the directions for use associated with each crop."

35. The Directions for Use associated with "Corn (Field, Sweet, Seed)" on the approved label of Lorsban Advanced states: "Worker Restricted Entry Interval: Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 24 hours unless PPE [personal protective equipment] required for early entry is worn."

36. In the Directions for Use, "Agricultural Use Requirements" section, the approved label of Lorsban Advanced states: "Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas."

37. The precautionary statements on the approved label of Lorsban Advanced provides: "Do not get on skin or on clothing. Avoid contact with eyes and breathing vapor or spray mist. Wash thoroughly with soap and water after handling and before eating, drinking, chewing gum, using tobacco or using the toilet."

38. Under first aid, the approved label of Lorsban Advanced provides: "[i]f on skin or clothing: [t]ake off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice. If in eyes: [h]old open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center or doctor for treatment advice."

39. Brandt Indicate™ 5 is a pH buffer plus adjuvants product used in agriculture to improve the performance of pesticides, such as herbicide formulations or spray tank mixtures to improve herbicidal activity or application characteristics.

January 20, 2016 Incident

40. On January 19, 2016, between approximately 12:33 p.m. and 1:42 p.m.[2], Respondent's employees Eddie Gutierrez and Alfred Baluaro, certified pesticide applicators, applied approximately 955 gallons of a pesticide mixture—containing approximately 4 gallons and 96 liquid ounces of Lorsban Advanced, 114 fluid ounces of Permethrin, and 48 fluid ounces of Brandt Indicate™ 5—to 19 acres on the Facility, including field 312-A25.

41. Gutierrez finished spraying field 312-A25 at approximately 12:57 p.m. on January 19, 2016.

42. Field 312-A25 was under an REI beginning on January 19, 2016, at 12:57 p.m., until January 20, 2016, 12:57 p.m.; during the application and at least the REI time frame, field 312-A25 was a "treated area."

43. On January 20, 2016, at approximately 7:00 a.m., 35 contract workers arrived at the Facility to begin their shift.

44. Respondent's employees Jerry Kanahele and Matthew McClallen held a morning meeting before work began during which they assigned the workers to attach row bands in field 312.

45. Respondent did not inform, orally or otherwise, the workers about the location and description of the treated area or the time during which entry was restricted in that treated area, and did not instruct them not to enter the treated area until the REI had expired.

46. Three of Respondent's employees were "crew leads" who supervised and worked with the contract workers as they attached row bands in field 312.

47. Workers were given row bands by the crew leads to apply to the plants in field 312,

[2] Time references are in Hawaii-Aleutian Standard Time (HAST).

including row bands specifically labeled for field 312-A25. The row bands were marked with the coordinates consisting of the section and the row to identify the location of the bands.

48. Row-banding, also known as tagging, is the process of stapling printed bands to corn stalks. It is a hand labor task performed by the workers under the supervision of the crew leads.

49. On the Facility in January 2016, field 312 was divided into two blocks, 312A and 312B. Each block contained a number of 90-foot wide sections. There was a five-foot buffer between each section. Each section contained 36 rows. The rows were 15-feet wide and each row was separated by a two-foot buffer. There was one field sign stationed at a corner of field 312-A25 ("the Warning Sign").

50. Around this time, workers at the Facility usually entered individual fields from the sides when those fields were part of a larger section of fields in which the workers were assigned to work; there were no usual points of entry for any field, including field 312-A25.

51. From approximately 8:15 a.m. through 9:00 a.m. on January 20, 2016, during which time field 312-A25 was under a REI, approximately 19 workers entered field 312-A25 from random locations to apply row bands to corn stalks. None of the 19 workers wore personal protective equipment (PPE) for early entry as instructed by the Lorsban Advanced label.

52. During the time that workers were in field 312-A25, the Warning Sign was "up," or "closed," meaning that the bottom portion of the Warning Sign was folded up and the contents of the Warning Sign were not visible.

