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4 Region IX
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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2008-0021

11)

12 Unelko Corporation,) CONSENT AGREEMENT
AND FINAL ORDER

13)

14 Respondent.)

15 I. CONSENT AGREEMENT

16 Complainant, the Director of the Communities and Ecosystems Division, United States

17 Environmental Protection Agency ("EPA"), Region IX, and Respondent, Unelko Corporation,

18 agree to settle this civil administrative action brought under the Federal Insecticide, Fungicide,

19 and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and consent to the entry of

20 this Consent Agreement and Final Order (the "CAFO").

21 A. AUTHORITY

22 1. Complainant initiated this civil administrative proceeding for the assessment of a civil

23 penalty against Respondent under FIFRA pursuant to Section 14(a) of FIFRA, 7 U.S.C. §

24 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of

25 Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing

26 ("the Complaint") against Respondent on September 24, 2008. Pursuant to those same

27 authorities, an Amended Complaint and Notice of Opportunity for Hearing (the "Amended

28

1 Complaint”) was subsequently issued by Complainant against Respondent on November 17,
2 2008. The Amended Complaint supersedes the Complaint in its entirety.

3 2. The Amended Complaint alleges that Respondent violated (1) Section 12(a)(1)(A) of
4 FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing unregistered pesticides;(2) Section
5 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(I), by refusing to prepare, maintain, or submit
6 any records required by or under Sections 5, 7, 8, 11, or 19; and (3) Section 12(a)(2)(I) of FIFRA,
7 7 U.S.C. § 136j(a)(2)(I), by violating an order issued under Section 13.

8 3. Complainant and Respondent have agreed to resolve this civil administrative
9 proceeding arising under FIFRA by executing this CAFO.

10 B. RESPONDENT’S ADMISSIONS

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

18 C. CIVIL ADMINISTRATIVE PENALTY

19 5. In settlement of the violations specifically alleged in the Amended Complaint,
20 Respondent shall pay a civil administrative penalty of SIXTY THOUSAND, FOUR HUNDRED,
21 AND FIFTY DOLLARS (\$60,450). Respondent shall pay this assessed civil penalty plus interest
22 according to the terms of the CAFO and Exhibit I, attached thereto, which specifies an installment
23 plan and payment schedule. Payment shall be made by cashier’s or certified check payable to the
24 “Treasurer, United States of America,” and shall be sent to the following address:

25 U.S. Environmental Protection Agency
26 Fines and Penalties
27 Cincinnati Finance Center
28 P.O. Box 979077
St. Louis, MO 63197-9000

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

4
5 Regional Hearing Clerk
6 Office of Regional Counsel (ORC-1)
7 U.S. Environmental Protection Agency, Region IX
8 75 Hawthorne Street
9 San Francisco, CA 94105

10
11 Julie Jordan
12 Communities and Ecosystems Division (CED-5)
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

16
17 Edgar P. Coral
18 Office of Regional Counsel (ORC-2)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

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

26
27 7. If Respondent fails to pay the assessed civil administrative penalty of SIXTY
28 THOUSAND, FOUR HUNDRED, AND FIFTY DOLLARS (\$60,450) plus interest, as identified
in Paragraph 5, by the deadlines specified in Exhibit 1, then Respondent shall pay to EPA the
remaining balance of the civil administrative penalty specified in Paragraph 5 along with a
stipulated penalty. The amount of the stipulated penalty will be FORTY THOUSAND AND
THREE HUNDRED DOLLARS (\$40,300), and, together with the remaining balance of the civil
administrative penalty specified in Paragraph 5, will be immediately due and payable upon the
missed deadline. Failure to pay the civil administrative penalty specified in Paragraph 5 by the
deadlines specified in Exhibit 1 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

1 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
2 collection proceeding.

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

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

11 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
12 Government may assess interest, administrative handling charges, and nonpayment penalties
13 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
14 civil administrative penalty specified in Paragraph 5 by the deadlines specified in Exhibit 1.

15 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
16 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
17 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
18 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
19 (30) days of the effective date of this CAFO.

20 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
21 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
22 either actual or average cost incurred (including both direct and indirect costs), for every month in
23 which any portion of the assessed penalty is more than thirty (30) days past due.

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

27 D. CERTIFICATION OF COMPLIANCE

28 8. In executing this CAFO, Respondent certifies that it is in compliance with all FIFRA

1 requirements at all facilities under its control.

2 E. RETENTION OF RIGHTS

3 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
4 liabilities for federal civil penalties for the violations and facts specifically alleged in the
5 Amended Complaint related to the products identified in the Amended Complaint. Nothing in
6 this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of
7 any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not
8 specifically alleged in the Amended Complaint; or (ii) any criminal liability. EPA specifically
9 reserves any and all authorities, rights, and remedies available to it (including, but not limited to,
10 injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or
11 any violation not specifically alleged in the Amended Complaint.

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

15 F. ATTORNEYS' FEES AND COSTS

16 11. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this
17 proceeding.

18 G. EFFECTIVE DATE

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

22 H. BINDING EFFECT

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

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

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FOR RESPONDENT UNELKO CORPORATION:

12/3/08
DATE


STEVEN OHLHAUSEN
President
Unelko Corporation
14641 N. 74th Street
Scottsdale, AZ 85260-2485

FOR COMPLAINANT EPA:

12/16/08
DATE


KATHERINE A. TAYLOR
Associate Director for Agriculture
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 Unelko Corporation having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008-0021) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of SIXTY
5 THOUSAND, FOUR HUNDRED, AND FIFTY DOLLARS (\$60,450), and comply with the
6 terms and conditions set forth in the Consent Agreement and Exhibit 1.
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8
9 12/17/08
10 DATE

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

EXHIBIT 1

INSTALLMENT PAYMENT AND INTEREST SCHEDULE
In re Unelko Corporation

Payment Number	Installment Payment Due	Principal	Interest (At 3% Annum)
1	\$15,112.50	\$15,112.50	\$0.00
2	\$15,339.75	\$14,999.72	\$340.03
3	\$15,339.75	\$15,112.22	\$227.53
4	\$15,339.75	\$15,225.56	\$114.19
Totals	\$61,131.75	\$60,450.00	\$681.75

1st Installment: \$15,112.50 (Due within 30 days of the effective date of the Consent Agreement and Final Order)

2nd Installment: \$15,339.75 (Due within 120 days of the effective date of the Consent Agreement and Final Order)

3rd Installment: \$15,339.75 (Due within 210 days of the effective date of the Consent Agreement and Final Order)

4th Installment: \$15,339.75 (Due within 300 days of the effective date of the Consent Agreement and Final Order)

Total Payment: \$61,131.75

CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2008-0021, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7008 1140 0002 6858 3494), return receipt requested, addressed to the following address:

Steven Ohlhausen
President
Unelko Corporation
14641 N. 74th Street
Scottsdale, AZ 85260-2485

Date: 12/17/2008

By: 

DANIELLE CARR
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143