



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7015 0640 0001 1121 9967

Kees Schoone, President
Floricultura Pacific Inc.
25425 Esperanza Road
Salinas, CA 93908-9768

DEC 18 2018

Re: Consent Agreement and Final Order – Floricultura Pacific Inc.
Docket No.: FIFRA-09-2019-0012

Dear Mr. Schoone:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Floricultura Pacific Inc. The terms of the CAFO require the payment of \$12,989 be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO. Your completion of all actions laid out in the CAFO will close this case.

If you have any questions, please contact Janice Chan of my staff at 415-972-3308.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Berg".

Elizabeth Berg
Acting Assistant Director
Water and Pesticides Branch
Enforcement Division

Enclosure

1 SYLVIA A. QUAST
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

** FILED **
18DEC2018 - 04:44PM
U.S.EPA - Region 09

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

) Docket No. FIFRA-09-2019-00 12

11)
12) Floricultura Pacific Inc.,

) CONSENT AGREEMENT
) AND FINAL ORDER
) pursuant to 40 C.F.R. §§ 22.13(b),
) 22.18(b)(2), and 22.18(b)(3)

13) Respondent.
14)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and
17 Floricultura Pacific Inc. (“Respondent”) agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for (1) the sale and/or distribution of an
25 unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), (2)
26 the sale and/or distribution of a misbranded pesticide in violation of Section 12(a)(1)(E) of
27 FIFRA, 7 U.S.C. § 136j(a)(1)(E), and (3) the failure to file a report required by FIFRA (e.g., a
28 “Notice of Arrival” for an imported pesticide) in violation of Section 12(a)(2)(N) of FIFRA, 7
U.S.C. § 136j(a)(2)(N).

1 2. Complainant is the Acting Assistant Director of the Water and Pesticides Branch in
2 the Enforcement Division, EPA Region IX, who has been duly delegated the authority to
3 commence and settle an enforcement action in this matter.

4 3. Respondent is Floricultura Pacific Inc., a California corporation with headquarter
5 offices located at 25425 Esperanza Road Lakeview Road in Salinas, California, 93908.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any
8 individual, partnership, association, corporation, or any organized group of persons whether
9 incorporated or not.

10 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides, in part, that a “pesticide” means
11 any substance or mixture of substances intended for preventing, destroying, repelling, or
12 mitigating any pest.

13 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that the term “to distribute or
14 sell” means to distribute, sell, offer for sale, hold for distribution, hold fo sale, hold for shipment,
15 ship, deliver for shipment, release for shipment, or receive (and having so received) deliver or
16 offer to deliver.

17 7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any
18 person to distribute or sell to any person any pesticide that is not registered under Section 3 of
19 FIFRA, 7 U.S.C. § 136a.

20 8. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), provides that a pesticide is
21 misbranded if any word, statement, or other information required by FIFRA to appear on the
22 label or labeling is not prominently placed thereon with such conspicuousness and in such terms
23 as to render it likely to be read and understood by the ordinary individual under customary
24 conditions of purchase and use.

25 9. 40 C.F.R. § 156.10(a)(3), which sets forth the general labeling requirement for the
26 language to be used to ensure public protection, states in pertinent part that all required label or
27 labeling text shall appear in the English language.

28 10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any

1 person to distribute or sell to any person any pesticide that is adulterated or misbranded.

2 11. The importation of pesticides into the United States is governed by Sections 17(c)
3 and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder
4 by the Secretary of the Treasury in consultation with the Administrator of the EPA
5 (the “Administrator”). These regulations are found at 19 C.F.R. Part 12.

6 12. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be
7 registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the
8 regulations (40 C.F.R. Part 162.10) promulgated thereunder by the Administrator before being
9 permitted entry into the United States.

10 13. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into
11 the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices
12 (Environmental Protection Agency Form 3540-1, or “Notice of Arrival”), prior to the arrival of
13 the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

14 14. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), makes it unlawful for any
15 person who is a registrant, wholesaler, dealer, retailer, or other distributor (*e.g.*, importer) to fail
16 to file reports required by FIFRA.

17 C. ALLEGED VIOLATIONS

18 15. Respondent is a corporation and therefore fits within the definition of “person” as
19 that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject
20 to FIFRA and the implementing regulations promulgated thereunder.

