



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL

RETURN RECEIPT REQUESTED 7010 2780 0000 8388 5760

Date: AUG 03 2011

Mr. Michael Miske, President
Kama'aina Termite and Pest Control, Inc.
940 Queen Street, Suite B
Honolulu, HI 96814

Subject: Kama'aina Termite and Pest Control, Inc.
Consent Agreement and Final Order
Docket No. FIFRA-9-2011-0011

Dear Mr. Miske:

Enclosed please find 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. for the above referenced case. Although the terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO, we are aware that you have already submitted payment.

If you have any questions, please contact Mr. Edgar Coral, Assistant Regional Counsel, U.S. Environmental Protection Agency Region IX, ORC-2, 75 Hawthorne Street, San Francisco, California 94105. Mr. Coral can be reached by telephone at (415) 972-3898.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosure

cc: Thomas Matsuda, Hawaii Department of Agriculture
Avis Onaga, Hawaii Department of Agriculture

FILED

2011 AUG -3 AM 11:17

U.S. ENVIRONMENTAL PROTECTION AGENCY
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
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2011-0011
11)
12 Kama'aina Termite and Pest Control, Inc.,) 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, Kama'aina Termite and
18 Pest Control, Inc., agree to settle this civil administrative action brought under the Federal
19 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and
20 consent to the entry of this 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 February 24, 2011.

28 2. The Complaint alleges that Respondent violated Section 12(a)(2)(G) of FIFRA, 7
U.S.C. § 136j(a)(2)(G), by using a registered pesticide in manners inconsistent with its labeling.

1 3. Complainant and Respondent have agreed to resolve this civil administrative
2 proceeding arising under FIFRA by executing this CAFO.

3 **B. RESPONDENT'S ADMISSIONS**

4 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
5 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
6 Respondent; (ii) neither admits nor denies the specific factual allegations contained in the
7 Complaint; (iii) consents to any and all conditions specified in this CAFO and to the assessment
8 of the civil administrative penalty under Section I.C of this CAFO; (iv) waives any right to
9 contest the allegations contained in the Complaint; and (v) waives the right to appeal the
10 proposed Final Order contained in this CAFO.

11 **C. CIVIL ADMINISTRATIVE PENALTY**

12 5. In settlement of the violations specifically alleged in the Complaint, Respondent shall
13 pay a civil administrative penalty of SEVENTEEN THOUSAND DOLLARS (\$17,000).
14 Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO.
15 The civil penalty shall be paid by remitting a certified or cashier's check, including the name and
16 docket number of this case, for the amount, payable to "Treasurer, United States of America," (or
17 be paid by one of the other methods listed below) and sent as follows:

18 Regular Mail:

19 U.S. Environmental Protection Agency
20 Fines and Penalties
21 Cincinnati Finance Center
22 PO Box 979077
23 St. Louis, MO 63197-9000

24 Wire Transfers:

25 Wire transfers must be sent directly to the Federal Reserve Bank in New
26 York City with the following information:
27 Federal Reserve Bank of New York
28 ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

1 Overnight Mail:
2 U.S. Bank
3 1005 Convention Plaza
4 Mail Station SL-MO-C2GL
5 ATTN Box 979077
6 St. Louis, MO 63101

7 ACH (also known as REX or remittance express):
8 Automated Clearinghouse (ACH) for receiving U.S. currency
9 PNC Bank
10 808 17th Street, NW
11 Washington, DC 20074
12 ABA = 051036706
13 Transaction Code 22 – checking
14 Environmental Protection Agency
15 Account 31006
16 CTX Format

17 On Line Payment:

18 This payment option can be accessed from the information below:
19 www.pay.gov
20 Enter "sf01.1" in the search field
21 Open form and complete required fields

22 If clarification regarding a particular method of payment remittance is
23 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

24 A copy of each check, or notification that the payment has been made by one of the other
25 methods listed above, including proof of the date payment was made, shall be sent with a
26 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
27 following addresses:

28
29 Regional Hearing Clerk
30 Office of Regional Counsel (ORC-1)
31 U.S. Environmental Protection Agency, Region IX
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 Julie Jordan
35 Communities and Ecosystems Division (CED-5)
36 U.S. Environmental Protection Agency, Region IX
37 75 Hawthorne Street
38 San Francisco, CA 94105

