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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2011-0110
	)	
BIO-GRO, INC.	)	<b>CONSENT AGREEMENT AND</b>
	)	<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 re delegated 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

1 Penalties,” 40 C.F.R. Part 22, EPA hereby issues, and Bio-Gro (“Respondent”) hereby agrees to  
2 issuance of, the Final Order contained in Part V of this CAFO.

3 **II. PRELIMINARY STATEMENT**

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

7 2.2. Part III of this CAFO contains a concise statement of the statutory and factual  
8 basis for the alleged violations of FIFRA.

9 **III. ALLEGATIONS**

10 3.1. Respondent owns and operates a business facility located at 681 Glade Road in  
11 Mabton, Washington. This facility has been registered with EPA as a pesticide-producing  
12 establishment since November 29, 2004.

13 3.2. Section 7(c) of FIFRA, 7 U.S.C. § 136(e)(c), requires that any producer operating  
14 a registered establishment annually report what it has produced, sold, or distributed in the past  
15 year.

16 3.3. 40 C.F.R. § 167.85(d) requires that registered pesticide-producing establishments  
17 file a Pesticide Report for Pesticide Producing Establishments (Report) with EPA for each  
18 calendar year, by March 1 of the following year.

19 3.4. Respondent failed to submit the Report for calendar year 2010 by the  
20 March 1, 2011, due date, as required by 40 C.F.R. § 167.85(d). EPA received the 2010 report on  
21 June 14, 2011.

22 3.5. Therefore, Respondent has violated Section 7(c) of FIFRA, 7 U.S.C. § 136(e)(c),  
23 by failing to report in a timely manner the production, sale, or distribution of pesticides as  
24 required by 40 C.F. R. § 167.85(d).

1 3.6. According to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j, any violation of  
2 Section 7 of FIFRA is unlawful. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), this  
3 claim subjects Respondent to the assessment of a civil penalty.

4 3.7. Pursuant to FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA  
5 may assess a civil penalty of not more than \$7,500 for each offense against any registrant,  
6 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any  
7 provision of Section 12 of FIFRA.

8 **IV. CONSENT AGREEMENT**

9 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional  
10 allegations contained herein, but neither admits nor denies the specific factual allegations put  
11 forth by EPA. Respondent waives any right to contest these allegations as well as the right to  
12 appeal the accompanying Final Order. Respondent also agrees that this settlement will be  
13 considered prior history of noncompliance under FIFRA.

14 4.2. Respondent consents to the assessment of a civil penalty in the amount of  
15 **THREE THOUSAND THREE HUNDRED DOLLARS (\$3,300.00)**. Respondent consents to  
16 issuance of the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set  
17 forth in this paragraph within thirty (30) days of the effective date of this Final Order.

18 4.3. Payment under this CAFO shall be made by cashier's check or certified check,  
19 payable to the order of "Treasurer, United States of America" and delivered to the following  
20 address:

21 US Bank - USEPA - Region 10  
22 Fines and Penalties  
23 Cincinnati Finance Center  
24 P.O. Box 979077  
25 St. Louis, MO 63197-9000

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

1 4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,  
2 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
3 Enforcement at the following addresses:

4  
5 Regional Hearing Clerk  
6 U.S. Environmental Protection Agency Region 10  
7 Office of Regional Counsel, ORC-158  
8 1200 Sixth Avenue, Suite 900  
9 Seattle, WA 98101

10 U.S. Environmental Protection Agency Region 10  
11 Pesticides and Toxics Unit, OCE-084  
12 1200 Sixth Avenue, Suite 900  
13 Seattle, WA 98101  
14 Attn: Erin Halbert

15 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,  
16 the entire unpaid balance of penalty and accrued interest shall become immediately due and  
17 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under  
18 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with  
19 interest, handling charges, and nonpayment penalties, as set forth below.

20 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by  
21 its due date, Respondent shall also be responsible for payment of the following amounts:

- 22 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate  
23 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)  
24 from the effective date of the accompanying Final Order, provided, however, that  
25 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.

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

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

8           4.7.    The penalty described in Paragraph 4.2, above, including any additional costs  
9           incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA  
10          and shall not be deductible for purposes of federal taxes.

11          4.8.    The undersigned representative of Respondent certifies that he is fully authorized  
12          to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

13          4.9.    Respondent shall bear its own costs and attorneys fees in connection with this  
14          matter.

15          4.10.   The provisions of this CAFO shall bind Respondent and its agents, servants,  
16          employees, successors, and assigns.

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

DATED: 6/2/2011

BIO-GRO, INC.  


PAUL VOSE  
BIO-GRO CEO  
For Respondent

DATED: 8/16/2011

U.S. ENVIRONMENTAL PROTECTION AGENCY:  


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

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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 23<sup>rd</sup> day of August, 2011.

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

