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****FILED****
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U.S. EPA - REGION IX

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2022-0009
11)
12 TriCal, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and TriCal,
17 Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for the use of a registered pesticide in
25 manners inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
26 136j(a)(2)(G).

27 2. Complainant is the Manager of the Toxics Section in the Enforcement and
28 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
bring this action and to sign a consent agreement settling this action.

1 combination with tillage equipment.

2 13. On or about November 9 and 12, 2016, Respondent used, “in a manner inconsistent
3 with its labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
4 registered pesticide Tri-Chlor Fumigant at a field located in Selma, California. Specifically, in a
5 manner not permitted by the pesticide Tri-Chlor Fumigant’s labeling, Respondent failed to include
6 all the required elements in its site-specific Fumigation Management Plan.

7 14. On or about November 9 and 12, 2016, Respondent used, “in a manner inconsistent
8 with its labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the
9 registered pesticide Tri-Chlor Fumigant at a field located in Selma, California. Specifically, in a
10 manner not permitted by the pesticide Tri-Chlor Fumigant’s labeling, Respondent failed to provide
11 an accurate or complete Post-Application Summary.

12 15. By using the registered pesticide, Tri-Chlor Fumigant, in the above-described manners
13 inconsistent with its labeling, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
14 136j(a)(2)(G) on six occasions.

15 16. The Administrator of EPA may assess a civil penalty against any registrant,
16 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
17 provision of FIFRA of up to \$20,528 for each offense that occurred after November 2, 2015
18 where penalties are assessed on or after December 23, 2020. See Section 14(a)(1) of FIFRA, 7
19 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at
20 85 Fed. Reg. 83818 (December 23, 2020).

21 D. RESPONDENT’S ADMISSIONS

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

1 5700 Rivertech Court
2 Riverdale, MD 20737

3 Remittance Express (REX) = (866) 234-5681

4 On Line Payment:

5 This payment option can be accessed from the information below:

6 www.pay.gov
7 Enter "SFO 1.1" in the search field
8 Open form and complete required fields

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

11 A copy of each check, or notification that the payment has been made by one of the other
12 methods listed above, including proof of the date payment was made, shall be sent with a
13 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
14 following regular mail or email addresses:

15 Regional Hearing Clerk
16 Office of Regional Counsel (ORC-1)
17 U.S. Environmental Protection Agency, Region IX
18 75 Hawthorne Street
19 San Francisco, CA 94105
20 R9HearingClerk@epa.gov

21 Timothy Hyles
22 Toxics Section
23 Enforcement and Compliance Assurance Division (ENF-2-3)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105
27 hyles.timothy@epa.gov

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

20. If Respondent fails to pay the assessed civil administrative penalty of FORTY-
FOUR THOUSAND, TWO HUNDRED, AND SEVENTY-FIVE DOLLARS (\$44,275), as
identified in Paragraph 18, by the deadline specified in that Paragraph, then Respondent shall pay
a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500) per day in addition to the

1 assessed penalty. Stipulated penalties shall accrue until such time as the assessed penalty and all
2 accrued stipulated penalties are paid and shall become due and payable upon EPA's written
3 request. Failure to pay the civil administrative penalty specified in Paragraph 18 by the deadline
4 specified in that Paragraph may also lead to any or all of the following actions:

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

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

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

18 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
19 Government may assess interest, administrative handling charges, and nonpayment penalties
20 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
21 civil administrative penalty specified in Paragraph 18 by the deadline specified in that Paragraph.

22 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
23 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
24 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
25 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
26 (30) days of the effective date of this CAFO.

27 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.
28 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,

1 based on either actual or average cost incurred (including both direct and indirect costs), for
2 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

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

6 F. CERTIFICATION OF COMPLIANCE

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

13 G. RETENTION OF RIGHTS

14 22. 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 23. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
23 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
24 and permits.

25 H. ATTORNEYS' FEES AND COSTS

26 24. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
27 this proceeding.
28

I. EFFECTIVE DATE

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

J. BINDING EFFECT

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

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

FOR RESPONDENT TRICAL, INC.:

10-22-2021
DATE



PAUL NIDAY
President
TriCal, Inc.
8100 Arroyo Circle
Gilroy, CA 95020-7305

FOR COMPLAINANT EPA:

11/4/21
DATE


MATTHEW SALAZAR
MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

Digitally signed by
MATTHEW SALAZAR
Date: 2021.11.04
09:03:35 -07'00'

1 II. FINAL ORDER

2 EPA and TriCal, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2022-0009) be entered, and
4 Respondent shall pay a civil administrative penalty in the amount of FORTY-FOUR
5 THOUSAND, TWO HUNDRED, AND SEVENTY-FIVE DOLLARS (\$44,275) and comply
6 with the terms and conditions set forth in the Consent Agreement.
7

8
9 November 9, 2021
10 DATE

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BEATRICE WONG
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of TriCal Inc. (FIFRA-09-2022-0009), has been filed with the Regional Hearing Clerk, and was served on the Respondent, and Counsel for EPA, as indicated below.

RESPONDENT

(via Email)

Ben Blanco
General Counsel
TriCal Group
Gilroy, California
bblanco@tricalgroup.com

COMPLAINANT

(via Email)

Edgar Coral
Assistant Regional Counsel
U.S. EPA - Region 9
San Francisco, California
Coral.Edgar@epa.gov

Date: _____, 2021

Steven Armsey
Regional Hearing Clerk
EPA, Region 9