

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

2007 SEP -3 AM 10:50

In the matter of:	)	Docket No. FIFRA	09-2008	REG. CLERK
	)			
Red Scale Down,	)			
	)	CONSENT AGREEMENT AND		
Respondent.	)	FINAL ORDER PURSUANT TO		
	)	40 C.F.R. §§ 22.13(b) AND 22.18(b)		

I. CONSENT AGREEMENT

The United States Environmental Protection Agency (“EPA”), Region IX and Red Scale Down (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a), against Respondent for violating Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division of EPA Region IX. By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By Regional Order Number 1255.08 CHG1 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Associate Director for Agriculture, Communities and Ecosystems Division.

3. Respondent is a California company that owns, operates, controls and/or is otherwise responsible for a facility located at 19421 Creek Road, Bakersfield, California.

## B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual report (“annual pesticide report”) to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

7. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

## C. ALLEGED VIOLATION

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

9. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 19421 Creek Road, in Bakersfield, California (hereinafter "Facility").

10. Respondent has registered the Facility as a pesticide producing establishment in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 75108-CA-002.

11. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

12. Respondent did not include its EPA product registration number in the annual pesticide report for the 2007 production year and its sales and distributions amounts were not reported.

13. Thus, Respondent failed to submit a complete annual pesticide report for the 2007 production year, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and 40 C.F.R. § 167.85.

14. Respondent's failure to submit a complete annual pesticide production report for the 2007 reporting year constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), which makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

15. Respondent had previously failed to submit a complete annual pesticide report for the 2006 production year, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 and EPA issued a Notice of Warning to the company on September 25, 2007 for that violation.

16. Consequently, the Enforcement Response Policy for FIFRA Section 7(c) dated June 2007 provides for the assessment of a penalty against Respondent for the 2007 reporting violation.

#### D. RESPONDENT'S ADMISSIONS

17. 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

18. In settlement of the violation specifically alleged in Section I.C. of this CAFO,

Respondent shall pay a civil administrative penalty of ONE THOUSAND DOLLARS (\$1,000). Respondent shall pay the full amount of this penalty within thirty (30) calendar days after the effective date 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  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, MO 63197-9000

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

Glenda Dugan  
Pesticides Office  
Communities and Ecosystems Division (CED-5)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

19. 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.

20. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 15 by the date specified in Paragraph 15, then (i) the entire balance of the unpaid penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty of \$150 per day for each day that payment is late. In addition, failure to pay in full the civil administrative penalty by its due date 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; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

21. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. 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. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.12(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. § 13.12(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.

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F. CERTIFICATION OF COMPLIANCE

22. In executing this CAFO, Respondent certifies that it has submitted a complete and accurate annual pesticide production report for the 2007 production year to the U.S. EPA Region IX Pesticides Office.

G. RETENTION OF RIGHTS

23. 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.

24. 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

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

I. EFFECTIVE DATE

26. 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

27. 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.

28. 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.

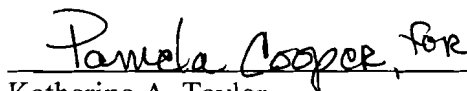
**FOR RESPONDENT, RED SCALE DOWN:**

1-13-08  
DATE

  
\_\_\_\_\_  
Tom Branson  
Partner

**FOR COMPLAINANT, EPA REGION IX:**


9/2/09  
DATE

  
\_\_\_\_\_  
Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and Red Scale Down, having entered into the forgoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008<sup>00 14</sup>) be entered, and Respondent shall pay a civil administrative penalty in the amount of ONE THOUSAND DOLLARS (\$1,000) in accordance with the terms set forth in the Consent Agreement.

09/02/08  
DATE

  
Steven Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX




CERTIFICATION

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket Number FIFRA-09-2008-~~00~~ **14**, has been filed with the Regional Hearing Clerk and a copy was sent, certified mail (7007 0710 0003 6239 7956) to:

Mr. Tom Branson  
Red Scale Down  
727 East Swift  
Fresno, CA 93704

9-3-08  
DATE

  
DANIELLE CARR  
U.S. Environmental Protection Agency, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED** 7007 0710 0003 6239 7956

Date: SEP 03 2008

Mr. Tom Branson  
Partner  
Red Scale Down  
727 East Swift  
Fresno, CA 93704

Subject: Red Scale Down  
Consent Agreement and Final Order  
Docket No. FIFRA-09-2008- 00 14

Dear Mr. Brandson:

Enclosed please find the Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq. for the above referenced case. The terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO. Directions for sending payment can be found in paragraph 18 of the CAFO.

If you have any questions you may contact Glenda Dugan, Enforcement Officer, telephone number 415- 947-4204 at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Sincerely,

*Pamela Cooper, FOR*

Katherine Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division

Cc: Carol Bussey, Office of Regional Counsel