

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CITY OF GREENVILLE, et al., individually, and on behalf of all others similarly situated,)	
)	
Plaintiffs,)	Case No.: 3:10-cv-00188-JPG-PMF
)	
vs.)	
)	
SYNGENTA CROP PROTECTION, INC., and SYNGENTA AG,)	
)	
Defendants.)	
)	

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into, subject to Final Approval of the Court, as of May 24, 2012, by and between Plaintiffs and Syngenta Crop Protection, LLC, and Syngenta AG (hereinafter “Defendants”).

1. RECITALS

- 1.1. WHEREAS**, the Settlement (as hereinafter defined) has been reached, subject to the Final Approval of the Court as provided herein, after extensive, arm’s-length negotiations between Plaintiffs’ and Defendants’ Counsel extending for many months; and

- 1.2. WHEREAS**, the Plaintiffs and their Counsel have concluded, after a thorough investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted, the legal and factual defenses thereto, and the applicable law, the burdens, risks, uncertainties, and expense of litigation, as well as the fair, cost-effective, and assured method of resolving the claims, that it would be in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class, and further, that Plaintiffs and their Counsel consider the Settlement set forth herein to be fair, reasonable, and adequate and in the best interests of the Settlement Class; and

- 1.3. WHEREAS**, Defendants, while continuing to deny any violation, wrongdoing, or liability with respect to any and all claims asserted in the Litigation, either on their part or on the part of any of the Released Parties, have nevertheless concluded that they will enter

into this Settlement Agreement in order, among other things, to avoid the expense, inconvenience, and distraction of further litigation.

1.4. NOW, THEREFORE, the undersigned agree, on behalf of Defendants and Plaintiffs, that subject to the Final Approval of the Court, the Litigation be settled, compromised and dismissed with prejudice in accordance with the terms of this Settlement Agreement, and without costs against the Settlement Class or Defendants (except as provided below), on the following terms and conditions:

2. DEFINITIONS – As used in this Agreement and its Exhibits, the following capitalized terms shall have the respective meanings set forth below.

2.1. Agreement - The term “Agreement” or “Settlement Agreement” shall mean and refer to this document evidencing a mutual settlement and release of disputed claims, and it shall also incorporate those other documents exhibited to, contemplated by and/or identified in this Agreement including, but not limited to, the Notice and the Claim Form.

2.2. Atrazine – “Atrazine” shall mean atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine), and to the extent they were, or were derived from, either constituents, or metabolites or degradates of a constituent, of a product that contained atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) as an active ingredient, all Atrazine Related Compounds, Atrazine Degradant Chemicals, and Atrazine Combination Chemicals. “Atrazine Degradant Chemical” means any of the chemicals into which atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) breaks down via microbial action, hydrolysis, dealkylation, dehalogenation, deamination, and photodegradation. Atrazine Degradant Chemicals include, but are not limited to chlorotriazine and hydroxyl triazine degradates. Chlorotriazine degradates include, but are not limited to deethylatrazine, deisopropylatrazine, and diaminochloroatrazine. Hydroxyl triazine degradates include, but are not limited to ammeline, ammelide, cyanuric acid, n-ethylammelide, n-isopropylammelide, hydroxyatrazine, hydroxydeisopropylatrazine, and hydroxideethylatrazine. “Combination Chemical” means any of the chemicals that are formed by the reaction and/or combination of atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine), Atrazine Related Compounds or Atrazine Degradant Chemicals with other chemicals (including nitrates) commonly found in water supplies or in the environment in which atrazine is used. “Atrazine Related Compound” means any of the compounds, including but not limited to simazine, which are identified collectively as “related compounds” in the list of active ingredients on the label for, or packaging of, any product containing atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) as an active ingredient.

2.3. Business Day – Shall mean any day other than a Saturday, Sunday or legal holiday in the United States of America as defined by Fed. R. Civ. P. 6(a)(6), or a statutory holiday in Switzerland.

2.4. Claim Form – “Claim Form” shall mean and refer to the document or online form that Class Members are required to use in order to receive a payment under this Agreement as specified in Paragraph 8.3.

