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west virginia department of environmental protection

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Division of Air Quality  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
(304) 926-0475

Joe Manchin III, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
AIR POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 5, SECTION 4**

TO: Mr. Steve Hedrick  
Site Manager, Institute Industrial Park  
Bayer CropScience  
P.O. Box 1005 St. Rt. 25  
Institute, WV 25112

DATE:  
ORDER NO.: CO-R4,30-E-2010-17  
FACILITY ID NO.: 039-00007

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Air Quality (“Director”), under the authority of West Virginia Code, Chapter 22, Article 5, Section 1 *et seq.* to Bayer CropScience (“Company”). The purpose of this Consent order is to resolve four open Notices of Violation (hereinafter “NOV”) between the Division of Air Quality (“DAQ”) and the Company. The four NOVs are:

- A. NOV issued January 3, 2008, re: Odors
- B. NOV issued March 30, 2009, re: Number 2 Powerhouse
- C. NOV issued July 9, 2009, re: Sevin Residues
- D. NOV issued March 16, 2010, re: Odors

**FINDINGS OF FACT**

In support of the respective NOVs, the Director finds the following Facts:

1. Bayer CropScience operates a chemical manufacturing facility (“Facility”) located in Institute, West Virginia.

#### **A. NOV Issued January 3, 2008**

1. Complaints of objectionable odors were received by the Division of Air Quality (DAQ) and U.S. Environmental Protection Agency (EPA) beginning on November 17, 2007. Complaints originated from individuals residing in the St. Albans, Nitro, Cross Lanes, Institute, South Charleston and Charleston communities. Odor complaints continued intermittently until November 21, 2007.
2. On December 20, 2007, complaints of objectionable odors were received by the DAQ from individuals residing in St. Albans. Odors were detected from the Facility's Waste Water Treatment Unit ("WWTU") due to reduced biological system efficiency.
3. On December 28, 2007 at approximately 3:46 A.M., Bayer CropScience experienced a process upset that caused two drums of Larvin product to auto-decompose. This decomposition resulted in the release of an objectionable odor. Complaints of objectionable odor were received by the DAQ from residents residing in the St. Albans and Teays Valley areas. Wind data obtained by the DAQ during the occurrence of the Larvin decomposition showed the wind carried the objectionable odor from the Larvin unit directly across the river to the St. Albans area.
4. DAQ personnel confirmed the presence of objectionable odors on November 21, 2007, December 20, 2007, and December 28, 2007.

#### **B. NOV Issued March 30, 2009**

1. On July 18, 2008, Bayer CropScience performed a particulate matter emissions test on the Number 2 Powerhouse common stack, also known as emission point 480A.
2. The results of this emissions test showed that Bayer was emitting particulate matter to the atmosphere from the stack at a rate of 59 pounds per hour.
3. Emission point 480A is subject to the emission limits prescribed by condition 5.1.1 of Title V operating permit 45CSR30-03900007-2005, issued on May 26, 2005 and by operating permit 45CSR13-277, issued on January 27, 1977, which limits PM emissions from this point to no more than 50 pounds per hour.

#### **C. NOV Issued July 9, 2009**

1. On June 25, 2009, an inspection was made of the facility by personnel of the Hazardous and Solid Waste Air Program of the DAQ.
2. During that inspection, DAQ personnel observed an uncontrolled leak from a gasket on a hazardous waste permitted storage tank labeled Tank 4623, Sevin Residues.
3. The residue was visible on the ground below the tank, along the tank sidewalls, and on the roof of the tank where the leak was taking place.

4. The Company failed to maintain, and operate a facility to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste.
5. The Company failed to take precautions to prevent a reaction which produced uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment.
6. The Company failed to properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the terms and conditions of West Virginia State Permit HW-16.
7. The Company failed to properly comply with RCRA Subpart CC, *Air Emission Standards for Tanks, Surface Impoundments, and Containers* (40CFR264.1080 *et seq.*), as incorporated by reference in 45CSR25, with respect to containers and tanks used to manage hazardous waste at the plant site.

#### **D. NOV Issued March 16, 2010**

1. On February 22, 2010, DAQ conducted an inspection of the Institute facility. That inspection established that the facility was in violation of the West Virginia Code §§ 22-5-3 and 45CSR4 Section 3.1 which states "that no person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor at any location occupied by the public."
2. The facility has been notified in the past that it has discharged an air pollutant or air pollutants which caused or contributed to an objectionable odor in accordance with 45CSR4 Section 5.1. A strong sulfur-like odor was detected off-site at multiple locations and deemed objectionable by personnel of the DAQ during the February 22, 2010 inspection.

#### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 5, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

#### **A. NOV of January 3, 2008**

1. The Company should be in compliance with all terms and conditions of its Odor Control Plan submitted on March 20, 2008 and additional explanations submitted on April 4 & April 28, 2008 (see Attachment to CO-R4-E-2008-9) as follows:
  - a. Sludge removal from both tanks was completed by August 12, 2008. Sludge manifests dates confirmed waste shipments were completed from June 16, 2008 through August 12, 2008.

- b. Aerator system replacement in the WWTU aeration tank 605 was completed by August 24, 2008.
  - c. Aerator system replacement in the WWTU aeration tank 606 was completed by October 8, 2008.
  - d. Dissolved oxygen floating probes were installed by August 1, 2008. The probes were installed in the 605 and 606 tanks prior to respective restart dates.
  - e. The VPSA (vacuum-pressure swing absorption) method of supplying oxygen study is continuing. Supplied oxygen will continue to be the primary mode of operation until the completion of the study.
  - f. The ten total organic carbon (TOC) analyzers were replaced by July 2008 and are currently in service.
  - g. The additional four analyzers scheduled for installation in the Methyomyl and Larvin sewers were ordered from Zancha Associates in 2008. The instruments (Endress+Hauser model EZTOC - II) have been installed and are currently operating.
2. DAQ and the Company agree that completion of all of the aforementioned actions constitutes fulfillment of this Order.

**B. NOV of March 30, 2009**

1. The Company shall be in compliance with all terms and conditions of the West Virginia Code §§ 22-5-3, 45CSR4, and 45CSR30, Title V Permit R30-03900007-2006.
2. Immediately following the July 18, 2008 test, Boiler 10 was shut down and annual maintenance was performed on the boiler, associated equipment, and electrostatic precipitator (ESP).
3. Annual maintenance was performed on the remaining two boilers, associated equipment, and ESPs prior to the maintenance on Boiler 10.
4. The Company conducted additional particulate testing on the Number 2 Powerhouse on March 19, 2009 in conjunction with NO<sub>x</sub> RATA testing.
5. The March 19, 2009 test measured particulate emissions from the Number 2 Powerhouse at 19 pounds per hour, below the permit limit of 50 pounds per hour.
6. The Company shall continue periodic testing of Powerhouse 2 for particulate matter as required by the schedule in Title V Permit R30-03900007-2006, Section 4.3.1.
7. DAQ and the Company agree that completion of the forgoing activities constitutes compliance with this Order.

### **C. NOV of July 9, 2009**

1. Cleanup of the residues on the tank and in the secondary containment area were initiated immediately upon observation on the day of the June 24, 2009 inspection.
2. Cleanup was completed on June 25, 2009 and verified by follow-up inspection by DAQ on June 30, 2009.
3. Repair of the valve was completed on June 26, 2009.
4. DAQ and the Company agree that completion of the forgoing activities constitutes compliance with this Order.

### **D. NOV of March 16, 2010**

1. The Company shall be in compliance with all terms and conditions of the West Virginia Code §§ 22-5-3, 45CSR4, and 45CSR30, Title V Permit R30-03900007-2006:
  - a. During its internal investigation of the Rhodimet, Larvin, and the FMC unit, the site was unable to identify a specific source of odor.
  - b. The process and shift leader operational logs were evaluated, but no upset conditions were indicated.
  - c. The Rhodimet unit emission control devices were also evaluated.
  - d. The control devices were confirmed to be operating within the normal operating parameters.
  - e. At the conclusion of this investigation, no additional odor complaints were received at the site associated with this event.
2. Without the primary indicating devices identifying any operational upset conditions, Bayer CropScience was unable to specifically identify the source of this specific odor.
3. DAQ and the Company agree that completion of the forgoing activities constitutes compliance with this Order.