53. At approximately 9:00 a.m., after Kanahele became aware that an unknown number of workers had entered field 312-A25 during the REI, he instructed them to exit the field.

54. After the workers exited field 312-A25, Respondent's employees instructed the workers to put on Tyvek suits over their clothes.

55. Also at approximately 9:00 a.m. on January 20, 2016, Ann Kam, an Environmental Health Specialist and authorized representative of the Hawaii Department of Agriculture (HDOA), arrived at the Facility to conduct an inspection in response to a prior complaint that had been filed against Respondent with HDOA and met with Robin Robinson, Agronomy Manager, and Emily Wedekind, the Facility's Integrated Pest Management Coordinator.

56. At approximately 9:05 a.m., Arthur Brun, Respondent's employee and Third Party Coordinator at the Facility, informed Wedekind that workers had entered a field for which an REI was still in effect.

57. Wedekind met with Jeremy Hausam, Respondent's employee and its Health Safety Environmental (HSE) and Security Lead, to discuss the situation.

58. At approximately 9:33 a.m., Robinson, Wedekind, Hausam and Kam arrived at the break station located adjacent to field 312. Kam took photographs and documented what she observed.

59. Kam observed several workers smoking cigarettes and drinking beverages. Kam informed the workers that no one should smoke, eat, or drink before washing their hands with soap and water, and prior to decontaminating.

60. Robinson, Wedekind and Kam left the break station to drive to field 312-A25 to look at the Warning Sign. They observed that the Warning Sign was closed and then returned to the break station.

61. After Hausam had retrieved and reviewed the approved label of Lorsban Advanced, he determined that all 35 workers would need to be decontaminated at the accessory building.

62. At approximately 10:00 a.m., Respondent's employees transported the workers by van to the Facility's accessory building for decontamination.

63. The accessory building is located approximately ¾ mile away from field 312-A25. The accessory building is used to store boom sprayers and pesticides. It is equipped with one shower and an adjacent sink with soap, single-use towels, and two emergency showers.

64. Kam went to the accessory building where she interviewed the workers.

65. At the accessory building, Wedekind told Kam that all 35 workers from field 312 would be decontaminated due to potential cross-contamination during van transport.

66. Between 11:10 a.m. and 11:30 a.m., approximately over two hours after the early entry of field 312-A25 occurred, 10 workers were transported to the Kauai Veterans' Memorial Hospital ("Hospital"). Robert Gandia, Staffing Site Manager for Global Ag, transported 8 workers and Brun transported 2 workers to the Hospital. Of the 10 workers admitted to the Hospital, the Hospital placed 7 under observation and kept 3 of the workers overnight for observation.

67. From January 28, 2016 to February 3, 2016, Kam conducted a follow-up investigation and inspection at the Facility where she took statements from 32 of the workers who worked in field 312 on January 20, 2016. Kam determined that 19 workers had entered field 312-A25 during the REI on January 20, 2016.

68. On February 18, 2016, Kam issued an Inspection Report and Addendum.

69. On March 11, 2016, HDOA formally referred its investigation into Respondent's suspected violations of the WPS to EPA for review and appropriate enforcement action.

70. On April 4, 2016, EPA Enforcement Officers Scott McWhorter and Amy C. Miller-Bowen ("EPA Inspectors") conducted a follow-up inspection at HI Employment and confirmed that HI Employment provided some of the workers involved in the January 20, 2016 incident.

71. On April 5, 2016, the EPA Inspectors conducted a follow-up inspection at Global Ag and confirmed that Global Ag provided some of the workers involved in the January 20, 2016

incident. The EPA Inspectors also confirmed that Gandia drove several of the workers to the Hospital.

72. On April 5, 2016, the EPA Inspectors conducted a follow-up inspection at the Facility, in which Kam also participated.

73. On May 4, 2016 and May 5, 2016, EPA completed its Inspection Report of HI Employment and Global Ag, respectively.

74. On May 10, 2016, EPA completed its Inspection Report of Syngenta Seeds, LLC, confirming the facts and findings of the February 18, 2016 HDOA Inspection Report.

