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U.S. EPA, REGION IX
REGIONAL HEARING CLERK

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4 Region IX
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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2012- 0041
11)
12 Pumpkin Patch Fund Raisers, Inc.,)
13 Respondent.)
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CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency ("EPA"), Region IX, and Pumpkin
17 Patch Fund Raisers, Inc. (the "Respondent") agree to settle this matter and consent to the entry of
18 this Consent Agreement and Final Order ("CAFO").

19 A. AUTHORITY AND PARTIES

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

25 2. Complainant is the Associate Director for Agriculture of the Communities and
26 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional
27 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation
28 Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further

1 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture
2 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,
3 dated June 9, 2005.

4 3. Respondent is Pumpkin Patch Fund Raisers, Inc., an active corporation whose
5 headquarters is located in Greensboro, North Carolina.

6 **B. STATUTORY AND REGULATORY BASIS**

7 4. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any
8 person to use any registered pesticide in a manner inconsistent with its labeling.

9 5. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), provides that a registered pesticide is
10 used in a manner inconsistent with its labeling if the registered pesticide is used in a manner not
11 permitted by the labeling.

12 **C. ALLEGED VIOLATIONS**

13 6. Respondent is a corporation and therefore fits within the definition of "person" as that
14 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15 7. Rozol Prairie Dog Bait (EPA Reg. No. 7173-286) is a "pesticide" as that term is
16 defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

17 8. On or about May 10, 2010, Respondent used, "in a manner inconsistent with its
18 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
19 pesticide Rozol Prairie Dog Bait at the Hamby Pumpkin Patch Farm located at Navajo
20 Agricultural Product Industry, Region II, south of Farmington, New Mexico. Specifically, in a
21 manner not permitted by the pesticide Rozol Prairie Dog Bait's labeling, Respondent applied the
22 pesticide by hose rather than by hand.

23 9. On or about May 10, 2010, Respondent used, "in a manner inconsistent with its
24 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
25 pesticide Rozol Prairie Dog Bait at the Hamby Pumpkin Patch Farm located at Navajo
26 Agricultural Product Industry, Region II, south of Farmington, New Mexico. Specifically, in a
27 manner not permitted by the pesticide Rozol Prairie Dog Bait's labeling, Respondent applied the
28 pesticide on or above ground level rather than strictly at least six inches underground in prairie

1 dog burrows, thus failing to ensure that no bait is left on the soil surface at the time of the
2 application.

3 10. By using the registered pesticide Rozol Prairie Dog Bait in the above-described
4 manners inconsistent with its labeling, Respondent violated Section 12(a)(2)(G) of FIFRA, 7
5 U.S.C. § 136j(a)(2)(G) on two occasions.

6 11. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and the Civil Monetary Penalty
7 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that, for any offense occurring after
8 January 12, 2009, any private applicator or other person not included in Section 14(a)(1) who
9 violates any provision of FIFRA subsequent to receiving a written notice from the Administrator
10 or following a citation for a prior violation, may be assessed a civil penalty by the Administrator
11 of not more than \$1,100 for each offense, except than any applicator not included under Section
12 14(a)(1) who holds or applies registered pesticides, or uses dilutions of registered pesticides, only
13 to provide a service of controlling pests without delivering any unapplied pesticide to any person
14 so served, and who violates any provision of FIFRA may be assessed a civil penalty by the
15 Administrator of not more than \$750 for the first offense nor more than \$1,100 for each
16 subsequent offense. Under the FIFRA Enforcement Response Policy, dated December 2009, and
17 the Civil Monetary Penalty Inflation Adjustment Rule, the two violations cited above would
18 merit a pre-modification civil penalty of \$2,100, given the alleged violations' gravity level, size
19 of business, and applicable gravity adjustments.