- 2.5. Class Counsel** – “Class Counsel” shall mean and refer to Stephen M. Tillery and the law firm of Korein Tillery LLC, 505 North 7th Street, Suite 3600, St. Louis, Missouri, 63101, United States of America (hereinafter “Korein Tillery”), and Scott Summy and the law firm of Baron & Budd, 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas, 75219-3605, United States of America.
- 2.6. Class Member** - The term “Class Member” shall mean and refer to an individual member of the Settlement Class.
- 2.7. Class Period** – The period ending on the date ninety (90) calendar days after the date on which the Court grants Preliminary Approval of the Settlement.
- 2.8. Claims Administrator** - “Claims Administrator” or “Settlement Administrator” or “Settlement Claims Administrator” means the person selected as provided in Paragraph 6.1 of this Agreement.
- 2.9. Community Water System** - “Community Water System” shall have the same meaning as it is given in 42 U.S.C. § 300f(15) (2006): “a public water system that— (A) serves at least 15 service connections used by year-round residents of the area served by the system; or (B) regularly serves at least 25 year-round residents.”
- 2.10. Court** - The term “Court” shall mean and refer to any Judge for the United States District Court for the Southern District of Illinois, or of any other court, who presides over this action or this Agreement.
- 2.11. Defendants** – “Defendants” shall mean and refer to Syngenta Crop Protection LLC, sued in the Litigation under its former name Syngenta Crop Protection, Inc, a corporation incorporated in the State of Delaware, United States of America, whose principal place of business is at 410 Swing Road, Greensboro, North Carolina, NC-27419-8300, United States of America, and Syngenta AG, a Swiss corporation whose principal place of business is at Schwarzwaldallee 215, CH-4058 Basel, Switzerland.
- 2.12. Defendants’ Counsel** - “Defendants’ Counsel” shall mean and refer to Michael A. Pope and the law firm of McDermott Will & Emery LLP, 227 West Monroe Street, Chicago, Illinois, 60606-5096, United States of America.
- 2.13. Effective Date** - “Effective Date” shall mean and refer to the date which occurs thirty (30) calendar days after the date of Final Judgment.
- 2.14. Escrow Agent** – “Escrow Agent” shall have the meaning ascribed to that term by Paragraph 5.1.1.1 of this Agreement.
- 2.15. Final Approval** – “Final Approval” shall mean the entry by the Court of the Order Granting Final Approval.
- 2.16. Final Fairness Hearing** - The “Final Fairness Hearing” will be a hearing set by the Court where, among other things, the Court, in its discretion, will provide an opportunity for any Class Member who wishes to object to the fairness, reasonableness or ad-

equacy of the Settlement an opportunity to be heard, provided that the Class Member complies with the requirements for objecting to the Settlement as set out in Paragraph 7.3. The date of the Final Fairness Hearing shall be set by the Court and communicated to the Settlement Class in a Court-approved Settlement Notice under Federal Rule of Civil Procedure 23(c)(2).

- 2.17. Final Judgment** – The judgment in this case shall become final on the earliest date on which all of the following events shall have occurred: The Settlement is approved in all respects by the Court in this case as required by Fed R. Civ. P. 23(e); the Court enters a Judgment that terminates this action and satisfies the requirements of Fed. R. Civ. P. 58; and the time for appeal of the Court’s approval of this Settlement and entry of the Final Order and Judgment under Fed. R. App. P. 4 has expired or, if appealed, approval of this Settlement has been affirmed by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further review (Fed. R. App. P. 40) or appeal (U.S. Sup. Ct. R. 13) or the appeal is voluntarily dismissed. (Fed. R. App. P. 42).
- 2.18. Litigation** –The Litigation means collectively *City of Greenville, et al. v. Syngenta Crop Protection, Inc. and Syngenta AG*, 3:10-cv-00188 (S.D. Ill.); *Holiday Shores Sanitary District, et al. v. Sipcam Agro USA, Inc. and Growmark, Inc.*, 04-L-708 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Drexel Chemical Co. and Growmark, Inc.*, 04-L-709 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Syngenta Crop Protection Inc. and Growmark, Inc.*, 04-L-710 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. United Agri Products and Growmark, Inc.*, 04-L-711 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Makhteshim-Agan of North America, Inc. and Growmark, Inc.*, 04-L-712 (Ill. Cir. Ct.); *Holiday Shores Sanitary District, et al. v. Dow Agrosiences LLC and Growmark, Inc.*, 04-L-713 (Ill. Cir. Ct.)).
- 2.19. Measurable Concentration** – a concentration equal to or greater than the limit of quantitation of the analytical method used.
- 2.20. Notice** – “Notice” shall mean any form through which Class Members are notified of their rights with respect to this Agreement in accordance with Paragraph 7.2 of this Agreement.
- 2.21. Notice Plan** – “Notice Plan” shall mean the plan for distribution of the Notice, including direct mail and publication, as appropriate, which is subject to the approval of the Court as provided in Paragraph 7.1 of this Agreement.
- 2.22. Objection** – “Objection” shall have the meaning ascribed to that term by Paragraph 7.3 of this Agreement.
- 2.23. Order Granting Final Approval** - The “Order Granting Final Approval” shall mean and refer to the order entered by the Court approving, among other things, the terms and conditions of this Agreement, including the manner and timing of providing Notice, and certifying a Settlement Class.

