

inconsistent with their labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

3. Respondent is Trees, a corporation that operates a landscaping services business headquartered at Houston, Texas.

B. STATUTORY AND REGULATORY BASIS

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

C. ALLEGED VIOLATIONS

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

6. Respondent provides landscaping services to Pacific Power (“Pacific”), a company that produces and distributes electricity in Northern California, including maintenance of rights-of-way.

7. Direx 4L (EPA Registration No. 1812-257) and Garlon 4 (EPA Registration No. 62719-40) are substances intended for preventing, destroying, repelling, or mitigating any weeds

and are therefore “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C.

§ 136(u).

8. The labeling for the pesticide Direx 4L includes detailed directions for use, including: “Do not apply directly to water, to areas where surface water is present. . . .”

9. The labeling for the pesticide Garlon 4 includes detailed directions for use, including: “Do not apply directly to water, to areas where surface water is present. . . .”

10. On or about April 23, 2007, Respondent cleared vegetation and brush around Pacific’s power poles in Klamath, California.

11. On or about April 23, 2007, Respondent applied Direx 4L on a power pole in or near a pool of water.

12. By failing to follow labeling instructions prohibiting application of Direx 4L on water or areas where surface water is present on or about April 23, 2007, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

13. On or about April 23, 2007, Respondent applied Garlon 4 on a power pole in or near a pool of water.

14. By failing to follow labeling instructions prohibiting application of Garlon 4 on water or areas where surface water is present on or about April 23, 2007, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

15. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that any applicator not included under paragraph (1) of this subsection [14(a)] who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering

offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the two violations cited above would warrant a civil penalty of \$1,300, given the alleged violations' gravity level, size of business, and applicable gravity adjustments.

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 THIRTEEN HUNDRED DOLLARS (\$1,300). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO, shall make this payment by cashier's or certified check payable to the "Treasurer, United States of America," and shall send the check by certified mail, return receipt requested, to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall accompany its payment with 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

Jason Gerdes
Communities and Ecosystems Division (CED-5)
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. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

19. If Respondent fails to pay the assessed civil administrative penalty of THIRTEEN HUNDRED DOLLARS (\$1,300), as identified in Paragraph 17, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The amount of the

stipulated penalty will be ONE HUNDRED AND THIRTY DOLLARS (\$130), and will be immediately due and payable on the day following the deadline specified in Paragraph 17, together with the initially assessed civil administrative penalty of THIRTEEN HUNDRED DOLLARS (\$1,300), resulting in a total penalty due of FOURTEEN HUNDRED AND THIRTY DOLLARS (\$1,430). Failure to pay the civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

- a. EPA may refer the debt 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. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.
- b. The U.S. Government may collect the debt 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 U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. §§ 13(C) and 13(H).
- c. Pursuant to 40 C.F.R. § 13.17, EPA may either: (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.
- 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 by 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. Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges, and nonpayment penalties against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 17 by the deadline specified in that Paragraph.

F. CERTIFICATION OF COMPLIANCE

20. In executing this CAFO, Respondent certifies that: (1) it is in compliance with Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by no longer using registered pesticides in manners inconsistent with their labeling; and (2) it has complied with all other FIFRA requirements at all facilities under its control.

G. RETENTION OF RIGHTS

21. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities 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 duties 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.

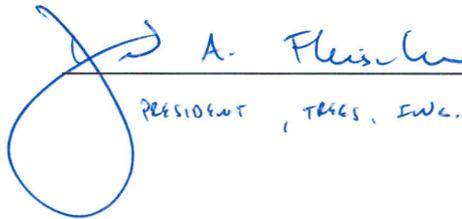
J. BINDING EFFECT

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 TREES, INC.:

3/24/2008
DATE


A. Fleischer
PRESIDENT, TREES, INC.

FOR COMPLAINANT EPA:

5/09/08
DATE


Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

II. FINAL ORDER

EPA and Trees, Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-⁰⁹9-2008-0006) be

entered, and Respondent shall pay a civil administrative penalty in the amount of THIRTEEN HUNDRED DOLLARS (\$1,300), and comply with the terms and conditions set forth in the Consent Agreement.

05/09/08
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATION

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number FIFRA-⁰⁹0006-2008-⁰⁶, has been filed with the Regional Hearing Clerk and a copy was sent, certified mail (7006 0810 0003 9306 2915) to:

William D. Houck
Trees, Inc.
4025 Old Highway 99 South
Roseburg, OR 97470

May 9, 2008
DATE

Danielle E. Carr
DANIELLE CARR
U.S. Environmental Protection Agency,
Region IX