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U.S. EPA-REGION IX
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EDGAR P. CORAL
Assistant Regional Counsel
U. S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3898

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Docket No. FIFRA-9-2007-0009

CONSENT AGREEMENT AND FINAL ORDER

pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and American Mold Guard Inc. ("AMG" or the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for: (1) the production of a pesticide in an unregistered establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L); and (2) the sale and/or distribution of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

2. Complainant is the Director of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May

1 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this
2 action under FIFRA to the Director of the Communities and Ecosystems Division by EPA
3 Regional Order Number 1255.08 CHG1, dated June 9, 2005.

4 3. Respondent is AMG, a corporation that operates a mold prevention services business
5 headquartered at 30200 Rancho Viejo Road in San Luis Obispo, California.

6 B. STATUTORY AND REGULATORY BASIS

7 4. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any
8 person who is a producer to violate any of the provisions of Section 7.

9 5. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce any
10 pesticide subject to this Act unless the establishment in which it is produced is registered with
11 the Administrator.

12 6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any
13 person to distribute or sell to any person any pesticide that is adulterated or misbranded.

14 7. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that a pesticide is
15 misbranded if the labeling accompanying it does not contain directions for use which are
16 necessary for effecting the purpose for which the product is intended and if complied with are
17 adequate to protect health and the environment.

18 C. ALLEGED VIOLATIONS

19 8. Respondent is a corporation and therefore fits within the definition of "person" as that
20 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21 9. AMG-X40 (EPA Registration No. 70087-1-82653) is a substance intended for
22 preventing, destroying, repelling, or mitigating any pest and is therefore a "pesticide" as that term
23 is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24 10. Respondent repackaged AMG-X40 as received from the pesticide manufacturer into
25 2 oz. plastic spray bottle dispensers.

26 11. The repackaged AMG-X40 containers were accompanied by labeling that solely
27 contained the names of the Respondent and the pesticide.

1 12. Respondent, by repackaging AMG-X40 and otherwise changing the pesticide's
2 approved container, is a "producer" as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. §
3 136(w) and 40 C.F.R. § 167.3.

4 13. Respondent operates a pesticide-producing facility that is an "establishment" as that
5 term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

6 14. Respondent's pesticide-producing establishment (the "Establishment") is not
7 registered with the Administrator pursuant to Section 7(b) of FIFRA, 7 U.S.C. § 136e(b).

8 15. On December 11, 2006, the California Department of Pesticide Regulation conducted
9 an inspection of Respondent's headquarters and confirmed that Respondent had produced the
10 pesticide AMG-X40 at the unregistered Establishment in calendar year 2006.

11 16. By producing a pesticide in an unregistered establishment in calendar year 2006,
12 Respondent violated Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and therefore violated Section
13 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

14 17. In calendar year 2006, Respondent "distributed or sold," as those terms are defined
15 by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide AMG-X40.

16 18. The labeling accompanying the pesticide AMG-X40 that Respondent distributed or
17 sold in calendar year 2006 failed to include any directions for use, precautionary statements, or
18 first aid statements.

19 19. The absence of these required statements on the labeling resulted in the pesticide
20 AMG-X40 being "misbranded" as that term is defined at Section 2(q)(1)(G) of FIFRA, 7 U.S.C.
21 § 136(q)(1)(G).

22 20. By distributing or selling the misbranded pesticide AMG-X40 in calendar year 2006,
23 Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

24 21. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Civil Monetary Penalty Inflation
25 Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,
26 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be
27 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$6,500 for each
28 offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for

1 FIFRA, dated July 2, 1990, the violations cited above would merit a pre-adjustment civil penalty
2 of \$13,000, given the alleged violations' gravity level, size of business, and applicable gravity
3 adjustments.

4 D. RESPONDENT'S ADMISSIONS

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

12 E. CIVIL ADMINISTRATIVE PENALTY

13 23. In settlement of the violations specifically alleged in Section I.C of this CAFO,
14 Respondent shall pay a civil administrative penalty of ELEVEN THOUSAND AND SEVEN
15 HUNDRED DOLLARS (\$11,700). Respondent shall pay this civil penalty within thirty (30)
16 days of the effective date of this CAFO, shall make this payment by cashier's or certified check
17 payable to the "Treasurer, United States of America," and shall send the check by certified mail,
18 return receipt requested, to the following address:

