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7 Region IX
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12 **UNITED STATES**
13 **ENVIRONMENTAL PROTECTION AGENCY**
14 **REGION IX**
15 **75 HAWTHORNE STREET**
16 **SAN FRANCISCO, CA 94105**

17
18 In the matter of:) Docket No. FIFRA-09-2017- **0008**
19) **CONSENT AGREEMENT**
20 San Joaquin Sulphur Co.,)
21) and
22)
23) **FINAL ORDER PURSUANT TO**
24 Respondent.) **SECTIONS 22.13 AND 22.18**
25)
26
27
28

I. CONSENT AGREEMENT

29 The United States Environmental Protection Agency (“EPA”) and San Joaquin Sulphur
30 Company (“Respondent”) agree to settle this matter and consent to the entry of this Consent
31 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
32 proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

33 **A. AUTHORITY AND PARTIES**

34 1. This administrative proceeding for the assessment of a civil administrative penalty is
35 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
36 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the “Act”), and the Consolidated

1 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
2 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

3 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
4 been duly delegated the authority to commence and settle an enforcement action in this matter.

5 3. Respondent is a California corporation with an office or business at 720 North
6 Sacramento Street, Lodi, California.

7 **B. STATUTORY AND REGULATORY AUTHORITIES**

8 4. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), the term *person* means “any
9 individual, partnership, association, corporation, or any organized group of persons whether
10 incorporated or not.”

11 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), the term *pesticide* is, among other
12 things, any substance or mixture of substances intended for preventing, destroying, repelling, or
13 mitigating any pest.

14 6. Under section 2(t) of FIFRA, 7 U.S.C. §136(t), the term *pest* includes (1) any insect,
15 rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life
16 or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on
17 or in living man or other living animals) which the Administrator declares to be a pest under
18 FIFRA section 25(c)(1).

19 7. Pursuant to the authority in section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1), the
20 Administrator declared that a pest includes “any plant growing where not wanted, including any
21 moss, alga, liverwort...” and “[a]ny fungus..., except for those on or in living man or other living
22 animals and those on or in processed food or processed animal feed, beverages, drugs . . . and
23 cosmetics. . . .” 40 C.F.R. § 152.5.

1 8. The term *producer* is any person who produces any pesticide (including packaging,
2 repackaging, labeling and relabeling) and the term *produce* includes to package, repackage, label,
3 relabel, or otherwise change the container of any pesticide. Section 2(w) of FIFRA, 7 U.S.C. §
4 136(w) and 40 C.F.R. § 167.3.

5 9. A pesticide is *misbranded* if:

6 (i) it is contained in a package or other container or wrapping which does not
7 conform to the standards established by the Administrator pursuant to Section 25(c)(3) of FIFRA
8 to protect children and adults from serious injury or illness resulting from accidental ingestion or
9 contact with pesticides. Section 2(q)(1)(B) of FIFRA, 7 U.S.C. §§ 136(q)(1)(B).

10 (ii) the label does not contain a warning or caution statement which may be
11 necessary and if complied with, together with any requirements imposed under section 136a(d)
12 [classification of pesticides], are adequate to protect health and the environment. Section
13 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

14 (iii) there is not affixed to its container, and to the outside container or wrapper of
15 the retail package, if there be one, through which the required information on the immediate
16 container cannot be clearly read, a label bearing the name and address of the producer, registrant,
17 or person for whom produced. Section 2(q)(C)(i) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(i).

18 (iv) any word, statement, or other information required by or under the authority
19 of FIFRA to appear on the label or labeling is not prominently placed thereon. Section 2(q)(1)(E)
20 of FIFRA, 7 U.S.C. § 136(q)(1)(E).

21 10. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term *label* means the
22 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its
23 containers or wrappers.

1 11. Under section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term *labeling*
2 means all labels and all other written, printed or graphic matter accompanying the pesticide or
3 device at any time.

4 12. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term *to distribute or sell*
5 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
6 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
7 offer to deliver.

8 13. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states that no person shall produce any
9 pesticide subject to FIFRA unless the establishment in which it is produced is registered with the
10 Administrator.

