



1 3. Respondent is a landscaping services company located in Las Vegas, Nevada.

2 B. STATUTORY AND REGULATORY BASIS

3 4. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any  
4 person to use any registered pesticide in a manner inconsistent with its labeling.

5 C. ALLEGED VIOLATIONS

6 5. Respondent is a corporation and therefore fits within the definition of “person” as that  
7 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

8 6. At all times relevant to this CAFO, Scythe Herbicide (“Scythe”)(EPA Reg. No. 62719-  
9 529) and Ranger Pro Herbicide (“Ranger Pro”)(EPA Reg. No. 524-517) were “pesticide[s]” as  
10 that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

11 7. At all times relevant to this CAFO, Scythe and Ranger Pro were registered under  
12 Section 3 of FIFRA, 7 U.S.C. §136a.

13 8. The labels of Scythe and Ranger Pro require applicators of these registered pesticides  
14 to wear personal protective equipment (“PPE”) during application.

15 9. On March 17, 2010, two applicators employed by Respondent applied Scythe and  
16 Ranger Pro without wearing all of the PPE required by their respective labels.

17 10. On March 17, 2010, two applicators employed by Respondent applied Scythe and  
18 Ranger Pro without wearing all of the PPE required by their respective labels, thereby using the  
19 registered pesticides Scythe and Ranger Pro in a manner inconsistent with their respective  
20 labeling.

21 11. On March 17, 2010, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C.  
22 § 136j(a)(2)(G), when its employees used the registered pesticide Scythe in a manner inconsistent  
23 with its labeling.

24 12. On March 17, 2010, Respondent violated Section 12(a)(2)(G) of FIFRA, 7  
25 U.S.C. § 136j(a)(2)(G), when its employees used the registered pesticide Ranger Pro in a manner  
26 inconsistent with its labeling.

27 13. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and the Civil Monetary Penalty  
28 Inflation Adjustment Rule, 40 C.F.R. Part 19, provide that, for any violation occurring after

1 January 12, 2009, any applicator not included under Section 14(a)(1) who holds or applies  
2 registered pesticides, or uses dilutions of registered pesticides, only to provide a service of  
3 controlling pests without delivering any unapplied pesticide to any person so served, and who  
4 violates any provision of FIFRA, may be assessed a civil penalty by the Administrator of not more  
5 than \$750 for the first offense nor more than \$1,100 for each subsequent offense.

6 D. RESPONDENT'S ADMISSIONS

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

14 E. CIVIL ADMINISTRATIVE PENALTY

15 15. In settlement of the two violations specifically alleged in Section I.C. of this CAFO,  
16 Respondent shall pay a civil administrative penalty of ONE THOUSAND TWO HUNDRED  
17 DOLLARS (\$1,200). In consideration of the effect of the penalty on Respondent's ability to  
18 continue in business, Respondent shall make delayed payments of ONE HUNDRED DOLLARS  
19 AND FIFTY CENTS (\$100.50) by the first calendar day of each month for twelve (12)  
20 consecutive months. The first payment shall be made by November 1, 2011. The installment  
21 penalty payments shall be paid by remitting a certified or cashier's check, including the name and  
22 docket number of this case, for the amount, payable to "Treasurer, United States of America," (or  
23 be paid by one of the other methods listed below) and sent as follows:

24 Regular Mail:  
25 U.S. Environmental Protection Agency  
26 Fines and Penalties  
27 Cincinnati Finance Center  
28 PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

1 Wire transfers must be sent directly to the Federal Reserve Bank in New  
2 York City with the following information:  
3 Federal Reserve Bank of New York  
4 ABA = 021030004  
5 Account = 68010727  
6 SWIFT address = FRNYUS33  
7 33 Liberty Street  
8 New York, NY 10045  
9 Field Tag 4200 of the Fedwire message should read "D 68010727  
10 Environmental Protection Agency"

11 Overnight Mail:

12 U.S. Bank  
13 1005 Convention Plaza  
14 Mail Station SL-MO-C2GL  
15 ATTN Box 979077  
16 St. Louis, MO 63101

17 ACH (also known as REX or remittance express):

18 Automated Clearinghouse (ACH) for receiving U.S. currency  
19 PNC Bank  
20 808 17<sup>th</sup> Street, NW  
21 Washington, DC 20074  
22 ABA = 051036706  
23 Transaction Code 22 – checking  
24 Environmental Protection Agency  
25 Account 31006  
26 CTX Format

