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| 6   | BEFORE THE<br>UNITED STATES ENVIRONMENTAL PROTECTION AGENCY   |
| 7   |   |
| 8   | In the Matter of: ) DOCKET NO. FIFRA-10-2010-0196   |
| 9   |   |
| 10  | DOUBLE "R" HOP RANCHES, INC.       )       CONSENT AGREEMENT AND         )       FINAL ORDER  |
| 11  | )<br>Respondent )   |
| 12  |   |
| 13  | I. STATUTORY AUTHORITY  |
| 14  |   |
| 15  | 1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority  |
| 16  | vested in the Administrator of the United States Environmental Protection Agency ("EPA") by   |
| 17  | Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C.  |
| 18  | § 136 <i>l</i> (a).   |
| 19  | 1.2. The Administrator has delegated the authority to issue the Final Order contained   |
| 20  | in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has  |
| 21  | redelegated this authority to the Regional Judicial Officer.  |
| 22  | 1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136 <i>l</i> (a), and in accordance with  |
| ·23 | the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil  |
| •24 | Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Double "R" Hop Ranches, Inc.  |
| 25  | ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.  |
|     | CONSENT AGREEMENT AND FINAL ORDER - 1<br>DOCKET NO. FIFRA-10-2010-0196<br>U.S. Environmental Protection Agency<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>(206) 553-1037 |

| 1  | II. <u>PRELIMINARY STATEMENT</u>  |  |
|----|---|--|
| 2  | 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO  |  |
| 3  | commences this proceeding which will conclude when the Final Order contained in Part V of   |  |
| 4  | this CAFO becomes effective.  |  |
| 5  | 2.2. Part III of this CAFO contains a concise statement of the statutory and factual  |  |
| 6  | basis for the alleged violations of FIFRA.  |  |
| 7  | III. <u>ALLEGATIONS</u>   |  |
| 8  | 3.1. Double "R" Hop Ranches, Inc. owns and operates a business facility located at  |  |
| 9  | 8491 Branch Road, Harrah, Washington 98933.   |  |
| 10 | 3.2. On or about April 13 2009, Respondent applied the pesticides "Lorsban 4E," EPA   |  |
| 11 | Reg. No. 62719-220, "Focus SC," EPA Reg. No. 10163-275, and "IAP Dormant Oil," EPA Reg.   |  |
| 12 | No. 71058-2 to an apple orchard in Hurrah, Washington. During the application, the pesticides   |  |
| 13 | drifted from the application site onto another individual's property. Respondent committed three  |  |
| 14 | violations of FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by allowing the above  |  |
| 15 | products to drift from the target site thereby applying the products in a manner inconsistent with  |  |
| 16 | their labeling. These violations subject Respondent to the payment of a civil penalty in  |  |
| 17 | accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 1361(a)(2).   |  |
| 18 | 3.3. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136 <i>l</i> (a)(2), and 40 C.F.R. Part 19,   |  |
| 19 | EPA may assess a civil penalty of not more than \$1,100 for each first offense against any private  |  |
| 20 | applicator who violates any provision of Section 12 of FIFRA.   |  |
| 21 |   |  |
| 22 | IV. <u>CONSENT AGREEMENT</u>  |  |
| 23 | 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional   |  |
| 24 | allegations contained herein, but neither admits nor denies the specific factual allegations put  |  |
| 25 |   |  |
|    | CONSENT AGREEMENT AND FINAL ORDER - 2<br>DOCKET NO. FIFRA-10-2010-0196<br>U.S. Environmental Protection Agency<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>(206) 553-1037 |  |

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forth by EPA. Respondent waives any right to contest these allegations as well as the right to
 appeal the accompanying Final Order. Respondent also consents that this settlement will be
 considered prior history under FIFRA once finalized and consents to payment of the penalty as
 stated below.

4.2. Respondent consents to the assessment of a civil penalty in the amount of TWO THOUSAND EIGHTY DOLLARS and no cents (\$2,080.00). Respondent consents to issuance
of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in
this paragraph within thirty (30) days of the effective date of this Final Order.

9 4.3. Payment under this CAFO shall be made by cashier's check or certified check,
10 payable to the order of "Treasurer, United States of America" and delivered to the following
11 address:

US Bank - USEPA - Region 10 Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000

15 || Respondent shall note on the check the title and docket number of this action.

16 4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,

17 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and

18 Enforcement at the following addresses:

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19 **Regional Hearing Clerk** U.S. Environmental Protection Agency Region 10 20 Office of Regional Counsel, ORC-158 1200 Sixth Avenue, Suite 900 21 Seattle, WA 98101 22 Attn: Derrick Terada U.S. Environmental Protection Agency Region 10 23 Pesticides and Toxics Unit, OCE-084 1200 Sixth Avenue, Suite 900 24 Seattle, WA 98101

CONSENT AGREEMENT AND FINAL ORDER - 3 DOCKET NO. FIFRA-10-2010-0196 U.S. Environmental Protection Agency 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101 (206) 553-1037

