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US EPA - REGION IX
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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:

) Docket No. FIFRA-09-2015-00 02

11)
12 Hill Brothers Chemical Company,

) CONSENT AGREEMENT
AND FINAL ORDER

13)
14 Respondent.

) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

15
16 I. CONSENT AGREEMENT

17 The United States Environmental Protection Agency (“EPA”), Region IX, and Hill
18 Brothers Chemical Company (the “Respondent”) agree to settle this matter and consent to the
19 entry of this Consent Agreement and Final Order (“CAFO”).

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
22 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
23 of a civil administrative penalty against Respondent for the sale and/or distribution of
24 misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

25 2. Complainant is the Assistant Director of the Enforcement Division in EPA, Region
26 IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the
27 authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May
28 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this

1 action under FIFRA to the Director, Deputy Director, Assistant Directors, and Managers of the
2 Enforcement Division by EPA Regional Order Number R9-5-14, dated February 11, 2013.

3 3. Respondent is Hill Brothers Chemical Company, a corporation headquartered in
4 Orange, California.

5 B. STATUTORY AND REGULATORY BASIS

6 4. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any
7 person to distribute or sell to any person any pesticide that is adulterated or misbranded.

8 5. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that a pesticide is
9 misbranded if the labeling accompanying it does not contain directions for use which are
10 necessary for effecting the purpose for which the product is intended and if complied with,
11 together with any requirements imposed under section 3(d) of this Act, are adequate to protect
12 health and the environment.

13 6. 40 C.F.R. § 156.10(i)(1)(ii)(B), which sets forth the general requirements for the
14 placement of directions for use, states in pertinent part that directions for use may appear on
15 printed or graphic matter which accompanies the pesticide provided that the label bears a
16 reference to the directions for use in accompanying leaflets or circulars.

17 C. ALLEGED VIOLATIONS

18 7. Respondent is a corporation and therefore fits within the definition of “person” as that
19 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20 8. “12.5% Sodium Hypochlorite Sanitizer Disinfectant” (EPA Reg. No. 266-20001) and
21 “5.25% Sodium Hypochlorite Sanitizer Disinfectant” (EPA Reg. No. 266-40) are “pesticides” as
22 that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3.

23 9. On or about June 10, 2013, Respondent “distributed or sold,” as those terms are
24 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticides “12.5% Sodium
25 Hypochlorite Sanitizer Disinfectant” and “5.25% Sodium Hypochlorite Sanitizer Disinfectant” to
26 the Ak-Chin Indian Community in Maricopa, Arizona.

27 10. The face of the label borne by the pesticides “12.5% Sodium Hypochlorite Sanitizer
28 Disinfectant” and “5.25% Sodium Hypochlorite Sanitizer Disinfectant” that Respondent

1 distributed or sold on or about June 10, 2013 did not include all necessary directions for use to
2 adequately protect health and the environment.

3 11. Instead, Respondent apparently sought to make use of the option provided by 40
4 C.F.R. § 156.10(i)(1)(ii)(B) that allows the directions for use to appear on printed or graphic
5 matter which accompanies the pesticide [rather than on the face of the label] provided that the
6 label bears a reference to the directions for use in accompanying leaflets or circulars.

7 12. Specifically, the labeling accompanying the pesticides “12.5% Sodium Hypochlorite
8 Sanitizer Disinfectant” and “5.25% Sodium Hypochlorite Sanitizer Disinfectant” that
9 Respondent distributed or sold on or about June 10, 2013 included the statement “For additional
10 directions and uses, refer to Hill Brothers’ Supplemental Sodium Hypochlorite Usage Bulletin.”

11 13. The pesticides “12.5% Sodium Hypochlorite Sanitizer Disinfectant” and “5.25%
12 Sodium Hypochlorite Sanitizer Disinfectant” that Respondent distributed or sold on or about
13 June 10, 2013 were not accompanied by the referenced Hill Brothers’ Supplemental Sodium
14 Hypochlorite Usage Bulletin (or any other usage-related leaflet or circular) and thus were not
15 accompanied by the referenced additional directions for use.

16 14. Respondent’s failure to provide all the required directions for use either on the label
17 itself or on accompanying leaflets or circulars referenced on the label resulted in the pesticides
18 “12.5% Sodium Hypochlorite Sanitizer Disinfectant” and “5.25% Sodium Hypochlorite Sanitizer
19 Disinfectant” being “misbranded” as that term is defined at Section 2(q)(1)(G) of FIFRA, 7
20 U.S.C. § 136(q)(1)(F).

