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2007 AUG 29 PM 5:27

U.S. EPA, REGION IX  
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7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of: ) Docket No. FIFRA-9-2007-0021

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12 Begay's Pest Control Service, )

13 Respondent. )

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CONSENT AGREEMENT  
AND FINAL ORDER  
pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Begay's Pest Control Service ("BPC" or the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the use of registered pesticides in manners inconsistent with their labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Dclegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this

1 action under FIFRA to the Director of the Communities and Ecosystems Division by EPA  
2 Regional Order Number 1255.08 CHG1, dated June 9, 2005.

3 3. Respondent is BPC, a corporation that operates a pest control and extermination  
4 services business headquartered at 111 Rosita Avenue in Gamero, New Mexico.

5 **B. STATUTORY AND REGULATORY BASIS**

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

8 **C. ALLEGED VIOLATIONS**

9 5. Respondent is a corporation and therefore fits within the definition of "person" as that  
10 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

11 6. Demon WP (EPA Registration No. 100-990) and Tempo WP Ultra (EPA Registration  
12 No. 432-1304) are substances intended for preventing, destroying, repelling, or mitigating any  
13 pest and are therefore "pesticides" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §  
14 136(u).

15 7. The labeling for the pesticide Demon WP includes language requiring the applicator to  
16 "wear protective eyewear (goggles, face shield, or safety glasses)" and a "long-sleeve shirt and  
17 long pants (or coveralls over short-sleeved shirt and short pants), socks, chemical-resistant shoes  
18 and chemical-resistant gloves."

19 8. The labeling for the pesticide Tempo WP Ultra includes language requiring the  
20 applicator to "wear safety glasses, goggles or face shield and a dust/mist respirator when treating  
21 overhead areas."

22 9. On July 13, 2006, the Navajo Nation Environmental Protection Agency (the  
23 "NNEPA") conducted an inspection of Respondent's commercial application of the pesticide  
24 Demon WP at the Navajo Department of Justice Building in Window Rock, Arizona.

25 10. During this inspection, the NNEPA inspector observed that Benjiman L. Mitchell, a  
26 certified commercial applicator employed by Respondent, was not wearing protective eyewear  
27 (including goggles, face shield, or safety glasses), nor was he wearing a long-sleeve shirt (or  
28 coveralls over his short-sleeved shirt), chemical-resistant shoes, or chemical-resistant gloves.

1 11. By failing to follow labeling instructions requiring the use of protective eyewear and  
2 clothing during application of the registered pesticide Demon WP on July 13, 2006, Respondent  
3 violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

4 12. On November 3, 2006, the NNEPA conducted an inspection of Respondent's  
5 commercial application of the pesticide Tempo WP Ultra at the Ganado Unified School District  
6 Office in Ganado, Arizona.

7 13. During this inspection, the NNEPA inspector observed that Edward Begay, a  
8 certified commercial applicator employed by Respondent, was not wearing safety glasses,  
9 goggles or a face shield, nor was he wearing a dust/mist respirator when treating overhead areas.

10 14. By failing to follow labeling instructions requiring the use of protective eyewear and  
11 a respirator during application of the registered pesticide Tempo WP Ultra on November 3, 2006,  
12 Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

13 15. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and the Civil Monetary Penalty  
14 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any applicator not included under  
15 paragraph (1) of this subsection [14(a)] who holds or applies registered pesticides, or uses  
16 dilutions of registered pesticides, only to provide a service of controlling pests without delivering  
17 any unapplied pesticide to any person so served, and who violates any provision of FIFRA may  
18 be assessed a civil penalty by the EPA Administrator in an amount not to exceed \$650 for each  
19 offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for  
20 FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the  
21 violations cited above would merit a pre-adjustment civil penalty of \$1,300, given the alleged  
22 violations' gravity level, size of business, and applicable gravity adjustments.

23 **D. RESPONDENT'S ADMISSIONS**

24 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,  
25 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over  
26 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section  
27 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the  
28 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any

1 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the  
2 proposed Final Order contained in this CAFO.