- 2.24. Order Granting Preliminary Approval** – “Order Granting Preliminary Approval” shall mean and refer to the order entered by the Court conditionally approving the terms and conditions of this Agreement, including among other things, the conditional certification of the proposed class, the manner and timing of providing Notice, the time period for opting out and filing objections, and the date of the Final Fairness Hearing. The Parties will submit to the Court a proposed Order Granting Preliminary Approval in the form attached hereto as Exhibit 1.
- 2.25. Parties** – “Parties” shall mean and refer to Defendants, Plaintiffs and the Settlement Class, as defined herein, and to the extent that the Defendants, Plaintiffs and the Settlement Class discharge any of their obligations under this Agreement through agents, the actions of those agents shall be considered the actions of the Parties.
- 2.26. Preliminary Approval** – “Preliminary Approval” shall mean and refer to the entry by the Court of the Order Granting Preliminary Approval.
- 2.27. Qualifying Test Result** – The result of analytical testing of the Class Member’s Water performed during the Class Period using any state or federal agency-approved analytical method.
- 2.28. Released Claims** – shall mean all claims of the Releasing Parties arising out of, or relating to, the presence of Atrazine in the Releasing Parties’ Water as a result of the development, manufacture, formulation, distribution, transportation, storage, loading, mixing, application, or use of atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) or products that contain atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) as an active ingredient that any Releasing Party asserted or could have asserted in the Litigation. Released Claims shall not include any claim for indemnity, contribution among joint tortfeasors or apportionment of liability or fault, with respect to any claim against a Releasing Party, arising from the consumption of the Releasing Parties’ Water, that is not a claim for property damage or economic loss.
- 2.29. Released Parties** – shall mean Defendants and all other manufacturers, contract manufacturers, research collaborators with Defendants or with such other manufacturers, formulators, distributors, retailers, purchasers, applicators, and users of Atrazine, including the defendants (in addition to the Defendants) in the Litigation, which are Sipcam Agro USA, Inc., Growmark, Inc., Drexel Chemical Co., United Agri Products, Makhteshim-Agan of North America, Inc. and Dow Agrosiences LLC, and their present and former parents, subsidiaries, divisions, affiliates, stockholders, benefit plans, officers, directors, employees, attorneys, insurers, agents and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of them.
- 2.30. Releasing Parties** – Shall mean the Plaintiffs, on behalf of themselves and all Class Members, and their respective successors, heirs and assigns, and anyone acting on their behalf, including in a representative or derivative capacity.

- 2.31. Settlement** – “Settlement” shall mean the settlement of the Litigation which is provided for by this Agreement.
- 2.32. Settlement Class** – “Settlement Class” shall mean and refer to every Community Water System in the United States of America for which any Qualifying Test Result shows any Measurable Concentration of atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine).
- 2.33. Settlement Fund** – “Settlement Fund” shall mean the fund in the total amount of One Hundred and Five Million United States Dollars (U.S. \$105,000,000.00) which is provided for by Paragraph 5.1.1. of this Agreement.
- 2.34. Taxes** – “Taxes” shall have the meaning ascribed to that term by Paragraph 5.1.1.2.3 of this Agreement.
- 2.35. Tax Expenses** - “Tax Expenses” shall have the meaning ascribed to that term by Paragraph 5.1.1.2.3 of this Agreement.
- 2.36. Water** – the term “Water” shall mean and refer to water in which a Class Member possesses a legal or equitable right, title or interest, and that is drawn from a lake, reservoir, river, stream, creek, well or other source of water used by the Class Member to provide drinking water, including such drinking water.

3. REPRESENTATIONS and WARRANTIES

- 3.1.** Class Counsel represent and warrant that neither they nor Plaintiffs nor any person acting on behalf of any of them have commissioned nor are any of them aware of any new scientific studies relating to Atrazine not already in the public domain. Class Counsel have been duly authorized by Plaintiffs to make the representation and warranty in this paragraph.
- 3.2.** Plaintiffs and Defendants represent that they have all requisite corporate power and authority to execute, themselves or respectively by Class Counsel or Defendants’ Counsel, deliver and perform this Agreement and to consummate the transactions contemplated herein, that the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action, and that this Agreement has been duly and validly executed as aforesaid and delivered by Plaintiffs and Defendants and constitutes their legal, valid and binding obligation.

