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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO.
	)	FIFRA-10-2012-0179
HARMS PACIFIC TRANSPORT, INC.	)	
Pasco, Washington	)	<b>CONSENT AGREEMENT</b>
	)	<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. The Regional Administrator of EPA Region 10 has redelegated 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 Harms Pacific Transport, Inc. (“Respondent”) hereby agrees to the 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 22.35, 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 statutory and factual basis for the alleged violations of FIFRA.

## III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 3220 North Glade Road in Pasco, Washington (the "Facility").

3.2. On May 18, 2011, and the June 22, 2011, an EPA representative inspected the Facility.

3.3. Respondent is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

### Violation 1

3.4. In 2009, Respondent produced two pesticides at the Facility.

3.5. In 2009, the Facility was not registered as an EPA pesticide-producing establishment.

3.6. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person to produce a pesticide or active ingredient in a facility that is not registered as an EPA pesticide-producing establishment.

3.7. Respondent produced two pesticides at a facility that is not registered as an EPA pesticide-producing establishment, in violation of FIFRA Section 12(a)(2)(L).

## Violation 2

3.8. Respondent sold and distributed the pesticides described in paragraph 3.4 at least 15 times in 2009 with labels that did not bear an EPA pesticide-producing establishment number assigned to Respondent under Section 7.

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

3.10. Section 2(q)(1)(D) of FIFRA states that a pesticide is misbranded if: (A) the label does not bear the EPA pesticide-producing establishment number assigned under Section 7 of FIFRA to each establishment in which it was produced.

3.11. Respondent sold and distributed a misbranded pesticide 15 times, in violation of FIFRA Section 12(a)(1)(E).

## Violation 3

3.12. Respondent did not maintain production records for the two pesticides it produced at its Facility in 2009.

3.13. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), makes it unlawful for any person to fail to maintain any records required under the Act.

3.14. Respondent failed to maintain required production records, in violation of FIFRA Section 12(a)(2)(B)(i).

3.15. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), these violations subject Respondent to the assessment of a civil penalty.

3.16. Pursuant to FIFRA Section 14(a), 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. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein.

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

4.3. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order.

4.4. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA.

4.5. Respondent consents to the assessment of a civil penalty in the amount of TWENTY-FIVE THOUSAND ONE HUNDRED TWENTY DOLLARS (\$25,120). This amount will be paid in three payments. Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to make the first payment in the amount of EIGHT THOUSAND THREE HUNDRED SEVENTY-FOUR DOLLARS (\$8,374) within thirty (30) days of the effective date of the Final Order. Two subsequent payments of EIGHT THOUSAND FOUR HUNDRED FORTY-THREE (\$8,443), and EIGHT THOUSAND FOUR HUNDRED ONE DOLLARS (\$8,401) are due five months and nine months, respectively, following the effective date of the Final Order. These payments include interest and are set forth in the table below.

Payment Number	Due Date	Amount
1	30 Days After Effective Date	\$8,374
2	Five Months After Effective Date	\$8,443
3	Nine Months After Effective Date	\$8,401

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

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

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

4.7. Respondent shall serve photocopies of the checks described in Paragraph 4.6, above, on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at the following addresses:

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

Erin Williams  
U.S. Environmental Protection Agency, Region 10  
Pesticides and Toxics Unit, OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

4.8. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.9. Should Respondent fail to pay any portion of the penalty assessed herein in full by its due date, Respondent shall also be responsible for payment of the following amount.

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, 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.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(2), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

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

4.10. The penalty described in Paragraph 4.5, above, 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 is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. Respondent shall bear its own costs and attorneys fees in connection with this matter.

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

~~4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and~~

EPA.

For Respondent:

DATED:

HARMS PACIFIC TRANSPORT, INC.:

9-14-12

Steve Dilley UP  
STEVE DILLEY, Vice President

For Complainant:

DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

9/18/2012

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

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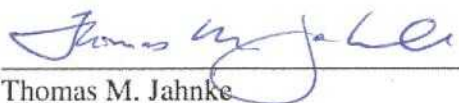
## V. FINAL ORDER

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 civil claims under 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 the regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 18<sup>th</sup> day of September, 2012.



Thomas M. Jahnke  
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: Harms Pacific Transport, Inc. Docket No. FIFRA 10-2012-0179** was filed, and served as follows, on the signature date below.

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

Mary Mercer St. Peter, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Andrew Schlegel  
Anderson & Yamada, P.C.  
9755 Southwest Barnes Road, Suite 675  
Portland, Oregon 97225

Steve Dilley  
Vice President  
Harms Pacific Transport, Inc.  
3220 North Glade Road  
Pasco, Washington 99301

Dated: 18 Sept 2012



Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10