## **OTHER PROVISIONS**

1. The Company hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 5, Section 1 of the Code of West Virginia. Under this Order, the Company agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, the Company does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding the Company other than proceedings, administrative or civil, to enforce this Order.
2. Bayer CropScience agrees to make a payment of seven thousand five hundred dollars (\$7,500) to the Air Pollution Education and Environment Fund. All payments shall be made by check payable to the Air Pollution Education and Environment Fund and shall be sent to the Division of Air Quality, Attention: John A. Benedict, Director, 601 57th Street, SE, Charleston, WV 25304. Payment shall be made within ninety (90) days after the effective date of this Order. In addition, if Bayer CropScience fails to pay the foregoing amount timely or to complete any of the requirements contained in this Order to the satisfaction of the Director or within the time limits set forth herein, Bayer CropScience agrees to pay a stipulated penalty of one thousand dollars (\$1,000.00) to the Air Pollution Education and Environment Fund for each day that the action remains incomplete. The Director shall first notify Bayer CropScience in writing that the Facility is in violation of the terms of conditions of the Order, and the stipulated penalty shall then become immediately due and payable. Payments made pursuant to this paragraph are not tax-deductible expenditures for purposes of state or federal law.
3. The Director reserves the right to take further action if compliance with the terms and conditions of this Order do not adequately address the violations noted herein and reserves all rights and defenses which he or she may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
4. If any event occurs which causes delay in the achievement of the requirements of this Order, the Company shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after the Company becomes aware of such a delay, notification shall be provided to the Director and the Company shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which the Company intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of the Company (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

5. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving the Company of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject the Company to additional penalties and injunctive relief in accordance with the applicable law.
6. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
7. This Order is binding on the Company, its successors and assigns.
8. This Order shall become effective immediately upon signing by both parties.
9. This Order shall terminate upon the Company's written notification of full compliance with the "Order for Compliance" and written verification of compliance by WVDEP.



Bayer CropScience

21 SEP 10

Date



John A. Benedict, Director  
Division of Air Quality

SEPTEMBER 20, 2010

Date



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west virginia department of environmental protection

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**CONSENT ORDER  
ISSUED UNDER THE  
AIR POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 5, SECTION 4**

TO: Mr. Steve Hedrick  
Site Manager, Institute Industrial Park  
Bayer CropScience  
P.O. Box 1005 St. Rt. 25  
Institute, WV 25112

DATE: September 20, 2010  
ORDER NO.: CO-R30- 2010-17  
FACILITY ID NO.: 039-00007

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Air Quality (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 5, Section 1 et seq. to Bayer CropScience (hereinafter "Company").

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. Bayer CropScience owns and operates an agricultural chemicals manufacturing facility ("Facility") located in Institute, WV. The Facility is subject to the terms and conditions of seven (7) Title V operating group permits ("Permit(s)") issued by the Director. These Permits are applicable to the 7 business and operating units within the Facility, which are as follows, Group 5 - *Oximes* having been disassembled, removed from the Facility, and thus never issued a Permit:
  - A. Group 1 - *Powerhouses, Maintenance, Wastewater Treatment Unit ("WWTU"), Laboratory*
  - B. Group 2 - *Rhodimet*
  - C. Group 3 - *Carbofuran, Carbosulfan*
  - D. Group 4 - *Aldicarb*
  - E. Group 6 - *Larvin, Methomyl*
  - F. Group 7 - *1-Naphthol*
  - G. Group 8 - *Phosgene, Methylisocyanate ("MIC"), Sevin*

2. On July 2, 2010, with revisions submitted on September 9, 2010, the Company self-reported to the Director a total of 20 partial missing records that are required to be kept by the Facility. These missing records were requirements of 5 of the 7 Permits, for the years 2007, 2008, and 2009. The partial missing records are as follows:
  - A. Group 1 - *Powerhouses, Maintenance, WWTU, Laboratory*: partial missing records for conditions 4.2.4, 5.2.1, 5.2.3, 5.4.5, 6.2.1, and 6.2.3.
  - B. Group 3 - *Carbofuran, Carbosulfan*: partial missing records for conditions 4.2.1, 4.2.4, 4.2.7, 4.2.10(b)(ii)(C), 4.2.10(b)(iv)(F), 5.2.2, 5.2.3, and 5.2.5.
  - C. Group 4 - *Aldicarb*: partial missing records for condition 4.2.1.
  - D. Group 6 - *Larvin, Methomyl*: partial missing records for conditions 4.2.5 and 4.5.2.
  - E. Group 8 - *Phosgene, MIC, Sevin*: partial missing records for conditions 4.2.3, 6.2.4, and 6.2.7.
  