75. Based on a thorough review of the record of facts presented in the above-referenced inspection reports, interviews and attestations, and other materials, Complainant determined that Respondent was in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the 1992 WPS, as set forth at 40 C.F.R. part 170.

January 12, 2017 Incident

76. On January 12, 2017, between approximately 7:00 a.m. and 7:45 a.m., Baluaro, one of the certified applicators at the Facility, applied approximately 813 gallons of a pesticide mixture—containing 3 gallons and 48 fluid ounces of Lorsban Advanced and 41 fluid ounces of Brandt Indicate 5—to fields 312-B07 through 312-B22 at the Facility.

77. After Lorsban Advanced was applied to fields 312-B07 through 312-B22, those treated areas were under an REI for 24 hours per the Lorsban Advanced label.

78. Respondent created work orders for five (5) work crews comprised of forty-two (42) total workers, to perform tasks related to the production of agricultural plants on January 12, 2017, in several sections of field 312 that were near or adjacent to the treated areas.

79. Specifically, on January 12, 2017, the work orders show that a crew of six (6) workers

was assigned to work in field 312-A24; a crew of eleven (11) workers was assigned to work in fields 312-A25, 312-A26 and 312-A27; a crew of eight (8) workers was assigned to work in fields 312-A28, 312-A29 and 312-A30; and a crew of nine (9) workers and a crew of eight (8) workers were assigned to work in fields 312-A36, 312-A37, 312-B01 and 312-B02.

80. On January 12, 2017, Respondent did not inform, orally or otherwise, the above-mentioned work crews consisting of 42 workers about the location and description of the treated areas subject to entry restrictions in fields 312-B07 through 312-B22 or the dates and times during which entry was restricted in those treated areas, and did not instruct them not to enter those treated areas for which an REI was in effect or inform them that entry was not allowed until the REI expired and all warning signs had been removed or covered.

81. On January 12, 2017, a worker from Respondent's Facility reported to EPA Region IX that he believed he had been exposed to pesticides at the Facility and was experiencing adverse health effects from the pesticide exposure.

82. Immediately thereafter on January 12, 2017, EPA informed HDOA about the worker's report and HDOA Inspector Kam contacted the worker directly that day.

83. In response to the report to HDOA, between January 12, 2017 and January 17, 2017, HDOA Inspector Kam, and, at the invitation of HDOA, EPA Inspector Miller-Bowen, conducted joint for-cause inspections at Respondent's Facility, at Global Ag, and at HI Employment.

84. During a January 16, 2017 inspection of the Facility, the inspectors observed that written information required to be displayed to workers about the January 12, 2017 application of Lorsban Advanced and information about other pesticide applications that took place on the Facility in the last 30 days, was only posted on documents located inside a folder inside a locked glass case, and was inaccessible to workers.

85. On February 10, 2017, HDOA formally referred its investigation into Respondent's suspected violations of the WPS in January 2017 to EPA for review and appropriate enforcement action.

86. On February 13, 2017, EPA Inspector Miller-Bowen issued Inspection Reports for Global Ag, HI Employment, and Respondent's Facility.

87. On February 14, 2017, Inspector Kam issued an Inspection Report and Addenda for Respondent's Facility.

88. Based on a thorough review of the record of facts presented in the above-referenced inspection reports, interviews and attestations, and other materials, Complainant determined that Respondent was in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the 2015 WPS as set forth at 40 C.F.R. part 170.

IV. SPECIFIC ALLEGATIONS – VIOLATIONS

Counts 1-19: Allowing or Directing Workers to Enter Treated Area

89. Complainant incorporates by reference the allegations contained in paragraphs 1 through 88 of this Amended Complaint.

90. 40 C.F.R. § 170.112(a)(1) provides that "[a]fter the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired . . . ."