19 U.S. Environmental Protection Agency, Region IX
20 P.O. Box 371099M
21 Pittsburgh, PA 15251

22 Respondent shall accompany its payment with a transmittal letter identifying the case name, the
23 case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty,
24 Respondent shall send a copy of the check and transmittal letter to the following addresses:

25 Regional Hearing Clerk
26 Office of Regional Counsel (ORC-1)
27 U.S. Environmental Protection Agency, Region IX
28 75 Hawthorne Street
San Francisco, CA 94105

Sharon Bowen
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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

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

25. If Respondent fails to pay the assessed civil administrative penalty of ELEVEN THOUSAND AND SEVEN HUNDRED DOLLARS (\$11,700), as identified in Paragraph 23, by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to

EPA. The amount of the stipulated penalty will be ONE THOUSAND AND THREE HUNDRED DOLLARS (\$1,300), and will be immediately due and payable on the day following the deadline specified in Paragraph 23, together with the initially assessed civil administrative penalty of ELEVEN THOUSAND AND SEVEN HUNDRED DOLLARS (\$11,700), resulting in a total penalty due of THIRTEEN THOUSAND DOLLARS (\$13,000). Failure to pay the civil administrative penalty specified in Paragraph 23 by the deadline specified in that Paragraph may also lead to any or all of the following actions:

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

(2) The U.S. Government may collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40

1 C.F.R. §§ 13(C) and 13(H).

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

5 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.
6 Government may assess interest, administrative handling charges, and nonpayment penalties
7 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
8 civil administrative penalty specified in Paragraph 23 by the deadline specified in that Paragraph.

9 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
10 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
11 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
12 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
13 (30) days of the effective date of this CAFO.

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

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

21 F. CERTIFICATION OF COMPLIANCE

22 26. In executing this CAFO, Respondent certifies that: (1) it is no longer producing any
23 pesticide in an unregistered establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C.
24 § 136j(a)(2)(L); (2) it is no longer selling or distributing any pesticide that is misbranded in
25 violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E); and (3) it has complied with
26 all other FIFRA requirements at all facilities under its control.

27 G. RETENTION OF RIGHTS

28 27. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's

1 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
2 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
3 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
4 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
5 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
6 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
7 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

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

11 H. ATTORNEYS' FEES AND COSTS

12 29. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
13 this proceeding.

14 I. EFFECTIVE DATE

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

18 J. BINDING EFFECT

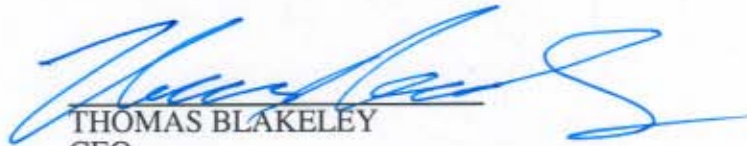
19 31. The undersigned representative of Complainant and the undersigned representative of
20 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
21 of this CAFO and to bind the party he or she represents to this CAFO.

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

1 FOR RESPONDENT AMERICAN MOLD GUARD INC.:

2
3 5-9-07

4 DATE



THOMAS BLAKELEY

CEO

American Mold Guard Inc.

30200 Rancho Viejo Road

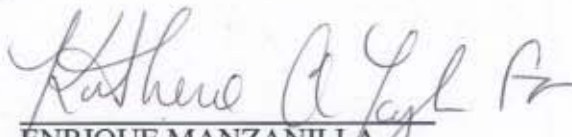
Suite G

San Juan Capistrano, CA 92685

7
8 FOR COMPLAINANT EPA:

9
10 6/11/07

11 DATE



ENRIQUE MANZANILLA

Director, Communities and Ecosystems Division

U.S. Environmental Protection Agency, Region IX

75 Hawthorne Street

San Francisco, California 94105

1 II. FINAL ORDER

2 EPA and American Mold Guard Inc. having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-9-2007-0009) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of ELEVEN
6 THOUSAND AND SEVEN HUNDRED DOLLARS (\$11,700), and comply with the terms and
7 conditions set forth in the Consent Agreement.

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9
10 6-11-07
11 DATE



12 STEVEN JAWGIEL
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-9-2007-009 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 3110 0002 8247 2534), return receipt requested, to:

Mr. Thomas Blakeley
American Mold Guard., Inc.
30200 Rancho Viejo Road, Suite G
San Juan Capistrano, CA 92685

June 12, 2007

DATE

Danielle E Carr

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105