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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. FIFRA-09-2008- 0022

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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)

Respondent.

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Vector Tobacco Inc. ("Vector Tobacco" 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), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

2. Complainant is the Associate Director for Agriculture 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 Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further

1 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture
2 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,
3 dated June 9, 2005.

4 3. Respondent is Vector Tobacco Inc., a Virginia corporation.

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 5. Pursuant to 40 C.F.R. § 170.112(a), after the application of any pesticide on an
9 agricultural establishment, the agricultural employer shall not allow or direct any worker to enter
10 or remain in the treated area before the restricted-entry interval specified on the labeling has
11 expired.

12 6. Pursuant to 40 C.F.R. § 170.120(b), the agricultural employer shall notify workers of
13 any pesticide application on the farm.

14 7. Pursuant to 40 C.F.R. § 170.122(c), when workers are on an agricultural establishment
15 and a pesticide has been applied on the establishment in the production of agricultural plants
16 within the past 30 days, the agricultural employer shall display, in accordance with this section,
17 specific information about the pesticide, including: (1) the location and description of the treated
18 area; (2) the product name, EPA registration number, and active ingredient(s) of the pesticide; (3)
19 the time and date the pesticide is to be applied; and (4) the restricted-entry interval for the
20 pesticide.

21 8. Pursuant to 40 C.F.R. § 170.130(a), the agricultural employer shall assure that each
22 worker, required by this section to be trained, has been trained according to this section during
23 the last 5 years.

24 9. Pursuant to 40 C.F.R. § 170.150(a), the agricultural employer must provide
25 decontamination supplies for workers in accordance with this section whenever: (1) any worker
26 on the agricultural establishment is performing an activity in the area where a pesticide was
27 applied or a restricted-entry interval was in effect within the last 30 days; and (2) the worker
28

1 contacts anything that has been treated with the pesticide, including, but not limited to, soil,
2 water, plants, plant surfaces, and plant parts.

3 10. Pursuant to 40 C.F.R. § 170.160, if there is any reason to believe that a person who is
4 or has been employed on an agricultural establishment to perform tasks related to the production
5 agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural
6 establishment, including, but not limited to, exposures from application, splash, spill, drift, or
7 pesticide residues, the agricultural employer shall: (1) make available to that person prompt
8 transportation from the agricultural establishment, including any labor camp on the agricultural
9 establishment, to an appropriate emergency medical facility; and (2) provide to that person or to
10 treating medical personnel, promptly upon request, any obtainable information on: (a) product
11 name, EPA registration number, and active ingredients of any product to which that person might
12 have been exposed; (b) antidote, first aid, and other medical information from the product
13 labeling; (c) the circumstances of application or use of the pesticide on the agricultural
14 establishment; and (d) the circumstances of exposure of that person to the pesticide.

15 11. Pursuant to 40 C.F.R. § 170.230(a), before any handler performs any handling task,
16 the handler employer shall assure that the handler has been trained in accordance with this
17 section during the last 5 years.

18 12. Pursuant to 40 C.F.R. § 170.232(a), the handler employer shall assure that before the
19 handler performs any handling activity, the handler either has read the product labeling or has
20 been informed in a manner that the handler can understand of all labeling requirements related to
21 safe use of the pesticide, such as signal words, human hazard precautions, personal protective
22 equipment requirements, first aid instructions, environmental precautions, and any precautions
23 pertaining to the handling activity to be performed.

24 13. Pursuant to 40 C.F.R. § 170.240(a), any person who performs tasks as a pesticide
25 handler shall use the clothing and personal protective equipment specified on the labeling for use
26 of the product.

27 14. Pursuant to 40 C.F.R. § 170.240(c), when personal protective equipment is specified
28 by the labeling of any pesticide for any handling activity, the handler employer shall provide the

1 appropriate personal protective equipment in clean and operating condition to the handler.