91. On January 20, 2016, Respondent provided workers with row bands for field 312-A25 and directed them to row band corn stalks in that field. From approximately 8:15 a.m. through 9:00 a.m., 19 workers entered field 312-A25 and began row-banding. Accordingly, Respondent

allowed or directed each of the 19 workers to enter or remain in field 312-A25 before the expiration of the applicable 24-hour REI for the application of Lorsban Advanced, in violation of 40 C.F.R. § 170.112(a)(1).

92. By allowing or directing 19 workers to enter or remain in field 312-A25, a treated area, prior to the expiration of the applicable REI on January 20, 2016, Respondent committed 19 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

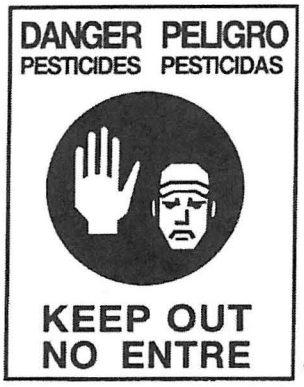
Counts 20-22: Failure to Post Required Warning Sign Features

93. Complainant incorporates by reference the allegations contained in paragraphs 1 through 92 of this Amended Complaint.

94. Pursuant to 40 C.F.R. § 170.120(b)(1), "[t]he agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph," which states that "[i]f the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall post signs in accordance with paragraph (c) of this section and shall provide oral notification of the application to the worker in accordance with paragraph (d) of this section."

95. 40 C.F.R. § 170.120(c)(1) provides that "[t]he agricultural employer shall post warning signs in accordance with the following criteria: (1) The warning sign shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the

height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. A black-and-white example of a warning sign meeting these requirements, other than the size requirements, follows:



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96. On January 20, 2016, the Warning Sign posted in a corner of field 312-A25 was "up" or "closed" in that the bottom portion of the Warning Sign was not visible as required by 40 C.F.R. § 170.120(c)(1). Accordingly, Respondent did not have a sign posted in field 312-A25 that featured: (1) the words "DANGER" and "PELIGRO," "PESTICIDES" and "PESTICIDAS;" (2) the words "KEEP OUT" and "NO ENTRE;" and (3) the stern-faced man with an upraised hand.

97. By failing to post a Warning Sign with each of the three required features on January 20, 2016, Respondent committed three independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 23-44: Failure to Post Visible Signage

98. Complainant incorporates by reference the allegations contained in paragraphs 1 through 97 of this Amended Complaint.

99. 40 C.F.R. § 170.120(c)(4) provides that "[o]n farms and in forests and nurseries, the signs shall be visible from all usual points of worker entry to the treated area, including at least each

access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility."

100. On January 20, 2016, signs were not posted and visible from all points of worker entry to field 312-A25 as required by 40 C.F.R. § 170.120(c)(4). Accordingly, Respondent did not post a sign or signs visible to the 19 workers and 3 crew leads working in field 312-A25 at the points of worker entry to the treated area.

101. By failing to post warning signs visible to 22 of its workers, Respondent committed 22 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 45: Failure to Post a Sign Throughout REI

102. Complainant incorporates by reference the allegations contained in paragraphs 1 through 101 of this Amended Complaint.

103. 40 C.F.R. § 170.120(c)(6)(ii) provides that "[t]he signs shall . . . [r]emain posted throughout the application and any restricted-entry interval."

104. On January 20, 2016, Respondent did not have a sign posted for field 312-A25 throughout the 24-hour REI for Lorsban Advanced in that the Warning Sign posted in a corner of field 312-A25 was "up" or "closed" in that the bottom portion of the Warning Sign was not visible as required by 40 C.F.R. § 170.120(c)(6)(ii).

105. By failing to post a sign throughout the 24-hour REI for Lorsban Advanced, Respondent committed one violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 46-80: Failure to Provide Oral Warnings of Treated Areas' Description and Location

106. Complainant incorporates by reference the allegations contained in paragraphs 1

through 105 of this Amended Complaint.

