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Regional Counsel

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4 U.S. Environmental Protection Agency  
Region IX  
5 75 Hawthorne Street  
San Francisco, CA 94105  
6 (415) 972-3898

**\*\* FILED \*\***  
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U.S.EPA - Region 09

7 UNITED STATES  
8 ENVIRONMENTAL PROTECTION AGENCY  
9 REGION IX

10 In the matter of:

) Docket No. FIFRA-09-2018-00 05

11 )  
12 Navajo Mesa Farms, L.L.C., )

) CONSENT AGREEMENT  
) AND FINAL ORDER  
) pursuant to 40 C.F.R. §§ 22.13(b),  
) 22.18(b)(2), and 22.18(b)(3)  
)

13 Respondent.  
14 \_\_\_\_\_

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Navajo  
17 Mesa Farms, L.L.C. (“Respondent”) agree to settle this matter and consent to the entry of this  
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and  
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).  
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(2) of the Federal  
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(2), for the assessment  
24 of a civil administrative penalty against Respondent for the use of registered pesticides in  
25 manners inconsistent with their labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §  
26 136j(a)(2)(G), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

27 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has  
28 been duly delegated the authority to commence and settle an enforcement action in this matter.

1           3. Respondent is Navajo Mesa Farms, L.L.C., an Idaho corporation with headquarter  
2 offices located at 2662 Lakeview Road in American Falls, Idaho, 83211.

3                                   B. STATUTORY AND REGULATORY BASIS

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

6           5. Pursuant to 40 C.F.R. § 170.122, when workers are on an agricultural establishment  
7 and a pesticide has been applied on the establishment in the production of agricultural plants  
8 within the past 30 days, the agricultural employer shall display, in accordance with this section,  
9 specific information about the pesticide, including: (1) the location and description of the treated  
10 area; (2) the product name, EPA registration number, and active ingredient(s) of the pesticide; (3)  
11 the time and date the pesticide is to be applied; and (4) the restricted-entry interval for the  
12 pesticide.

13           6. Pursuant to 40 C.F.R. § 170.135, when workers are on an agricultural establishment  
14 and, within the last 30 days, a pesticide covered by this subpart has been applied on the  
15 establishment or a restricted-entry interval has been in effect, the agricultural employer shall  
16 display, in accordance with this section, pesticide safety information on or near a pesticide safety  
17 poster in a central location where it can be readily seen and read by workers.

18           7. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. Part 170,  
19 as referenced on the pesticide label, and who fails to perform that duty, violates Section  
20 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section  
21 14 of FIFRA, 7 U.S.C. § 136l.

22                                   C. ALLEGED VIOLATIONS

23           8. Respondent is a corporation and therefore fits within the definition of “person” as that  
24 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject to  
25 FIFRA and the implementing regulations promulgated thereunder.

26           9. At all times relevant to this matter, Respondent operated a facility (the “Facility”)  
27 located at 9986 Highway #371 NM Road in Farmington, New Mexico.

1           10. This Facility is a “farm” and therefore an “agricultural establishment” as those terms  
2 are defined at 40 C.F.R. § 170.3.

3           11. At all times relevant to this matter, the individuals employed by Respondent for the  
4 performance of activities relating to the production of agricultural plants at the Facility were  
5 “workers” as that term is defined at 40 C.F.R. § 170.3.

6           12. At all times relevant to this matter, Respondent was an “agricultural employer” as  
7 that term is defined at 40 C.F.R. § 170.3.

8           13. Reglone Dessicant (EPA Reg. No. 100-1061), Super Tin 80WP (EPA Reg. No.  
9 70506-214), and Vapam HL Soil Fumigant (EPA Reg. No. 5481-468) are registered “pesticides”  
10 as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

11           14. At all times relevant to this matter, the entire Facility (including its potato crop)  
12 represented a “treated area” as that term is defined at 40 C.F.R. § 170.3.

