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12 **UNITED STATES**
13 **ENVIRONMENTAL PROTECTION AGENCY**
14 **REGION IX**
15 **75 HAWTHORNE STREET**
16 **SAN FRANCISCO, CA 94105**
17

18 In the matter of:) Docket No. FIFRA-09-2016- 0014
19) **CONSENT AGREEMENT**
20 Southern Valley Chemical) and
21 Company,) **FINAL ORDER PURSUANT TO**
22 Respondent.) **SECTIONS 22.13 AND 22.18**
23)
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27 **I. CONSENT AGREEMENT**

28 The United States Environmental Protection Agency (“EPA”) and Southern Valley
29 Chemical Company (“Respondent”) agree to settle this matter and consent to the entry of this
30 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
31 concludes this proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

32 **A. AUTHORITY AND PARTIES**

33 1. This administrative proceeding for the assessment of a civil administrative penalty is
34 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
35 U.S.C. § 136, *et seq.* (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated
Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

1 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

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

4 3. Respondent is a California corporation that owns, operates, or otherwise controls a
5 facility located at 101 Sycamore Road, Arvin, California.

6 **B. STATUTORY AND REGULATORY AUTHORITIES**

7 4. Under section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term *person* means any individual,
8 partnership, association, corporation, or any organized group of persons whether incorporated or
9 not.

10 5. Under section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term *pesticide* is, among other
11 things, any substance or mixture of substances intended for preventing, destroying, repelling, or
12 mitigating any pest.

13 6. Under section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is
14 *misbranded* if its label does not bear the registration number assigned under section 136e of
15 FIFRA to each establishment in which it was produced.

16 7. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term *label* means the
17 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its
18 containers or wrappers.

19 8. Under section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term *labeling* means
20 all labels and all other written, printed or graphic matter accompanying the pesticide or device at
21 any time.

22 9. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term *to distribute or sell* means
23 to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship,

1 deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to
2 deliver.

3 10. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
4 person in any state to distribute or sell to any person any pesticide that is adulterated or
5 misbranded.

6 11. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any
7 person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and
8 136q.

9 12. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
10 regulations governing the labeling requirements for pesticides and devices, which are codified at
11 40 C.F.R. Part 156.

12 13. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
13 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
14 containers and pesticide containment structures (“the Container/Containment regulations”),
15 which are codified at 40 C.F.R. Part 165.

16 14. *Agricultural pesticide* means any pesticide product labeled for use in or on a farm,
17 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

18 15. *Appurtenance* means any equipment or device which is used for the purpose of
19 transferring a pesticide from a stationary pesticide container or to any refillable container,
20 including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering
21 devices. 40 C.F.R. § 165.3.

22 16. *Containment pad* means any structure that is designed and constructed to intercept
23 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40

1 C.F.R. § 165.3.

2 17. *Containment structure* means either a secondary containment unit or a containment
3 pad. 40 C.F.R. § 165.3.

4 18. *Facility* means all buildings, equipment, structures, and other stationary items which
5 are located on a single site or on contiguous or adjacent sites and which are owned or operated by
6 the same person (or by any person who controls, who is controlled by, or who is under common
7 control with such person). 40 C.F.R. § 165.3.

8 19. *Establishment* means any site where a pesticidal product, active ingredient, or device
9 is produced, regardless of whether such site is independently owned or operated, and regardless
10 of whether such site is domestic and producing a pesticidal product for export only, or whether
11 the site is foreign and producing any pesticidal product for import into the United States. 40
12 C.F.R. § 165.3.

13 20. *Operator* means any person in control of, or having responsibility for, the daily
14 operation of a facility at which a containment structure is located.

15 21. *Owner* means any person who owns a facility at which a containment structure is
16 required. 40 C.F.R. § 165.3.

17 22. *Pesticide dispensing area* means an area in which pesticide is transferred out of or
18 into a container. 40 C.F.R. § 165.3.

19 23. *Produce* means to manufacture, prepare, propagate, compound, or process any
20 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active
21 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container
22 of any pesticide or device. 40 C.F.R. § 165.3.

23 24. *Refilling establishment* means an establishment where the activity of repackaging

1 pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

2 25. *Refillable container* means a container that is intended to be filled with pesticide
3 more than once for sale or distribution. 40 C.F.R. § 165.3.

