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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	COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING
Respondent.	

I. AUTHORITY AND PARTIES

1. This is a civil administrative action brought 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 Complaint.[1]

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

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

II. STATUTORY AND REGULATORY BACKGROUND

4. 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.

5. 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."

6. 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."

7. 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."

8. 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 ..."

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

10. The 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.

11. Subpart B of the Standard –Standard for Workers, 40 C.F.R. §§ 170.103-170.160 – 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.

12. 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."

13. 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."

14. 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*.

III. GENERAL ALLEGATIONS

Respondent's Operations in Hawaii

15. At all times relevant to the Complaint, Respondent was a corporation doing business in the state of Hawaii, and therefore a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), with a duty under 40 C.F.R. Part 170. As such, Respondent is subject to FIFRA and the implementing regulations promulgated thereunder.

16. At all times relevant to the 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).

17. Respondent leases approximately 3700 acres of land on the Hawaiian island of Kauai, much of which is located around Kekaha and Waimea.

18. At all times relevant to the Complaint, Respondent operated a facility located at 7050 Kaumualii Highway, Kekaha, Hawaii, 96752 (the "Facility"). The main function of the Facility is to develop new varieties of seed corn.

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

20. At all times relevant to the Complaint, Respondent grew or maintained Syngenta PIP Seed Corn for commercial and research purposes on the Facility. Therefore, the Syngenta PIP Seed Corn at the Facility constituted an "agricultural plant" as that term is defined at 40 C.F.R. § 170.3.

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

22. At all times relevant to the Complaint, field 312-A25 at the Facility was a "treated area" as that term is defined at 40 C.F.R. § 170.3.

23. At all times relevant to the Complaint, Respondent seasonally hired contract workers to work on the Facility. Respondent received workers from Hawaii Employment (HI Employment) and Global Ag Services, Inc. (Global Ag), companies which provide seasonal contract workers to agricultural companies in Hawaii.

24. At all times relevant to the 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.

25. At all times relevant to the Complaint, Respondent was an "agricultural employer" as that term is defined at 40 C.F.R. § 170.3, in that Respondent hired or contracted for the services of workers, for compensation, to perform activities related to the production of Syngenta PIP Seed Corn.

Products Involved

26. 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).

27. 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."

28. 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."

29. 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."

30. 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."

31. 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."

32. 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."

33. 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 19-20, 2016 Incident

34. 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 Indicate™ 5—to 19 acres on the Facility, including field 312-A25.

35. Gutierrez finished spraying field 312-A25 at approximately 12:57 p.m.

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

36. Field 312-A25 was under an REI from January 19, 2016, 12:33 p.m. until January 20, 2016, 12:51 p.m.; during that time frame, field 312-A25 was a "treated area."

37. On January 20, 2016, at approximately 7:00 a.m., 35 contract workers (hereafter referred to as "workers") arrived at the Facility to begin their shift.

38. 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.

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

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

41. 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.

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

43. Workers at the Facility usually enter individual fields randomly from the sides when those fields are part of a larger section of fields in which the workers are assigned to work; there are no usual points of entry for any field, including field 312-A25.

44. 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.

45. 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.

46. 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.

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

48. 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.

49. 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.

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

51. 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.

52. 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.

53. 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.

54. 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.

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

56. 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.

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

58. 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.

59. 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.

60. 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.

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

62. 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.

63. 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.

64. 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.

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

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

67. 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.

68. Based on a thorough review of the record of facts presented in the 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 Worker Protection Standard (WPS) regulations, as set forth at 40 C.F.R. Part 170.

IV. SPECIFIC ALLEGATIONS – VIOLATIONS

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

69. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

70. 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 . . ."

71. 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).

72. 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).

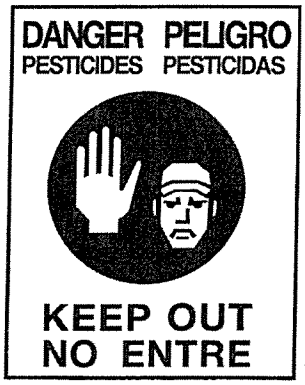
Counts 20-22: Failure to Post Required Warning Sign Features

73. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

74. 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."

75. 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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76. 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.

77. 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

78. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

79. 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."

80. 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.

81. 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

82. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

83. 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."

84. 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).

85. 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 46-90: Failure to Provide Oral Warnings Containing Treated Area's Description and Location

86. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

87. 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.

88. 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."

89. 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).

90. 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 91-115: Failure to Provide Oral Warnings Containing Treated Area's REI in Effect

91. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

92. 40 C.F.R. § 170.120(d)(2) provides that "[t]he warning shall consist of . . . [t]he time during which entry is restricted."

93. 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).

94. 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 to Not Enter the Treated Area

95. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

96. 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."

97. 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).

98. 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

99. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

100. 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."