2 15. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. Part 170,
3 as referenced on the pesticide label, and who fails to perform that duty, violates Section
4 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section
5 14 of FIFRA, 7 U.S.C. § 136l.

6 **C. ALLEGED VIOLATIONS**

7 16. Respondent is a corporation and therefore fits within the definition of “person” as
8 that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject
9 to FIFRA and the implementing regulations promulgated thereunder.

10 17. At all times relevant to this matter, Respondent operated a facility (the “Facility”)
11 located at the Old Plantation Site in Mana, Kekaha, Hawaii.

12 18. This Facility is a “farm” and therefore an “agricultural establishment” as those terms
13 are defined at 40 C.F.R. § 170.3.

14 19. At all times relevant to this matter, the individuals employed by Respondent for the
15 performance of activities relating to the production of agricultural plants at the Facility were
16 “workers” as that term is defined at 40 C.F.R. § 170.3.

17 20. At all times relevant to this matter, the individuals employed by Respondent for
18 assistance with the application of pesticides at the Facility were “handlers” as that term is defined
19 at 40 C.F.R. § 170.3.

20 21. At all times relevant to this matter, Respondent was an “agricultural employer” as
21 that term is defined at 40 C.F.R. § 170.3.

22 22. At all times relevant to this matter, Respondent was a “handler employer” as that
23 term is defined at 40 C.F.R. § 170.3.

24 23. Terramaster 4EC (EPA Reg. No. 400-422), NemaCur 3 (EPA Reg. No. 3125-283),
25 Lorsban 4E (EPA Reg. No. 62719-220), Prowl 3.3EC (EPA Reg. No. 241-337), Devrinol 50DF
26 (EPA Reg. No. 70506-36), and Ridomil Gold EC (EPA Reg. No. 100-801) are registered
27 “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28 24. At all times relevant to this matter, the Greenhouse Float Beds and Field 121 at the

1 Facility were “treated areas” as that term is defined at 40 C.F.R. § 170.3.

2 25. On or about November 15, 2005, Respondent used, “in a manner inconsistent with its
3 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
4 pesticide Terramaster 4EC at the Facility. Specifically, Respondent failed to prevent a worker
5 (Raquel S.) from entering a treated area (Field 121) at the Facility before the applicable
6 restricted-entry interval for the application of this pesticide had expired. Pursuant to 40 C.F.R. §
7 170.112(a), this failure represent the use of a registered pesticide in a manner inconsistent with
8 its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

9 26. On or about February 14 or 15, 2006, Respondent used, “in a manner inconsistent
10 with its labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
11 registered pesticide Nemacur 3 at the Facility. Specifically, on seven total occasions Respondent
12 failed to prevent four separately identifiable workers (Jerry L. on February 14 and 15, 2006; Jack
13 S. on February 14 and 15, 2006; Raquel S. on February 15, 2006; and Michael I. on February 14
14 and 15, 2006) from entering a treated area (Field 121) at the Facility before the applicable
15 restricted-entry interval for the application of this pesticide had expired. Pursuant to 40 C.F.R. §
16 170.112(a), these seven failures represent the use of a registered pesticide in a manner
17 inconsistent with its labeling and are thus violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
18 136j(a)(2)(G).

19 27. On or about February 14 or 15, 2006, Respondent used, “in a manner inconsistent
20 with its labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
21 registered pesticide Ridomil Gold EC at the Facility. Specifically, on seven total occasions
22 Respondent failed to prevent four separately identifiable workers (Jerry L. on February 14 and
23 15, 2006; Jack S. on February 14 and 15, 2006; Raquel S. on February 15, 2006; and Michael I.
24 on February 14 and 15, 2006) from entering a treated area (Field 121) at the Facility before the
25 applicable restricted-entry interval for the application of this pesticide had expired. Pursuant to
26 40 C.F.R. § 170.112(a), these seven failures represent the use of a registered pesticide in a
27 manner inconsistent with its labeling and are thus violations of Section 12(a)(2)(G) of FIFRA, 7
28 U.S.C. § 136j(a)(2)(G).