11 14. EPA has promulgated regulations setting forth procedures, requirements and criteria
12 concerning the registration of pesticide products under FIFRA section 3, found at 40 CFR Part
13 152 (“Pesticide Registration Regulations”); regulations setting forth labeling requirements for
14 pesticides, found at 40 CFR Part 156 (“Labeling Regulations”); and regulations under the
15 authority of FIFRA sections 25(a)(1) and 25(c)(3) concerning child-resistant packaging of
16 pesticide products, found at 40 CFR Part 157 Subpart B (“Child-Resistant Packaging
17 Regulation”).

18 15. The Child-Resistant Packaging Regulation requires that a pesticide product must be
19 distributed and sold in child-resistant packaging complying with 40 C.F.R. § 157.32 when (a) the
20 product meets any of the specified toxicity criteria including that the pesticide has such
21 characteristics that, based upon human toxicological data, use history, accident data, or such
22 other evidence as is available, the Agency determines there is serious hazard of accidental injury
23 or illness which child-resistant packaging could reduce, and (b) the product’s labeling either

1 directly recommends residential use or reasonably can be interpreted to permit residential use. 40
2 C.F.R. § 157.22.

3 16. The Labeling Regulations require every pesticide to bear a label containing, amongst
4 other items, the following information: hazard and precautionary statements as proscribed in
5 Subpart D and E (40 C.F.R. § 156.10(a)(1)(vii)) including the statement on the front panel “Keep
6 Out of Reach of Children” (40 C.F.R. § 156.66); and the name and address of the producer,
7 registrant or person for whom produced (40 C.F.R. § 156.10(a)(1)(ii)).

8 17. Subpart H of the Labeling Regulations requires identification of container types as
9 refillable or nonrefillable and pesticide products must use the statement “do not reuse or refill
10 this container” unless alternative wording is allowed by 40 C.F.R. §§ 156.140(a)(2) or
11 156.140(b)(1) or (2).

12 18. Under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any
13 person in any state to distribute or sell to any person any pesticide that is not registered under
14 section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended,
15 except to the extent that distribution or sale otherwise has been authorized by the Administrator.

16 19. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
17 person in any state to distribute or sell to any person any pesticide that is misbranded.

18 20. Under section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any
19 person who is a producer to violate any of the provisions of section 7 of FIFRA, 7 U.S.C. §
20 136(e).

21 21. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
22 distributor who violates any provision of the Act may be assessed a civil penalty of not more than
23 \$7,500 for violations that occurred after December 6, 2013 through November 2, 2015, or are

1 assessed before August 1, 2016; not more than \$18,750 for violations that occurred after
2 November 2, 2015 and are assessed on or after August 1, 2016 but before January 15, 2017; and
3 \$19,057 for violations that occurred after November 2, 2015 and are assessed on or after January
4 15, 2017. Section 14(a)(1) of the Act, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary
5 Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

6 C. COMPLAINANT'S ALLEGATIONS

7 Complainant alleges:

8 22. Respondent is a "*person*" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. §
9 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

10 23. At all times relevant to this CAFO, Respondent has a facility located at 720 North
11 Sacramento Street, Lodi, California ("Lodi facility").

12 24. On or before February 9, 2015 at the Lodi facility, Respondent purchased a 50 pound
13 bag of Zinc Sulphate fertilizer and repackaged the contents into 10 plastic bags with labels
14 stating "Zinc Sulphate 36% 5 lbs. Do not use below freezing. Use: 1 lb per gallon of warm
15 water."

16 25. At all times relevant to this CAFO, Respondent distributed or sold a product called
17 Zinc Sulphate 36% 5 Lbs. (hereafter, "Zinc Sulphate 36%").

18 26. At all times relevant to this CAFO, Respondent was selling Zinc Sulphate 36% for
19 application to roofs for preventing, destroying, repelling or mitigating mold or moss.

20 27. Mold and Moss are each a "*pest*" as that term is defined under section 2(t) of FIFRA,
21 7 U.S.C. §136(t).