4 26. *Refiller* means a person who engages in the activity of repackaging pesticide product
5 into refillable containers. 40 C.F.R. § 165.3.

6 27. *Repackage* means, for the purposes of this part, to transfer a pesticide formulation
7 from one container to another without a change in the composition of the formulation, the
8 labeling content, or the product's EPA registration number, for sale or distribution. 40 C.F.R. §
9 165.3.

10 28. *Secondary containment unit* means any structure, including rigid diking, that is
11 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff
12 and leaching from stationary pesticide containers. 40 C.F.R. § 165.3.

13 29. *Stationary pesticide container* means a refillable container that is fixed at a single
14 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30
15 consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

16 30. *Transport vehicle* means a cargo-carrying vehicle such as an automobile, van, tractor,
17 truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode. 40 C.F.R.
18 § 165.3.

19 **C. COMPLAINANT'S ALLEGATIONS**

20 31. Respondent is a *person* as that term is defined by section 2(s) of FIFRA, 7 U.S.C. §
21 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

22 32. Respondent is an *owner* and *operator* of a *facility* that is an *establishment*, as those
23 terms are defined by 40 C.F.R. § 165.3, located at 101 Sycamore Road, Arvin, California (the

1 “Facility”).

2 33. The Facility is a *refilling establishment* that *repackages* Vapam HL, EPA Reg. No.
3 5481-468 (“Vapam HL”), Roundup Power Max, EPA Reg. No. 524-549 (“Roundup Power
4 Max”), and Supreme Spray Oil, EPA Reg. No. 10951-16 (“Supreme Spray Oil”), which are each
5 an *agricultural pesticide*, as those terms are defined by 40 C.F.R. § 165.3, and dispenses
6 pesticides, and whose principal business is retail sale.

7 34. Owners or operators of refilling establishments who repackage agricultural pesticides
8 and whose principal business is retail sale that have a stationary pesticide container or a pesticide
9 dispensing (including container refilling) area must comply with the secondary container
10 requirements of the Container/Containment regulations. 40 C.F.R. § 165.80(b)(1).

11 35. Pesticide dispensing areas that are subject to the Container/Containment regulations
12 and must have a containment pad that complies with the requirements of the Containment
13 regulations include areas where agricultural pesticides are dispensed from a transport vehicle for
14 purposes of filling a refillable container. 40 C.F.R. § 165.82(a)(3).

15 36. At all times relevant to this CAFO, the Facility includes the Roundup Power Max
16 Tank, the Supreme Spray Oil Tank, and the Vapam HL Tank which are each a *stationary*
17 *pesticide container* located within a *secondary containment unit*, as those terms are defined by 40
18 C.F.R. § 165.3.

19 37. At all times relevant to this CAFO, the Roundup Power Max Tank had a holding
20 capacity of approximately 4,500 gallons and held Roundup Power Max; the Supreme Spray Oil
21 Tank had a holding capacity of approximately 6,500 gallons and held Supreme Spray Oil; and the
22 “Vapam HL Tank had a holding capacity of approximately 5,000 gallons and held Vapam HL.

23 38. At all times relevant to this CAFO, the Facility included an area used to fill refillable

1 containers with Roundup Power Max and an area used to fill refillable containers with Vapam
2 HL or Supreme Spray Oil and to refill stationary tanks and each of these areas is a pesticide
3 dispensing area and containment pad, as those terms are defined by 40 C.F.R. § 165.3.

4 39. The containment structures at the Facility were constructed on or before November
5 16, 2006 and are each *existing containment structures*, as that term is defined by 40 C.F.R. §
6 165.83(b).

7 40. On or about September 4, 2013, a California Department of Pesticide Regulation
8 (“CDPR”) inspector inspected the Facility.

9 **Count 1: Failure to Have Vapam HL Residue Removal Procedures/Description of Containers**

10 41. On and about September 4, 2013, Respondent refilled the pesticide Vapam HL for
11 distribution or sale at the Facility.

12 42. Respondent is a *refiller* of Vapam HL, as that term is defined by 40 C.F.R. § 165.3,
13 but not the registrant.