107. Pursuant to 40 C.F.R. § 170.120(d), "[t]he agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect.

108. 40 C.F.R. § 170.120(d)(1) provides that "[t]he warning shall consist of . . . [t]he location and description of the treated area."

109. On January 20, 2016, Respondent did not provide oral warnings consisting of the location and description of the treated area to 35 workers as required by 40 C.F.R. § 170.120(d)(1).

110. By failing to provide oral warnings consisting of the location and description of the treated area to each worker, Respondent committed 35 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 81-115: Failure to Provide Oral Warnings Containing Treated Areas' REIs in Effect

111. Complainant incorporates by reference the allegations contained in paragraphs 1 through 110 of this Amended Complaint.

112. 40 C.F.R. § 170.120(d)(2) provides that "[t]he warning shall consist of . . . [t]he time during which entry is restricted."

113. On January 20, 2016, Respondent did not provide oral warnings consisting of the time during which entry into field 312-A25 was restricted to 35 workers as required by 40 C.F.R. § 170.120(d)(2).

114. By failing to provide oral warnings consisting of the time during which entry into field

312-A25 was restricted to each worker, Respondent committed 35 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 116-150: Failure to Provide Oral Warnings Instructing Workers Not to Enter the Treated Areas

115. Complainant incorporates by reference the allegations contained in paragraphs 1 through 114 of this Amended Complaint.

116. 40 C.F.R. § 170.120(d)(3) provides that "[t]he warning shall consist of . . . [i]nstructions not to enter the treated area until the restricted-entry interval has expired."

117. On January 20, 2016, Respondent did not provide oral warnings consisting of instructions not to enter the treated area until the REI had expired for Lorsban Advanced to 35 workers as required by 40 C.F.R. § 170.120(d)(3).

118. By failing to provide oral warnings consisting of instructions not to enter the treated area until the REI had expired to each worker, Respondent committed 35 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 151-188: Failure to Provide Water for Routine and Emergency Eyeflushing

119. Complainant incorporates by reference the allegations contained in paragraphs 1 through 118 of this Amended Complaint.

120. 40 C.F.R. § 170.150(b)(1) provides that "[t]he agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed."

121. On January 20, 2016, Respondent did not provide enough water for routine washing and emergency eyeflushing to 35 workers and 3 crew leads (38 workers in total) as required by 40 C.F.R. § 170.150(b)(1) and the approved label of Lorsban Advanced.

122. By failing to provide its workers with enough water for routine washing and emergency eyeflushing as required by the Lorsban Advanced pesticide label, Respondent committed 38 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 189-226: Failure to Provide Accessible Decontamination Supplies

123. Complainant incorporates by reference the allegations contained in paragraphs 1 through 122 of this Amended Complaint.

124. 40 C.F.R. § 170.150(c)(1) provides that "[t]he decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working."

125. On January 20, 2016, decontamination supplies consisting of enough water for routine washing and emergency eyeflushing, soap and sufficient single-use towels, were located in the accessory building which was located approximately ¾ mile away from field 312-A25 where the 35 workers and 3 crew leads (38 workers in total) were working, in violation of 40 C.F.R. § 170.150(c)(1).

126. By failing to provide decontamination supplies together and reasonably accessible not more than ¼ mile from field 312-A25 where the 35 workers and 3 crew leads (38 workers in total) were working, Respondent committed 38 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 227-261: Failure to Provide Prompt Transportation to an Appropriate Medical Facility

127. Complainant incorporates by reference the allegations contained in paragraphs 1 through 126 of this Amended Complaint.

128. 40 C.F.R. § 170.160 provides that "[i]f there is reason to believe that a person who is or has been employed on an agricultural establishment to perform tasks related to the production of

agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall: (a) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility."

129. On January 20, 2016, immediately after workers left field 312-A25, Respondent had reason to believe that all 35 workers working in and around field 312-A25 had been poisoned or injured by exposure to Lorsban Advanced.