1 28. On or about February 14 or 15, 2006, Respondent used, “in a manner inconsistent
2 with its labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
3 registered pesticide Lorsban 4E at the Facility. Specifically, on three total occasions Respondent
4 failed to prevent three separately identifiable workers (Jerry L. on February 14, 2006; Jack S. on
5 February 14, 2006; and Michael I. on February 14, 2006) from entering a treated area (Field 121)
6 at the Facility before the applicable restricted-entry interval for the application of this pesticide
7 had expired. Pursuant to 40 C.F.R. § 170.112(a), these three failures represent the use of a
8 registered pesticide in a manner inconsistent with its labeling and are thus violations of Section
9 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

10 29. On or about February 13, 2006, Respondent used, “in a manner inconsistent with
11 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
12 registered pesticides Namacur 3, Lorsban 4E, Prowl 3.3EC, Devrinol 50DF, and Ridomil Gold
13 EC at the Facility. Specifically, Respondent failed to notify four separately identifiable workers
14 (Jerry L., Jack S., Raquel S., and Michael I.) of the applications of these five pesticides at Field
15 121 at the Facility, resulting in a total of 20 counts. Pursuant to 40 C.F.R. § 170.120(b), these 20
16 failures represent the use of registered pesticides in a manner inconsistent with their labeling and
17 are thus violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

18 30. On or about February 13, 2006, Respondent used, “in a manner inconsistent with
19 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
20 registered pesticides Namacur 3, Lorsban 4E, Prowl 3.3EC, Devrinol 50DF, and Ridomil Gold
21 EC at the Facility. Specifically, Respondent failed to provide workers with specific information
22 about the application of these five pesticides at Field 121 at the Facility within the past 30 days.
23 Pursuant to 40 C.F.R. § 170.122(c), these five failures represent the use of registered pesticides
24 in a manner inconsistent with their labeling and are thus violations of Section 12(a)(2)(G) of
25 FIFRA, 7 U.S.C. § 136j(a)(2)(G).

26 31. On or about February 13, 2006, Respondent used, “in a manner inconsistent with
27 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
28 registered pesticides Namacur 3, Lorsban 4E, Prowl 3.3EC, Devrinol 50DF, and Ridomil Gold

1 EC at the Facility. Specifically, after the application of these five pesticides at Field 121 at the
2 Facility within the preceding 30 days, Respondent failed to assure that each of four separately
3 identifiable workers (Jerry L., Jack S., Raquel S., and Michael I.) had received pesticide safety
4 training during the preceding five years, resulting in a total of 20 counts. Pursuant to 40 C.F.R. §
5 170.130(a), these 20 failures represent the use of registered pesticides in a manner inconsistent
6 with their labeling and are thus violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
7 136j(a)(2)(G).

8 32. On or about February 13, 2006, Respondent used, “in a manner inconsistent with
9 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
10 registered pesticides Namacur 3, Lorsban 4E, Prowl 3.3EC, Devrinol 50DF, and Ridomil Gold
11 EC at the Facility. Specifically, Respondent failed to provide decontamination supplies for four
12 separately identifiable workers (Jerry L., Jack S., Raquel S., and Michael I.) after these five
13 pesticides had been applied at Field 121 at the Facility within the preceding 30 days, resulting in
14 a total of 20 counts. Pursuant to 40 C.F.R. § 170.150(a), these 20 failures represent the use of
15 registered pesticides in a manner inconsistent with their labeling and are thus violations of
16 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

17 33. On or about November 15, 2005, Respondent used, “in a manner inconsistent with its
18 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
19 pesticide Terramaster 4EC at the Facility. Specifically, Respondent failed to make available
20 prompt emergency medical assistance to a worker (Raquel S.) that had been injured by exposure
21 to this pesticide at the Greenhouse Float Beds at the Facility. Pursuant to 40 C.F.R. § 170.160,
22 this failure represents the use of a registered pesticide in a manner inconsistent with its labeling
23 and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