14 43. Refillers of a pesticide product who are not the registrant of that pesticide product
15 must comply with the standards in section 165.70 of the Container/Containment regulations. 40
16 C.F.R. § 165.70(a).

17 44. Before repackaging a pesticide product into any refillable container for distribution or
18 sale, a refiller must have at its establishment specified documents and information, including the
19 registrant's written refilling residue removal procedure for the pesticide product as required by 40
20 C.F.R. § 165.70(e)(5)(iii) and the registrant's written description of acceptable containers for the
21 pesticide product as required by 40 C.F.R. § 165.70(e)(5)(iv).

22 45. On and about September 4, 2013, Respondent failed to have the written refiller
23 residue removal procedures and the written description of acceptable containers for Vapam HL at

1 the Facility, as required by 40 C.F.R. §§ 165.70(e)(5)(iii) and (iv).

2 46. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
3 7 U.S.C. § 136j(a)(2)(S), by repackaging Vapam HL for distribution or sale without having
4 refiller residue removal procedures and description of acceptable containers for Vapam HL at the
5 Facility, as required by 40 C.F.R. § 165.70(e)(5).

6 **Count 2: Failure to Have Supreme Spray Oil Residue Removal Procedures**

7 47. On and about September 4, 2013, Respondent failed to have the written refiller
8 residue removal procedures for Supreme Spray Oil at the Facility, as required by 40 C.F.R. §
9 165.70(e)(5)(iii).

10 48. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
11 7 U.S.C. § 136j(a)(2)(S), by repackaging Supreme Spray Oil for distribution or sale without
12 having refiller residue removal procedures for Supreme Spray Oil at the Facility, as required by
13 40 C.F.R. § 165.70(e)(5)(iii).

14 **Count 3: Use of External Sight Gauge on Vapam HL Tank**

15 49. Refillers of a pesticide product who are not the registrant of that pesticide product are
16 prohibited from having external sight gauges, which are pesticide-containing hoses or tubes that
17 run vertically along the exterior of the container from the top to the bottom, on stationary
18 containers of liquid pesticides designed to hold undivided quantities of pesticides equal to or
19 greater than 500 gallons (1,890 liters) of liquid pesticide. 40 C.F.R. §§ 165.40(b)(2) and
20 165.45(f)(2)(ii).

21 50. On and about September 4, 2013, the Vapam HL Tank had a hose or tube running
22 vertically along the exterior of the tank from the top to the bottom showing the level of liquid
23 held in the Vapam HL Tank.

1 51. At all times relevant to this CAFO, the tube running vertically on the Vapam HL
2 Tank is an *external sight gauge*, as defined by 40 C.F.R. § 165.45(f)(2)(ii).

3 52. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
4 7 U.S.C. § 136j(a)(2)(S), by using an external sight gauge prohibited by 40 C.F.R. §
5 165.45(f)(2)(ii) on the Vapam HL Tank at the Facility.

6 **Count 4: Use of External Sight Gauge on Supreme Spray Oil Tank**

7 53. On and about September 4, 2013, the Supreme Spray Oil Tank had a hose or tube
8 running vertically along the exterior of the tank from the top to the bottom showing the level of
9 liquid held in the Supreme Spray Oil Tank.

10 54. At all times relevant to this CAFO, the tube running vertically on the Supreme Spray
11 Oil Tank is an *external sight gauge* as defined by 40 C.F.R. § 165.45(f)(2)(ii).

12 55. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
13 7 U.S.C. § 136j(a)(2)(S), by using an external sight gauge prohibited by 40 C.F.R. §
14 165.45(f)(2)(ii) on the Supreme Spray Oil Tank at the Facility.

15 **Count 5: Failure to Anchor or Elevate Vapam HL Tank**

16 56. The owner or operator must either anchor or elevate each stationary container of
17 liquid pesticide protected by an existing secondary containment unit to prevent flotation in the
18 event that the secondary containment unit fills with liquid. 40 C.F.R. § 165.87(d).

19 57. On and about September 4, 2013, the Vapam HL Tank was in an existing secondary
20 containment unit but was neither anchored nor elevated.

21 58. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
22 7 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate the Vapam HL Tank as required
23 by 40 C.F.R. § 165.87(d).

