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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2011-0138
	)	
MORROW COUNTY GRAIN	)	<b>CONSENT AGREEMENT AND</b>
GROWERS, INC.,	)	<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 United States 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, who in turn 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 Morrow County Grain Growers, Inc. ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

1 **II. PRELIMINARY STATEMENT**

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO  
3 commences this proceeding which will conclude when the Final Order contained in Part V of  
4 this CAFO becomes effective.

5 2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10  
6 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and  
7 the party against whom a penalty is proposed to be assessed pursuant to Section 14(a) of FIFRA,  
8 7 U.S.C. § 136l(a).

9 2.3. Part III of this CAFO contains a concise statement of the statutory and factual  
10 basis for the alleged violations of FIFRA.

11 **III. ALLEGATIONS**

12 3.1. Respondent owns and operates a business facility located at 71025 Old Highway  
13 97 Loop in Wasco, Oregon. This facility is registered as an EPA pesticide-producing  
14 establishment under the EPA Est. No. 061803-OR-002 and has been a pesticide-producing  
15 establishment since January 19, 1995.

16 3.2. Respondent’s headquarters is located at 350 East Main Street in Lexington,  
17 Oregon.

18 3.3. Respondent’s Wasco, Oregon, facility repackages two pesticides under an  
19 agreement with Nufarm Americas, Inc., the registrant: Weedone LV6 EC Broadleaf Herbicide  
20 (EPA Reg. No. 71368-11) and Weedar 64 Broadleaf Herbicide (EPA Reg. No. 71368-1).

21 3.4. Nufarm’s headquarters is located at 150 Harvester Drive, Suite 200, in Burr  
22 Ridge, Illinois.

1 3.5. Information collected during an inspection conducted by Oregon Department of  
2 Agriculture (ODA) on March 23, 2010, showed that Respondent had sold or distributed  
3 Weedone LV6 EC and Weedar 64 with out-dated labels.

4 3.6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for  
5 any person in any state to distribute or sell to any person any pesticide which is misbranded.

6 3.7. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is  
7 misbranded if (G) the label does not contain a warning or caution statement which may be  
8 necessary and if complied with, together with any requirements imposed under Section 3(d) of  
9 FIFRA, is adequate to protect health and the environment.

10 3.8. The labels used by Respondent in its distribution or sale of Weedone LV6 EC and  
11 Weedar 64 did not include the up-to-date warning or caution statements.

12 3.9. Respondent sale of products with out-dated labels constitutes distribution or sale  
13 of misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

14 3.10. Sales information collected during the inspection and in response to EPA's Notice  
15 of Warning and Information Request (May 9, 2011) showed that Respondent distributed and sold  
16 misbranded pesticides on 15 separate occasions in 2009 and 2010.

17 3.11. These violations subject Respondent to the payment of a civil penalty in  
18 accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

19 3.12. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1) and 40 C.F.R.  
20 Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense against any  
21 registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates  
22 any provision of Section 12 of FIFRA.

23 **IV. CONSENT AGREEMENT**

1           4.1. For the purpose of this proceeding, Respondent admits the jurisdictional  
2 allegations contained herein, but neither admits nor denies the specific factual allegations put  
3 forth by EPA. Respondent waives any right to contest these allegations as well as the right to  
4 appeal the accompanying Final Order. Respondent acknowledges that this settlement will be  
5 considered prior history under FIFRA once finalized and consents to payment of the penalty as  
6 stated below.

7           4.2. Respondent consents to the assessment of a civil penalty in the amount of  
8 TEN THOUSAND TWENTY DOLLARS (\$10,020.00). Respondent consents to issuance of the  
9 Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in this  
10 paragraph within thirty (30) days of the effective date of this Final Order.

11           4.3. Payment under this CAFO shall be made by cashier's check or certified check,  
12 payable to the order of "Treasurer, United States of America" and delivered to the following  
13 address:

14                           US Bank - USEPA - Region 10  
15                           Fines and Penalties  
16                           Cincinnati Finance Center  
17                           P.O. Box 979077  
18                           St. Louis, MO 63197-9000

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

20           4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,  
21 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
22 Enforcement at the following addresses:

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

1 U.S. Environmental Protection Agency Region 10  
2 Pesticides and Toxics Unit, OCE-084  
3 1200 Sixth Avenue, Suite 900  
4 Seattle, WA 98101  
5 Attn: Erin Halbert

6 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,  
7 the entire unpaid balance of penalty and accrued interest shall become immediately due and  
8 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under  
9 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with  
10 interest, handling charges, and nonpayment penalties, as set forth below.

11 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by  
12 its due date, Respondent shall also be responsible for payment of the following amounts:

- 13 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate  
14 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)  
15 from the effective date of the accompanying Final Order, provided, however, that  
16 no interest shall be payable on any portion of the assessed penalty that is paid  
17 within 30 days of the effective date of the Final Order.
- 18 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge  
19 of \$15 shall be paid if any portion of the assessed penalty is more than 30 days  
20 past due.
- 21 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty  
22 of 6% per annum shall be paid on any portion of the assessed penalty that is more  
23 than 90 days past due, which nonpayment penalty shall be calculated as of the  
24 date the underlying penalty first becomes past due.  
25

1           4.7.    The penalty described in Paragraph 4.2, above, including any additional costs  
2 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA  
3 and shall not be deductible for purposes of federal taxes.

4           4.8.    The undersigned representative of Respondent certifies that he is fully authorized  
5 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

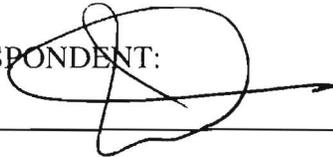
6           4.9.    Except as described in Paragraph 4.6 of this CAFO, each party shall bear its own  
7 costs in bringing or defending this action. The provisions of this CAFO shall bind Respondent  
8 and its agents, servants, employees, successors, and assigns.

9           4.10. The above provisions are STIPULATED AND AGREED upon by Respondent  
10 and EPA.

11  
12 DATED:

13 9/8/2011

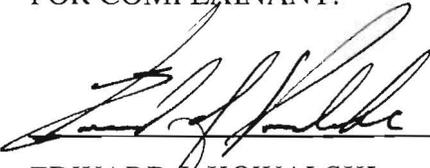
FOR RESPONDENT:

14   
15 \_\_\_\_\_  
16 John Ripple  
17 General Manager  
18 Morrow County Grain Growers, Inc.

19 DATED:

20 9/12/2011

FOR COMPLAINANT:

21   
22 \_\_\_\_\_  
23 EDWARD J. KOWALSKI  
24 Director, Office of Compliance and Enforcement  
25 EPA Region 10

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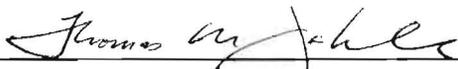
**V. FINAL ORDER**

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 claims for civil penalties pursuant to 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 16<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
Thomas M. Jahnke  
Regional Judicial Officer  
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Morrow County Grain Growers, Inc., DOCKET NO.: FIFRA-10-2011-0138** was filed with the Regional Hearing Clerk on September 16, 2011.

On September 16, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Socorro Rodriguez, Associate Regional Counsel  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on September 16, 2011, to:

John Ripple  
Morrow County Grain Growers, Inc.  
350 Main Street  
Lexington, OR 97839

DATED this 16<sup>th</sup> day of September 2011.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10