130. On January 20, 2016, Respondent transported via van all 35 workers working in and around field 312-A25 to the accessory building for decontamination. Subsequently, approximately over two hours after early entry in the treated area, an employee for Global Ag transported 8 workers to the Hospital and Respondent transported 2 workers to the Hospital.

131. By failing to provide prompt transportation for each of the 35 workers it had reason to believe were poisoned or injured by exposure to Lorsban Advanced, as required by 40 C.F.R. § 170.160, Respondent committed 35 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Allegations Specific to the January 12, 2017 Incident

Counts 262-303: Failure to Provide Oral Warnings of Treated Areas' Description and Location

132. Complainant incorporates by reference the allegations contained in paragraphs 1 through 131 of this Amended Complaint.

133. 40 C.F.R. § 170.409(a) provides that "[t]he agricultural employer must notify workers of all entry restrictions required by §§ 170.405 and 170.407 in accordance with this section."

134. 40 C.F.R. § 170.407(a) provides that agricultural employers must not allow or direct any

worker to enter or remain in a treated area before an REI specified on a label of a product that was applied to that treated area has expired and all warning signs have been removed or covered, except for early entry activities permitted by § 170.603.

135. 40 C.F.R. § 170.409(a)(1) provides that "[i]f the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with paragraph (b) of this section and must also provide oral notification of the application to workers in accordance with paragraph (c) of this section."

136. 40 C.F.R. § 170.409(c) provides that "[i]f oral notification is required pursuant to paragraph (a) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the worker's work period."

137. 40 C.F.R. § 170.409(c)(1) provides that the warning must include: "[t]he location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in §§ 170.405 and 170.407."

138. On January 12, 2017, Respondent did not provide oral warnings consisting of the location and description of fields 312-B07 thru 312-B22 to 42 workers as required by 40 C.F.R. § 170.409(c)(1).

139. By failing to provide oral warnings consisting of the location and description of treated areas subject to entry restrictions to each worker, Respondent committed 42 independently

assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 304-345: Failure to Provide Oral Warnings of the Treated Areas' REIs in Effect

140. Complainant incorporates by reference the allegations contained in paragraphs 1 through 139 of this Amended Complaint.

141. 40 C.F.R. § 170.409(c)(2) provides that the required oral warning must consist of "[t]he dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in §§ 170.405 and 170.407."

142. On January 12, 2017, Respondent did not provide oral warnings consisting of the dates and times during which entry was restricted into fields 312-B07 thru 312-B22, to 42 workers as required by 40 C.F.R. § 170.409(c)(2).

143. By failing to provide oral warnings consisting of the dates and times during which entry was restricted in any treated area subject to entry restrictions to each worker, Respondent committed 42 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Counts 346-387: Failure to Provide Oral Warnings Instructing Workers Not to Enter the Treated Areas

144. Complainant incorporates by reference the allegations contained in paragraphs 1 through 143 of this Amended Complaint.

145. 40 C.F.R. § 170.409(c)(3) provides that the oral warning must consist of "[i]nstructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by § 170.603 of this part."

146. On January 12, 2017, Respondent did not provide oral warnings consisting of instructions not to enter the treated area or an application exclusion zone during application, and that entry to fields 312-B07 thru 312-B22 was not allowed until the restricted-entry interval had expired and all treated area warning signs had been removed or covered, to 42 workers as required by 40 C.F.R. § 170.409(c)(3).

147. By failing to provide oral warnings consisting of instructions not to enter a treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered to each worker, Respondent committed 42 independently assessable violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 388: Failure to Post Accessible Pesticide Application Information

148. Complainant incorporates by reference the allegations contained in paragraphs 1 through 147 of this Amended Complaint

149. 40 C.F.R. § 170.309(h) provides that agricultural employers must: "[d]isplay, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with § 170.311 if workers or handlers are on the establishment and within the last 30 days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment."

150. 40 C.F.R. § 170.311(b) provides that "[w]henever pesticide safety information and pesticide application and hazard information is required to be provided under § 170.309(h), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this paragraph."