101. 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.

102. 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

103. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

104. 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."

105. 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).

106. 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

107. Complainant incorporates by reference the allegations contained in paragraphs 1 through 68 of this Complaint.

108. 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."

109. 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.

110. 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.

111. 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).

V. PROPOSED CIVIL PENALTY

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 ("Penalty Inflation Rule"), and the 2016 Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43,091 (Jul. 1, 2016) ("2016 Rule"), the maximum statutory civil penalty for FIFRA violations occurring after November 2, 2015, and assessed on or after August 1, 2016 is $18,750. See 81 Fed. Reg. 43,091, 43,094. On the basis of the violations of FIFRA alleged above, EPA has determined that Respondent is subject to penalties under Section 14(a)(l) of FIFRA, 7 U.S.C. § 136/(a)(l).

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. EPA has also taken into account the particular facts and circumstances of this case with specific reference to EPA's December 2009 FIFRA Enforcement Response Policy - Federal Insecticide, Fungicide, and Rodenticide Act ("December 2009 FIFRA ERP"), as supplemented by the Interim Final Penalty Policy for the FIFRA Worker

Protection Standard (September 1997), EPA's December 6, 2013 Amendments to the US. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013) and EPA's July 27, 2016 Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016), copies of which are attached hereto. These policies provide a rational, consistent and equitable methodology for applying to particular cases the statutory penalty factors set forth above.

Accordingly, based on the violations alleged in this Complaint, after consideration of the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136*l*(a)(4), and in accordance with the 2016 Rule and applicable Agency penalty policies, Complainant proposes that a civil penalty be assessed against Respondent for 261 violations of FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), as follows:

Counts 1-19

Allowing or Directing Workers Entry to Treated Area ..... $18,750 per Count

Counts 20-22

Failure to Post Required Warning Sign Features ..... $18,750 per Count

Counts 23-44

Failure to Post Visible Signage ..... $18,750 per Count

Count 45

Failure to Post a Sign Throughout REI ..... $18,750 per Count

Counts 46-90

Failure to Provide Oral Warnings Containing Treated Area's Description and Location .....

..... $18,750 per Count

Counts 91-115

Failure to Provide Oral Warnings Containing Treated Area's REI in Effect ..... $18,750 per Count

Counts 116-150

Failure to Provide Oral Warnings Instructing Workers to Not Enter the Treated Area .....

..... $18,750 per Count

Counts 151-188

Failure to Provide Water for Routine and Emergency Eyeflushing ..... $18,750 per Count

Counts 189-226

Failure to Provide Accessible Decontamination Supplies ..... $18,750 per Count

Counts 227-261

Failure to Provide Prompt Transportation to an Appropriate Medical Facility .....

..... $18,750 per Count

Total Proposed Penalty: ..... (261 counts x $18,750 = $4,893,750).

VI. NOTICE OF OPPORTUNITIES FOR HEARING AND SETTLEMENT

Answering the 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. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these Rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, within

thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be served on Complainant through her counsel at the following address:

Christina E. Cobb
Attorney-Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Ave N.W. (MC: 2843)
Washington, D.C. 20460

Ms. Cobb is the attorney assigned to represent EPA in this matter. She can be contacted at Cobb.Christina@epa.gov and (202) 564-1798.

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. 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 Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default judgment.

After the issuance of this Complaint, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of the proceeding with the EPA Administrator, Region IX Administrator, the Regional Judicial Officer, any Administrative Law Judge, any member of the Environmental Appeals Board, or any other person likely to advise these officials on any decision in this proceeding.

Informal Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, regardless of whether you request a hearing, you may confer informally with Complainant through Christina E. Cobb, the EPA attorney assigned to this case, concerning the alleged violations, the facts of this matter, and the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. An informal conference does not, however, affect your obligation to file an Answer to this Complaint. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order (CAFO) by the Regional Judicial Officer, EPA, Region IX. The issuance of a CAFO shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

Signed in San Francisco, California, on this 14th day of December 2016.

Claire D. Trombadore
acting for
Kathleen H. Johnson, Director
Enforcement Division, Region IX
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

I certify that the original of the foregoing Complaint and Notice of Opportunity for hearing was delivered to:

Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

And that a true and correct copy of the Complaint and Notice of Opportunity for Hearing, the Consolidated Rules of Practice at 40 C.F.R. Part 22, and the Enforcement Response Policy for FIFRA were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Jon D. Jacobs
Dana Stotsky
JACOBS STOTSKY PLLC
1629 K Street, NW, Suite 300
Washington, D.C. 20006

CERTIFIED MAIL NUMBER: 7015 0640 0007 0638 0256

Ponsi Trivisvavet
President
Syngenta Seeds, LLC
11055 Wayzata Boulevard
Minnetonka, MN 55305

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 2863

12/14/16
Date

By: _____
Enforcement Division, EPA Region IX