1 **Count 6: Failure to Anchor or Elevate Supreme Spray Oil Tank**

2 59. On and about September 4, 2013, the Supreme Spray Oil Tank was in an existing
3 secondary containment unit but was neither anchored nor elevated.

4 60. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
5 7 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate the Supreme Spray Oil Tank as
6 required by 40 C.F.R. § 165.87(d).

7 **Count 7: Distribution and Sale of Misbranded Vapam HL**

8 61. On or about September 4, 2013, Respondent *distributed or sold* the pesticide Vapam
9 HL, in the Vapam HL Tank, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. §
10 136(gg), by holding Vapam HL for distribution, sale, or shipment.

11 62. When pesticide products are stored in bulk containers, whether mobile or stationary,
12 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
13 directions for use, must be securely attached to the container in the immediate vicinity of the
14 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). This includes marking the producing
15 establishment registration number preceded by the phrase “EPA Est.”, of the final establishment
16 at which the product was produced. 40 C.F.R. § 156.10(f).

17 63. On or about September 4, 2013, Respondent did not have a copy of the label or
18 labeling attached to the Vapam HL Tank that included the EPA Establishment Number of the
19 final establishment at which the bulk product, Vapam HL, was produced.

20 64. On or about September 4, 2013, Respondent’s failure to attach to the Vapam HL
21 Tank a copy of the label for Vapam HL that included the establishment number of the final
22 establishment at which Vapam HL was last produced, as required by 40 C.F.R. §§
23 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section

1 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

2 65. On or about September 4, 2013, Respondent distributed or sold the misbranded
3 pesticide Vapam HL in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

4 **Count 8: Distribution and Sale of Misbranded Supreme Spray Oil**

5 66. On or about September 4, 2013, Respondent *distributed or sold* the pesticide
6 Supreme Spray Oil Tank in Supreme Spray Oil Tank, as that term is defined by section 2(gg) of
7 FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

8 67. On or about September 4, 2013, Respondent did not have a copy of the Supreme
9 Spray Oil Tank label or labeling attached to Supreme Spray Oil Tank.

10 68. On or about September 4, 2013, Respondent's failure to attach to the Supreme Spray
11 Oil Tank a copy of the label for Supreme Spray Oil constitutes *misbranding*, as that term is
12 defined by section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C).

13 69. On or about September 4, 2013, Respondent distributed or sold the misbranded
14 pesticide Supreme Spray Oil at the Facility in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C.
15 § 136j(a)(1)(E).

16 **Count 9: Failure to have Written Contract to Repackage Supreme Spray Oil**

17 70. On and about September 4, 2013, Respondent was refilling the pesticide Supreme
18 Spray Oil for distribution or sale at the Facility.

19 71. Respondent is a *refiller* of Supreme Spray Oil, as that term is defined by 40 C.F.R. §
20 165.3, but not the registrant.

21 72. Before repackaging a pesticide product into any refillable container for distribution or
22 sale, a refiller must have entered into a written contract with the registrant to repackage the
23 pesticide product and to use the label of the registrant's pesticide product as required by 40

1 C.F.R. § 165.70(b)(3).

2 73. A refiller must maintain records as required by 40 C.F.R. § 165.70(j), and parts 167
3 and 169 [see 40 C.F.R. § 165.70(e)(10), (11), and (12)], including the written contract with the
4 registrant referred to in paragraph 165.70(b)(3). 40 C.F.R. § 165.70(e)(5)(i).

5 74. On and about September 4, 2013, Respondent failed to have the written contract with
6 the registrant for Supreme Spray Oil, as required by 40 C.F.R. §§ 165.70(e)(5)(i).

7 75. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
8 7 U.S.C. § 136j(a)(2)(S), by repackaging Supreme Spray Oil for distribution or sale without
9 having the written contract with the registrant for Supreme Spray Oil at the Facility, as required
10 by 40 C.F.R. §§ 165.70(b)(3) and 165.70(e)(5).

11 **Count 10: Failure to Protect Appurtenances**

12 76. One of the general design requirements for existing secondary containment structures
13 is that the owner or operator must protect appurtenances and pesticide containers against damage
14 from operating personnel and moving equipment. Means of protection include, but are not
15 limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and
16 protective cages. 40 C.F.R. § 165.87(b)(1).