22 28. At all times relevant to this CAFO, Zinc Sulphate 36% is a pesticide subject to
23 FIFRA.

1 29. At all times relevant to this CAFO, Zinc Sulphate 36% is not a registered pesticide.

2 30. Respondent is a “*producer*” of Zinc Sulphate 36%, and repackaging Zinc Sulphate
3 fertilizer into plastic bags for sale as a product to control mold or moss on roofs is “*production*”
4 of a pesticide, as those terms are defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40
5 C.F.R. § 167.3.

6 31. At the times relevant to this CAFO, the Lodi facility is not a registered establishment.

7 32. Respondent produced Zinc Sulphate 36% at an unregistered establishment in
8 violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). Respondent violated Section 12(a)(2)(L)
9 of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

10 33. On or about February 9, 2015, Respondent distributed or sold Zinc Sulphate 36% to a
11 person in the United States. On or about March 11, 2015, Respondent distributed or sold Zinc
12 Sulphate 36% by offering it for sale. In each of these two instances, Respondent violated section
13 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered
14 pesticide.

15 34. At all times relevant to this CAFO, Zinc Sulphate 36% meets the specified toxicity
16 criteria at 40 C.F.R. § 157.22(a), the Zinc Sulphate 36% labeling reasonably can be interpreted to
17 permit residential use, and the Zinc Sulphate 36% was not distributed and sold in child-resistant
18 packaging complying with 40 C.F.R. § 157.32.

19 35. Zinc Sulphate 36% is “*misbranded*” as that term is defined by Section 2(q) of FIFRA,
20 7 U.S.C. § 136(q), because it is contained in a package which does not conform to the standards
21 specified in the Child-Resistant Packaging Regulation established by the Administrator pursuant
22 to Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3), to protect children and adults from serious
23 injury or illness resulting from accidental ingestion or contact with pesticides.

1 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this
2 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and
3 (vi) waives the right to appeal the proposed final order contained in this CAFO.

4 **E. CIVIL ADMINISTRATIVE PENALTY**

5 40. Respondent consents to the assessment of a joint and severable civil administrative
6 penalty in the amount of **TWENTY-FIVE THOUSAND ONE HUNDRED AND TWENTY-**
7 **SEVEN DOLLARS (\$25,127)** as final settlement and complete satisfaction of the civil claims
8 against Respondent arising from the facts alleged in Section I.C of the CAFO and under the Act.

9 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
10 date of this CAFO by one of the methods listed below:

- 11 i. Respondent may pay online through the Department of the Treasury
12 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
13 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
14 complete the SFO Form Number 1.1.
15
16 ii. Respondent may pay by remitting a certified or cashier's check, including
17 the name and docket number of this case, for the amount, payable to
18 "Treasurer, United States of America," and sent as follows:

19
20 Regular Mail:

21 U.S. Environmental Protection Agency
22 PO Box 979077
23 St. Louis, MO 63197-9000
24

25 Overnight/Signed Receipt Confirmation Mail:

26 U.S. Environmental Protection Agency
27 ATTN Box 979077
28 1005 Convention Plaza
29 Mail Station SL-MO-C2GL
30 St. Louis, MO 63101
31

- 32 iii. Respondent may also pay the civil penalty using any method, or
33 combination of methods, provided on the following website:

34
35 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

1
2 If clarification regarding a particular method of payment remittance is needed,
3 contact the EPA's Cincinnati Finance Center at (513) 487-2091.
4

5 b. Respondent shall identify each and every payment with the name and docket
6 number of this case; and

7 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
8 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
9 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
10 other information required to demonstrate that payment has been made according to EPA
11 requirements, in the amount due, and identified with the name and docket number of this case),
12 including proof of the date payment was made, along with a transmittal letter, indicating
13 Respondent's names, the case title, and docket number, to the following addresses:

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

20 Panah Stauffer
21 Enforcement Division (ENF 3-3)
22 U.S. Environmental Protection Agency, Region IX
23 75 Hawthorne Street
24 San Francisco, CA 94105
25

26 41. In the event that Respondent fail to pay the civil administrative penalty assessed
27 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
28 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
29 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
30 immediately become due and payable.

