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**\*\* FILED \*\***  
**22 DEC 2020**  
**U.S. EPA - REGION IX**

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of: ) Docket No. FIFRA-09-2021-0016  
11 )  
12 Alpha Water Systems, 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 )

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15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Alpha  
17 Water Systems, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this  
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and  
19 concludes this 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 violations of Sections 12 (a)(1)(E),  
25 12(a)(2)(G), and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E), 136j(a)(2)(G), and  
26 136j(a)(2)(S).

27 2. Complainant is the Manager of the Toxics Branch in the Enforcement and Compliance  
28 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 regulations governing the labeling requirements for pesticides and devices, which are codified at  
2 40 C.F.R. Part 156.

3 13. Pursuant to Sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and  
4 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide  
5 containers and pesticide containment structures (“the Container/Containment regulations”),  
6 which are codified at 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140-156.159.

7 14. “Establishment” means any site where a pesticidal product, active ingredient, or  
8 device is produced, regardless of whether such site is independently owned or operated, and  
9 regardless of whether such site is domestic and producing a pesticidal product for export only, or  
10 whether the site is foreign and producing any pesticidal product for import into the United States.  
11 40 C.F.R. § 165.3.

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

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

18 17. “Owner” means any person who owns a facility at which a containment structure is  
19 required. 40 C.F.R. § 165.3.

20 18. “Produce” means to manufacture, prepare, propagate, compound, or process any  
21 pesticide, including any pesticide produced pursuant to Section 5 of the Act, and any active  
22 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container  
23 of any pesticide or device. 40 C.F.R. § 165.3.

24 19. “Producer” means any person, as defined by the Act, who produces any pesticide,  
25 active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40  
26 C.F.R. § 165.3.

27 20. “Refilling establishment” means an establishment where the activity of repackaging  
28 pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.



1 which remain in the custody of the user, a copy of the label or labeling, including all appropriate  
2 directions for use, must be securely attached to the container in the immediate vicinity of the  
3 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a  
4 label containing, inter alia, the net contents as prescribed in paragraph (d) of this section, the  
5 producing establishment number as prescribed in paragraph (f) of this section, hazard and  
6 precautionary statements as prescribed in subparts D and E of this part, and the directions for use  
7 as prescribed in paragraph (i) of this section. 40 C.F.R. § 156.10(a)(1).

8 31. On or about December 5, 2019, Respondent “distributed or sold” the pesticide, Alpha  
9 Chlor, in two 6,500 gallon bulk stationary pesticide containers at the Paramount Establishment,  
10 as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide  
11 for distribution, sale, or shipment.

12 32. On or about December 5, 2019, Respondent “distributed or sold” the pesticide, Alpha  
13 Chlor, in one gallon, five gallon, 15 gallon, and 53 gallon pesticide containers at the Paramount  
14 Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding  
15 the pesticide for distribution, sale, or shipment.

16 33. On or about December 5, 2019, Respondent failed to have labels attached to the two  
17 6,500 gallon bulk stationary pesticide containers or the one gallon, five gallon, 15 gallon, and 53  
18 gallon pesticide containers containing Alpha Chlor at the Paramount Establishment that marked  
19 or identified the net contents, producing establishment number, hazard and precautionary  
20 statements, and/or directions for use, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and  
21 156.10(a)(1).

22 34. Respondent’s failure to mark or identify the net contents, producing establishment  
23 number, hazard and precautionary statements, and/or directions for use on the labels attached to  
24 the two 6,500 gallon bulk stationary pesticide containers or the one gallon, five gallon, 15 gallon,  
25 and 53 gallon pesticide containers containing Alpha Chlor at the Paramount Establishment, as  
26 required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(a)(1), constitutes “misbranding,” as that  
27 term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

28 35. Consequently, on or about December 5, 2019, Respondent’s distribution or sale of

1 the pesticide, Alpha Chlor, in two 6,500 gallon bulk stationary pesticide containers and one  
2 gallon, five gallon, 15 gallon, and 53 gallon pesticide containers at the Paramount Establishment  
3 constitutes six violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which  
4 prohibits a person from distributing or selling a misbranded pesticide.

5           COUNTS 7-10: Use of a Pesticide in a Manner Inconsistent with its Labeling

6           36. The labels for the one gallon, five gallon, 15 gallon, and 53 gallon pesticide  
7 containers that contained the pesticide product Alpha Chlor at the Paramount Establishment all  
8 bore the language, “Do not reuse container but place in trash collection.”