17 77. On and about September 4, 2013, hoses used to dispense Roundup Power Max and
18 an electrical box used to dispense Supreme Spray Oil were not protected against damage from
19 operating personnel and moving equipment. These equipment including hoses and electrical box
20 are *appurtenances*, as that term is defined by 40 C.F.R. § 165.3.

21 78. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
22 7 U.S.C. § 136j(a)(2)(S) by failing to protect appurtenances at the Facility, as required by 40
23 C.F.R. § 165.87(b)(1).

1 **Count 11: Failure To Keep Containment Structures Liquid-Tight**

2 79. Existing containment structures must be liquid-tight with cracks, seams and joints
3 appropriately sealed. 40 C.F.R. § 165.87(a)(1).

4 80. On or about September 4, 2013, the wall of the secondary containment unit for the
5 Vapam HL Tank had unsealed cracks.

6 81. On or about September 4, 2013, the containment pad and the wall of the secondary
7 containment unit for the Roundup Power Max Tank had unsealed cracks.

8 82. On and about September 4, 2013, Respondent failed to keep containment structures
9 liquid-tight with cracks, seams and joints appropriately sealed, as required by 40 C.F.R. §
10 165.87(a)(1).

11 83. On and about September 4, 2013, Respondent violated section 12(a)(2)(S) of FIFRA,
12 7 U.S.C. § 136j(a)(2)(S) by failing to keep containment structures liquid-tight with cracks, seams
13 and joints appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

14 **D. RESPONDENT’S ADMISSIONS**

15 84. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding,
16 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
17 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section
18 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to
19 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this
20 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and
21 (vi) waives the right to appeal the proposed final order contained in this CAFO.

22 **E. CIVIL ADMINISTRATIVE PENALTY**

23 85. Respondent consents to the assessment of a penalty in the amount of **THIRTY-**

1 **FOUR THOUSAND NINE HUNDRED DOLLARS (\$34,900)** as final settlement and
2 complete satisfaction of the civil claims against Respondent arising from the facts alleged in
3 Section I.C of the CAFO and under the Act.

4 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
5 date of this CAFO by one of the methods listed below:

6 i. Respondent may pay online through the Department of the Treasury
7 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
8 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
9 complete the SFO Form Number 1.1.

10 ii. Respondent may pay by remitting a certified or cashier's check, including
11 the name and docket number of this case, for the amount, payable to
12 "Treasurer, United States of America," and sent as follows:

13 Regular Mail:

14 U.S. Environmental Protection Agency
15 PO Box 979077
16 St. Louis, MO 63197-9000

17 Overnight/Signed Receipt Confirmation Mail:

18 U.S. Environmental Protection Agency
19 ATTN Box 979077
20 1005 Convention Plaza
21 Mail Station SL-MO-C2GL
22 St. Louis, MO 63101

23 iii. Respondent may also pay the civil penalty using any method, or
24 combination of methods, provided on the following website:

25 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

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

28 b. Respondent shall identify each and every payment with the name and docket
29 number of this case; and
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1 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
2 payment (“proof of payment” means, as applicable, a copy of the check, confirmation of credit
3 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
4 other information required to demonstrate that payment has been made according to EPA
5 requirements, in the amount due, and identified with the name and docket number of this case),
6 including proof of the date payment was made, along with a transmittal letter, indicating
7 Respondent’s name, the case title, and docket number, to the following addresses:

8 Regional Hearing Clerk
9 Office of Regional Counsel (ORC-1)
10 U.S. Environmental Protection Agency, Region IX
11 75 Hawthorne Street
12 San Francisco, CA 94105

13
14 Estrella Armijo
15 Enforcement Division (ENF 3-3)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105
19

20 86. In the event that Respondent fails to pay the civil administrative penalty assessed
21 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
22 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
23 balance of the penalty assessed above. Upon EPA’s written demand, this stipulated penalty shall
24 immediately become due and payable.

25 87. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date,
26 the entire unpaid balance and accrued interest shall become immediately due and owing.

