

FILED

2008 DEC -3 PM 1:18

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U. S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. FIFRA-09-2008-0007
11)
12 Nevada Onion,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.)
14 _____)

15 I. CONSENT AGREEMENT

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

22 A. AUTHORITY

23 1. Complainant initiated this civil administrative proceeding for the assessment of a civil
24 penalty against Respondent under FIFRA pursuant to Section 14(a) of FIFRA, 7 U.S.C. §
25 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of
26 Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing
27 ("the Complaint") against Respondent on June 25, 2008.
28

1 San Francisco, CA 94105

2 Julie Jordan
3 Communities and Ecosystems Division (CED-5)
4 U.S. Environmental Protection Agency, Region IX
5 75 Hawthorne Street
6 San Francisco, CA 94105

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

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

15 7. If Respondent fails to pay the assessed civil administrative penalty of FIFTY-SIX
16 THOUSAND, THREE HUNDRED, AND TWENTY DOLLARS (\$56,320), as identified in
17 Paragraph 5, by the deadline specified in that Paragraph, then Respondent shall also pay a
18 stipulated penalty to EPA. The amount of the stipulated penalty will be FOURTEEN
19 THOUSAND AND EIGHTY DOLLARS (\$14,080), and will be immediately due and payable on
20 the day following the deadline specified in Paragraph 5, together with the initially assessed civil
21 administrative penalty of FIFTY-SIX THOUSAND, THREE HUNDRED, AND TWENTY
22 DOLLARS (\$56,320), resulting in a total penalty due of SEVENTY THOUSAND AND FOUR
23 HUNDRED DOLLARS (\$70,400). Failure to pay the civil administrative penalty specified in
24 Paragraph 5 by the deadline specified in that Paragraph may also lead to any or all of the following
25 actions:

26 (1) EPA may refer the debt to a credit reporting agency, a collection
27 agency, or to the Department of Justice for filing of a collection action in the appropriate United
28 States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. The validity, amount, and
appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
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 5 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 in
19 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, may
22 be assessed on all debts more than ninety (90) days delinquent.

23 **D. CERTIFICATION OF COMPLIANCE**

24 8. In executing this CAFO, Respondent certifies that: (1) it is no longer using registered
25 pesticides in a manner inconsistent with their labeling in violation of Section 12(a)(2)(G) of
26 FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard set forth at 40 C.F.R. Part
27 170; and (2) it has complied with all other FIFRA requirements at all facilities under its control.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

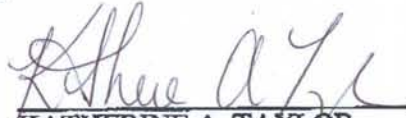
FOR RESPONDENT NEVADA ONION:



DATE

DAVID LITTLE
President
Nevada Onion
61 Bowman Lane
Yerington, NV 89447-9723

FOR COMPLAINANT EPA:



12/6/08
DATE

KATHERINE A. TAYLOR
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Nevada Onion having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008-0007) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY-SIX
5 THOUSAND, THREE HUNDRED, AND TWENTY DOLLARS (\$56,320), and comply with the
6 terms and conditions set forth in the Consent Agreement.

7
8
9 12/03/08
10 DATE

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2008-0007, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7000 0520 0025 3711 3466), return receipt requested, addressed to the following address:

David Little
President
Nevada Onion
61 Bowman Lane
Yerington, NV 89447-9723

Date: 12/3 /2008

By: Danielle E. Carr

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143