21 15. By distributing or selling the misbranded pesticides “12.5% Sodium Hypochlorite
22 Sanitizer Disinfectant” and “5.25% Sodium Hypochlorite Sanitizer Disinfectant” on or about
23 June 10, 2013, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

24 16. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty
25 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,
26 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be
27 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$7,500 for each
28 offense occurring after January 12, 2009. Under the FIFRA Enforcement Response Policy, dated

1 December 2009, and the Civil Monetary Penalty Inflation Adjustment Rule, the two violations
2 cited above would merit a pre-modification civil penalty of \$15,000, given the alleged violations'
3 gravity level, size of business, and applicable gravity adjustments.

4 D. RESPONDENT'S ADMISSIONS

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

12 E. CIVIL ADMINISTRATIVE PENALTY

13 18. In settlement of the violations specifically alleged in Section I.C of this CAFO,
14 Respondent shall pay a civil administrative penalty of TWELVE THOUSAND DOLLARS
15 (\$12,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of
16 this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including
17 the name and docket number of this case, for the amount, payable to "Treasurer, United States of
18 America," (or be paid by one of the other methods listed below) and sent as follows:

19 Regular Mail:

20 U.S. Environmental Protection Agency
21 Fines and Penalties
22 Cincinnati Finance Center
23 PO Box 979077
24 St. Louis, MO 63197-9000

25 Wire Transfers:

26 Wire transfers must be sent directly to the Federal Reserve Bank in New
27 York City with the following information:
28 Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

1 Overnight Mail:
2 U.S. Bank
3 1005 Convention Plaza
4 Mail Station SL-MO-C2GL
5 ATTN Box 979077
6 St. Louis, MO 63101

7 ACH (also known as REX or remittance express):
8 Automated Clearinghouse (ACH) for receiving U.S. currency
9 PNC Bank
10 808 17th Street, NW
11 Washington, DC 20074
12 ABA = 051036706
13 Transaction Code 22 – checking
14 Environmental Protection Agency
15 Account 31006
16 CTX Format

17 On Line Payment:
18 This payment option can be accessed from the information below:
19 www.pay.gov
20 Enter “sfo1.1” in the search field
21 Open form and complete required fields

22 If clarification regarding a particular method of payment remittance is
23 needed, contact the EPA’s Cincinnati Finance Center at (513) 487-2091.

24 A copy of each check, or notification that the payment has been made by one of the other
25 methods listed above, including proof of the date payment was made, shall be sent with a
26 transmittal letter, indicating Respondent’s name, the case title, and docket number, to the
27 following addresses:

28
29 Regional Hearing Clerk
30 Office of Regional Counsel (ORC-1)
31 U.S. Environmental Protection Agency, Region IX
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 Scott McWhorter
35 Enforcement Division (ENF-3-3)
36 U.S. Environmental Protection Agency, Region IX
37 75 Hawthorne Street
38 San Francisco, CA 94105

39 Edgar P. Coral
40 Office of Regional Counsel (ORC-2)
41 U.S. Environmental Protection Agency, Region IX
42 75 Hawthorne Street
43 San Francisco, CA 94105

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

4 20. If Respondent fails to pay the assessed civil administrative penalty of TWELVE
5 THOUSAND DOLLARS (\$12,000), as identified in Paragraph 18, by the deadline specified in
6 that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written
7 request. The amount of the stipulated penalty will be THREE THOUSAND DOLLARS
8 (\$3,000), and will be immediately due and payable upon EPA's written request on the day
9 following the deadline specified in Paragraph 18, together with the initially assessed civil
10 administrative penalty of TWELVE THOUSAND DOLLARS (\$12,000), resulting in a total
11 penalty due of FIFTEEN THOUSAND DOLLARS (\$15,000). Failure to pay the civil
12 administrative penalty specified in Paragraph 18 by the deadline specified in that Paragraph may
13 also lead to any or all of the following actions:

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

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

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

27 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
28 Government may assess interest, administrative handling charges, and nonpayment penalties

1 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
2 civil administrative penalty specified in Paragraph 18 by the deadline specified in that Paragraph.

3 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
4 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
5 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
6 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
7 (30) days of the effective date of this CAFO.

8 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
9 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
10 either actual or average cost incurred (including both direct and indirect costs), for every month
11 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

15 F. CERTIFICATION OF COMPLIANCE

16 21. In executing this CAFO, Respondent certifies that (1) it is no longer selling or
17 distributing any pesticide that is misbranded in violation of Section 12(a)(1)(E) of FIFRA, 7
18 U.S.C. § 136j(a)(1)(E), and (2) it is currently in compliance with all other FIFRA requirements
19 for all its ongoing operations.

