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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2011-0065
	)	
PRIDE PACKING COMPANY	)	<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 Pride Packing Company (“Respondent”)  
2 hereby agrees to 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. Pride Packing Company owns and operates a business facility located at  
11 560 Lateral B Road, Wapato, Washington 98951.

12 3.2. Pride Packing Company is a private pesticide applicator as defined in  
13 Section 2(e)(2) of FIFRA, 7 U.S.C. § 136(e)(2).

14 3.3. On or about April 1, 2010, Respondent applied the pesticide “Micro Sulf” (EPA  
15 Reg. No. 55146-75) to an apple orchard in Wapato, Washington. At the time of the application,  
16 the facility did not have pesticide application information posted at a central posting location as  
17 required in the Worker Protection Standard established at 40 C.F.R. Part 170.

18 3.4. The “Micro Sulf” label (EPA Reg. No. 55146-75) includes a statement requiring  
19 compliance with Worker Protection Standards at 40 C.F.R. Part 170. Failure to comply with Part  
20 170 is a use inconsistent with the label.

21 3.5. 40 C.F.R. §§170.122 and 170.222 state that, when a pesticide has been applied  
22 within the past 30 days, specific information about that pesticide must be displayed at the same  
23 central location as the pesticide safety poster. The displayed information must include the  
24 location and description of the treated area; the product name; the EPA registration number; the  
25

1 active ingredient(s) of the pesticide; the time and date of application; and the restricted entry  
2 interval of the pesticide. This information must be posted before the application of a pesticide  
3 and remain posted for at least 30 days after the end of the restricted-entry interval for the  
4 pesticide. If the pesticide has no restricted-entry interval, the information must be posted for at  
5 least 30 days after the application or until workers are no longer on the establishment, whichever  
6 is sooner.

7 3.6. FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G) states that it is unlawful for  
8 any person to use any registered pesticide in a manner inconsistent with its labeling.

9 3.7. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by  
10 applying pesticide without posting pesticide application information at a central posting location,  
11 thereby applying the product in a manner inconsistent with its labeling. This violation subjects  
12 Respondent to the assessment of a civil penalty in accordance with Section 14(a)(2) of FIFRA,  
13 7 U.S.C. § 136l(a)(2).

14 3.8. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19,  
15 EPA may assess a civil penalty of not more than \$1,200 for each first offense against any private  
16 applicator who violates any provision of Section 12 of FIFRA.

#### 17 18 **IV. CONSENT AGREEMENT**

19 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional  
20 allegations contained herein, but neither admits nor denies the specific factual allegations put  
21 forth by EPA. Respondent waives any right to contest these allegations as well as the right to  
22 appeal the accompanying Final Order. Respondent also agrees that this settlement will be  
23 considered prior history under FIFRA once finalized and consents to payment of the penalty as  
24 stated below.

1           4.2.    Respondent consents to the assessment of a civil penalty in the amount of FIVE  
2 HUNDRED AND SIXTY DOLLARS (\$560.00). Respondent consents to issuance of the Final  
3 Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in this  
4 paragraph within thirty (30) days of the effective date of this Final Order.

5           4.3.    Payment under this CAFO shall be made by cashier's check or certified check,  
6 payable to the order of "Treasurer, United States of America" and delivered to the following  
7 address:

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

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

14           4.4.    Respondent shall serve photocopies of the checks described in Paragraph 4.3,  
15 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
16 Enforcement at the following addresses:

17                   Regional Hearing Clerk  
18                   U.S. Environmental Protection Agency Region 10  
19                   Office of Regional Counsel, ORC-158  
20                   1200 Sixth Avenue, Suite 900  
21                   Seattle, WA 98101

22                   U.S. Environmental Protection Agency Region 10  
23                   Pesticides and Toxics Unit, OCE-084  
24                   1200 Sixth Avenue, Suite 900  
25                   Seattle, WA 98101  
26                   Attn: Derrick Terada

27           4.5.    Should Respondent fail to pay the penalty assessed herein in full by its due date,  
28 the entire unpaid balance of penalty and accrued interest shall become immediately due and

1 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under  
2 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with  
3 interest, handling charges, and nonpayment penalties, as set forth below.

4 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by  
5 its due date, Respondent shall also be responsible for payment of the following amounts:

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

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

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

18 4.7. The penalty described in Paragraph 4.2, above, including any additional costs  
19 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA  
20 and shall not be deductible for purposes of federal taxes.

21 4.8. The undersigned representative of Respondent certifies that he is fully authorized  
22 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

23 4.9. Respondent shall bear its own costs and attorneys fees in connection with this  
24 matter.

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

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

DATED:  
5/20/11

PRIDE PACKING COMPANY:  
Ernest Spada  
~~STEVE NUNLEY~~ Ernest Spada  
Owner President  
For Respondent

DATED:  
5/26/2011

U.S. ENVIRONMENTAL PROTECTION AGENCY:  
Edward J. Kowalski  
EDWARD J. KOWALSKI  
Director, Office of Civil Enforcement  
For Complainant

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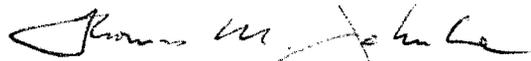
**V. FINAL ORDER**

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 regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22 day of June, 2011.



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 **In the Matter of: Pride Packing Company, DOCKET NO.: FIFRA-10-2011-0065** was filed with the Regional Hearing Clerk on June 2, 2011.

On June 2, 2011 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 June 2, 2011, to:

Teresa Spack  
Pride Packing Company  
8448 NE 33<sup>rd</sup> Drive  
Portland, OR 97211

DATED this 2<sup>nd</sup> day of June 2011.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10