27 On Line Payment:

28 This payment option can be accessed from the information below:  
www.pay.gov  
Enter "sfo1.1" in the search field  
Open form and complete required fields

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

A copy of the first and last check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent within TEN (10) days of remittance, along with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following addresses:

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

1 Glenda Dugan  
2 Communities and Ecosystems Division (CED-5)  
3 U.S. Environmental Protection Agency, Region 9  
4 75 Hawthorne Street  
5 San Francisco, CA 94105

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

9 17. If Respondent misses a penalty payment under the payment schedule specified in  
10 Paragraph 15, then Respondent shall also pay a stipulated penalty to EPA upon EPA's written  
11 request. The amount of the stipulated penalty will be THREE HUNDRED DOLLARS (\$300),  
12 and will be immediately due and payable upon EPA's written request on the day following the  
13 deadline specified in Paragraph 15, together with the monthly payment specified in Paragraph 15.  
14 Failure to timely make monthly penalty payments pursuant to Paragraph 15 may also lead to any  
15 or all of the following actions:

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

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

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

(4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
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 make  
2 penalty payments as specified in Paragraph 15 by the deadlines 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 in accordance  
7 with Paragraph 15.

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 in  
11 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, may  
14 be assessed on all debts more than ninety (90) days delinquent.

#### 15 F. CERTIFICATION OF COMPLIANCE

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

#### 19 G. RETENTION OF RIGHTS

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

28 20. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's

1 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,  
2 and permits.

3 H. ATTORNEYS' FEES AND COSTS

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

6 I. EFFECTIVE DATE

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

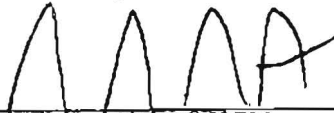
10 J. BINDING EFFECT

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

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

17  
18 FOR RESPONDENT U.S. LANDSCAPE, INC.

19  
20 9/24/11  
DATE

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20   
21 \_\_\_\_\_  
JOHN W. MORTENSEN  
22 President  
U.S. Landscape, Inc.  
3390 Wynn Road, Suite D  
23 Las Vegas, NV 89102

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28 FOR COMPLAINANT EPA:

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9/28/2011  
DATE



KATHERINE A. TAYLOR  
Associate Director for Agriculture  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105



1 II. FINAL ORDER

2 EPA and U.S. Landscape, Inc., having entered into the foregoing Consent Agreement,  
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011- 0023) be  
4 entered, and Respondent shall make penalty payments as specified in Paragraph 15 of the Consent  
5 Agreement, and otherwise comply with the terms and conditions set forth in the Consent  
6 Agreement.

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9 09/29/11  
10 DATE

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STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2011-0027) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

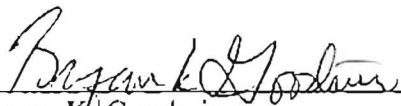
A copy was mailed via CERTIFIED MAIL to:

Mr. John Mortensen  
President  
U.S. Landscape, Inc.  
3390 Wynn Road, Suite D  
Las Vegas, NV 89102

**CERTIFIED MAIL NUMBER: 7007 0710 0003 6240 3152**

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

Brian Riedel, Esq  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
\_\_\_\_\_  
Bryan K. Goodwin  
Regional Hearing Clerk  
U.S. EPA, Region IX

9/29/11  
\_\_\_\_\_  
Date



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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**CERTIFIED RECEIPT NUMBER: 7007 0710 0003 6240 3152**

Date: SEP 29 2011

Mr. John W. Mortensen  
U.S. Landscape, Inc.  
3390 Wynn Road, Suite D  
Las Vegas, NV 89102

Subject: U.S. Landscape, Inc.  
Consent Agreement and Final Order  
Docket No. FIFRA-09-2011-0023

Dear Mr. Mortensen:

Enclosed please find the 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. The terms of the CAFO require the payment of \$100.50 to be sent monthly for 12 months, with the first payment made by November 1, 2011. Directions for sending payment can be found in paragraph 15 (pages 3-5) of the CAFO. Offices to which copies must be sent can be found on pages 4 and 5.

If you have any questions you may contact Brian Riedel, Office of Regional Counsel, telephone number 415-972-3924 or Glenda Dugan, Enforcement Officer, telephone number, 415-947-4204 at the U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Sincerely,

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

Katherine Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division

Cc: Brian Riedel, Office of Regional Counsel