20 G. RETENTION OF RIGHTS

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

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

4 H. ATTORNEYS' FEES AND COSTS

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

7 I. EFFECTIVE DATE

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


11 J. BINDING EFFECT

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

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

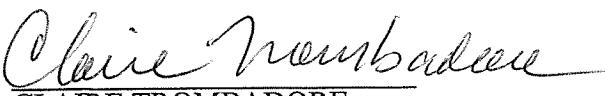
18
19 FOR RESPONDENT HILL BROTHERS CHEMICAL COMPANY:

20 11-05-2014
21 DATE


22 SHANE BURKHART
23 Director of Corporate Safety & Compliance
24 Hill Brothers Chemical Company
25 1675 North Main Street
26 Orange, CA 92867

27 FOR COMPLAINANT EPA:

28 11/21/2014
DATE


29 CLAIRE TROMBADORE
30 Assistant Director
31 Enforcement Division
32 U.S. Environmental Protection Agency, Region IX

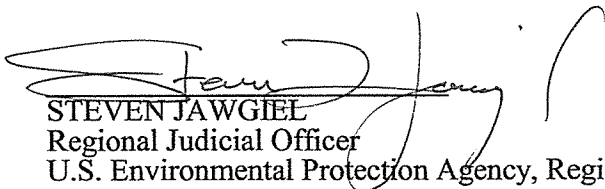
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II. FINAL ORDER

EPA and Hill Brothers Chemical Company having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2015-0002) be entered, and Respondent shall pay a civil administrative penalty in the amount of TWELVE THOUSAND DOLLARS (\$12,000), and comply with the terms and conditions set forth in the Consent Agreement.

11/24/14
DATE


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



Receipt

Your payment is complete

Pay.gov Tracking ID: 25IAFNEC

Agency Tracking ID: 74703196955

Form Name: EPA Miscellaneous Payments - Cincinnati Finance Center

Application Name: EPA Miscellaneous Payments

Payment Information

Payment Type: Debit or credit card

Payment Amount: \$12000.00

Transaction Date: 11/05/2014 04:55:01 PM EST

Payment Date: 11/05/2014

Account Information

Card Holder Name: Hill Brothers Chemical Company

Billing Address: 1675 North Main Street

Billing Address 2:

City: Orange

Country:

State/Province: California

ZIP/Postal Code: 92867

Card Type: American Express

Card Number: *****1276

Email Confirmation Receipt

Confirmation Receipts have been emailed to:

shane@hillbrothers.com

Shane Burkhart

From: pay.gov.clev@clev.frb.org
Sent: Wednesday, November 05, 2014 2:55 PM
To: Shane Burkhart
Subject: Pay.gov Payment Confirmation: EPA Miscellaneous Payments

Your payment has been submitted to Pay.gov and the details are below. If you have any questions regarding this payment, please contact Craig Steffen at (513) 487-2091 or by email at steffen.craig@epa.gov.

Application Name: EPA Miscellaneous Payments
Pay.gov Tracking ID: 25IAFNEC
Agency Tracking ID: 74703196955
Transaction Type: Sale
Transaction Date: 11/05/2014 04:55:01 PM EST

Account Holder Name: Hill Brothers Chemical Company

Transaction Amount: \$12,000.00
Billing Address: 1675 North Main Street
Billing Address 2:
City: Orange
State/Province: California
Zip/Postal Code: 92867
Country:
Card Type: AmericanExpress
Card Number: *****1276

THIS IS AN AUTOMATED MESSAGE. PLEASE DO NOT REPLY.

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2015-0002) 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:

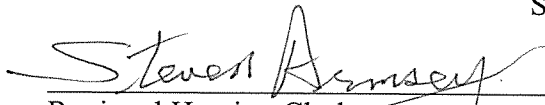
A copy was mailed via CERTIFIED MAIL to:

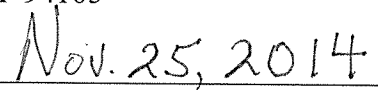
Mr. Shane T. Burkhart
Director of Corporate Safety & Compliance
Hill Brothers Chemical Company
1675 North Main Street
Orange, CA 92867

CERTIFIED MAIL NUMBER: 7012 1640 0001 2190 8066

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

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


Regional Hearing Clerk
U.S. EPA, Region IX


Date