3 **E. CIVIL ADMINISTRATIVE PENALTY**

4 17. In settlement of the violations specifically alleged in Section I.C of this CAFO,  
5 Respondent shall pay a civil administrative penalty of ONE THOUSAND, ONE HUNDRED,  
6 AND SEVENTY DOLLARS (\$1,170). Respondent shall pay this civil penalty within thirty (30)  
7 days of the effective date of this CAFO, shall make this payment by cashier's or certified check  
8 payable to the "Treasurer, United States of America," and shall send the check by certified mail,  
9 return receipt requested, to the following address:

10 U.S. Environmental Protection Agency, Region IX  
11 P.O. Box 371099M  
12 Pittsburgh, PA 15251

13 Respondent shall accompany its payment with a transmittal letter identifying the case name, the  
14 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,

15 Respondent shall send a copy of the check and transmittal letter to the following addresses:

16 Regional Hearing Clerk  
17 Office of Regional Counsel (ORC-1)  
18 U.S. Environmental Protection Agency, Region IX  
19 75 Hawthorne Street  
20 San Francisco, CA 94105

21 Julie Jordan  
22 Communities and Ecosystems Division (CED-5)  
23 U.S. Environmental Protection Agency, Region IX  
24 75 Hawthorne Street  
25 San Francisco, CA 94105

26 Edgar P. Coral  
27 Office of Regional Counsel (ORC-2)  
28 U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

18. Respondent shall not use payment of any penalty under this CAFO as a tax deduction  
from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use  
such payment as a tax deduction.

19. If Respondent fails to pay the assessed civil administrative penalty of ONE

1 THOUSAND, ONE HUNDRED, AND SEVENTY DOLLARS (\$1,170), as identified in  
 2 Paragraph 17, by the deadline specified in that Paragraph, then Respondent shall also pay a  
 3 stipulated penalty to EPA. The amount of the stipulated penalty will be ONE HUNDRED AND  
 4 THIRTY DOLLARS (\$130), and will be immediately due and payable on the day following the  
 5 deadline specified in Paragraph 17, together with the initially assessed civil administrative penalty  
 6 of ONE THOUSAND, ONE HUNDRED, AND SEVENTY DOLLARS (\$1,170), resulting in a  
 7 total penalty due of THIRTEEN HUNDRED DOLLARS (\$1,300). Failure to pay the civil  
 8 administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph may  
 9 also lead to any or all of the following actions:

10 (1) EPA may refer the debt to a credit reporting agency, a collection  
 11 agency, or to the Department of Justice for filing of a collection action in the appropriate United  
 12 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and  
 13 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such  
 14 collection proceeding.

15 (2) The U.S. Government may collect the debt by administrative offset  
 16 (i.e., the withholding of money payable by the United States to, or held by the United States for, a  
 17 person to satisfy the debt the person owes the U.S. Government), which includes, but is not  
 18 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40  
 19 C.F.R. §§ 13(C) and 13(H).

20 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke  
 21 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing  
 22 business with EPA or engaging in programs EPA sponsors or funds.

23 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.  
 24 Government may assess interest, administrative handling charges, and nonpayment penalties  
 25 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
 26 civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph.

27 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
 28 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established

1 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
2 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
3 (30) days of the effective date of this CAFO.

4 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
5 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
6 based on either actual or average cost incurred (including both direct and indirect costs), for  
7 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

8 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
9 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,  
10 may be assessed on all debts more than ninety (90) days delinquent.

#### 11 F. CERTIFICATION OF COMPLIANCE

12 20. In executing this CAFO, Respondent certifies that: (1) it is in compliance with  
13 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by no longer using registered pesticides  
14 in manners inconsistent with their labeling; and (2) it has complied with all other FIFRA  
15 requirements at all facilities under its control.

#### 16 G. RETENTION OF RIGHTS

17 21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
18 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
19 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
20 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,  
21 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
22 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
23 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
24 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

25 22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's  
26 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
27 and permits.  
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H. ATTORNEYS' FEES AND COSTS

23. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

24. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

25. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

26. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT BEGAY'S PEST CONTROL SERVICE:

4/20/07  
DATE

*Robert Begay*  
ROBERT BEGAY  
Owner  
Begay's Pest Control Service  
111 Rosita Avenue  
Gamerco, NM 87317

FOR COMPLAINANT EPA:

                      
DATE

*Enrique Manzanilla*  
*En* ENRIQUE MANZANILLA  
Director, Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Consent Agreement and Final Order  
*In re Begay's Pest Control Service*


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II. FINAL ORDER

EPA and Begay's Pest Control Service having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2007-\_\_\_\_) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE THOUSAND, ONE HUNDRED, AND SEVENTY DOLLARS (\$1,170), and comply with the terms and conditions set forth in the Consent Agreement.

08/29/07  
DATE

  
STEVEN JAWGJEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

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CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2007-0021 was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail, return receipt requested, addressed to the following address:

Mr. Robert Begay  
Begay's Pest Control Service  
111 Rosita Ave.  
Gamerco, NM 87317

Certified Return Receipt No. 7000 1670 0009 3120 9366

Date: 08/29/2007

By: Steven Ramsey, Acting  
for DANIELLE CARR  
Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region IX  
75 Hawthorne Avenue  
San Francisco, California 94105-3143