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7	IN THE MATTER OF:) Dealers No. FIED A. 10, 2000, 0012					
8	Swanson's Pest Management Inc.) Docket No. FIFRA-10-2009-0012)					
9	Respondent.) CONSENT AGREEMENT AND FINAL ORDER FOR PAYMENT OF CIVIL PENALTIES					
10						
11 12	I. PRELIMINARY STATEMENT					
12 13 '	1. This Consent Agreement and Final Order ("CAFO") is issued under the authority					
14	vested in the Administrator of the United States Environmental Protection Agency ("EPA") by					
15	Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C.					
16	§ 136 <i>l</i> (a).					
17	2. The Administrator has delegated the authority to enter into the Final Order contained					
18 19	in Part III of this CAFO to the Regional Administrator of EPA Region 10, who in turn has					
20	redelegated this authority to the Regional Judicial Officer.					
21	3. In accordance with the "Consolidated Rules of Practice Governing the Administrative					
22	Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Swanson's Pest					
23	Management Inc. ("Respondent") hereby agrees to issuance of, the Final Order contained in					
24 25	Part III of this CAFO.					
26						
27	Swanson's Pest Management Inc. Docket No. FIFRA-10-2009-0012 Page 1					

1	4. EPA initiated this proceeding for the assessment of a civil penalty pursuant to				
2	Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), by issuing a complaint against Respondent, on				
3	December 3, 2008.				
4	5. In the complaint, EPA alleged that Respondent violated Section 12(a)(2)(G), of				
5	FIFRA, 7 U.S.C. §136j(a)(2)(G). In particular, EPA alleged that Respondent used the registered				
6	pesticides Conquer Residential Insecticide Concentrate, EPA Registration Number 1021-1641-				
7 8	57076, and ULD BP-100 Contact Insecticide, EPA Registration Number 499-452, in a manner				
9	inconsistent with their labeling.				
10	6. The complete factual and jurisdictional basis for proposing the assessment of a civil				
11	penalty is set forth in the complaint and is incorporated herein by reference.				
12	7. Respondent does not admit liability but, as a result of information exchanged during				
13 14	Alternative Dispute Resolution, EPA and Respondent agree to resolve this matter by executing				
15	this CAFO.				
16	II. CONSENT AGREEMENT				
17	The parties to this action hereby stipulate as follows:				
18					
19	8. Respondent admits EPA has jurisdiction over this proceeding.				
20	9. Respondent neither admits nor denies the specific factual allegations contained in the				
21	complaint.				
22	10. As a result of information exchanged during negotiations after filing the complaint,				
23	and in consideration of the nature and gravity of the violations, the impact of a penalty on				
24	Respondent's ability to continue in business and other relevant factors, and in accordance with				
25 26	the statutory penalty criteria set out in Section 14(a) of FIFRA 7 II S.C. 8 1361(a)(4), as reflected				
27	Swanson's Pest Management Inc.				
28	Docket No. FIFRA-10-2009-0012 Page 2				

1	in the July 2, 1990, "Enforcement Response Policy for the Federal Insecticide, Fungicide, and					
2	Rodenticide Act," EPA has determined and Respondent agrees that an appropriate penalty to					
3	settle this action is FOUR THOUSAND FIVE HUNDRED AND FIFTY DOLLARS (\$4,550).					
4	11. Respondent consents to the issuance of the Final Order contained in Part III of this					
5	CAFO, and payment of the civil penalty cited in the foregoing paragraph no later than 30 days					
6 7	from the date it receives a conformed copy of this CAFO.					
8	12. Payment under this CAFO shall be made by cashier's check or certified check,					
9	payable to the order of "Treasurer, United States of America" and shall be delivered to the					
10	following address:					
11	II C. Environmental Protection Agency					
12	U.S. Environmental Protection Agency Fines and Penalties					
	Cincinnati Finance Center					
13 '	PO Box 979077					
14	St. Louis, MO 63197-9000					
15	A transmittal letter providing the Respondent's name, complete address, and this case docket					
16	number must accompany the payment. Respondent shall serve photo copies of the check and of					
17	the accompanying transmittal letter to the Regional Hearing Clerk and the Pesticies and Toxics					
18 19	Unit at the following addresses:					
	Regional Hearing Clerk					
20	U.S. Environmental Protection Region 10					
21	Office of Regional Counsel, ORC-158					
22	1200 Sixth Avenue, Suite 900 Seattle, Washington 98101					
23	Atten Chad Cabulas					
24	Attn: Chad Schulze U.S. Environmental Protection Region 10					
25	Pesticides and Toxics Unit, OCE-084					
26	1200 Sixth Avenue, Suite 900 Seattle, Washington 98101					
27	Curanasa's Doct Monasasant Is a					
28	Swanson's Pest Management Inc. Docket No. FIFRA-10-2009-0012 Page 3					
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1	13. Famure to make unitry payment of the assessed penalty may subject Respondent to a					
2	civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid					
3	portion of the assessed penalty, together with interest, handling charges, and nonpayment					
4	penalties as set forth in Paragraph 14 below.					
5	14. Should Respondent fail to pay any portion of the penalty assessed in this CAFO in					
6 7	full by its due date, Respondent shall also be responsible for the payment of the following					
8	amounts. Pursuant to 31 U.S.C. § 3717, Respondent shall pay the following amounts:					
9	a. <u>Interest</u> . Any unpaid portion of the assessed penalty shall bear					
10	interest at the rate established by the Secretary of the Treasury pursuant to					
11	31 U.S.C. § 3717(a)(1) from the date a conformed copy of this CAFO is mailed to					
12	• • • • • • • • • • • • • • • • • • • •					
13 [*]	the accessed namelty that is noted within 30 days of the date a conformed convent					
15						
16	b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly					
17	handling charge of \$15 shall be paid if any portion of the assessed penalty is more					
18						
19						
20	c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a					
21	nonpayment penalty of 3% per annum shall be paid on any portion of the assessed					
22	penalty that is more than 90 days past due, which nonpayment penalty shall be					
23	calculated as of the day the underlying penalty first becomes past due.					
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27	Swanson's rest Management Inc.					
28	Docket No. FIFRA-10-2009-0012 Page 4					

