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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105**

In the matter of:) Docket No. FIFRA-09-2018- 0015
) **CONSENT AGREEMENT**
Colusa County Farm Supply, Inc.,)
) and
)
) **FINAL ORDER PURSUANT TO 40 C.F.R. §§**
Respondent.) **22.13 AND 22.18**
)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”) and Colusa County Farm Supply, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

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

Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

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

3. Respondent is a California corporation with a business located at 5873 Freshwater Road, Williams, California 95987.

B. STATUTORY AND REGULATORY AUTHORITIES

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

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

6. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and 136q.

7. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide containers and pesticide containment structures (“the Container/Containment regulations”), which are codified at 40 C.F.R. Part 165.

8. *Agricultural pesticide* means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

9. *Container* means any package, can, bottle, bag, barrel, drum, tank, or other containing-

device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol cans, and containers that become part of a direct injection system) are considered to be containers for the purposes of the Container/Containment regulations. 40 C.F.R. § 165.3.

10. *Containment structure* means either a secondary containment unit or a containment pad. 40 C.F.R. § 165.3.

11. *Facility* means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person). 40 C.F.R. § 165.3.

12. *Establishment* means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States. 40 C.F.R. § 165.3.

13. *Operator* means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

14. *Owner* means any person who owns a facility at which a containment structure is required. 40 C.F.R. § 165.3.

15. *Pesticide dispensing area* means an area in which pesticide is transferred out of or into a container. 40 C.F.R. § 165.3.

16. *Produce* means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active

ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device. 40 C.F.R. § 165.3.

17. *Refilling establishment* means an establishment where the activity of repackaging pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

18. *Refillable container* means a container that is intended to be filled with pesticide more than once for sale or distribution. 40 C.F.R. § 165.3.

19. *Refiller* means a person who engages in the activity of repackaging pesticide product into refillable containers. 40 C.F.R. § 165.3.

20. *Repackage* means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution. 40 C.F.R. § 165.3.

21. *Secondary containment unit* means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers. 40 C.F.R. § 165.3.

22. *Stationary pesticide container* means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least thirty (30) consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

23. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of the Act may be assessed a civil penalty of not more than \$19,446 for violations that occurred after November 2, 2015 and are assessed after January 15, 2018. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

C. COMPLAINANT'S ALLEGATIONS

Complainant alleges:

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

25. Respondent is an *owner* and *operator* of a *facility* that is an *establishment*, as those terms are defined by 40 C.F.R. § 165.3, located at 5873 Freshwater Road, Williams, California 95987 (the "Facility").

26. The Facility is a *refilling establishment* whose principal business is retail sale and the Facility *repackages* and dispenses Roundup PowerMAX, EPA Reg. No. 524-549, which is an *agricultural pesticide*, as those terms are defined by 40 C.F.R. § 165.3.

27. Owners or operators of refilling establishments who repackage agricultural pesticides and whose principal business is retail sale that have a stationary pesticide container or a pesticide dispensing (including container refilling) area must comply with the secondary container requirements of the Container/Containment regulations. 40 C.F.R. § 165.80(b)(1).

28. The Facility includes two Roundup PowerMAX bulk tanks, which are *stationary pesticide containers* located within a *secondary containment unit*, as those terms are defined by 40 C.F.R. § 165.3.

29. On May 17, 2017, an Inspector from the California Department of Pesticide Regulation conducted an inspection of the Facility.

Count 1: Failure to Keep Inspection and Maintenance Records

30. An owner or operator of a *refilling establishment* that has a *stationary pesticide container* or *pesticide dispensing area* must keep for three years records of inspection and maintenance for each containment structure and for each stationary pesticide container and its

appurtenances, and these records must include the (1) name of the person conducting the inspection or maintenance; (2) date the inspection or maintenance was conducted; (3) conditions noted; and (4) specific maintenance performed. 40 C.F.R. § 165.95(a).

31. On and about May 17, 2017, Respondent failed to keep records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances that included the name of the person conducting the inspection or maintenance; date the inspection or maintenance was conducted; conditions noted; and specific maintenance performed, as required by 40 C.F.R. § 165.95(a).

32. On and before May 17, 2017, Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to keep records as required by 40 C.F.R. § 165.95(a).

Count 2: Failure to Maintain Repackaging Records

33. Respondent is a *refiller* of Roundup PowerMAX, as that term is defined by 40 C.F.R. § 165.3, but not the registrant. Refillers who are not the registrant of the pesticide product must maintain records in accordance with 40 C.F.R. § 165.70(j). 40 C.F.R. § 165.70(e)(10).

