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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2009-0080
)	
ASPLUNDH TREE EXPERT COMPANY)	CONSENT AGREEMENT AND
)	FINAL ORDER
Respondent)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Asplundh Tree Expert Company ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

1 **II. PRELIMINARY STATEMENT**

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
8 **III. ALLEGATIONS**

9 3.1. Asplundh Tree Expert Company owns and operates a business facility located at
10 708 Blair Mill Road in Willow Grove, Pennsylvania.

11 3.2. On at least eight separate occasions in 2006, Respondent applied the pesticide
12 "Garlon 4," EPA Registration Number 62719-40 at a rate higher than permitted on the label.
13 Respondent committed eight violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C.
14 § 136j(a)(2)(G), by applying "Garlon 4" inconsistent with its labeling. These violations subject
15 Respondent to the payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA,
16 7 U.S.C. § 136l(a)(2).

17 3.3. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19,
18 EPA may assess a civil penalty of not more than \$650 for each first offense against any private
19 applicator who violates any provision of Section 12 of FIFRA.

20
21 **IV. CONSENT AGREEMENT**

22 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional
23 allegations contained herein, but neither admits nor denies the specific factual allegations put
24 forth by EPA. Respondent waives any right to contest these allegations as well as the right to
25 appeal the accompanying Final Order. Respondent also consents that this settlement will be

1 considered prior history under FIFRA once finalized and consents to payment of the penalty as
2 stated below.

3 4.2. Respondent consents to the assessment of a civil penalty in the amount of –
4 FOUR- THOUSAND TWO-HUNDRED DOLLARS and no cents (\$4,200.00). Respondent
5 consents to issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil
6 penalty set forth in this paragraph within thirty (30) days of the effective date of this Final Order.

7 4.3. Payment under this CAFO shall be made by cashier's check or certified check,
8 payable to the order of "Treasurer, United States of America" and delivered to the following
9 address:

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

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

14 4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,
15 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
16 Enforcement at the following addresses:

17 Regional Hearing Clerk
18 U.S. Environmental Protection Agency Region 10
Office of Regional Counsel, ORC-158
19 1200 Sixth Avenue, Suite 900
Seattle, WA 98101

20 Attn: Derrick Terada
21 U.S. Environmental Protection Agency Region 10
Pesticides and Toxics Unit, OCE-084
22 1200 Sixth Avenue, Suite 900
23 Seattle, WA 98101

24 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,
25 the entire unpaid balance of penalty and accrued interest shall become immediately due and

1 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under
2 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with
3 interest, handling charges, and nonpayment penalties, as set forth below.

4 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by
5 its due date, Respondent shall also be responsible for payment of the following amounts:

6 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate
7 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)
8 from the effective date of the accompanying Final Order, provided, however, that
9 no interest shall be payable on any portion of the assessed penalty that is paid
10 within 30 days of the effective date of the Final Order.

11 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge
12 of \$15 shall be paid if any portion of the assessed penalty is more than 30 days
13 past due.

14 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty
15 of 6% per annum shall be paid on any portion of the assessed penalty that is more
16 than 90 days past due, which nonpayment penalty shall be calculated as of the
17 date the underlying penalty first becomes past due.

18 4.7. The penalty described in Paragraph 4.2, above, including any additional costs
19 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA
20 and shall not be deductible for purposes of federal taxes.

21 4.8. The undersigned representative of Respondent certifies that he is fully authorized
22 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

23 4.9. Respondent shall bear its own costs and attorneys fees in connection with this
24 matter.

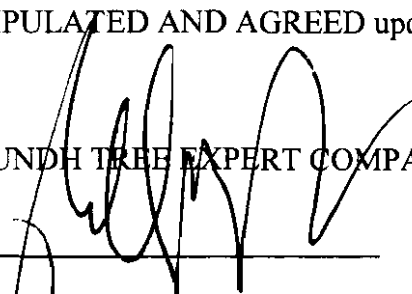
1 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants,
2 employees, successors, and assigns.

3 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent
4 and EPA.

5 DATED:

6 April 13, 2009


ASPLUNDH TREE EXPERT COMPANY:

7 
8 PHILLIP TATOIAN
9 General Counsel
For Respondent

10 DATED:

11 April 16, 2009

U.S. ENVIRONMENTAL PROTECTION AGENCY:

12 
13 MERCER ST. PETER
14 Assistant Regional Counsel
For Complainant

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V. **FINAL ORDER**

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 24th day of April, 2009.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: ASPLUND TREE EXPERT COMPANY**, **DOCKET NO.: FIFRA-10-2009-0080** was filed with the Regional Hearing Clerk on April 24, 2009.


On April 24, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

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 April 24, 2009, to:

Phillip E. Tatoian, Jr. Esq.
Vice President, General Counsel
Asplundh Tree Expert Co.
708 Blair Mill Road
Willow Grove, PA 19090-1784

DATED this 24th day of April 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10