20 **D. RESPONDENT'S ADMISSIONS**

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

1 On Line Payment:

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

3 www.pay.gov

4 Enter "sfol.1" in the search field

5 Open form and complete required fields

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

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

12 Regional Hearing Clerk
13 Office of Regional Counsel (ORC-1)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105

17 Julie Jordan
18 Communities and Ecosystems Division (CED-5)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 Edgar P. Coral
23 Office of Regional Counsel (ORC-2)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105

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

30 15. If Respondent fails to pay the assessed civil administrative penalty of TWO
31 THOUSAND, ONE HUNDRED DOLLARS (\$2,100), as identified in Paragraph 13, by the
32 deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA
33 upon EPA's written request. The amount of the stipulated penalty will be ONE HUNDRED
34 DOLLARS (\$100), and will be immediately due and payable upon EPA's written request on the
35 day following the deadline specified in Paragraph 13, together with the initially assessed civil

1 administrative penalty of TWO THOUSAND, ONE HUNDRED DOLLARS (\$2,100), resulting
2 in a total penalty due of TWO THOUSAND, TWO HUNDRED DOLLARS (\$2,200). Failure to
3 pay the civil administrative penalty specified in Paragraph 13 by the deadline specified in that
4 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 13 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.

1 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
2 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
3 either actual or average cost incurred (including both direct and indirect costs), for every month
4 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

8 F. CERTIFICATION OF COMPLIANCE

9 16. In executing this CAFO, Respondent certifies that (1) it is no longer using registered
10 pesticides in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and (2) it is
11 currently in compliance with all other FIFRA requirements for all its ongoing operations.

12 G. RETENTION OF RIGHTS

13 17. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
14 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
15 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
16 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
17 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
18 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
19 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
20 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

24 H. ATTORNEYS' FEES AND COSTS

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

27 I. EFFECTIVE DATE

28 20. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be

1 effective on the date that the Final Order contained in this CAFO, having been approved and
2 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

3 **J. BINDING EFFECT**

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

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

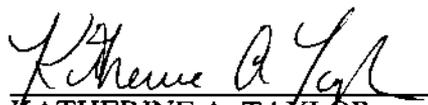
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11 FOR RESPONDENT PUMPKIN PATCH FUND RAISERS, INC.:

12 6-5-12
13 DATE


14 RICHARD HAMBY
15 President
16 Pumpkin Patch Fund Raisers, Inc.
17 425 Highway 150 W
18 Greensboro, NC 27455

19 FOR COMPLAINANT EPA:

20 7/31/2012
21 DATE

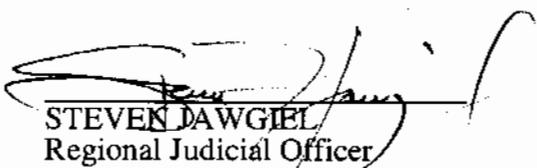

22 KATHERINE A. TAYLOR
23 Associate Director for Agriculture
24 Communities and Ecosystems Division
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, California 94105
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1 II. FINAL ORDER

2 EPA and Pumpkin Patch Fund Raisers, Inc. having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2012- 0001) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TWO
6 THOUSAND, ONE HUNDRED DOLLARS (\$2,100), and comply with the terms and conditions
7 set forth in the Consent Agreement.

8
9
10 07/31/12
DATE


11 STEVEN DAWGIEL
Regional Judicial Officer
12 U.S. Environmental Protection Agency, Region IX
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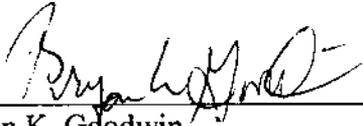
CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2012-0001 , was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7010 2780 0000 8388 6415), return receipt requested, addressed to the following address:

Mr. Richard Hamby
President
Pumpkin Patch Fund Raisers, Inc.
425 Hwy 150 W
Greensboro, NC 27455

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral, Esq
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

8/6/12

Date



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED 7010 2780 0000 8388 6415

Date: AUG 06 2012

Mr. Richard Hamby
President
Pumpkin Patch Fund Raisers, Inc.
425 Hwy 150 W
Greensboro, NC 27455

Subject: Pumpkin Patch Fund Raisers, Inc.
Consent Agreement and Final Order
Docket No. FIFRA-09-2012-00

Dear Mr. Hamby:

Enclosed please find a 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.

If you have any questions, please contact Edgar Coral, Assistant Regional Counsel, telephone number (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosure

cc: Glenna Lee, Navajo Nation Environmental Protection Agency Pesticide Program
Jefferson Biakeddy, Navajo Nation Environmental Protection Agency
Kimberly Bingham, EPA Region 4 Pesticide Program