3. On July 2, 2010, with revisions submitted on July 30 and September 9, 2010, the Company self-reported to the Director a total of 509 actual and potential deviation events not previously reported that are required to be reported by the Facility. These deviation events were missing or out-of-range control device parameters set by conditions of 6 of the 7 Permits, for the years 2007, 2008, and 2009. The deviation events not previously reported number as follows:
  - A. Group 1 - *Powerhouses, Maintenance, WWTU, Laboratory*: 2 deviations of condition 5.1.8.
  - B. Group 2 - *Rhodimer*: 35 deviations of conditions 4.1.3, 4.1.6, 4.2.1, and 4.5.3(5);
  - C. Group 3 - *Carbofuran, Carbosulfan*: 376 deviations of conditions 4.1.1, 4.1.11, 4.2.2, 4.2.3, 4.5.2, 5.1.5, 5.1.6, 5.1.7, 5.1.8, 5.1.10, 5.2.2, 5.2.3, and 5.2.5.
  - D. Group 4 - *Aldicarb*: 46 deviations of conditions 4.1.5 and 4.2.1.
  - E. Group 6 - *Larvin, Methomyl*: 7 deviations of conditions 4.1.9, 4.1.17, 4.2.5, 4.4.4, and 4.5.2.
  - F. Group 8 - *Phosgene, MIC, Sevin*: 45 deviations of conditions 4.1.15, 4.2.1, 5.1.9, 5.2.1, and 6.2.1.
  
4. Per the Director's request, on July 30, 2010 with revisions submitted on September 9, 2010, the Company reported additional information concerning the missing records and deviation events, including calculated potential excess pollutant emissions resulting from the missing records and deviations. These calculated potential excess emissions were for 3 of the 7 Permits, for the years 2007 and 2008; the Company calculated that no potential excess pollutant emissions resulted from missing records and deviations for the year 2009. These calculated potential excess pollutant emissions were reported as follows:
  - A. Group 2 - *Rhodimer*: methylthiopropionaldehyde ("MTPA"), in the amounts:
    - (1) 1<sup>st</sup> Half 2007: 0.0 pounds
    - (2) 2<sup>nd</sup> Half 2007: 7.2 pounds
    - (3) 1<sup>st</sup> Half 2008: 10.7 pounds
    - (4) 2<sup>nd</sup> Half 2008: 0.0 pounds
  - B. Group 3 - *Carbofuran, Carbosulfan*: dichloromethane ("DCM"), in the amounts:
    - (1) 2<sup>nd</sup> Half 2007: 1.2 pounds
    - (2) 2<sup>nd</sup> Half 2008: 542 pounds
  - C. Group 6 - *Larvin, Methomyl*: methanol, in the amounts:
    - (1) 2<sup>nd</sup> Half 2008: 96 pounds
  
5. The Company is in violation of the Permit conditions listed in Section 2 for partial failure to record and maintain required records.
  
6. The Company is in violation of the Permit conditions listed in Section 3 for partial failure to record and for out-of-range control device parameters.
  
7. For Group 3 - *Carbofuran, Carbosulfan*, the Company is in violation of 40CFR63§1362(b)(2) for failure to limit emissions of DCM from the Carbon Bed outlets to a daily average of less than 20 ppmv for 1 day in 2007 and for 8 days in 2008.