9           37. On or about December 5, 2019, an EPA, Region IX inspector observed at the  
10 Paramount Establishment that the one gallon, five gallon, 15 gallon, and 53 gallon pesticide  
11 containers that contained the pesticide product Alpha Chlor were being reused rather than being  
12 placed in trash collection.

13           38. By failing to follow labeling instructions prohibiting the reuse of the one gallon, five  
14 gallon, 15 gallon, and 53 gallon pesticide containers that contained the pesticide product Alpha  
15 Chlor at the Paramount Establishment on December 5, 2019, Respondent violated Section  
16 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

17           COUNTS 11-14: Failure to Properly Identify the Container

18                           Type By Including the Required Statements

19           39. For products other than plant-incorporated protectants, either a “nonrefillable  
20 container” or a “refillable container” statement, as applicable, must be placed on the label or  
21 container. 40 C.F.R. § 156.140. For “refillable containers,” one of the following statements is  
22 required [except for inapplicable exemptions]: (1) “Refillable Container. Refill this container  
23 with pesticide only. Do not reuse this container for any other purpose,” or (2) “Refillable  
24 Container” Refill this container with [*common chemical name*] only. Do not reuse this container  
25 for any other purpose.” 40 C.F.R. § 156.140(b).

26           40. On or about December 5, 2019, an EPA, Region IX inspector observed at the  
27 Paramount Establishment that Alpha Chlor, a pesticide product other than a plant-incorporated  
28 protectant, was being packaged and distributed in one gallon, five gallon, 15 gallon, and 53

1 gallon pesticide containers meant for refillable reuse. Neither of the two “refillable container”  
2 statement options required pursuant to 40 C.F.R. § 156.140(b) was placed on the one gallon, five  
3 gallon, 15 gallon, or 53 gallon pesticide containers or their labels for this pesticide product.

4 41. On or about December 5, 2019, Respondent failed to identify the container type by  
5 placing a “refillable container” statement on one gallon, five gallon, 15 gallon, or 53 gallon  
6 pesticide containers containing the pesticide product Alpha Chlor at the Paramount  
7 Establishment, as required by 40 C.F.R. § 156.140(b).

8 42. On or about December 5, 2019, Respondent violated Section 12(a)(2)(S) of FIFRA, 7  
9 U.S.C. § 136j(a)(2)(S), by failing to identify the container type by placing a “refillable container”  
10 statement on one gallon, five gallon, 15 gallon, or 53 gallon pesticide containers containing the  
11 pesticide product Alpha Chlor at the Paramount Establishment, as required by 40 C.F.R. §  
12 156.140(b).

13 COUNTS 15-18: Failure to Properly Label the Pesticide

14 With Appropriate Residue Removal Instructions

15 43. The label of each pesticide product packaged in a refillable container must include  
16 the residue removal instructions in this section. Instructions must be given for all pesticide  
17 products that are distributed or sold in refillable containers, including those that do not require  
18 dilution prior to application. 40 C.F.R. § 156.156.

19 44. On or about December 5, 2019, Respondent stated that Alpha Chlor, a pesticide  
20 product, was packaged and distributed at the Paramount Establishment in one gallon, five gallon,  
21 15 gallon, and 53 gallon pesticide containers meant for refillable reuse. The residue removal  
22 instructions required pursuant to 40 C.F.R. § 156.156 were missing from the labels of each of  
23 these four refillable container types containing a pesticide product.

24 45. On or about December 5, 2019, Respondent failed to include residue removal  
25 instructions on the labels of one gallon, five gallon, 15 gallon, and 53 gallon refillable containers  
26 containing the pesticide product Alpha Chlor at the Paramount Establishment, as required by 40  
27 C.F.R. § 156.156.

28 46. On or about December 5, 2019, Respondent violated Section 12(a)(2)(S) of FIFRA, 7

1 U.S.C. § 136j(a)(2)(S), by failing to include residue removal instructions on the labels of one  
2 gallon, five gallon, 15 gallon, and 53 gallon refillable containers containing the pesticide product  
3 Alpha Chlor at the Paramount Establishment, as required by 40 C.F.R. § 156.156.

