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2 UNITED STATES
3 ENVIRONMENTAL PROTECTION AGENCY
4 REGION IX
5 75 HAWTHORNE STREET
6 SAN FRANCISCO, CA 94105

2011 SEP 26 PM 12:13

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE

7 In the Matter of:)
8 JHTG, Inc. dba Orkin Pest Control,)
9 Respondent.) Docket No. FIFRA-09-2011-0022
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9 I. CONSENT AGREEMENT

10 The United States Environmental Protection Agency ("EPA"), Region IX and JHTG,
11 Inc. dba Orkin Pest Control ("Respondent") agree to settle this matter and consent to the entry
12 of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates
13 and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

14 A. AUTHORITY AND PARTIES

15 1. This administrative proceeding is for the assessment of a civil administrative penalty
16 under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7
17 U.S.C. § 1361(a), against Respondent for the use of a registered pesticide in a manner
18 inconsistent with its labeling, in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
19 136j(a)(2)(G).

20 2. Complainant is the Associate Director for Agriculture of the Communities and
21 Ecosystems Division, EPA Region IX, who has been duly delegated the authority to initiate
22 administrative proceedings under Section 14 of FIFRA and to sign consent agreements settling
23 such proceedings.

24 3. Respondent is an Arizona corporation located at 8230 East Pecos Drive in Prescott
25 Valley, Arizona.

26 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

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

3 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) provides, in part, that a “pesticide” means
4 any substance or mixture of substances intended for preventing, destroying, repelling, or
5 mitigating any pest

6 6. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee) provides that the term “to use any
7 registered pesticide in a manner inconsistent with its labeling” means to use any registered
8 pesticide in a manner not permitted by the labeling.

9 7. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) provides that the term “labeling”
10 means all labels and all other written, printed, or graphic matter accompanying the pesticide at
11 the time; or to which reference is made on the label or in literature accompanying the pesticide.

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

14 C. ALLEGED VIOLATIONS

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

16 10. On October 26, 2009, Respondent, through applicator, James Giles, applied the
17 product, Talstar, at the Tuba City Regional Health Care Corporation located on the Navajo
18 Reservation in Tuba City, Arizona.

19 11. Talstar is a “pesticide,” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. §
20 136(u), that is registered with EPA pursuant to Section 3 of FIFRA (EPA Reg. No. 279-3206).

21 12. The labeling for the pesticide, Talstar, states that all pesticide handlers (mixers,
22 loaders and applicators) must wear chemical-resistant gloves but, after the product is diluted in
23 accordance with label directions for use, waterproof gloves are sufficient.

24 13. On October 26, 2009, Respondent, through applicator, James Giles, applied the
25 registered pesticide, Talstar, at the Tuba City Regional Health Care Corporation without
26 wearing chemical-resistant or waterproof gloves.

1 14. Respondent's application of the registered pesticide, Talstar, at the Tuba City
2 Regional Health Care Corporation through applicator, James Giles, without wearing chemical-
3 resistant or waterproof gloves on October 26, 2009 constitutes a violation of Section
4 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

5 15. The Enforcement Response Policy for FIFRA dated December 2009 provides for a
6 penalty of \$500 for this violation.

7 **D. RESPONDENT'S ADMISSIONS**

8 16. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
9 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
10 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
11 I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
12 assessment of the civil administrative penalty under Section I.E. of this CAFO; (iv) waives any
13 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
14 proposed final order contained in this CAFO.

15 **E. CIVIL ADMINISTRATIVE PENALTY**

16 17. Respondent agrees to the assessment of a penalty in the amount of **FOUR**
17 **HUNDRED DOLLARS** (\$400) as final settlement of the civil claims against Respondent
18 arising under FIFRA, as alleged in Section I.C. of this CAFO.

19 18. Respondent shall pay the assessed penalty no later than thirty (30) calendar days
20 from the effective date of this CAFO. Payment shall be made by cashier's or certified check
21 payable to the "Treasurer, United States of America," and shall be sent by certified mail, return
22 receipt requested (or be paid by one of the other methods listed below) and sent as follows:

23 Regular Mail:

24 U.S. Environmental Protection Agency
25 Fines and Penalties
26 Cincinnati Finance Center
27 PO Box 979077
28 St. Louis, MO 63197-9000

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2 Wire Transfers:

3 Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the
4 following information:

5 Federal Reserve Bank of New York

6 ABA = 021030004

7 Account = 68010727

8 SWIFT address = FRNYUS33

9 33 Liberty Street

10 New York, NY 10045

11 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection
12 Agency"

13 Overnight Mail:

14 U.S. Bank

15 1005 Convention Plaza

16 Mail Station SL-MO-C2GL

17 ATTN Box 979077

18 St. Louis, MO 63101

19 ACH (also known as REX or remittance express):

20 Automated Clearinghouse (ACH) for receiving US currency

21 PNC Bank

22 808 17th Street, NW

23 Washington, DC 20074

24 ABA = 051036706

25 Transaction Code 22 – checking

26 Environmental Protection Agency

27 Account 31006

28 CTX Format

29 On Line Payment:

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

31 www.pay.gov

32 Enter "sfo1.1" in the search field

33 Open form and complete required fields

34 If clarification regarding a particular method of payment remittance is needed, contact the EPA

35 Cincinnati Finance Center at 513-487-2091.

36 In addition, a copy of each check or notification that the payment has been made by one of the

37 other methods listed above, including proof of the date payment was made, shall be sent with a

38 Consent Agreement and Final Order

In re: JHTG, Inc. dba Orkin Pest Control

1 transmittal letter indicating Respondent's name, the case title, and the docket number to:

2 Regional Hearing Clerk
3 Office of Regional Counsel (ORC-1)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105

7 Julie Jordan
8 Pesticides Office
9 Communities and Ecosystems Division (CED-5)
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, CA 94105

13 19. Payment of the above civil administrative penalty shall not be used by Respondent
14 or any other person as a tax deduction from Respondent's federal, state, or local taxes.

