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HEARINGS CLERK
EPA--REGION 10

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. FIFRA-10-20	10-0006
 J. R. SIMPLOT COMPANY	CONSENT AGREEMENT A FINAL ORDER	AND
Respondent		

I. <u>STATUTORY AUTHORITY</u>

- 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. § 136*l*(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. § 136*l*(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 J.R. Simplot Company ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

CONSENT AGREEMENT AND FINAL ORDER'- 1 DOCKET NO. FIFRA-10-2010-006

U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1037

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Π. PRELIMINARY STATEMENT

- 2.1. In accordance with 40 C.F.R. § 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding which will conclude when the Final Order contained in Part V of this CAFO becomes effective.
- Part III of this CAFO contains a concise statement of the statutory and factual 2.2. basis for the alleged violations of FIFRA.

III. **ALLEGATIONS**

- 3.1. Respondent owns and operates a business facility located at 723 Detweiler Drive in Grafton, North Dakota. This facility was previously registered with EPA as a pesticide producing facility but was inactivated in 2002. Respondent did not re-activate this facility with EPA as a pesticide-producing establishment until 2009, yet produced three pesticides at this facility in 2008, in violation of Section 12 of FIFRA.
- 3.2. Respondent owns and operates another business facility located at 1831 50th Avenue South in Moorhead, Minnesota. This facility was previously registered with EPA as a pesticide producing facility but was inactivated in 1996. Respondent did not re-activate this facility with EPA as a pesticide-producing establishment until 2009, yet produced six pesticides at this facility in 2008, in violation of Section 12 of FIFRA.
- Each pesticide produced at a facility that is not registered with EPA as an active 3.3. pesticide producing facility is in violation of Section 12 of FIFRA.
- Pursuant to FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA 3.4. may assess a civil penalty of not more than \$6,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

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IV. <u>CONSENT AGREEMENT</u>

- 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein, but neither admits nor denies the specific factual allegations put forth by EPA. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order. Respondent also consents to payment of the penalty as stated below.
- 4.2. Respondent consents to the assessment of a civil penalty in the amount of TWENTY-EIGHT THOUSAND, EIGHTY DOLLARS and no cents (\$28,080.00). 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.
- 4.3. 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:

US Bank - USEPA - Region 10 Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000

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

4.4. Respondent shall serve photocopies of the check described in Paragraph 4.3, above, on the Regional Hearing Clerk and the 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
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, WA 98101

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

- 4.5. 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.
- 4.6. 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. <u>Interest</u>: 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. <u>Handling Charge</u>: 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.

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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 regulations promulgated thereunder.
 - 5.3. This Final Order shall become effective upon filing.

SO ORDERED this 16 day of November, 2009.

THOMAS M. JAHNKE Regional Judicial Officer

U.S. Environmental Protection Agency

Region 10

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: J.R. Simplot Company, DOCKET NO.: FIFRA-10-2010-0006** was filed with the Regional Hearing Clerk on November 16, 2009.

On November 16, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire US Environmental Protection Agency 1200 Sixth Avenue, ORC-158 Suite 900 Seattle, WA 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 on November 16, 2009, to:

J.R. Simplot Company
Terry Uhling, VP of Health, Safety & Environment
One Capital Center
999 Main Street
Suite 1300
P.O. Box 2
Boise, Idaho

DATED this 16th day of November 2009.

Carol Kennedy

Regional Hearing Clerk

EPA Region 10