4 D. RESPONDENT'S ADMISSIONS

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

12 E. CIVIL ADMINISTRATIVE PENALTY

13 48. In full and final settlement of the violations specifically alleged in Section I.C of this  
14 CAFO, Respondent shall pay a civil administrative penalty of THREE HUNDRED DOLLARS  
15 (\$300). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this  
16 CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the  
17 name and docket number of this case, for the amount, payable to "Treasurer, United States of  
18 America," (or be paid by one of the other methods listed below) and sent as follows:

19 Regular Mail:

20 U.S. Environmental Protection Agency  
21 Fines and Penalties  
22 Cincinnati Finance Center  
23 PO Box 979077  
24 St. Louis, MO 63197-9000

25 Wire Transfers:

26 Wire transfers must be sent directly to the Federal Reserve Bank in New  
27 York City with the following information:  
28 Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary = U.S. Environmental Protection Agency





1 Enforcement and Compliance Assurance Division (ENF-4)  
2 U.S. Environmental Protection Agency, Region IX  
3 75 Hawthorne Street  
4 San Francisco, CA 94105  
5 salazar.matt@epa.gov

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

9 50. If Respondent fails to pay the assessed civil administrative penalty of THREE  
10 HUNDRED DOLLARS (\$300), as identified in Paragraph 48, by the deadline specified in that  
11 Paragraph, then Respondent shall pay a stipulated penalty to EPA of ONE HUNDRED  
12 DOLLARS (\$100) per day in addition to the assessed penalty. Stipulated penalties shall accrue  
13 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall  
14 become due and payable upon EPA's written request. Failure to pay the civil administrative  
15 penalty specified in Paragraph 48 by the deadline specified in that Paragraph may also lead to any  
16 or all of the following actions:

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

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

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

1 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
2 Government may assess interest, administrative handling charges, and nonpayment penalties  
3 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
4 civil administrative penalty specified in Paragraph 48 by the deadline specified in that Paragraph.

5 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.  
6 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
7 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
8 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
9 (30) days of the effective date of this CAFO.

10 (b) Administrative Handling Charges. Pursuant to 31 U.S.C.  
11 Section 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge,  
12 based on either actual or average cost incurred (including both direct and indirect costs), for  
13 every month in which any portion of the assessed penalty is more than thirty (30) days past due.

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

17 F. CERTIFICATION OF COMPLIANCE

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

24 G. RETENTION OF RIGHTS

25 52. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's  
26 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C  
27 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil  
28 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,

1 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal  
2 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it  
3 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address  
4 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

8 H. ATTORNEYS' FEES AND COSTS

9 54. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in  
10 this proceeding.

11 I. EFFECTIVE DATE

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

15 J. BINDING EFFECT

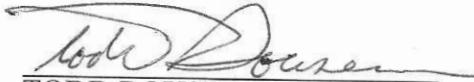
16 56. The undersigned representative of Complainant and the undersigned representative of  
17 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
18 of this CAFO and to bind the party he or she represents to this CAFO.

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

1 FOR RESPONDENT ALPHA WATER SYSTEMS, INC.:

2 11-20-2020

3 DATE



TODD BOUSEMA

President

Alpha Water Systems, Inc.

7200 Coral Lane

Paramount, CA 90723-3909

7 FOR COMPLAINANT EPA:

8 12/14/2020

9 DATE

10 MATTHEW

11 SALAZAR

MATT SALAZAR, P.E.

12 Manager, Toxics Branch

13 Enforcement and Compliance Assurance Division

14 U.S. Environmental Protection Agency, Region IX

Digitally signed by

MATTHEW SALAZAR

Date: 2020.12.14 09:04:53

-08'00'

1 II. FINAL ORDER

2 EPA and Alpha Water Systems, Inc. having entered into the foregoing Consent Agreement,  
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2021- 0016) be entered, and  
4 Respondent shall pay a civil administrative penalty in the amount of THREE HUNDRED DOLLARS  
5 (\$300) and comply with the terms and conditions set forth in the Consent Agreement.  
6  
7

8 Steven L.  
9 Jawgiel

Digitally signed by  
Steven L. Jawgiel  
Date: 2020.12.22  
09:34:21 -08'00'

10 \_\_\_\_\_  
DATE

11 STEVEN JAWGIEL  
12 Regional Judicial Officer  
13 U.S. Environmental Protection Agency, Region IX  
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## CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Alpha Water Systems* (FIFRA-09-2021-0016), has been filed with the Regional Hearing Clerk, and a copy was served on the Respondent and on the Complainant as indicated below:

**RESPONDENT**

Todd Bousema  
President  
Alpha Water Systems, Inc.  
email: pmtorder@awspoolsupply.com

**COMPLAINANT**

Edgar P. Coral  
Assistant Regional Counsel  
U.S. EPA - Region 9  
email: Coral.Edgar@epa.gov

Date Filed: \_\_\_\_\_, 2020

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Steven Armsey  
Regional Hearing Clerk  
EPA, Region 9