34. Each time a pesticide product is repackaged into a refillable container and distributed or sold, the refiller must generate records of the EPA registration number of the pesticide product, the date of the repackaging, and the serial number or other identifying code of the refillable container and maintain these records for at least three years after the date of repackaging. 40 C.F.R. § 165.70(j)(2)(i).

35. On or about May 17, 2017, Respondent packaged Roundup PowerMAX into refillable containers but did not generate or maintain records of the EPA registration number of the pesticide product, the date of the repackaging, and the serial number or other identifying code of the refillable container, as required by 40 C.F.R. § 165.70(j)(2)(i).

36. On or about May 17, 2017, Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to generate and maintain refillable container repackaging records as required by 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(i).

Count 3: Maintaining an External Sight Gauge on Pesticide Container

37. External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container, are prohibited on *stationary pesticide containers* designed to hold undivided quantities of pesticides equal to or greater than 500 gallons. 40 C.F.R. § 165.45(f)(2)(ii).

38. The Roundup PowerMAX bulk tanks at the Facility are *stationary pesticide containers* designed to hold undivided quantities of pesticides equal to or greater than 500 gallons of liquid pesticides.

39. On or about May 17, 2017, one of Respondent's Roundup PowerMAX bulk tanks had an external sight gauge, as that term is defined by 40 C.F.R. § 165.45(f)(2)(ii).

40. On or about May 17, 2017, Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by having an external sight gauge on one of its Roundup PowerMAX bulk tanks, which is prohibited by 40 C.F.R. § 165.45(f)(2)(ii).

D. RESPONDENTS' ADMISSIONS

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

(vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

42. Respondent consents to the assessment of civil administrative penalty in the amount of **THIRTEEN THOUSAND, SEVEN HUNDRED AND NINETY-FIVE DOLLARS (\$13,795)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C of the CAFO and under the Act.

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

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

Regular Mail:

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

Overnight/Signed Receipt Confirmation Mail:

U.S. Environmental Protection Agency
ATTN Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

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

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

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

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

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

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

Julie Jordan
Enforcement Division (ENF 3-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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

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

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

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

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

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

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

of-credit. 40 C.F.R. § 13.17.

F. CERTIFICATION OF COMPLIANCE

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

G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

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

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

permits.

48. Except as set forth in Paragraph 44 above, EPA and Respondent shall each bear its own attorneys' fees, costs, and disbursements incurred in this action.

49. For the purposes of state and federal income taxation, neither Respondent nor any other person shall claim a deduction for any civil penalty payment made pursuant to this CAFO.

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

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

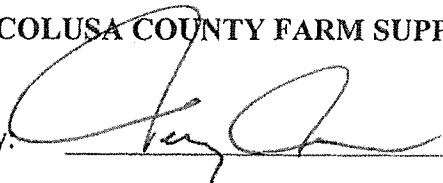
52. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

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

FOR RESPONDENT, COLUSA COUNTY FARM SUPPLY, INC.:

Date: 8/6/18

By:




Name: Terry Talbot

Title: President

**FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION IX:**

Date: 8/21/2018

By:



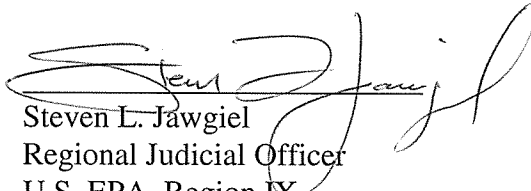
ELIZABETH BERG

Acting Assistant Director, Water & Pesticides Branch
Enforcement Division

II. FINAL ORDER

Complainant and Respondent, having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and
that Respondent shall pay a civil administrative penalty in the amount of **THIRTEEN
THOUSAND, SEVEN HUNDRED AND NINETY-FIVE DOLLARS (\$13,795)** in accordance
with the terms set forth in the Consent Agreement.

Date: 08/29/18


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2018-0015**) 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:

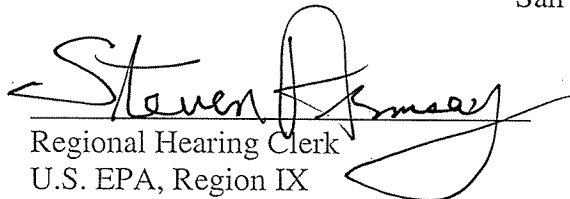
A copy was mailed via CERTIFIED MAIL to:

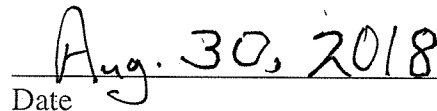
Terry Talbot
President
Colusa County Farm Supply
5873 Freshwater Road
Williams, CA 95987

CERTIFIED MAIL NUMBER:

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

Nathaniel Boesch
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