4. CERTIFICATION FOR SETTLEMENT PURPOSES

- 4.1. Settlement Class.** For the sole purpose of effectuating this Settlement, Plaintiffs and Defendants agree jointly to request that the Court certify a Settlement Class consisting of:
- 4.1.1.** Every Community Water System in the United States of America for which any Qualifying Test Result shows any Measurable Concentration of atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine).

5. CONSIDERATION

5.1. Under the terms of this Agreement, Defendants agree to provide the following relief to the Settlement Class:

5.1.1. The Settlement Fund

5.1.1.1. Within fourteen (14) calendar days following the date of Preliminary Approval of the Settlement Agreement, Syngenta Crop Protection, LLC will pay the sum of Five Million United States dollars (US\$5,000,000.00) into an interest-bearing account at a federally-insured financial institution with a party mutually agreed upon in writing by the Parties serving as escrow agent (the “Escrow Agent”) for the account whose fees and expenses shall be paid from the Settlement Fund and considered a cost of administration of the Settlement Fund. The balance of One Hundred Million United States dollars (US\$100,000,000.00) will be paid by Syngenta Crop Protection, LLC into the account within fourteen (14) calendar days following the date of Final Approval. If Syngenta Crop Protection, LLC fails to fulfill any of its payment obligations in this Paragraph, then Syngenta AG shall be responsible for the balance of any unpaid funds.

5.1.1.2. Tax Treatment of Settlement Fund.

5.1.1.2.1. The Settlement Fund shall be treated as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1.1.2, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the sole responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.1.1.2.2. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” as defined in that Section shall be the Escrow Agent. The Escrow Agent shall file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 5.1.1.2.1 herein) shall be consistent with this Paragraph 5.1.1.2 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 5.1.1.2.3 hereof.

5.1.1.2.3. All: (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, includ-

ing any Taxes or tax detriments that may be imposed upon the Defendants, their insurers or Defendants' counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (the "Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 5.1.1.2 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 5.1.1.2 (the "Tax Expenses"), shall be paid out of the Settlement Fund; in all events neither the Defendants, the Plaintiffs, Defendants' insurers, nor Defendants' counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall (notwithstanding anything herein to the contrary) withhold from distribution out of the Settlement Fund any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Defendants, the Plaintiff, their insurers nor their counsel are responsible nor shall they have any liability therefor.

5.1.1.2.4. Class Counsel shall enter into an Escrow Agreement with the Escrow Agent which shall be consistent with, and shall give effect to the obligations of the Escrow Agent provided for by, this Agreement. The Parties agree to cooperate with the Escrow Agent, each other, and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Agreement.

6. ADMINISTRATION

6.1. Selection of Settlement Administrator - Within thirty (30) calendar days following execution of this Settlement Agreement, Plaintiffs will retain, subject to prior written approval by Defendants, a settlement claims administrator to administer the proposed settlement including creation and distribution of the Notice specified in Paragraph 7.2 and payment of all claims. Upon application by the Settlement Administrator to the Escrow Agent, all fees and expenses of administration of the Settlement shall be paid out of the Settlement Fund within thirty (30) calendar days of receipt by the Escrow Agent of such application together with such supporting documentation of such fees and expenses as shall reasonably be required by the Escrow Agent. Defendants and Defendants' Counsel shall have no liability whatsoever for any acts or omissions of the Settlement Administrator, Escrow Agent or Class Counsel or the administration of the Settlement.

7. APPROVAL AND NOTICE

7.1. Preliminary Approval – Within seven (7) calendar days after the date of this Agreement, Plaintiffs shall submit to the Court a joint motion in the form of Exhibit 2 to this Agreement seeking certification, for settlement purposes only, of the Settlement Class as defined in Paragraph 4.1.1; Preliminary Approval of the Settlement; approval of the form of Notice (attached as Exhibit 3 to this Agreement) and the Notice Plan (attached as Exhibit 4 to this Agreement) and appointment of Class Counsel.

7.2. Notice – Notice of the Settlement shall be given as soon as practicable after entry of the Order Granting Preliminary Approval, provided however that the notice process shall commence no later than fourteen (14) calendar days following the entry of such Order. Summary notice shall be provided by the Settlement Administrator to the Settlement Class by first-class U.S. mail where available and by publication elsewhere, to meet the requirements of Rule 23, incorporate the elements suggested by the Federal Judicial Center and describe the aggregate amount of the Settlement Fund and the plan for allocation as specified in Exhibit 5 to this Agreement. Defendants shall take all necessary steps to comply with 28 U.S.C. § 1715. Plaintiffs and Defendants will agree in writing on the form and content of the Notices and Claim Forms.