13           15. On or about September 27, 2016, Respondent used, “in a manner inconsistent with  
14 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the  
15 registered pesticides Reglone Dessicant and Super Tin 80WP at the Facility. Specifically,  
16 Respondent failed to provide workers with specific information about the applications of these  
17 pesticides at the Facility within the past 30 days. Pursuant to 40 C.F.R. § 170.122, these two  
18 failures represent the use of registered pesticides in a manner inconsistent with their labeling and  
19 are thus two violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

20           16. On or about September 27, 2016, Respondent used, “in a manner inconsistent with  
21 [their] labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the  
22 registered pesticides Reglone Dessicant and Super Tin 80WP at the Facility. Specifically,  
23 Respondent failed to post pesticide safety information in a central location after these pesticides  
24 had been applied at the Facility within the preceding 30 days. Pursuant to 40 C.F.R. § 170.135,  
25 these two failures represent the use of registered pesticides in a manner inconsistent with their  
26 labeling and are thus two violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

27           17. On or about April 2, 2013, Respondent used, “in a manner inconsistent with its  
28 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered

1 pesticide Vapam HL at the Facility. Specifically, in a manner not permitted by the pesticide  
2 Vapam HL's labeling, Respondent failed to verify that handlers of this soil fumigant were fit-  
3 tested and fit-checked for proper use of a respirator prior to the pesticide's application.

4 18. On or about April 2, 2013, Respondent used, "in a manner inconsistent with its  
5 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered  
6 pesticide Vapam HL at the Facility. Specifically, in a manner not permitted by the pesticide  
7 Vapam HL's labeling, Respondent failed to post fumigant buffer zone signs to prevent bystander  
8 access to the zone of pesticidal application.

9 19. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), as amended by the Civil Monetary  
10 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response  
11 Policy dated December 2009 provide for a penalty of up to \$2,795 for each violation.

#### 12 D. RESPONDENT'S ADMISSIONS

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

#### 20 E. CIVIL ADMINISTRATIVE PENALTY

21 21. In final settlement of the violations of FIFRA specifically alleged in Section I.C of  
22 this CAFO, Respondent shall pay a civil administrative penalty of SIX THOUSAND AND  
23 SEVENTY-TWO DOLLARS (\$6,072). Respondent shall pay this civil penalty no later than  
24 thirty (30) calendar days from the effective date of this CAFO. The civil penalty shall be paid by  
25 remitting a certified or cashier's check, including the name and docket number of this case, for  
26 the amount, payable to "Treasurer, United States of America," (or be paid by one of the other  
27 methods listed below) and sent as follows:  
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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  
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Environmental Protection Agency  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
ATTN Box 979077  
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver  
ABA = 051036706  
Account = 31006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Physical Location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)  
Enter "SFO 1.1" 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.

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2 Concurrently, a copy of each check, or notification that the payment has been made by one of the  
3 other methods listed above, including proof of the date payment was made, shall be sent with a  
4 transmittal letter, indicating Respondent's name, the case title, and docket number, to the  
5 following addresses:

6  
7 Regional Hearing Clerk  
8 Office of Regional Counsel (ORC-1)  
9 U.S. Environmental Protection Agency, Region IX  
10 75 Hawthorne Street  
11 San Francisco, CA 94105

12  
13 Julie Jordan  
14 SDWA/FIFRA Section  
15 Enforcement Division (ENF-4)  
16 U.S. Environmental Protection Agency, Region IX  
17 75 Hawthorne Street  
18 San Francisco, CA 94105

19  
20 Edgar P. Coral  
21 Office of Regional Counsel (ORC-2)  
22 U.S. Environmental Protection Agency, Region IX  
23 75 Hawthorne Street  
24 San Francisco, CA 94105

