

RECEIVED

14 FEB -5 PM 1:38

HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

the Matter of:	)	DOCKET NO. FIFRA-10-2014-0018
J.R. Simplot Company	)	<b>CONSENT AGREEMENT AND</b>
Boise, Idaho	)	<b>FINAL ORDER</b>
Respondent	)	

---

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. 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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

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 issues, and J.R. Simplot Company (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 5612 South Hills Valley Road in Orange Cove, California (the “facility”).

3.2. Respondent is a “person” under FIFRA Section 2(s), 7 U.S.C. § 136(s).

3.3. Respondent produced the pesticide PHT 415 Supreme Spray Oil (EPA Reg. No. 10951-15) at the facility in 2012. Respondent produced the pesticides PHT 415 Supreme Spray Oil and PHT Supreme Spray Oil (EPA Reg. No. 10951-16) at the facility in 2013.

3.4. Under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20(a), any establishment where a pesticide is produced must be registered with EPA.

3.5. The facility was not registered with EPA in 2012 or 2013.

3.6. Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. § 167.20(a) on three occasions by producing one pesticide in 2012 and two pesticides in 2013 at an unregistered facility.

3.7. Each year, production of each pesticide at an unregistered facility is a separate violation of Section 12 of FIFRA.

3.8. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j, any violation of Section 7 of FIFRA is unlawful.

3.9. Pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA for five years following the date of this CAFO for purposes of calculating penalty amounts in future FIFRA enforcement actions.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is FIFTEEN THOUSAND FOUR HUNDRED FORTY DOLLARS (\$15,440).

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

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

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Erin Williams  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect any unpaid penalty under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), together with interest, handling charges, and nonpayment penalties described below.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no



interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

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

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

4.10. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.14. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

Jan. 31, 2014

FOR RESPONDENT:

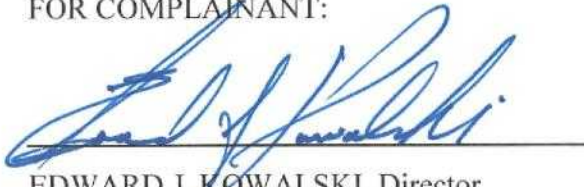


ALAN PROUTY, VP Sustainability  
J.R. Simplot Company

DATED:

2/4/2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

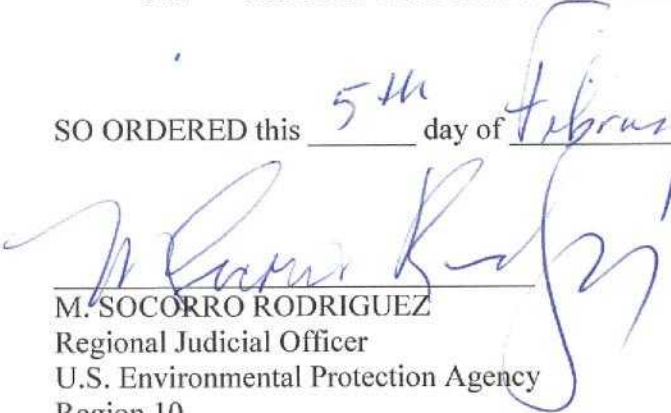
V. FINAL ORDER

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

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III. 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 or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 5<sup>th</sup> day of February, 2014

  
\_\_\_\_\_  
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 the Matter of: J.R. Simplot Company Docket No.: FIFRA-10-2014-0018** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

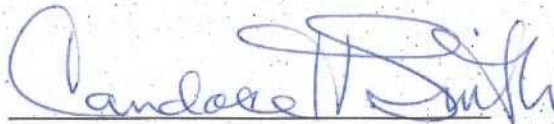
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Rindner, Esquire  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 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 to:

Alan Prouty  
VP Sustainability  
J.R. Simplot Company  
P.O. Box 27  
Boise, Idaho 83707

DATED this 5th day of February, 2014.



Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10