

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

DOCKET NO. ~~FIFRA-10-0247~~  
HEARINGS CLERK  
EPA--REGION 10

SKYLINE CHEMICAL, LLC.

CONSENT AGREEMENT AND  
FINAL ORDER

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 redelegated 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 Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Skyline Chemical, LLC. ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

**II. 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.

2.2. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of FIFRA.

1 **III. ALLEGATIONS**

2 3.1. Respondent owns and operates a business facility located at 10302 Farmington  
3 Road, Farmington, Washington 99128.

4 3.2. On at least 29 separate occasions in 2008, Respondent, sold, and distributed  
5 Syngenta Axial XL (EPA Reg. No. 100-1256), BASF Prowl H2O (EPA Reg. No. 241-418),  
6 Monsanto PowerMax (EPA Reg. No. 524-549), Monsanto RT3 (EPA Reg. No. 524-544), Bayer  
7 Tenkoz Wolfpack Advanced (EPA Reg. No. 264-690), and Dow AgroSciences WideMatch  
8 (EPA Reg. No. 62719-512) without valid repackaging agreements. According to the July 11,  
9 1977, Enforcement Policy Applicable to Bulk Shipments of Pesticides, a pesticide produced  
10 without a valid repackaging agreement requires a separate registration. Because Respondent did  
11 not have a valid repackaging agreement or a separate registration for the above products, any sale  
12 or distribution of the above products was a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C.  
13 § 136j(a)(1)(A), for sale and distribution of unregistered pesticides. These violations subject  
14 Respondent to the payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA,  
15 7 U.S.C. § 136l(a)(2).

16 3.3. Respondent used an incorrect establishment number on the products it repackaged  
17 at the Farmington facility. The establishment number corresponded to an address of another  
18 facility owned by Respondent. At the time of the inspection, the Farmington facility was not a  
19 registered pesticide producing establishment.

20 3.4. On at least six occasions in 2008, Respondent placed an improper EPA  
21 Establishment Number on the labels of Syngenta Axial XL (EPA Reg. No. 100-1256), BASF  
22 Prowl H2O (EPA Reg. No. 241-418), Monsanto PowerMax (EPA Reg. No. 524-549), Monsanto  
23 RT3 (EPA Reg. No. 524-544), Bayer Tenkoz Wolfpack Advanced (EPA Reg. No. 264-690), and  
24 Dow AgroSciences WideMatch (EPA Reg. No. 62719-512). Respondent committed six  
25 violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling and distributing

1 misbranded pesticides. These violations subject Respondent to the payment of a civil penalty in  
2 accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

3 3.5. Respondent repackaged Syngenta Axial XL (EPA Reg. No. 100-1256), BASF  
4 Prowl H2O (EPA Reg. No. 241-418), Monsanto PowerMax (EPA Reg. No. 524-549), Monsanto  
5 RT3 (EPA Reg. No. 524-544), Bayer Tenkoz Wolfpack Advanced (EPA Reg. No. 264-690), and  
6 Dow AgroSciences WideMatch (EPA Reg. No. 62719-512) at this unregistered facility.

7 Respondent committed six violations of Section 12(a)(1)(L) of FIFRA, 7 U.S.C. § 136j(a)(1)(L),  
8 by producing six separate pesticides in an unregistered facility. These violations subject  
9 Respondent to the payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA, 7  
10 U.S.C. § 136l(a)(2).

11 3.6. Pursuant FIFRA Section 14(a), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19, EPA  
12 may assess a civil penalty of not more than \$6,500 for each offense against any registrant,  
13 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any  
14 provision of Section 12 of FIFRA.

#### 15 16 **IV. CONSENT AGREEMENT**

17 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional  
18 allegations contained herein, but neither admits nor denies the specific factual allegations put  
19 forth by EPA. Respondent waives any right to contest these allegations as well as the right to  
20 appeal the accompanying Final Order. Respondent also consents to payment of the penalty as  
21 stated below.

22 4.2. Respondent consents to the assessment of a civil penalty in the amount of  
23 TWENTY-FOUR THOUSAND NINE HUNDRED SIXTY DOLLARS and no cents  
24 (\$24,960.00). This amount will be paid in three annual payments. Respondent consents to  
25 issuance of the Final Order set forth in Part V, below, and agrees to make the first payment in the

1 amount of EIGHT THOUSAND THREE HUNDRED TWENTY DOLLARS (\$8,320) within  
2 thirty (30) days of the effective date of this Final Order. Two subsequent annual payments of  
3 EIGHT THOUSAND FOUR HUNDRED EIGHTY SIX DOLLARS and FOURTY CENTS  
4 (\$8,486.40), and EIGHT THOUSAND FOUR HUNDRED THREE DOLLARS and TWENTY  
5 CENTS (\$8,403.20) are due one year and two years respectively following the initial payment.  
6 This is outlined in the table below.