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

29  
30 23. If Respondent fails to pay the assessed civil administrative penalty of SIX  
31 THOUSAND AND SEVENTY-TWO DOLLARS (\$6,072) as identified in Paragraph 21 by the  
32 deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to EPA  
33 upon EPA's written request. The amount of the stipulated penalty will be ONE THOUSAND,  
34 TWO HUNDRED, AND FOURTEEN T DOLLARS (\$1,214) and will be immediately due and  
35 payable upon EPA's written request, together with the initially assessed civil administrative  
36 penalty of SIX THOUSAND AND SEVENTY-TWO DOLLARS (\$6,072), resulting in a total  
37 penalty due of SEVEN THOUSAND, TWO HUNDRED, AND EIGHTY-SIX DOLLARS  
38 (\$7,286). Failure to pay the civil administrative penalty specified in Paragraph 21 by the  
39 deadline specified in that Paragraph may also lead to any or all of the following actions:

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

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

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

14 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
15 Government may assess interest, administrative handling charges, and nonpayment penalties  
16 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
17 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

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

23 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
24 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
25 either actual or average cost incurred (including both direct and indirect costs), for every month  
26 in which any portion of the assessed penalty is more than thirty (30) days past due.

27 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)  
28 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,

1 may be assessed on all debts more than ninety (90) days delinquent.

2 F. CERTIFICATION OF COMPLIANCE

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

6 G. RETENTION OF RIGHTS

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

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

18 H. ATTORNEYS' FEES AND COSTS

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

21 I. EFFECTIVE DATE

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

25 J. BINDING EFFECT

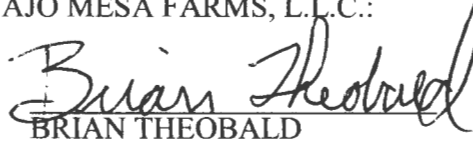
26 29. The undersigned representative of Complainant and the undersigned representative of  
27 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
28 of this CAFO and to bind the party he or she represents to this CAFO.



1           30. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
2 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
3 and assigns.  
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7           FOR RESPONDENT NAVAJO MESA FARMS, L.L.C.:

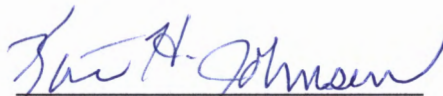
8       1/25/18  
9       DATE



BRIAN THEOBALD  
General Manager  
Navajo Mesa Farms, L.L.C.  
2662 Lakeview Road  
American Falls, ID 83211

10  
11  
12  
13           FOR COMPLAINANT EPA:

14       2/20/18  
15       DATE



KATHLEEN H. JOHNSON  
Director  
Enforcement Division  
U.S. Environmental Protection Agency, Region IX

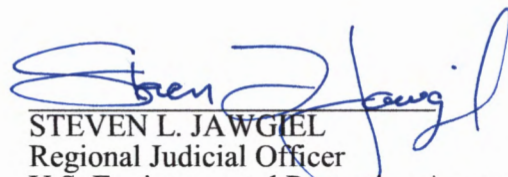
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II. FINAL ORDER

EPA and Navajo Mesa Farms, L.L.C., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2018-0005) be entered, and Respondent shall pay a civil administrative penalty in the amount of SIX THOUSAND AND SEVENTY-TWO DOLLARS (\$6,072), and comply with the terms and conditions set forth in the Consent Agreement.

02/23/18  
DATE

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

CERTIFICATE OF SERVICE

I hereby certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2018- 0005**) 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:

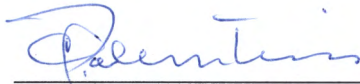
A copy was mailed via CERTIFIED MAIL to:

BRIAN THEOBALD  
General Manager  
Navajo Mesa Farms, L.L.C.  
2662 Lakeview Road  
American Falls, ID 83211

**CERTIFIED MAIL NUMBER: 7015 0640 0001 1118 0700**

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

Ed Coral  
Assistant Regional Counsel (ORC-2)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105



*FOR* : \_\_\_\_\_  
Regional Hearing Clerk  
U.S. EPA, Region IX

*2/27/18*

\_\_\_\_\_  
Date