24 34. On or about February 13, 2006, Respondent used, “in a manner inconsistent with
25 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
26 registered pesticides Namacur 3, Lorsban 4E, Prowl 3.3EC, Devrinol 50DF, and Ridomil Gold
27 EC at the Facility. Specifically, Respondent failed to make available prompt emergency medical
28 assistance to a worker (Michael I.) that had been injured by exposure to these five pesticides at

1 Field 121 at the Facility. Pursuant to 40 C.F.R. § 170.160, these five failures represent the use of
2 registered pesticides in a manner inconsistent with their labeling and are thus violations of
3 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

4 35. On or about November 15, 2005, Respondent used, “in a manner inconsistent with its
5 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
6 pesticide Terramaster 4EC at the Facility. Specifically, after the application of this pesticide at
7 the Greenhouse Float Beds at the Facility within the preceding 30 days, Respondent failed to
8 assure that a handler (Raquel S.) had received handler safety training during the preceding five
9 years. Pursuant to 40 C.F.R. § 170.230(a), this failure represents the use of a registered pesticide
10 in a manner inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G) of
11 FIFRA, 7 U.S.C. § 136j(a)(2)(G).

12 36. On or about November 15, 2005, Respondent used, “in a manner inconsistent with its
13 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
14 pesticide Terramaster 4EC at the Facility. Specifically, during the performance of a handling
15 task involving this pesticide at the Greenhouse Float Beds at the Facility, Respondent failed to
16 assure that a handler (Raquel S.) either had read the labeling for this pesticide or had been
17 informed of all labeling requirements. Pursuant to 40 C.F.R. § 170.232(a), this failure represents
18 the use of a registered pesticide in a manner inconsistent with its labeling and is thus a violation
19 of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

20 37. On or about November 11, 2005, Respondent used, “in a manner inconsistent with its
21 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
22 pesticide Terramaster 4EC at the Facility. Specifically, during the performance of a handling
23 task involving this pesticide at the Greenhouse Float Beds at the Facility, a handler (Robert B.)
24 failed to use the clothing and personal protective equipment specified by the labeling. Pursuant
25 to 40 C.F.R. § 170.240(a), this failure represents the use of a registered pesticide in a manner
26 inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
27 136j(a)(2)(G).

1 38. On or about November 15, 2005, Respondent used, “in a manner inconsistent with its
2 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
3 pesticide Terramaster 4EC at the Facility. Specifically, during the performance of a handling
4 activity involving this pesticide at the Greenhouse Float Beds at the Facility, Respondent failed
5 to provide to a handler (Raquel S.) the appropriate personal protective equipment specified by the
6 labeling. Pursuant to 40 C.F.R. § 170.240(c), this failure represents the use of a registered
7 pesticide in a manner inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G)
8 of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

9 39. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Civil Monetary Penalty Inflation
10 Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,
11 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be
12 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$6,500 for each
13 offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for
14 FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the 93
15 violations cited above would merit a pre-adjustment civil penalty of EIGHTY-ONE
16 THOUSAND AND THREE HUNDRED DOLLARS (\$81,300), given the alleged violations’
17 gravity level, size of business, and applicable gravity adjustments.

18 D. RESPONDENT’S ADMISSIONS

19 40. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
20 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
21 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
22 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
23 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
24 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
25 proposed Final Order contained in this CAFO.