151. 40 C.F.R. § 170.311(b)(3) provides that "[w]hen the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours."

152. On January 16, 2017, Respondent failed to display in a manner that workers could access the pesticide application information for the January 12, 2017 application of Lorsban Advanced and other pesticide application information for the last 30 days.

153. By failing to allow access to the pesticide application information as required for workers on its agricultural establishment, Respondent committed one independently assessable violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

V. CIVIL PENALTY

On the basis of the facts and violations alleged above, Complainant has determined that Respondent is subject to civil penalties under Section 14(a)(l) of FIFRA, 7 U.S.C. § 136*l*(a)(l). However, pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not setting forth a specific penalty demand at this time. *See* 40 C.F.R. § 22.19(a)(4). Where a specific penalty demand is not made, a complaint shall set forth the statutory penalty authority applicable for each violation, the number of violations for which a penalty is sought, and a brief explanation of the severity of the alleged violations. These are set forth below.

Section 14(a)(l) of FIFRA, 7 U.S.C. § 136*l*(a)(l), provides that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than $5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the subsequent Adjustment of Civil Monetary Penalties for Inflation rule, 40 C.F.R. part 19, and the 2017 Civil Monetary Penalty Inflation Adjustment Rule, 82 Fed.

Reg. 3,633 (Jan. 12, 2017), the maximum statutory civil penalty for FIFRA violations occurring after November 2, 2015, and assessed on or after January 15, 2017, is $19,057 per violation. Respondent is a registrant of pesticide products, and as such, is subject to Section 14(a)(1) penalties for FIFRA violations.

For purposes of determining the amount of any penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), requires EPA to consider the appropriateness of such penalty given 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. To assist in considering these factors and calculating an appropriate penalty for the facts and circumstances of each FIFRA case, EPA considers the December 2009 FIFRA Enforcement Response Policy - Federal Insecticide, Fungicide, and Rodenticide Act ("ERP"), as supplemented by the Interim Final Penalty Policy for the FIFRA Worker Protection Standard (September 1997) ("WPS Penalty Policy"), and applicable penalty inflation adjustment policies. These policies provide a rational, consistent and equitable methodology for applying to particular cases the statutory penalty factors set forth above.

For each violation of FIFRA, the ERP and the WPS Penalty Policy set forth a certain "gravity level" that "represents an assessment of the relative severity of each violation." ERP 18. "The relative severity of each violation considers the actual or potential harm to human health and the environment which could result from the violation and the importance of the requirement to achieving the goals of the statute." *Id.* For all Section 12(a)(2)(G) violations, the ERP assigns a level "2" for gravity (the range runs from "1" being the most severe and "4" being the least severe). However, the more specific WPS Penalty Policy assigns a "1" or "2" to particular provisions of part 170, "1" being reserved for the most severe violations. WPS 15-17. Using these policies as guidance, the number and severity of the violations alleged in this Amended

Complaint are as follows:

2016:

Counts 1-19 (19 counts) – Gravity Level 1
170.112(a): Allowing or Directing Workers to Enter Treated Area

Counts 20-22 (3 counts) – Gravity Level 2
170.120(c)(1): Failure to Post Required Warning Sign Features

Counts 23-44 (22 counts) – Gravity Level 2
170.120(c)(4): Failure to Post Visible Signage

Count 45 (1 count) – Gravity Level 2
170.120(c)(6)(ii): Failure to Post a Sign Throughout REI

Counts 46-80 (35 counts) – Gravity Level 2
170.120(d)(1): Failure to Provide Oral Warnings of Treated Areas' Description and Location

Counts 81-115 (35 counts) – Gravity Level 2
170.120(d)(2): Failure to Provide Oral Warnings of the Treated Areas' REIs in Effect

Counts 116-150 (35 counts) – Gravity Level 2
170.120(d)(3): Failure to Provide Oral Warnings Instructing Workers Not to Enter Treated Areas