7.3. Objections to Settlement - Any Class Member who wishes to object to the Settlement or an award of fees or expenses to Class Counsel must file with the Clerk of the Court, with service on all Parties in accordance with Fed. R. Civ. P. 5 and S.D. Ill. L.R. 5.1, a written and signed statement, designated “Objection.” Service on the Court and all Parties must be completed by the date designated in the Notice.

7.3.1. All Objections must certify in accordance with 28 U.S.C. § 1746, under penalty of perjury, that the filer has been legally authorized to object on behalf of the Class Member and provide an affidavit or other proof of the Class Member’s standing; must provide the name, address, telephone and facsimile number and email address (if available) of the filer and the Class Member; the name, address, telephone and facsimile number and email address (if available) of any counsel representing the Class Member; must state all objections asserted by the Class Member and the specific reason(s) for each objection, and include all legal support and evidence the Class Member wishes to bring to the Court’s attention; must indicate if the Class Member wishes to appear at the Final Fairness Hearing; and, identify all witnesses the Class Member may call to testify.

7.3.2. Class Members may object either on their own or through any attorney hired at their own expense. If a Class Member is represented by counsel, the attorney must: file a notice of appearance with the Clerk of Court no later than the date ordered by the Court for the filing of Objections and serve all Parties in accordance with Fed. R. Civ. P. 5 and S.D. Ill. L.R. 5.1 within the same time period.

7.3.3. Any Class Member who fully complies with the provisions of paragraphs 7.3 through 7.3.2 may, in the Court’s discretion, appear at the Final Fairness Hearing to object to the Settlement or the award of fees and costs to Class Counsel. Any Class Member who fails to comply with the provisions of paragraphs 7.3 through 7.3.2 shall waive and forfeit any and all rights and objections the Class Member may have

asserted in this action, and shall be bound by all the terms of the Agreement and by all proceedings, orders and judgments with respect to the Settlement .

7.4. Opt-outs. Any Class Member who wishes to opt out of the Settlement must file with the Settlement Administrator, with service on all Parties in accordance with Fed. R. Civ. P. 5 and S.D. Ill. L.R. 5.1, a written and signed statement, entitled “Request for Exclusion.” Service on the Settlement Administrator and all Parties must be completed by the date designated for that purpose in the Notice.

7.4.1. The Request for Exclusion must certify in accordance with 28 U.S.C. § 1746, under penalty of perjury, that the filer has been legally authorized to exclude the Class Member from the Settlement and provide an affidavit or other proof of the Class Member’s standing; must provide the filer’s name, address, telephone and facsimile number and email address (if available); include the Class Member’s name, address, telephone number, and e-mail address (if available) and be received by the Court no later than the date designated for such purpose in the Notice.

7.5. Termination - Defendants may terminate this Agreement prior to Final Approval if, based upon application of the Parties’ agreed allocation formula as specified in Exhibit 5 to this Agreement, Class Members with claims arising within the ten years preceding the date of this Agreement and with claims together constituting more than 10% by value of the Settlement Fund opt out of the Settlement Class. Defendants’ right of termination is waived unless Defendants execute this termination right by notice in writing to the Plaintiffs served within 14 Business Days of the date on which Defendants and Defendants’ Counsel are notified in writing by the Settlement Administrator that the termination conditions have been met, or the Parties mutually agree to extend this time. The Escrow Agent shall, within seven (7) calendar days of receiving written notice of Defendants exercising of their termination right, repay to Syngenta Crop Protection, LLC the Settlement Fund (including interest accrued thereon) less the sum of the notice, administrative, and any other Court-approved costs actually paid or due and payable from the Settlement Fund as of the date on which notice is received (the “Termination Refund”) and this Agreement shall thereupon terminate. In the event of such a termination, no class will be deemed certified as a result of this Agreement, and the Litigation for all purposes will revert to its status as of March 30, 2012. In such event, Defendants will not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case. Likewise, the participation in the Settlement by any Plaintiff or Class Member cannot be raised as a defense to their claims.

7.6. Entry of Order of Final Approval - At the time the Court considers the Order Granting Preliminary Approval, the Parties will request that the Court set the Final Fairness Hearing to take place approximately one hundred and fifty (150) calendar days after Notice is mailed pursuant to paragraph 7.2 above. At the Final Fairness Hearing, the Parties will request that the Court, among other things: (a) enter an Order Granting Final Approval in accordance with this Agreement; (b) conclusively certify the Settlement Class; (c) approve the Settlement Agreement as final, fair, reasonable, adequate and binding on all Class Members; and (d) permanently enjoin any Class Member who has not opted out

from bringing any proceeding in any court. In addition, prior to the Final Fairness Hearing, Class Counsel shall petition the Court for an award of attorneys' fees in an amount not to exceed 33 ⅓ % of the gross amount awarded to the Settlement Class plus costs and expenses.

