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

In the matter of:)
)
Western Farm Services, Inc.)
)
Respondent.)
_____)

Docket No. FIFRA-⁰⁹~~9~~-2008-0020
CONSENT AGREEMENT
AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Western Farm Services, Inc. ("Western Farm" or the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for production of a pesticide in two unregistered pesticide-producing establishments in violation of 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

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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 Western Farm Services, Inc., a corporation with headquarters located at 3705 W. Beechwood Ave, Fresno, CA 93711.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person to distribute or violate any of the provisions of section 7 FIFRA, 7 U.S.C. § 136a.

5. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), states that “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution sale.”

6. Section 7(a) of FIFRA, 7 U.S.C. § 136(e), states that “[n]o person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator.”

7. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer and produce” as the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. The term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”

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8. "Produce" is further defined at 40 C.F.R. § 167.3 as "to manufacture, prepare, propagate, compound or process any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device."

9. "Producer" is further defined at 40 C.F.R. § 167.3 as "any person as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling)."

C. GENERAL ALLEGATIONS

10. Respondent sells to farmers agricultural products and services from approximately 100 facilities located in California, Arizona, Washington, Oregon and Idaho, and is incorporated in the state of Delaware.

11. Respondent is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is therefore subject to FIFRA and the regulations promulgated thereunder.

12. During 2006, Respondent repackaged two registered pesticide products at two different unregistered sites, Vapam HL (EPA Registration number 005481-468) at a site located at 53800 Polk Street, Coachella, California (011656-CA-024) and Buccaneer at a site located at 215 E Street, Endicott, Washington (011656-WA-010).

13. By repackaging Vapam HL and Buccaneer, Respondent was "producing" a pesticide as defined by 40 C.F.R. § 167.3.

14. The sites where Respondent "produced" Vapam HL and Buccaneer located at 53800 Polk Street, Coachella, California, and 215 E. Street, Endicott, Washington, are "establishments," as that term is defined by Section 2(dd) of FIFRA.

15. The "establishments" located at 53800 Polk Street, Coachella, California, and 215

E. Street, Endicott, Washington, were not registered with the Administrator as required by Section 7(a) of FIFRA.

D. ALLEGED VIOLATIONS

Count 1

16. Paragraphs 1 through 14 above are hereby incorporated in this Count 1 by reference as if the same were set forth herein in full.

17. Respondents violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a registered pesticide product, Vapam HL, at its Coachella, California facility, an unregistered site.

Count 2

18. Paragraphs 1 through 14 above are hereby incorporated in this Count 2 by reference as if the same were set forth herein in full.

19. Respondents violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by producing a registered pesticide product, Buccaneer, at its Endicott, Washington facility, an unregistered site.

E. RESPONDENT'S ADMISSIONS

20. 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 and I.D 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.

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F. CIVIL ADMINISTRATIVE PENALTY

21. Section 14 of FIFRA, 7 U.S.C. §136l, and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, provide that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil administrative penalty by the EPA Administrator in an amount not to exceed \$6,500 for each offense. After consideration of (1) the size of Respondent's business, (2) Respondent's ability to continue in business, and (3) the gravity of Respondent's violations, EPA proposed the assessment NINE THOUSAND NINE HUNDRED AND FORTY FIVE DOLLARS (\$9,945) in civil penalties for the alleged violations described in Section I.D.

22. In settlement of the violations specifically alleged in Section I.D of this CAFO, Respondent shall pay a civil administrative penalty of NINE THOUSAND NINE HUNDRED AND FORTY FIVE DOLLARS (\$9,945) within 30 days of 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

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AND

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

23. 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.

24. If Respondent fails to pay in full the civil administrative penalty by its due date, then (i) the entire balance of the unpaid penalty amount shall become due immediately. Respondent shall also pay a stipulated penalty to EPA. The amount of the stipulated penalty will be TWO HUNDRED DOLLARS (\$200) for each day that the payment is late, up to and including the 15th day; THREE HUNDRED DOLLARS (\$300) for each subsequent day that the payment is late, starting with the 16th day and continuing up to and including the 30th day; and FOUR HUNDRED DOLLARS (\$400) for each subsequent day that the payment is late after the 30th day. Upon Complainant's written demand, payment of the stipulated penalty shall immediately become due and payable. In addition, failure to pay the civil administrative penalty by the 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.

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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. § 13.17.

25. 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. § 13.11(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

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Respondent's overdue debt.

G. CERTIFICATION AND COMPLIANCE

26. In executing this CAFO, Respondent certifies that (1) it is no longer selling or distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities that it owns or operates.

H. RETENTION OF RIGHTS

27. In accordance with 40 C.F.R. § 22.18(c) and as provided below, this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Sections I.C and I.D 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 Sections I.C and I.D of this CAFO; or (ii) any criminal liability. In addition to any other authority, right, or remedy available to EPA, 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 Sections I.C and I.D of this CAFO.

28. 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.

I. ATTORNEYS' FEES AND COSTS

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

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J. EFFECTIVE DATE

30. 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.


K. BINDING EFFECT

31. 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.

32. 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 WESTERN FARM SERVICES, INC.:

8/26/08
DATE



J. Billy Pirkle
Director, EHS
Western Farm Services, Inc.
3705 W. Beechwood Avenue
Fresno, CA 93711

FOR COMPLAINANT EPA:

9/18/08
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

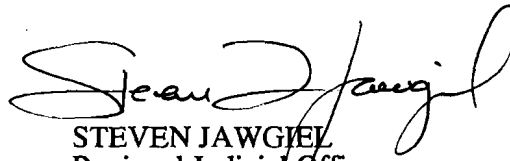
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II. FINAL ORDER

EPA and Western Farm Services, Inc. having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008-000020) be entered, and Respondent shall pay a civil administrative penalty in the amount of NINE THOUSAND NINE HUNDRED AND FORTY FIVE DOLLARS (\$9,945), and comply with the terms and conditions set forth in the Consent Agreement.

09/23/08
DATE



STEVEN JAWGIEL
Regional Judicial Officer
U.S. 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-09-2008-0202 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7006 0810 0003 9306 3844), return receipt requested, to:

Mr. J. Billy Pirkle
Western Farms Service, Inc.
7251 W. 4th St.
Greeley, CO 80634

SEP 24 2008



DATE

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