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Acting Regional Counsel
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3 EDGAR P. CORAL
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U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
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US EPA - REGION IX
HEARING CLERK

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. FIFRA-09-2012-0006
11)
12 Fry's Electronics, Inc.,)
13) CONSENT AGREEMENT
Respondent.) AND FINAL ORDER
14)
_____)

15 I. CONSENT AGREEMENT
16

17 Complainant, the Director of the Enforcement Division, United States Environmental
18 Protection Agency ("EPA"), Region IX, and Respondent, Fry's Electronics, Inc., agree to settle
19 this civil administrative action brought under the Federal Insecticide, Fungicide, and Rodenticide
20 Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and consent to the entry of this Consent
21 Agreement and Final Order (the "CAFO").

22 A. AUTHORITY

23 1. Complainant was the Associate Director for Agriculture of the Communities and
24 Ecosystems Division in EPA, Region IX who initiated this civil administrative proceeding for the
25 assessment of a civil penalty against Respondent under FIFRA pursuant to Section 14(a) of
26 FIFRA, 7 U.S.C. § 136(a), and the Consolidated Rules of Practice Governing the Administrative
27 Assessment of Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of
28 Opportunity for Hearing ("the Complaint") against Respondent on September 24, 2012.

1 Bill Lee
2 Enforcement Division (ENF-3-3)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 Edgar P. Coral
7 Office of Regional Counsel (ORC-2)
8 U.S. Environmental Protection Agency, Region IX
9 75 Hawthorne Street
10 San Francisco, CA 94105

11 7. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
12 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
13 use such payment as a tax deduction.

14 8. If Respondent fails to pay the assessed civil administrative penalty of FIFTY
15 THOUSAND DOLLARS (\$50,000), as identified in Paragraph 6, by the deadline specified in
16 that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written
17 request. The amount of the stipulated penalty will be TWENTY-FIVE THOUSAND DOLLARS
18 (\$25,000), and will be immediately due and payable upon EPA's written request on the day
19 following the deadline specified in Paragraph 6, together with the initially assessed civil
20 administrative penalty of FIFTY THOUSAND DOLLARS (\$50,000), resulting in a total penalty
21 due of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000). Failure to pay the civil
22 administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph may
23 also lead to any or all of the following actions:

24 (1) EPA may refer the debt to a credit reporting agency, a collection
25 agency, or to the Department of Justice for filing of a collection action in the appropriate United
26 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
27 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
28 collection proceeding.

(2) The U.S. Government may collect the debt by administrative offset
(i.e., the withholding of money payable by the United States to, or held by the United States for, a

1 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
2 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
3 C.F.R. §§ 13(C) and 13(H).

4 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
5 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
6 business with EPA or engaging in programs EPA sponsors or funds.

7 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
8 Government may assess interest, administrative handling charges, and nonpayment penalties
9 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
10 civil administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph.

11 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
12 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
13 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
14 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
15 (30) days of the effective date of this CAFO.

16 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
17 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
18 either actual or average cost incurred (including both direct and indirect costs), for every month
19 in which any portion of the assessed penalty is more than thirty (30) days past due.

20 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
21 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
22 may be assessed on all debts more than ninety (90) days delinquent.

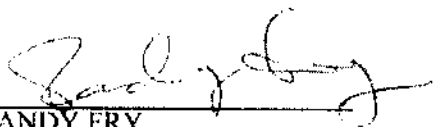
23 D. CERTIFICATION OF COMPLIANCE

24 9. In executing this CAFO, Respondent certifies that, to the best of its knowledge: (1) it
25 is not selling or distributing unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA,
26 7 U.S.C. § 136j(a)(1)(A); (2) it is not failing to file reports required by the Act in violation of
27 Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N); and (3) it has complied with all other
28 FIFRA requirements at all facilities under its control.

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FOR RESPONDENT FRY'S ELECTRONICS, INC.:

7/31/13
DATE


RANDY FRY
President
Fry's Electronics, Inc.

FOR COMPLAINANT EPA:

07/31/13
DATE

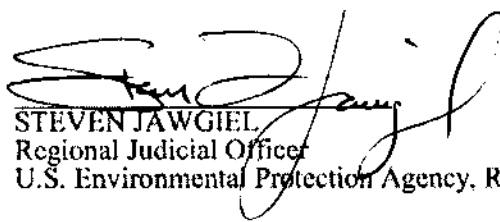

KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and Fry's Electronics, Inc. having entered into the foregoing Consent Agreement,
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2012-0006) be
entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY
THOUSAND DOLLARS (\$50,000), and comply with the terms and conditions set forth in the
Consent Agreement.

05/01/13
DATE


STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2012-0006) 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:

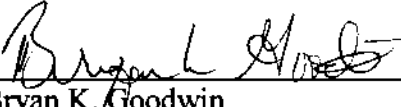
A copy was mailed via CERTIFIED MAIL to:

**Mr. Randy Fry, President
Fry's Electronics, Inc.
600 E. Brokaw Road
San Jose, CA 95112**

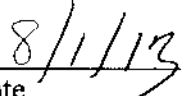
CERTIFIED MAIL NUMBER: 7010 2780 0000 8388 6903

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

**Edgar Coral, 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
RECEIPT NO: 7010 2780 0000 8388 6903

Date: AUG 27 2013

Randy Fry
President
Fry's Electronics, Inc.
600 E. Brokaw Road
San Jose, CA 95112

Re: Federal Insecticide, Fungicide and Rodenticide Act
Consent Agreement and Final Order – Fry's Electronics, Inc.
Docket No. FIFRA-09-2012-0006

Dear Mr. Fry:

Enclosed is 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., by Fry's Electronics, Inc. The terms of the CAFO require the payment of \$50,000 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact William Lee of my staff at 415-947-4185.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson".

KHJ Kathleen H. Johnson
Director, Enforcement Division

Enclosures

cc: Patrick Thalcken, California Department of Pesticide Regulation