1 Should Respondent fail to pay the penalty assessed herein in full by its due date, 4.5. 2 the entire unpaid balance of penalty and accrued interest shall become immediately due and 3 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under 4 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with 5 interest, handling charges, and nonpayment penalties, as set forth below. 6 Should Respondent fail to pay any portion of the penalty assessed herein in full by 4.6. 7 its due date. Respondent shall also be responsible for payment of the following amounts: 8 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate 9 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) 10 from the effective date of the accompanying Final Order, provided, however, that 11 no interest shall be payable on any portion of the assessed penalty that is paid 12 within 30 days of the effective date of the Final Order. 13 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge 14 of \$15 shall be paid if any portion of the assessed penalty is more than 30 days 15 past due. 16 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty 17 of 6% per annum shall be paid on any portion of the assessed penalty that is more 18 than 90 days past due, which nonpayment penalty shall be calculated as of the 19 date the underlying penalty first becomes past due. 20 4.7. The penalty described in Paragraph 4.2, above, including any additional costs 21 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA 22 and shall not be deductible for purposes of federal taxes. 23 4.8. The undersigned representative of Respondent certifies that he is fully authorized 24 to enter into the terms and conditions of this CAFO and to bind Respondent to this document. 25 CONSENT AGREEMENT AND FINAL ORDER - 4 U.S. Environmental Protection Agency DOCKET NO. FIFRA-10-2010-0196 1200 Sixth Avenue, Suite 900 Seattle, Washington 98101 (206) 553-1037

Respondent shall bear its own costs and attorneys fees in connection with this 4.9. 1 2 matter. The provisions of this CAFO shall bind Respondent and its agents, servants, 3 4.10. 4 employees, successors, and assigns. The above provisions are STIPULATED AND AGREED upon by Respondent 5 4.11. and EPA. 6 "R" HOP RANCHES. INC .: DATED: DOUBLE 7 8 9 **KEVIN RIEL** 10 Owner For Respondent 11 U.S. ENVIRONMENTAL PROTECTION AGENCY: DATED: 12 13 9/2/2010 14 EDWARD J. KOWALSKI Director, Office of Civil Enforcement 15 For Complainant 16 1718 19 20 21 22 23 24 25 CONSENT AGREEMENT AND FINAL ORDER - 5 **U.S. Environmental Protection Agency** 1200 Sixth Avenue, Suite 900 DOCKET NO. FIFRA-10-2010-0196 Seattle, Washington 98101 (206) 553-1037

| 1  | V. <u>FINAL ORDER</u>   |
|----|---|
| 2  | 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by  |
| 3  | reference into this Final Order. Respondent is hereby ordered to comply with the foregoing  |
| 4  | terms of the settlement.  |
| 5  | 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties   |
| 6  | pursuant to FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a),  |
| 7  | nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate   |
| 8  | injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO   |
| 9  | does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all   |
| 10 | applicable provisions of FIFRA and regulations promulgated thereunder.  |
| 11 | 5.3. This Final Order shall become effective upon filing.   |
| 12 |   |
| 13 | SO ORDERED this 3rd day of September, 2010.   |
| 14 |   |
| 15 | Frans m. fle  |
| 16 | Thomas M. Jahnke<br>Regional Judicial Officer   |
| 17 | U.S. Environmental Protection Agency  |
| 18 | Region 10   |
| 19 |   |
| 20 |   |
| 21 |   |
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|    | CONSENT AGREEMENT AND FINAL ORDER - 6<br>DOCKET NO. FIFRA-10-2010-0196<br>U.S. Environmental Protection Agency<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>(206) 553-1037 |

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| 1        | CERTIFICATE OF SERVICE  |
|----------|---|
| 2        | The undersigned certifies that the original of the attached <b>CONSENT AGREEMENT</b>  |
| 3        | AND FINAL ORDER in the Matter of: Double "R" Hop Ranch Docket<br>No. FIFRA 10-2010-0196, was filed with the Regional Hearing Clerk on $\sum \mu \tau$ . $\tau$ , $2^{\nu}i^{\nu}$ .               |
| 4        | On Sept. $7_1 200^{\circ}$ the undersigned certifies that a true and correct copy of the document was hand delivered to:  |
| 5        | was hand delivered to:  |
| 6        | Mercer St. Peter, Assistant Regional Counsel  |
| 7        | U.S. Environmental Protection Agency, Region 10<br>1200 Sixth Avenue, Suite 900, Mail Stop ORC-158<br>Secttle Washington 08101  |
| 8        | Seattle, Washington 98101   |
| 9        | Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on $\underline{Sp(. 7, 2v/v)}$ , to: |
| 10       | Kevin Riel  |
| 11<br>12 | Double "R" Hop Ranch<br>8491 Branch Road  |
| 12       | Harrah, Washington 98933  |
| 13       |   |
| 14       | Dated: 9/7/10 Abran Eng   |
| 16       | Carol Kennedy Shq nh Eng<br>Regional Hearing Clerk  |
| 17       |   |
| 18       |   |
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|          | CONSENT AGREEMENT AND FINAL ORDER - 7<br>DOCKET NO. FIFRA-10-2010-0196<br>U.S. Environmental Protection Agency<br>1200 Sixth Avenue, Suite 900<br>Seattle, Washington 98101<br>(206) 553-1037     |

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