Counts 151-188 (38 counts) – Gravity Level 1
170.150(b)(1): Failure to Provide Water for Routine and Emergency Eyeflushing

Counts 189-226 (38 counts) – Gravity Level 1
170.150(c)(1): Failure to Provide Accessible Decontamination Supplies

Counts 227-261 (35 counts) – Gravity Level 1
170.160(a): Failure to Provide Prompt Transportation to an Appropriate Medical Facility

2017:

Counts 262-303 (42 counts) – Gravity Level 2
170.409(c)(1): Failure to Provide Oral Warnings of Treated Areas' Description and Location

Counts 304-345 (42 counts) – Gravity Level 2
170.409(c)(2): Failure to Provide Oral Warnings of the Treated Areas' REIs in Effect

Counts 346-387 (42 counts) – Gravity Level 2
170.409(c)(3): Failure to Provide Oral Warnings Instructing Workers Not to Enter Treated Areas

Count 388 (1 count) – Gravity Level 2

170.311(b)(3): Failure to Post Accessible Pesticide Application Information

Total Alleged Violations of FIFRA Section 12(a)(2)(G): 388

VI. NOTICE OF OPPORTUNITY FOR HEARING

Answering the Amended Complaint and Requesting a Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. part 22, govern these proceedings. Complainant served Respondent with a copy of the Consolidated Rules of Practice when it served it with the Complaint.

Respondent requested a hearing before an Administrative Law Judge in its Answer filed on March 10, 2017. To contest any newly alleged material fact or conclusion of law set forth in this Amended Complaint, Respondent must file a written Answer to this Amended Complaint with the Headquarters Hearing Clerk within twenty (20) days from the date this Amended Complaint is served on Respondent. 40 C.F.R. § 22.14(c). The Headquarters Hearing Clerk is located at the following addresses:

UPS, FedEx, DHL or other courier, or personal delivery:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

United States Postal Service:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

A copy of Respondent's Answer to the Amended Complaint should also be served on Complainant through her counsel at the following address:

Adrienne Trivedi
Christina E. Cobb
U.S. Environmental Protection Agency
1200 Pennsylvania Ave N.W. (MC: 2249A)
Washington, D.C. 20460

Ms. Trivedi is the lead attorney assigned to represent EPA in this matter. She can be contacted at Trivedi.Adrienne@epa.gov and (202) 564-7862.

Respondent's Answer should comply with 40 C.F.R. § 22.15. The Answer should clearly and directly admit, deny, or explain each new factual allegation contained in this Amended Complaint with regard to which it has any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. All material facts not denied in the Answer to the Amended Complaint will be considered admitted. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice as set forth at 40 C.F.R. part 22.

If you fail to file an Answer to this Amended Complaint with the Headquarters Hearing Clerk within twenty (20) days of service, such failure shall constitute an admission of all facts newly alleged in the Amended Complaint and a waiver of your right to a hearing on such facts.

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Signed in San Francisco, California, on this 12th day of January 2018.

Kathleen H. Johnson, Director
Enforcement Division, Region IX
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that in the matter of Syngenta Seeds, LLC, d/b/a/ Syngenta Hawaii, LLC, U.S. EPA Docket No. FIFRA-09-2017-0001, a true and correct copy of the Amended Complaint and Notice of Opportunity for Hearing, and a copy of the Consolidated Rules of Practice set forth at 40 C.F.R. part 22, was served on Respondent's counsel by e-mail and placed in the custody of the United States Postal Service by certified mail, return receipt requested, addressed to the following counsel for Respondent:

John D. Conner Jr.
Peter L. Gray
Crowell & Moring LLP
1001 Pennsylvania Ave NW
Washington, DC 20004-2595
JConner@crowell.com
PGray@crowell.com

CERTIFIED MAIL NUMBER: 7008 3230 0000 9398 2987

On this date:

1-12-2018

By: Christina E. Cobb
Christina E. Cobb
U.S. EPA OECA, Office of Civil Enforcement