8. For Group 3 - *Carbofuran, Carbosulfan*, the Company is in violation of condition 4.2.3 and 40CFR§63.1366(b)(1)(ii) [Subpart MMM] for failure to maintain a minimum daily aqueous sodium hydroxide concentration of 10% for Caustic Scrubber A-3204 for a total of 61 days from 2007 through 2009.
9. For Group 3 - *Carbofuran, Carbosulfan*, the Company is in violation of conditions 5.2.2 & 5.2.5 and 40CFR§63.1366(b)(1)(ii) [Subpart MMM] for failure to determine liquor flow and pH measurements at least once per 15 minutes of operation through Wet Scrubber C-1304 for a total of 486 times from 2007 through 2009.
10. For Group 3 - *Carbofuran, Carbosulfan*, the Company is in violation of conditions 5.2.2 & 5.2.5 and 40CFR§63.1366(b)(1)(ii) [Subpart MMM] for failure to determine liquor flow and pH measurements at least once per 15 minutes of operation through Wet Scrubber C-1305 for a total of 458 times from 2007 through 2009.
11. For Group 3 - *Carbofuran, Carbosulfan*, the Company is in violation of conditions 5.2.3 & 5.2.5 and 40CFR§63.1366(b)(1)(x) [Subpart MMM] for failure to maintain the Carbon Bed D instruments resulting in loss of monitoring data for a total of 159 days in 2009.
12. For Group 4 - *Aldicarb*, the Company is in violation of condition 4.2.1 for failure to measure the concentration of aqueous sodium hydroxide once per week for Caustic Scrubber A-2732 for a total of 40 weeks from 2007 through 2009.
13. For Group 6 - *Methomyl, Larvin*, the Company is in violation of conditions 4.1.9 & 4.1.17 and 40CFR§63.1366(b)(1)(ii) [Subpart MMM] for failure to maintain a minimum liquor flow of 2.37 gallons per minute for Wet Scrubber C-337 for a total of 6 days in 2008.
14. For Group 8 - *Phosgene, MIC, Sevin*, the Company is in violation of conditions 4.1.15 and 5.1.9 for failure to maintain a minimum 2% caustic concentration in the scrubber liquor flow for Normal (Caustic) Vent Scrubber 242B for a total of 9 days in 2007 and 2009.
15. For Group 8 - *Phosgene, MIC, Sevin*, the Company is in violation of conditions 4.1.15 and 5.1.9 for failure to maintain a minimum caustic liquor flow rate of 91 gallons per minute for Normal (Caustic) Vent Scrubber 242B for a total of 9 days in 2007 and 2009.
16. For Group 8 - *Phosgene, MIC, Sevin*, the Company is in violation of conditions 4.2.1 and 5.2.1 for failure to perform daily measurement of the caustic concentration in the scrubber liquor for Normal (Caustic) Vent Scrubber 242B for a total of 10 days in 2008.
17. For Group 8 - *Phosgene, MIC, Sevin*, the Company is in violation of condition 6.2.1 for failure to perform daily measurement of the caustic concentration in the scrubber liquor for Sevin (Caustic) Scrubber 260A for a total of 15 days in 2009.

#### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 5, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. The Company shall record and maintain all records as required per its Title V Permits. These records shall be maintained on site for a minimum of five years and be made available to the Director upon request.

2. The Company shall report all future deviations of Title V Permit conditions timely and accurately, including proper documentation within the semi-annual and annual Permit certifications, MACT reports, or other reports as required by the Permits.
3. The Company shall develop and adhere to a Permits records collection and management program for each Permit Group to ensure that future Permit violations are avoided. This data collection and management program shall be developed and implemented within thirty (30) days after the effective date of this order.
4. The Company shall perform volatile organic compound (“VOC”) and chloroform destruction efficiency testing using approved EPA testing methods on the Group 8 Emission Unit 242D, vent gas incinerator (“VGI”), and Emission Unit 242E, VGI Scrubber. This testing shall be completed within 180 days of the effective date of this consent order. Test protocols shall be submitted to the Director for written approval a minimum of thirty (30) days prior to testing. Notification of actual test date shall be submitted to the Director a minimum of fifteen (15) days prior to testing.
5. During the term of this Order, Bayer CropScience agrees to make a payment of one-hundred fifteen thousand, five-hundred twenty dollars (\$115,520) to the Air Pollution Education and Environment Fund. All payments shall be made by check payable to the Air Pollution Education and Environment Fund and shall be sent to the Division of Air Quality, Attention: John A. Benedict, Director, 601 57th Street, SE, Charleston, WV 25304. Payment shall be made within ninety (90) days after the effective date of this Order. In addition, if Bayer CropScience fails to pay the foregoing amount timely or to complete any of the requirements contained in this Order to the satisfaction of the Director or within the time limits set forth herein, Bayer CropScience agrees to pay a stipulated penalty of one thousand dollars (\$1,000.00) to the Air Pollution Education and Environment Fund for each day that the action remains incomplete. The Director shall first notify Bayer CropScience in writing that the Facility is in violation of the terms of conditions of the Order, and the stipulated penalty shall then become immediately due and payable. Payments made pursuant to this paragraph are not tax-deductible expenditures for purposes of state or federal law.

#### **OTHER PROVISIONS**

1. The Company hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 5, Section 1 of the Code of West Virginia. Under this Order, the Company agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director’s jurisdiction regarding this Order. However, the Company does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding the Company other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order do not adequately address the violations noted herein and reserves all rights and defenses which he or she may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, the Company shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after the Company becomes aware of such a delay, notification shall be provided to the Director and the Company shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which the Company intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of the Company (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be

considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving the Company of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject the Company to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on the Company, its successors and assigns.
7. This Order shall become effective immediately upon signing by both parties.
8. This Order shall terminate upon the Company's written notification of full compliance with the "Order for Compliance".

  
Bayer CropScience

21 SEP 10  
Date

  
John A. Benedict, Director  
Division of Air Quality

SEPTEMBER 20, 2010  
Date