7.7. Effect of Failure of Approval - In the event the Court fails to enter an Order Granting Final Approval in accordance with the terms of this Agreement, the Parties shall proceed as follows:

7.7.1. If the Court declines to enter the Order Granting Final Approval as provided for in this Agreement, the Litigation will resume unless within thirty (30) calendar days the Parties mutually agree in writing to: seek reconsideration or appellate review of the decision denying entry of the Order Granting Final Approval; or attempt to re-negotiate the Settlement and seek Court approval of the renegotiated settlement.

7.7.2. In the event the Litigation resumes or the Parties seek reconsideration and/or appellate review of the decision denying entry of the Order Granting Final Approval and such reconsideration and/or appellate review is denied, the Escrow Agent shall, within seven (7) calendar days of receiving written notice of the resumption of the Litigation or the denial of reconsideration or appellate review, repay to Syngenta Crop Protection, LLC the Termination Refund and this Agreement shall thereupon terminate.

7.7.3. If, for any reason, the Settlement is not approved by the Court or does not become subject to Final Approval, then no class will be deemed certified as a result of this Agreement, and the Litigation for all purposes will revert to its status as of March 30, 2012. In such event, Defendants will not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case. Likewise, if the Settlement is not approved by the Court or does not become subject to Final Approval, then the participation in the Settlement by any Plaintiff or Class Member cannot be raised as a defense to their claims.

7.7.4. It shall not be deemed a failure to enter the Order Granting Final Approval for the Court to deny, all or in part, the attorneys' fees and cost award requested by Class Counsel. In such case, this Agreement shall be deemed valid and enforceable, notwithstanding the Court's order awarding less than the requested amount of attorneys' fees and costs. However, Class Counsel shall retain all rights of appellate review to such an order without affecting the finality of any award to the Settlement Class.

7.8. Effect of Failure of Order Granting Final Approval to Become a Final Judgment - In the event the Order Granting Final Approval does not become a Final Judgment because an appeal is taken of the Order Granting Final Approval, the Parties shall proceed as follows:

- 7.8.1. In the event the Order Granting Final Approval does not become a Final Judgment because an appeal is taken of the Order Granting Final Approval and the Order Granting Final Approval is reversed by the appellate court, the Litigation will resume unless within thirty (30) calendar days of the appellate court ruling the Parties mutually agree in writing to: seek further reconsideration or appellate review of the appellate decision reversing the Order Granting Final Approval; or attempt to renegotiate the Settlement and seek Court approval of the renegotiated settlement.
- 7.8.2. In the event the Litigation resumes or the Parties seek further reconsideration and/or appellate review of the appellate decision reversing the Order Granting Final Approval and such further reconsideration and/or appellate review is denied, the Escrow Agent shall, within seven (7) calendar days of receiving written notice of the resumption of the Litigation or the denial of further reconsideration or appellate review, repay to Syngenta Crop Protection, LLC the Termination Refund, and this Agreement shall thereupon terminate.
- 7.8.3. If, for any reason, the Settlement does not become subject to Final Judgment, then no class will be deemed certified as a result of this Agreement, and the Litigation for all purposes will revert to its status as of March 30, 2012. In such event, Defendants will not be deemed to have consented to certification of any class, and will retain all rights to oppose, appeal, or otherwise challenge, legally or procedurally, class certification or any other issue in this case. Likewise, if the Settlement does not become subject to Final Judgment, then the participation in the Settlement by any Plaintiff or Class Member cannot be raised as a defense to their claims.

8. DISTRIBUTIONS

8.1. Notice and Administration - All costs of notice and administration of the Settlement shall be paid from the Settlement Fund subject to and in accordance with the provisions of Paragraph 6.1.

8.2. Attorneys' Fees and Costs

- 8.2.1. Any award of attorneys' fees, expenses, costs or incentive awards, under the Order Granting Final Approval or such other order of the Court, shall be paid from the Settlement Fund by the Escrow Agent to Class Counsel, upon production to the Escrow Agent of a copy of the Order, fourteen (14) calendar days after the Effective Date.

8.3. Claims Procedure and Claims Period. To make a claim against the Settlement Fund, Class Members will be required to submit a completed Claim Form to the Settlement Administrator that provides that the person submitting the Claim Form is authorized to submit a claim on behalf of a Class Member, provides the Class Member's name, address, telephone and facsimile number and email address (if available); and provides, fully and completely, all other information required by the Notice. Class Members will be allowed to submit Claim Forms up to the date specified for such purpose in the No-

tice. Class Counsel will, in its sole discretion, confirm the validity of each Claim Form and confirm that it provides the required information.