21 16. At all times relevant to this CAFO, the product “Oxyl-PRO S” contained 50% silver-
22 stabilized hydrogen peroxide, a known active ingredient in other EPA registered bactericides, and
23 its labeling bore pesticidal claims. “Oxyl-PRO S” is thus a substance intended for use as an
24 bactericide and is a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. §
25 136(u).

26 17. On or about October 17, 2017, Respondent “distributed or sold,” as that term is
27 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the product “Oxyl-PRO S” by importing
28 it into the United States.

1 18. At all times relevant to this CAFO, the pesticide “Oxyl-PRO S” that Respondent
2 distributed or sold was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

3 19. By distributing or selling the unregistered pesticide “Oxyl-PRO S” on or about
4 October 17, 2017, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

5 20. The entirety of the labeling (including all required text) for the pesticide “Oxyl-Pro
6 S” that Respondent distributed or sold on or about October 17, 2017, was in the Dutch language,
7 rendering it unlikely to be read and understood by the ordinary domestic individual under
8 customary conditions of purchase and use.

9 21. Respondent’s failure to ensure that all required label or labeling text appear in the
10 English language for the pesticide “Oxyl-Pro S” that Respondent distributed or sold on or about
11 October 17, 2017, violated 40 C.F.R. § 156.10(a)(3) and thus constitutes “misbranding,” as that
12 term is defined at Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

13 22. By distributing or selling the misbranded pesticide “Oxyl-Pro S” on or about October
14 17, 2017, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

15 23. On or about October 17, 2017, Respondent failed to submit to the EPA a Notice of
16 Arrival for the importation into the United States of the product “Oxyl-PRO S” prior to the
17 arrival of its shipment in the United States as required by Section 17(c) of FIFRA, 7 U.S.C. §
18 136o(c), and 19 C.F.R. § 12.112.

19 24. By failing to submit to the EPA a Notice of Arrival for the importation into the
20 United States of the product “Oxyl-PRO S” prior to the arrival of its shipment in the United
21 States on or about October 17, 2017, Respondent failed to file a report required by FIFRA and
22 thus violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

23 25. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary
24 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response
25 Policy dated December 2009 provide for a penalty of up to \$19,446 for each violation.

26 **D. RESPONDENT’S ADMISSIONS**

27 26. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
28 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over

1 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
2 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
3 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
4 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
5 proposed Final Order contained in this CAFO.

6 E. CIVIL ADMINISTRATIVE PENALTY

7 27. In final settlement of the violations of FIFRA specifically alleged in Section I.C of
8 this CAFO, Respondent shall pay a civil administrative penalty of TWELVE THOUSAND,
9 NINE HUNDRED, AND EIGHTY-NINE DOLLARS (\$12,989). Respondent shall pay this civil
10 penalty no later than thirty (30) calendar days from the effective date of this CAFO. The civil
11 penalty shall be paid by remitting a certified or cashier's check, including the name and docket
12 number of this case, for the amount, payable to "Treasurer, United States of America," (or be
13 paid by one of the other methods listed below) and sent as follows:

14 Regular Mail:

15 U.S. Environmental Protection Agency
16 Fines and Penalties
17 Cincinnati Finance Center
18 PO Box 979077
19 St. Louis, MO 63197-9000

20 Wire Transfers:

21 Wire transfers must be sent directly to the Federal Reserve Bank in New
22 York City with the following information:

23 Federal Reserve Bank of New York
24 ABA = 021030004
25 Account = 68010727
26 SWIFT address = FRNYUS33
27 33 Liberty Street
28 New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Environmental Protection Agency
1005 Convention Plaza
Mail Station SL-MO-C2-GL
ATTN Box 979077
St. Louis, MO 63101

1 ACH (also known as Remittance Express or REX):

2 Automated Clearinghouse (ACH) payments to EPA can be made through
3 the U.S. Treasury using the following information:

4 U.S. Treasury REX/Cashlink ACH Receiver
5 ABA = 051036706
6 Account = 310006, Environmental Protection Agency
7 CTX Format Transaction Code 22 – checking

8 Physical Location of U.S. Treasury facility:
9 5700 Rivertech Court
10 Riverdale, MD 20737

11 Remittance Express (REX) = (866) 234-5681

12 On Line Payment:

13 This payment option can be accessed from the information below:

14 www.pay.gov
15 Enter "SFO 1.1" in the search field
16 Open form and complete required fields

