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Attorneys for Plaintiff

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

In the Matter of:

Fernley Hay & Grain,

Respondent

Docket No. FIFRA-09-2007-0005

CONSENT AGREEMENT AND FINAL
ORDER PURSUANT TO 40 C.F.R. §§ 22.13
AND 22.18

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX ("EPA Region IX"), and Fernley Hay & Grain ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (the "FIFRA" or the "Act"), 7 U.S.C. § 136l(a), against Respondent for violating the Act.

2. Complainant is the Director of the Communities and Ecosystems Division of EPA Region IX. The Administrator of EPA has delegated to the Regional Administrator of EPA Region IX the authority to issue complaints, and the Regional Administrator, in turn, has re-delegated that authority to the Complainant.

B. STATUTORY AND REGULATORY BASIS

3. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any unregistered pesticide.
4. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).
5. The term "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ." 7 U.S.C. § 136(u).
6. The term "pest" means "any insect, rodent, nematode, fungus, weed" 7 U.S.C. § 136(t).
7. The term "distribute or sell" means to "distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and . . . deliver or offer to deliver." 7 U.S.C. § 136(gg).

C. ALLEGED VIOLATIONS

8. At all times relevant to this action, Respondent is a "person" as that term is defined in Section 2(s) of the Act, 7 U.S.C. § 136(s), in that it is a corporation.
9. Respondent owns and operates a facility (the "Facility") at 808 W. Main Street, Fernley, Nevada.
10. The Facility engages in sale and distribution of various feed and farm products, including pesticides.

11. On or about May 8, 2006, Respondent sold or offered for sale a product called "Tomcat Ground Squirrel Bait," claiming that the product trapped and killed ground squirrels.
12. Squirrels are "pests" as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
13. "Tomcat Ground Squirrel Bait" is a "pesticide" as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
14. At all times relevant to this action, "Tomcat Ground Squirrel Bait" was not registered with EPA for sale within the State of Nevada.
15. On or about May 8, 2006, Respondent sold or distributed an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

D. RESPONDENT'S ADMISSIONS

16. 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 and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

17. In settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of THREE THOUSAND ONE HUNDRED TWENTY DOLLARS (\$3,120) within 30 days of the effective date of this CAFO. Respondent shall pay this penalty according to the terms of this CAFO. Payment

shall be made by cashier's or certified check payable to the "Treasurer, United States of America," and shall be sent by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, PA 15251

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check and transmittal letter 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

David H. Kim
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

18. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
19. If Respondent fails to pay the civil administrative penalty within 30 days after the effective date of this CAFO, then Respondent shall pay to EPA the stipulated penalty of FIVE THOUSAND DOLLARS (\$5,000) instead of the agreed upon penalty sum specified in paragraph 17 immediately. In addition, failure to pay the civil administrative penalty may 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; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty within the deadline specified in paragraph 17. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).

Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). 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.

F. CERTIFICATION OF COMPLIANCE

20. In executing this CAFO, Respondent certifies that (1) it is no longer distributing or selling unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and (2) it is currently in compliance with all other FIFRA requirements for all its ongoing operations.

G. RETENTION OF RIGHTS

21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability 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.
22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to

comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

24. 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

25. 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.
26. 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 FERNEY HAY & GRAIN:

2-12-04
DATE

Kevin Miller
By: Kevin Miller
Title: owner
Address:

FERNEY HAY AND GRAIN
PAID
FERNEY, NY 89408

FOR COMPLAINANT EPA REGION IX:

4-4-07
DATE

Francis Schuth for
ENRIQUE MANZANILLA

Director
Communities and Ecosystems Division
United States Environmental
Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA Region IX and Fernley Hay & Grain, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2007-0005) be entered, and Respondent shall pay a civil administrative penalty in the amount of \$_ in accordance with the terms set forth in the Consent Agreement.

09/05/07

DATE



STEVEN JAWGIEL
Regional Judicial Officer
United States Environmental
Protection Agency, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-9-2000-0005 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7003 3110 0006 1997 8510), return receipt requested, to:

Mr. Kevin Miller
Fernley Hay & Grain
P.O. Box 559
Fernley, NV 89408-0559

4-5-07
DATE

Danielle L. Carr
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105