26 E. CIVIL ADMINISTRATIVE PENALTY

27 41. In settlement of the violations specifically alleged in Section I.C of this CAFO,
28 Respondent shall pay a civil administrative penalty of SIXTY-FIVE THOUSAND AND FORTY

1 DOLLARS (\$65,040). Respondent shall pay this civil penalty within thirty (30) days of the
2 effective date of this CAFO, shall make this payment by cashier's or certified check payable to
3 the "Treasurer, United States of America," and shall send the check to the following address:

4 U.S. Environmental Protection Agency
5 Fines and Penalties
6 Cincinnati Finance Center
7 P.O. Box 979077
8 St. Louis, MO 63197-9000

9 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
10 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
11 Respondent shall send a copy of the check and transmittal letter to the following addresses:

12 Regional Hearing Clerk
13 Office of Regional Counsel (ORC-1)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Sharon Bowen
18 Communities and Ecosystems Division (CED-5)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 Edgar P. Coral
23 Office of Regional Counsel (ORC-2)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

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

43. If Respondent fails to pay the assessed civil administrative penalty of SIXTY-FIVE
THOUSAND AND FORTY DOLLARS (\$65,040), as identified in Paragraph 41, by the deadline
specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The
amount of the stipulated penalty will be SIXTEEN THOUSAND, TWO HUNDRED, AND
SIXTY DOLLARS (\$16,260), and will be immediately due and payable on the day following the
deadline specified in Paragraph 41, together with the initially assessed civil administrative

1 penalty of SIXTY-FIVE THOUSAND AND FORTY DOLLARS (\$65,040), resulting in a total
2 penalty due of EIGHTY-ONE THOUSAND AND THREE HUNDRED DOLLARS (\$81,300).
3 Failure to pay the civil administrative penalty specified in Paragraph 41 by the deadline specified
4 in that Paragraph may also lead to any or all of the following actions:

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

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

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

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
19 Government may assess interest, administrative handling charges, and nonpayment penalties
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
21 civil administrative penalty specified in Paragraph 41 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
23 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
28 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on

1 either actual or average cost incurred (including both direct and indirect costs), for every month
2 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

6 **F. CERTIFICATION OF COMPLIANCE**

7 44. In executing this CAFO, Respondent certifies that: (1) it is in compliance with
8 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), in that it is not using registered
9 pesticides in manners inconsistent with their labeling; and (2) based on Respondent's knowledge,
10 it has complied with all other FIFRA requirements at all facilities under its control.

11 **G. RETENTION OF RIGHTS**

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

20 46. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
21 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
22 and permits.

23 **H. ATTORNEYS' FEES AND COSTS**

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

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I. EFFECTIVE DATE

48. 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

49. 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.

50. 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.

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FOR RESPONDENT VECTOR TOBACCO INC.:

8/7/08

DATE

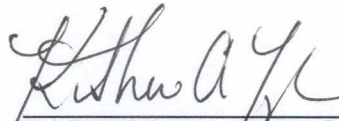


MARC N. BELL
Senior Vice President and General Counsel
Vector Tobacco Inc.
3800 Paramount Parkway
Suite 250
Morrisville, NC 27560

FOR COMPLAINANT EPA:

9/23/08

DATE



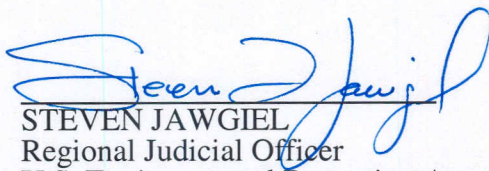
KATHERINE A. TAYLOR
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

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II. FINAL ORDER

EPA and Vector Tobacco Inc. having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008-0022) be
entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY-FIVE
THOUSAND AND FORTY DOLLARS (\$65,040), and comply with the terms and conditions set
forth in the Consent Agreement.

09/25/08
DATE


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

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Motion for Revision of the Final Order (Docket No. FIFRA-09-2008-0022) was hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

and that a true and correct copy of the Motion for Revision of the Final Order was sent by First Class United States Mail to the following:

Marc N. Bell, Esq.
Vice President & General Counsel
Vector Group Ltd.
100 S.E. 2nd Street
32nd Floor
Miami, FL 33131

Dated: 10-14-08

By: 
U.S. Environmental Protection Agency, Region IX