8.4. Submission and Payment of Claims

8.4.1. Fourteen (14) calendar days after the Effective Date, the Escrow Agent shall release all funds remaining in the Settlement Fund to Class Counsel for the benefit of the Settlement Class.

8.4.2. Within thirty (30) calendar days of the Effective Date, Class Counsel will cause the Settlement Administrator to distribute all of the res remaining in the Settlement Fund to Class Members who have submitted valid claims in accordance with the provisions of Paragraph 8.3 and have not exercised the right to opt out through application of a single allocation formula as specified in Exhibit 5 to this Agreement that allocates a single payment to each Class Member.

9. RELEASE AND COVENANT NOT TO SUE

9.1. Upon entry of the Final Judgment, the Releasing Parties shall (i) release the Released Parties from all Released Claims, and (ii) covenant not to sue the Released Parties based on any Released Claims. In addition, upon entry of the Final Judgment, the Releasing Parties shall be deemed to have granted the Released Parties an irrevocable, non-exclusive, transferrable license for a period of ten (10) years commencing with the date that is the earlier of Final Judgment or July 1, 2014, holding them harmless for all Released Claims or claims which, had they accrued prior to Final Judgment, would have been Released Claims. *See Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978 (7th Cir. 2002). Provided however, that this license shall not apply to any claim arising from point-source contamination, as defined in Section 502(14) of the Clean Water Act, resulting from the Released Parties' development, manufacture, formulation, distribution, transportation, storage, loading, mixing application, or use of atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) or products that contain atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) as an active ingredient or to any claim against any applicator or user of any product that contains atrazine (2-chloro-4 ethylamino-6-isopropylamino-s-triazine) as an active ingredient arising from the presence of Atrazine in the Releasing Parties' Water as a result of any use of such product not in accordance with the precautionary statements and instructions for use on the label of such product. It is not the intent of the Parties to create terms that interfere in any way with the acts or jurisdiction of any state or federal agency. Defendants shall have exclusive control over any negotiations with or recovery from the other defendants in the Litigation with regard to any contributions by such defendants to the Settlement Fund (which shall in all cases be paid to Syngenta Crop Protection LLC) in exchange for the foregoing releases.

9.2. In accordance with the foregoing release and covenant not to sue, all pending litigation brought by or on behalf of a Class Member involving Released Claims, including the Litigation, shall be dismissed with prejudice, with each party bearing their own costs, within 30 days of the Effective Date.

10. MISCELLANEOUS PROVISIONS

- 10.1. **Continuing Jurisdiction.** The U.S. District Court for the Southern District of Illinois shall have and retain jurisdiction over the interpretation and implementation of this Agreement, as well as any and all matters arising out of, or related to, the interpretation or implementation of the Agreement.
- 10.2. **Cooperation Between the Parties.** The Parties shall cooperate fully with each other and shall use all reasonable efforts to obtain Court approval of the Settlement and all of its terms. The Defendants shall provide all information reasonably necessary to assist Plaintiffs in the filing of any brief supporting approval of the Settlement. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel agree to recommend approval of and to support this Settlement Agreement to the Court and to use all reasonable efforts to give force and effect to its terms and conditions. Defendants shall have no obligation to affirmatively support an award of attorneys' fees, but shall not oppose any request for attorneys' fees up to one-third of the amount of the Settlement Fund plus reimbursement for costs and expenses. Neither Plaintiffs, Class Counsel, Defendants, Defendants' agents nor Defendants' Counsel shall in any way encourage any objections to the Settlement (or any of its terms or provisions) or encourage any Class Member to elect to opt out.
- 10.3. **Entire Agreement.** No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties, including the Memorandum of Understanding dated March 29, 2012, shall be deemed merged into this Agreement.
- 10.4. **Modification of Agreement.** No waiver, modification or amendment of the terms of this Agreement, made before or after Final Approval, shall be valid or binding unless in writing, signed by Class Counsel and by duly authorized signatories of Defendants, and then only to the extent set forth in such written waiver, modification or amendment, and subject to any required Court approval.
- 10.5. **Construction of Agreement.** The Parties acknowledge as part of the execution hereof that this Agreement was reviewed and negotiated by their respective counsel and agree that the language of this Agreement shall not be presumptively construed against any of the Parties hereto. This Agreement shall be construed as having been drafted by all the Parties to it, so that any rule of construction by which ambiguities are interpreted against the drafter shall have no force and effect.
- 10.6. **Number and Gender** – Any reference in this Agreement to the singular includes the plural where appropriate and any reference in this Agreement to the masculine gender includes the feminine and neuter genders where appropriate.