31 42. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date,

1 the entire unpaid balance and accrued interest shall become immediately due and owing.

2 Respondent's tax identification numbers may be used for collecting or reporting any delinquent
3 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received
4 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the
5 effective date of this CAFO as described at 40 CFR §13.11. In addition, if this matter is referred
6 to another department or agency (e.g., the Department of Justice, the Internal Revenue Service),
7 that department or agency may assess its own administrative costs, in addition to EPA's
8 administrative costs, for handling and collecting Respondent's overdue debt. Respondent's
9 failure to pay in full the civil administrative penalty by its due date also may also lead to any or
10 all of the following actions:

11 a. The debt being referred to a credit reporting agency, a collection agency, or to
12 the Department of Justice for filing of a collection action in the appropriate United States District
13 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
14 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

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

20 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
21 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
22 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
23 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-

1 of-credit. 40 C.F.R. §§ 13.17.

2 **F. CERTIFICATION OF COMPLIANCE**

3 43. In executing this CAFO, Respondent certifies that the information it has supplied
4 concerning this matter was at the time of submission, and is at the time of signature to this
5 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
6 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading information
7 can result in significant penalties, including the possibility of fines and imprisonment for
8 knowing submission of such information.

9 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

10 44. This Consent Agreement constitutes the entire agreement between the Respondent
11 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
12 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
13 liability against Respondent for the violations alleged in Section I.C of this CAFO.

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

1 permits.

2 46. Except as set forth in Paragraph 42 above, EPA and Respondent shall each bear its
3 own fees, costs, and disbursements in this action.

4 47. For the purposes of state and federal income taxation, Respondent shall not claim a
5 deduction for any civil penalty payment made pursuant to this CAFO.

6 48. This CAFO constitutes an enforcement action for purposes of considering
7 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
8 available to the public and does not contain any confidential business information.

9 49. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
10 CAFO shall be the date on which the accompanying Final Order, having been signed by the
11 Regional Judicial Officer, is filed.

12 50. The provisions of this CAFO shall be binding on Respondent and on Respondent's
13 officers, directors, employees, agents, servants, authorized representatives, successors, and
14 assigns.

15 51. The undersigned representatives of each party to this Consent Agreement certify that
16 each is duly authorized by the party whom he or she represents to enter into the terms and
17 conditions of this Consent Agreement and Final Order and bind that party to it.

18
19 **SAN JOAQUIN SULPHUR COMPANY:**

20
21
22 Date: 5/24/17 By: Janet Chandler, president

23
24
25 Name: Janet Chandler

26
27
28 Title: President

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:
2
3

4 Date: 9/19/17 By: *Claire Neubauer*
5
6 *for* KATHLEEN H. JOHNSON
7 Director
8 Enforcement Division
9 U.S. Environmental Protection Agency,
10 Region IX
11
12
13

1 II. FINAL ORDER

2
3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and
4 that Respondent shall pay a civil administrative penalty in the amount of **TWENTY-FIVE**
5 **THOUSAND ONE HUNDRED AND TWENTY-SEVEN DOLLARS (\$25,127)** in
6 accordance with the terms set forth in the Consent Agreement.
7
8
9

10 Date: 06/26/17

11 
12 Steven L. Jawgiel
13 Regional Judicial Officer
14 U.S. EPA, Region IX
15

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2017-0008) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

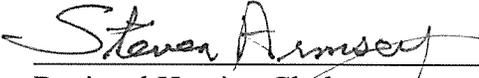
Janet Chandler
President
San Joaquin Sulphur Company
720 N Sacramento St
Lodi, CA 95240

CERTIFIED MAIL NUMBER: 7015 0640 0007 0638 0089

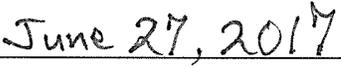
An additional copy was hand-delivered or emailed to the following U.S. EPA case attorney:

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Alkon.Margaret@epa.gov



Regional Hearing Clerk
U.S. EPA, Region IX



Date