7 Payment Number	Due Date	Amount
8 1	30 Days After Effective Date	\$8,320
9 2	One Year After Effective Date	\$8,486.40
10 3	Two Years After Effective Date	\$8,403.20

11  
12 4.3. Payment under this CAFO shall be made by cashier's check or certified check,  
13 payable to the order of "Treasurer, United States of America" and delivered to the following  
14 address:

15 US Bank - USEPA - Region 10  
16 Fines and Penalties  
17 Cincinnati Finance Center  
18 P. O. Box 979077  
19 St. Louis, MO 63197-9000

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

21 4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,  
22 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and  
23 Enforcement at the following addresses:

24 Regional Hearing Clerk  
25 U.S. Environmental Protection Agency Region 10  
Office of Regional Counsel, ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

1                   Attn: Derrick Terada  
2                   U.S. Environmental Protection Agency Region 10  
3                   Pesticides and Toxics Unit, OCE-084  
4                   1200 Sixth Avenue, Suite 900  
5                   Seattle, WA 98101

6                   4.5.     Should Respondent fail to pay the penalty assessed herein in full by its due date,  
7 the entire unpaid balance of penalty and accrued interest shall become immediately due and  
8 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under  
9 Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with  
10 interest, handling charges, and nonpayment penalties, as set forth below.

11                  4.6.     Should Respondent fail to pay any portion of the penalty assessed herein in full by  
12 its due date, Respondent shall also be responsible for payment of the following amounts:

- 13                  a.     Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate  
14 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1)  
15 from the effective date of the accompanying Final Order, provided, however, that  
16 no interest shall be payable on any portion of the assessed penalty that is paid  
17 within 30 days of the effective date of the Final Order.
- 18                  b.     Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge  
19 of \$15 shall be paid if any portion of the assessed penalty is more than 30 days  
20 past due.
- 21                  c.     Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty  
22 of 6% per annum shall be paid on any portion of the assessed penalty that is more  
23 than 90 days past due, which nonpayment penalty shall be calculated as of the  
24 date the underlying penalty first becomes past due.  
25

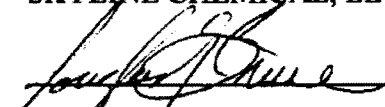
1 4.7. The penalty described in Paragraph 4.2, above, including any additional costs  
2 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA  
3 and shall not be deductible for purposes of federal taxes.

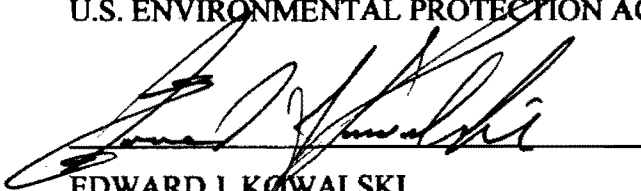
4 4.8. The undersigned representative of Respondent certifies that he is fully authorized  
5 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

6 4.9. Respondent shall bear its own costs and attorneys fees in connection with this  
7 matter.

8 4.10. The provisions of this CAFO shall bind Respondent and its agents, servants,  
9 employees, successors, and assigns.

10 4.11. The above provisions are STIPULATED AND AGREED upon by Respondent  
11 and EPA.

12 DATED: SKYLINE CHEMICAL, LLC.:  
13 9/24/2010   
14 DOUG BRUCE,  
15 Owner  
16 For Respondent

16 DATED: U.S. ENVIRONMENTAL PROTECTION AGENCY:  
17 9/27/2010   
18 EDWARD J. KOWALSKI  
19 Director, Office of Compliance and Enforcement  
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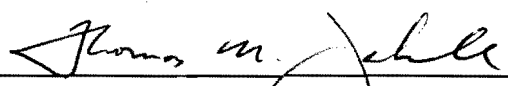
V. FINAL ORDER

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 30<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
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: Skyline Chemical, LLC, DOCKET NO.: FIFRA-10-2010-0247** was filed with the Regional Hearing Clerk on September 30, 2010.

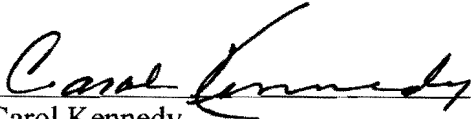
On September 30, 2010, the undersigned certifies that a true and correct copy of the document was delivered to:

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 September 30, 2010, to:

Sean F. O'Quinn, Esq.  
Winston & Cashatt  
Bank of American Financial Center  
601 West Riverside, Suite 1900  
Spokane, WA 99201-0695

DATED this 30<sup>th</sup> day of September 2010.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10