1	15. The civil penalty described in this CAFO, including any additional costs incurred				
2	under paragraph 14 above, shall represent civil administrative penalties assessed by EPA and				
3	shall not be deductible for purposes of federal taxes.				
4	16. The undersigned representative of Respondent certifies that he or she is fully				
5	authorized to enter into the terms and conditions of this CAFO and to bind Respondent and its				
6	officers, directors, agents, servants, employees, successors, and assigns to this document.				
.7 8	17. Respondent shall bear its own costs and attorney fees in connection with this matter				
9	18. Respondent expressly waives any right to contest the allegations and its right to				
10	appeal the Final Order contained herein.				
11	19. Respondent certifies that, to the best of its knowledge, it is now in compliance with				
12	FIFRA.				
13 ¹	20. The provisions of this CAFO shall bind Respondent and its officers, directors,				
15					
16	21. This document is a "Final Order" as that term is defined in the Enforcement				
17	Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated				
18	July 2, 1990, for the purposes of demonstrating prior violations.				
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27	Swanson's Pest Management Inc. Docket No. FIFRA-10-2009-0012 Page 5				
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1	STIPULATED AND AGREED this day of, 2009:					
2	V					
3	SWANSON'S PEST MANAGEMENT INC.					
4	Respondent					
5	District David Kolog					
6	(Print Name) Jon E. Jensen					
7	(Fitle Operations Manager					
8						
9	U.S. ENVIRONMENTAL PROTECTION AGENCY, Complainant					
10						
11	By Xilianel Matthews Dated: 4/14/09					
12 12 ·	Juliane R.B. Matthews Assistant Regional Counsel					
13 ´						
14 15	III. FINAL ORDER					
16	22. The terms of the foregoing Consent Agreement are hereby ratified and incorporated					
17	into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the					
18	settlement.					
19	23. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant					
20	to the FIFRA for the particular violations alleged in the Complaint. In accordance with 40 C.F.R.					
21	·					
22	§ 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue					
23	appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.					
24	This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply					
25	with all applicable provisions of the FIFRA and regulations issued thereunder.					
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27	Swanson's Pest Management Inc.					
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1	24. This Final Order shall become effective upon filing.		
2	SO ORDERED this 24th day of April, 2009:		
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5	Socorro Rodriguez		
6	Regional Judicial Officer U.S. Environmental Protection Agency		
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27	Swanson's Pest Management Inc.		
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached CONSENT AGREEMENT AND FINAL ORDER in In the Matter of: Swanson's Pest Management, Inc., DOCKET NO.: FIFRA-10-2009-0012 was filed with the Regional Hearing Clerk on April 24, 2009.

On April 24, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Julie Matthews, 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 April 24, 2009, to:

Joan Jensen Operations Manager Swanson's Pest Management, Inc. P.O. Box 40728 Eugene, OR 97404

Honorable Susan L. Biro Chief Administrative Law Judge U.S. EPA, Mail Code 1900L 1200 Pennsylvania Avenue N.W. Washington, D.C. 20460

DATED this 24th day of April 2009.

Carol Kennedy

Regional Hearing Clerk

EPA Region 10