27 Respondent’s tax identification number may be used for collecting or reporting any delinquent
28 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received
29 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the

1 effective date of this CAFO as described at 40 CFR §13.11. In addition, if this matter is referred
2 to another department or agency (e.g., the Department of Justice, the Internal Revenue Service),
3 that department or agency may assess its own administrative costs, in addition to EPA's
4 administrative costs, for handling and collecting Respondent's overdue debt. Respondent's
5 failure to pay in full the civil administrative penalty by its due date also may also lead to any or
6 all of the following actions:

7 a. The debt being referred to a credit reporting agency, a collection agency, or to
8 the Department of Justice for filing of a collection action in the appropriate United States District
9 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
10 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

11 b. The debt being collected by administrative offset (i.e., the withholding of
12 money payable by the United States to, or held by the United States for, a person to satisfy the
13 debt the person owes the Government), which includes, but is not limited to, referral to the
14 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
15 and H.

16 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
17 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
18 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
19 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
20 of-credit. 40 C.F.R. §§ 13.17.

21 **F. CERTIFICATION OF COMPLIANCE**

22 88. In executing this CAFO, Respondent certifies that the information it has supplied
23 concerning this matter was at the time of submission, and is at the time of signature to this

1 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
2 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading information
3 can result in significant penalties, including the possibility of fines and imprisonment for
4 knowing submission of such information.

5 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

6 89. This Consent Agreement constitutes the entire agreement between the Respondent
7 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
8 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
9 liability against Respondent for the violations alleged in Section I.C of this CAFO.

10 90. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
11 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
12 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
13 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
14 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
15 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
16 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
17 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
18 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
19 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
20 permits.

21 91. Except as set forth in Paragraph 87 above, each party shall bear its own fees, costs,
22 and disbursements in this action.

23 92. For the purposes of state and federal income taxation, Respondent shall not claim a

1 deduction for any civil penalty payment made pursuant to this CAFO.

2 93. This CAFO constitutes an enforcement action for purposes of considering
3 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
4 available to the public and does not contain any confidential business information.

5 94. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
6 CAFO shall be the date on which the accompanying Final Order, having been signed by the
7 Regional Judicial Officer, is filed.

8 95. The provisions of this CAFO shall be binding on Respondent and on Respondent's
9 officers, directors, employees, agents, servants, authorized representatives, successors, and
10 assigns.

11 96. The undersigned representatives of each party to this Consent Agreement certify that
12 each is duly authorized by the party whom he or she represents to enter into the terms and
13 conditions of this Consent Agreement and Final Order and bind that party to it.

14
15
16 **SOUTHERN VALLEY CHEMICAL COMPANY:**

17
18
19 Date: 3/31/2016 By: 

20
21
22 Name: Russell A. Carlson

23
24
25 Title: Secretary, Treasurer

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**
2
3

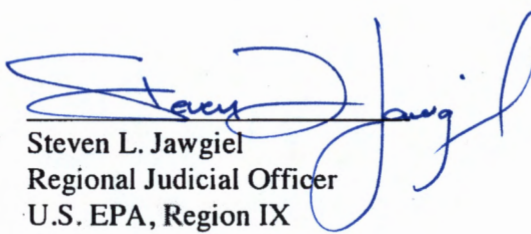
4 Date: 4/28/16 By: *Kath H. Johnson*
5

6 KATHLEEN H. JOHNSON
7 Director
8 Enforcement Division
9 U.S. Environmental Protection Agency,
10 Region IX
11
12

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2
3 **II. FINAL ORDER**

4 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and
5 that Respondent shall pay a civil administrative penalty in the amount of **THIRTY-FOUR**
6 **THOUSAND NINE HUNDRED DOLLARS (\$34,900)** in accordance with the terms set forth
7 in the Consent Agreement.
8

9
10 Date: 05/02/2016

11 
12 Steven L. Jawgiel
13 Regional Judicial Officer
14 U.S. EPA, Region IX
15

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2016-0014) 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:

Christopher C. Carlson, CEO
Southern Valley Chemical Company
101 Sycamore Road
Arvin, CA 93203


CERTIFIED MAIL NUMBER: 7010 1060 0002 0234 8288

And a copy was sent via email to:

p.carrick@charter.net
Patrick Carrick, Esq.
LeBeau Thelen LLP
5001 E Commercenter Drive, Suite 300
Bakersfield, CA 93309

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

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



5/3/16

For:

Regional Hearing Clerk
U.S. EPA, Region IX

Date