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

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

23 Regional Hearing Clerk
24 Office of Regional Counsel (ORC-1)
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105

28 Janice Chan
29 Air and TRI Section
30 Enforcement Division (ENF-2-1)
31 U.S. Environmental Protection Agency, Region IX
32 75 Hawthorne Street
33 San Francisco, CA 94105

34 Edgar P. Coral
35 Office of Regional Counsel (ORC-2)
36 U.S. Environmental Protection Agency, Region IX
37 75 Hawthorne Street
38 San Francisco, CA 94105

1 28. 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 29. If Respondent fails to pay the assessed civil administrative penalty of TWELVE
5 THOUSAND, NINE HUNDRED, AND EIGHTY-NINE DOLLARS (\$12,989) as identified in
6 Paragraph 27 by the deadline specified in that Paragraph, then Respondent shall also pay a
7 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will
8 be THREE THOUSAND, TWO HUNDRED, AND FORTY-SEVEN DOLLARS (\$3,247) and
9 will be immediately due and payable upon EPA's written request, together with the initially
10 assessed civil administrative penalty of TWELVE THOUSAND, NINE HUNDRED, AND
11 EIGHTY-NINE DOLLARS (\$12,989), resulting in a total penalty due of SIXTEEN
12 THOUSAND, TWO HUNDRED, AND THIRTY-SIX DOLLARS (\$16,236). Failure to pay the
13 civil administrative penalty specified in Paragraph 27 by the deadline specified in that Paragraph
14 may also lead to any or all of the following actions:

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

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

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

28 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.

1 Government may assess interest, administrative handling charges, and nonpayment penalties
2 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
3 civil administrative penalty specified in Paragraph 27 by the deadline specified in that Paragraph.

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

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

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

16 F. CERTIFICATION OF COMPLIANCE

17 30. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or
18 distributing any pesticide that is unregistered in violation of Section 12(a)(1)(A) of FIFRA, 7
19 U.S.C. § 136j(a)(1)(A); (2) it is no longer selling or distributing any pesticide that is misbranded
20 in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E); (3) it is no longer failing
21 to file reports required under FIFRA in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. §
22 136j(a)(2)(N); and (4) it is currently in compliance with all other FIFRA requirements for all its
23 ongoing operations.

24 G. RETENTION OF RIGHTS

25 31. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
26 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
27 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
28 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,

1 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
2 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
3 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
4 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

8 H. ATTORNEYS' FEES AND COSTS

9 33. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
10 this proceeding.

11 I. EFFECTIVE DATE

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

15 J. BINDING EFFECT


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

19 36. The provisions of this CAFO shall apply to and be binding upon Respondent and its
20 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
21 and assigns.

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FOR RESPONDENT FLORICULTURA PACIFIC INC.:

11/28/18
DATE


DON HOWELL
General Manager
Floricultura Pacific Inc.
25425 Esperanza Road
Salinas, CA 93908-9768

FOR COMPLAINANT EPA:

12/17/18
DATE


ELIZABETH BERG
Acting Assistant Director
Water and Pesticides Branch
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Floricultura Pacific Inc., having entered into the foregoing Consent Agreement,

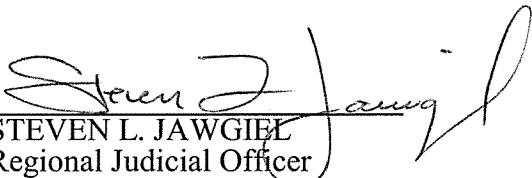
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2019-0012) be

4 entered, and Respondent shall pay a civil administrative penalty in the amount of TWELVE

5 THOUSAND, NINE HUNDRED, AND EIGHTY-NINE DOLLARS (\$12,989), and comply with

6 the terms and conditions set forth in the Consent Agreement.

7
8
9 12/18/18
DATE

10 
STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2019-0012**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Kees Schoone, President
Floricultura Pacific Inc.
25425 Esperanza Road
Salinas, CA 93908-9768

CERTIFIED MAIL NUMBER: 7015 0640 0001 1121 9967

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

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

Dec. 18, 2018
Date

Steven Armsey
Regional Hearing Clerk
U.S. EPA, Region IX