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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO.
	)	FIFRA-10-2012-0175
PENDLETON GRAIN GROWERS, INC.	)	CONSENT AGREEMENT
Pendleton, Oregon	)	FINAL ORDER
	)	
Respondent	)	
_____	)	

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. 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 Pendleton Grain Growers, Inc. ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

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

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

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

## III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 4600 McKennon Road in Pendleton, Oregon (the “facility”).

3.2. Section 7(c) of FIFRA, 7 U.S.C. § 136(e)(c), requires that any producer operating a registered establishment annually report what it has produced, sold, or distributed in the past year.

3.3. 40 C.F.R. § 167.85(d) requires that registered pesticide-producing establishments file a Pesticide Report for Pesticide-Producing Establishments (“Annual Report”) with EPA for each calendar year, by March 1 of the following year.

3.4. Respondent failed to submit the Annual Report for Calendar Year 2011 by the March 1, 2012, due date, as required by 40 C.F.R. § 167.85(d). EPA received the 2011 Annual Report on April 19, 2012.

3.5. Therefore, Respondent has violated Section 7(c) of FIFRA, 7 U.S.C. § 136(e)(c), by failing to report in a timely manner the production, sale, or distribution of pesticides as required by 40 C.F. R. § 167.85(d).

3.6. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j, any violation of Section 7 of FIFRA is unlawful. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), this claim subjects Respondent to the assessment of a civil penalty.

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

#### **IV. CONSENT AGREEMENT**

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order.

4.4. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA.

4.5. Respondent consents to the assessment of a civil penalty in the amount of THREE THOUSAND NINE HUNDRED SIXTY DOLLARS (\$3,960). Respondent consents to issuance

of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in this paragraph within thirty (30) days of the effective date of this Final Order.

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

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

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

4.7. Respondent shall serve photocopies of the checks described in Paragraph 4.6, above, on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at the following addresses:

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

Erin Williams  
U.S. Environmental Protection Agency, Region 10  
Pesticides and Toxics Unit, OCE-084  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

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

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

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the accompanying Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.5, above, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

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

4.12. Respondent shall bear its own costs and attorneys fees in connection with this matter.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

For Respondent:

DATED:

8/20/12

PENDLETON GRAIN GROWERS, INC.:



ALLEN WAGGONER, President

*SCOTT KIMBARD, CFU*

For Complainant:

DATED:

9/18/2012

U.S. ENVIRONMENTAL PROTECTION AGENCY:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

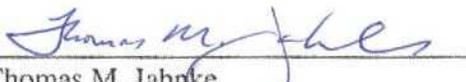
V. FINAL ORDER

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 civil claims under 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 18<sup>th</sup> day of September, 2012.

  
Thomas M. Jahnke  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Pendleton Grain Growers, Inc., Docket No.: FIFRA-10-2012-0175**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

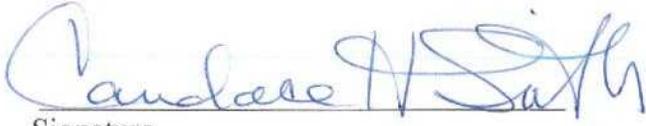
The undersigned certifies that a true and correct copy of the document was delivered to:

Meg Silver, Associate Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 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 to:

Sloan Kimball  
CFO  
Pendleton Grain Growers, Inc.  
1000 Southwest Dorian Avenue  
Pendleton, Oregon 97801

DATED this 18<sup>th</sup> day of September 2012

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10