39 Edgar P. Coral
40 Office of Regional Counsel (ORC-2)
41 U.S. Environmental Protection Agency, Region IX
42 75 Hawthorne Street
43 San Francisco, CA 94105

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

4 7. If Respondent fails to pay the assessed civil administrative penalty of SEVENTEEN
5 THOUSAND DOLLARS (\$17,000), as identified in Paragraph 5, by the deadline specified in
6 that Paragraph, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written
7 request. The amount of the stipulated penalty will be THREE THOUSAND, ONE HUNDRED
8 DOLLARS (\$3,100), and will be immediately due and payable upon EPA's written request on
9 the day following the deadline specified in Paragraph 5, together with the initially assessed civil
10 administrative penalty of SEVENTEEN THOUSAND DOLLARS (\$17,000), resulting in a total
11 penalty due of TWENTY THOUSAND, ONE HUNDRED DOLLARS (\$20,100). Failure to pay
12 the civil administrative penalty specified in Paragraph 5 by the deadline specified in that
13 Paragraph may also lead to any or all of the following actions:

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

19 (2) The U.S. Government may collect the debt by administrative offset
20 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
21 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
22 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
23 C.F.R. §§ 13(C) and 13(H).

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

27 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
28 Government may assess interest, administrative handling charges, and nonpayment penalties

1 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
2 civil administrative penalty specified in Paragraph 5 by the deadline specified in that Paragraph.

3 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
4 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
5 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
6 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
7 (30) days of the effective date of this CAFO.

8 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
9 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
10 either actual or average cost incurred (including both direct and indirect costs), for every month
11 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

15 D. CERTIFICATION OF COMPLIANCE

16 8. In executing this CAFO, Respondent certifies that, to the best of its knowledge and
17 belief (1) it is no longer using a registered pesticide in a manner inconsistent with its labeling in
18 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and (2) it is currently in
19 compliance with all other FIFRA requirements for all its ongoing operations.

20 E. RETENTION OF RIGHTS

21 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
22 liabilities for federal civil penalties for the violations and facts specifically alleged in the
23 Complaint. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
24 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
25 ordinance, or permit not specifically alleged in the Complaint; or (ii) any criminal liability. EPA
26 specifically reserves any and all authorities, rights, and remedies available to it (including, but
27 not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation
28 of this CAFO or any violation not specifically alleged in the Complaint.

1 10. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
2 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
3 and permits.

4 F. ATTORNEYS' FEES AND COSTS

5 11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
6 this proceeding.

7 G. EFFECTIVE DATE

8 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be
9 effective on the date that the Final Order contained in this CAFO, having been approved and
10 issued by either the Regional Judicial Officer or Regional Administrator, is filed.


11 H. BINDING EFFECT

12 13. The undersigned representative of Complainant and the undersigned representative of
13 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
14 of this CAFO and to bind the party he or she represents to this CAFO.

15 14. The provisions of this CAFO shall apply to and be binding upon Respondent and its
16 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
17 and assigns.


1 FOR RESPONDENT KAMA'AINA TERMITE AND PEST CONTROL, INC.:

2
3 6/27/11
4 DATE


MICHAEL MISKE
President
Kama'aina Termite and Pest Control, Inc.
940 Queen Street, Suite B
Honolulu, HI 96814

5
6
7
8 FOR COMPLAINANT EPA:

9
10 8/01/11
11 DATE

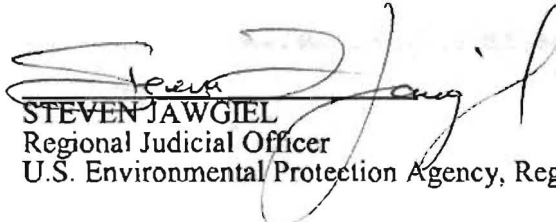

KATHERINE A. TAYLOR
Associate Director for Agriculture
Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and Kama'aina Termite and Pest Control, Inc. having entered into the foregoing
3 Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-0011) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of SEVENTEEN
6 THOUSAND DOLLARS (\$17,000), and comply with the terms and conditions set forth in the
7 Consent Agreement.

8
9
10 08/02/11
DATE

11 
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-9-2011-0011, 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 (7010 2780 0000 8388 5760), return receipt requested, addressed to the following address:

Mr. Michael Miske, President
Kama'aina Termite and Pest Control, Inc.
940 Queen Street, Suite B
Honolulu, HI 96814

Date: 8/13/2011

By: 

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