- 10.7. **Arm's Length Transaction.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length.
- 10.8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class and their respective heirs, successors and assigns. The individual signing this Agreement on behalf of Defendants hereby represents and warrants that he has the power and authority to enter into this Agreement on behalf of Defendants, on whose behalf he has executed this Agreement, as well as the power and authority to bind Defendants to this Agreement. Likewise, Class Counsel executing this Agreement represents and warrants that he has the authority to enter into this Agreement on behalf of Plaintiffs and the Settlement Class, and to bind Plaintiffs and the Settlement Class.
- 10.9. **Waiver.** Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 10.10. **When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its execution by Defendants and Class Counsel. The Parties may execute this Agreement in counterparts and execution in one or more counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 10.11. **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 10.12. **Electronic Signatures.** Any Party may execute this Agreement by having their respective duly authorized signatory sign their name on the designated signature block below, and transmitting that signature page electronically to counsel for all of the Parties. Any signature made and transmitted electronically for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement, and shall be binding upon the Party transmitting their signature electronically.
- 10.13. **Confidentiality** - The Parties shall keep confidential the content of the negotiations, points of discussion, documents, communications, and supporting data utilized or prepared in connection with the negotiations and settlement discussions taking place in this case, except as otherwise required by law. This Paragraph, however, shall not prevent Defendants from disclosing such information to their insurers if demanded by those insurers in the context of any coverage dispute. In accordance with the protective order governing the Litigation, within 120 days of the Effective Date, all documents and materials containing confidential information produced in the Litigation (other than those documents filed with the court or used as deposition exhibits) shall be returned to the Designating Party or shall be destroyed, except to the extent such documents or materials are being used by the parties in the insurance coverage litigation entitled *Syngenta*

Crop Protection, Inc. v. Insurance Company of North America, et al., No. UNN-L-3230-08 (N.J. Super. Ct. Law Div. Union Cnty.) for the purposes of that litigation only.

- 10.14. **Public comment** – Defendants will issue a joint press release to be published by Defendants in the form of Exhibit 6 on the date the motion seeking Preliminary Approval is filed in accordance with Paragraph 7.1.
- 10.15. **Exhibits.** Any exhibits hereto are incorporated herein by reference as if set forth herein verbatim, and the terms of any exhibits are expressly made a part of this Agreement.
- 10.16. **Notices to Parties.** Any notice or other communication which is required or permitted to be provided by this Agreement shall be delivered in writing by certified mail and email effective upon mailing, as follows:

To: Syngenta Crop Protection LLC

Alan B. Nadel
alan.nadel@syngenta.com
Lead Counsel Litigation NA
Syngenta Crop Protection, LLC
Post Office Box 18300
Greensboro, NC 27419-8300
USA

With copies to:

Michael A. Pope
mpope@mwe.com
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, Illinois 60606-5096
USA

To: Syngenta AG

Group General Counsel
christoph.maeder@syngenta.com
Syngenta AG
Schwarzwaldallee 215
CH-4058 Basel, Switzerland

With copies to:

Michael A. Pope
mpope@mwe.com
McDermott Will & Emery LLP

227 W. Monroe Street
Chicago, Illinois 60606-5096
USA

To: Plaintiffs, Class Counsel or the Settlement Class:

Stephen M. Tillery
stillery@koreintillery.com
azigler@koreintillery.com
Korein Tillery LLC
505 North 7th Street, Suite 3600
St. Louis, Missouri 63101-1625
USA

10.17. **Governing Law** - This and all related agreements between the Parties and all actions arising out of them shall be governed by and construed in accordance with the laws of the State of Illinois, United States of America, without regard to conflicts of law.

Agreed to:

On July 22, 2012

By: 

Stephen M. Tillery

Korein Tillery, LLC

One U.S. Bank Plaza


505 N. 7th Street, Suite 3600

St. Louis, MO 63101

Attorneys for Plaintiffs

On T æ G 2012

Syngenta Crop Protection, LLC

By: 
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On _____, 2012

Syngenta AG

By: _____

By: _____

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On _____, 2012

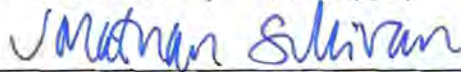
Syngenta Crop Protection, LLC

By: _____

On May 23, 2012

Syngenta AG

By: 
CHRISTOPH MAEDER

By: 
JONATHAN D SULLIVAN

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