15 20. If Respondent fails to pay in full the civil administrative penalty assessed in
16 Paragraph 17 by the date specified in Paragraph 18, then Respondent shall pay to EPA a
17 stipulated penalty of \$100 per day for each day that payment is late, in addition to the assessed
18 penalty. Stipulated penalties are due and payable upon EPA's written request. In addition,
19 failure to pay in full the civil administrative penalty by its due date may lead to any or all of the
20 following actions:

21 a.. The debt being referred to a credit reporting agency, a collection agency, or
22 to the Department of Justice for filing of a collection action in the appropriate United States
23 District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the
24 validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be
25 subject to review.

26 b. The debt being collected by administrative offset (i.e., the withholding of
27 money payable by the United States to, or held by the United States for, a person to satisfy the
28 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.

1 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
2 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
3 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
4 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
5 of-credit. 40 C.F.R. §§ 13.14 and 13.17.

6 d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13,
7 interest, penalty charges, and administrative costs will be assessed against the outstanding
8 amount that Respondent owes to EPA for Respondent's failure to pay in full the civil
9 administrative penalty by the deadline specified in Paragraph 18. Interest will be assessed at an
10 annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e.,
11 the Treasury tax and loan account rate) as prescribed and published by the Secretary of the
12 Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40
13 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40
14 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt
15 will be based on either actual or average cost incurred, and will include both direct and indirect
16 costs. 40 C.F.R. § 13.12(b). In addition, if this matter is referred to another department or
17 agency (e.g., the Department of Justice, the Internal Revenue Service), that department or
18 agency may assess its own administrative costs, in addition to EPA's administrative costs, for
19 handling and collecting Respondent's overdue debt.

20 F. CERTIFICATION OF COMPLIANCE

21 21. In executing this CAFO, Respondent certifies that it is no longer using any
22 registered pesticides in a manner inconsistent with its labeling.

23 G. RETENTION OF RIGHTS

24 22. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
25 liability for federal civil penalties for the violation and facts specifically alleged in Section I.C.
26 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any
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1 civil liability for violations of any provision of any federal, state, or local law, statute,
2 regulation, rule, ordinance, or permit not specifically alleged in Section I.C. of this CAFO; or
3 (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and
4 remedies available to it (including, but not limited to, injunctive or other equitable relief or
5 criminal sanctions) to address any violation of this CAFO or any violation not specifically
6 alleged in Section I.C. of this CAFO.

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

10 H. ATTORNEYS' FEES AND COSTS

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

13 I. EFFECTIVE DATE

14 25. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
15 effective on the date that the final order contained in this CAFO, having been approved and
16 issued by either the Regional Judicial Officer or Regional Administrator, is filed.

17 J. BINDING EFFECT

18 26. The undersigned representative of Complainant and the undersigned representative
19 of Respondent each certifies that he or she is fully authorized to enter into the terms and
20 conditions of this CAFO and to bind the party he or she represents to this CAFO.

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

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FOR RESPONDENT, JHTG, INC. dba ORKIN PEST CONTROL:

8/15/11
DATE


Timothy Goeringer
Owner
JHTG, Inc. dba Orkin Pest Control

FOR COMPLAINANT, EPA REGION IX:

9/22/11
DATE


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

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II. FINAL ORDER

Complainant and Respondent, having entered into the forgoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-22) be entered,
and that Respondent shall pay a civil administrative penalty in the amount of FOUR
HUNDRED DOLLARS (\$400) in accordance with the terms and conditions set forth in the
Consent Agreement. This CAFO shall become effective upon filing.

09/23/11

DATE



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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2011-0022**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Tim Goeringer
JHTG, Inc. dba Orkin Pest Control
8230 East Pecos Dr.
Prescott Valley, AZ 86314

CERTIFIED MAIL NUMBER: 7007 2680 0000 5772 4412

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

Carol Bussey, 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



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

CERTIFIED MAIL

RETURN RECEIPT REQUESTED 7007 2680 0000 5772 4412

Date: SEP 26 2011

Mr. Tim Goeringer
JHTG, Inc. dba Orkin Pest Control
8230 East Pecos Dr.
Prescott Valley, AZ 86314

Subject: JHTG, Inc. dba Orkin Pest Control
Consent Agreement and Final Order
Docket No. FIFRA-9-2011-00

Dear Mr. Goeringer:

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 Carol Bussey, Assistant Regional Counsel, telephone number (415) 972-3950.

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

ecc: Glenna Lee, Navajo Nation Environmental Protection Agency Pesticide Program