

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

FILED

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U.S. EPA REGION IX  
REGIONAL HEARING CLERK

In the matter of:	)	Docket No. FIFRA-09-2011-0008
	)	
Fertizona,	)	
	)	CONSENT AGREEMENT AND
Respondent.	)	FINAL ORDER PURSUANT TO
	)	40 C.F.R. §§ 22.13(b) AND 22.18(b)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX and Fertizona, ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This administrative proceeding is for the assessment of a civil administrative penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), against Respondent for failure to complete and submit an annual pesticide production report for the 2009 reporting year by March 1, 2010 for EPA Establishment Number 51092-AZ-007 and for the 2010 reporting year by March 1, 2011 for EPA Establishment Number 51092-AZ-004 , as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the applicable regulation, 40 C.F.R. § 167.85

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division of EPA Region IX. By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator of EPA delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By Regional Order Number 1255.08 CHG1, dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Associate Director for Agriculture, Communities and Ecosystems Division.

3. Respondent is a corporation that owns, operates, controls and/or is otherwise responsible for facilities located at 17102 W Olive Ave., Waddell, AZ 85355 and at 4257 W US

Highway 70, Thatcher, AZ 85552.

**B. APPLICABLE STATUTORY AND REGULATORY SECTIONS**

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual report to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

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

**C. ALLEGED VIOLATION**

8. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

9. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 17102 W Olive Ave. in Waddell, Arizona and for a facility located at 4257 W US Highway 70, Thatcher, AZ 85552 (hereinafter “Facilities”).

10. Respondent has registered the Facilities as pesticide producing establishments in compliance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

11. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.

12. Respondent failed to complete and submit an annual pesticide report for the 2007 production year by March 1, 2008, for the Thatcher, AZ facility, as required by Section 7(c)(1)

of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and was issued a Notice of Warning for this violation on August 1, 2008.

13. Respondent also failed to complete and submit an annual pesticide production report for the 2009 reporting year by March 1, 2010, for the Thatcher, AZ facility, and for the 2010 reporting year by March 1, 2011, for the Waddell, AZ facility, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.

14. Consequently, Respondent's failure to complete and submit an annual pesticide production report for the 2009 reporting year by March 1, 2010 and for the 2010 reporting year by March 1, 2011 constitute violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), that are subject to a penalty under the May 2010 Enforcement Response Policy for FIFRA Section 7(c).

#### D. RESPONDENT'S ADMISSIONS

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

#### E. CIVIL ADMINISTRATIVE PENALTY

16. In settlement of the violation specifically alleged in Section I.C. of this CAFO, Respondent shall pay a civil administrative penalty of SEVEN THOUSAND NINE HUNDRED AND TWENTY DOLLARS (\$7,920). Respondent shall pay the full amount of this penalty within thirty (30) calendar days after the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire Transfers:

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

Overnight Mail:

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

ACH (also known as REX or remittance express):

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

On Line Payment:

This payment option can be accessed from the information below:  
[www.pay.gov](http://www.pay.gov)  
Enter "sfol.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.

The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or proof of payment and copy of the transmittal letter to the following addresses:

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street

San Francisco, CA 94105

Glenda Dugan  
Pesticides Office (CED-5)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

17. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.

18. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 15 by the date specified in Paragraph 15, then (i) the entire balance of the unpaid penalty amount shall become due immediately and (ii) Respondent shall, upon demand from EPA Region IX, pay (in addition to the unpaid balance of the civil administrative penalty) a stipulated penalty of \$1,980, the amount of the 20% "good faith" reduction. In addition, failure to pay in full the civil administrative penalty by its due date may lead to any or all of the following actions:

a.. The debt being referred 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. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected 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 Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.14 and 13.17.

19. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13, interest,

penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay in full the civil administrative penalty by its due date. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins, 40 C.F.R. § 13.12(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum, 40 C.F.R. § 13.12(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs, 40 C.F.R. § 13.12(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

#### F. CERTIFICATION OF COMPLIANCE

20. In executing this CAFO, Respondent certifies that it has submitted its annual pesticide production reports for the 2009 and 2010 production years to the U.S. EPA Region IX Pesticides Office.

#### G. RETENTION OF RIGHTS

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

22. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,

and permits.

**H. ATTORNEYS' FEES AND COSTS**

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

**I. EFFECTIVE DATE**

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

**J. BINDING EFFECT**

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

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

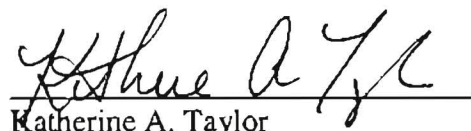
**FOR RESPONDENT, FERTIZONA:**

7/14/11  
DATE

  
Mr. James R. Compton, Jr.  
President, Fertizona

**FOR COMPLAINANT, EPA REGION IX:**

8/18/11  
DATE

  
Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and Fertizona, having entered into the forgoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2011-~~0818~~) be entered, and Respondent shall pay a civil administrative penalty in the amount of SEVEN THOUSAND NINE HUNDRED AND TWENTY DOLLARS (\$7,920) in accordance with the terms set forth in the Consent Agreement.

08/19/11  
DATE

  
Steven Jawgiel  
Regional Judicial Officer  
U.S. EPA, Region IX



CERTIFICATION

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket Number FIFRA-09-2011-0018, has been filed with the Regional Hearing Clerk and a copy was sent, certified mail (7007 0710 0003 6240 3114) to:

Mr. James R. Compton, Jr., President  
Fertizona  
2850 S. Peart Road  
Casa Grande, AZ 85193

\_\_\_\_\_  
DATE

\_\_\_\_\_  
BRYAN GOODWIN  
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the originals of the fully executed Expedited Settlement Agreements against **Fertizona (Docket #: FIFRA-09-2011-0018)** 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:

Mr. James R. Compton, Jr.  
President  
Fertizona  
2850 S. Peart Road  
Casa Grande, AZ 85193

**CERTIFIED MAIL NUMBER:** 7007-0710-0003-6240-3114

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

Carol Bussey  
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

8/23/11  
Date



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

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Date: AUG 23 2011

Mr. James R. Compton, Jr., President  
Fertizona  
2850 S. Peart Road  
Casa Grande, AZ 85193

Subject: Fertizona  
Consent Agreement and Final Order  
Docket No. FIFRA-09-2011-0018

Dear Mr. Compton:

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 to be received within 30 days of the effective date (filing date) of the CAFO. Directions for sending payment can be found in paragraph 16 (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 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: Carol Bussey, Office of Regional Counsel