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U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK

1 NANCY J. MARVEL
Regional Counsel
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Assistant Regional Counsel
U. S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
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6

7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2008-0025
11)
12 Abtech Industries, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.)
14

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, Abtech Industries, Inc.,
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 29, 2008.

27 2. The Complaint alleges that Respondent violated Section 12(a)(1)(A) of FIFRA, 7
28 U.S.C. § 136j(a)(1)(A), by selling or distributing unregistered pesticides.

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

3 B. RESPONDENT'S ADMISSIONS

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

11 C. CIVIL ADMINISTRATIVE PENALTY

12 5. In settlement of the violations specifically alleged in the Complaint, Respondent shall
13 pay a civil administrative penalty of FOUR THOUSAND AND FIVE HUNDRED DOLLARS
14 (\$4,500). Respondent shall pay this assessed civil penalty plus interest according to the terms of
15 the CAFO and Exhibit I, attached thereto, which specifies an installment plan and payment
16 schedule. Payment shall be made by cashier's or certified check payable to the "Treasurer, United
17 States of America," and shall be sent to the following address:

18 U.S. Environmental Protection Agency
19 Fines and Penalties
20 Cincinnati Finance Center
21 P.O. Box 979077
22 St. Louis, MO 63197-9000

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

26 Regional Hearing Clerk
27 Office of Regional Counsel (ORC-1)
28 U.S. Environmental Protection Agency, Region IX
29 75 Hawthorne Street
30 San Francisco, CA 94105

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

4 Edgar P. Coral
5 Office of Regional Counsel (ORC-2)
6 U.S. Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105

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

10 7. If Respondent fails to pay the assessed civil administrative penalty of FOUR
11 THOUSAND AND FIVE HUNDRED DOLLARS (\$4,500) plus interest, as identified in
12 Paragraph 5, by the deadlines specified in Exhibit 1, then Respondent shall pay to EPA (upon
13 EPA's written request) the remaining balance of the civil administrative penalty specified in
14 Paragraph 5 along with a stipulated penalty. The amount of the stipulated penalty will be TWO
15 THOUSAND, TWO HUNDRED, AND FIFTY DOLLARS (\$2,250), and, together with the
16 remaining balance of the civil administrative penalty specified in Paragraph 5, will be immediately
17 due and payable upon the missed deadline. Failure to pay the civil administrative penalty specified
18 in Paragraph 5 by the deadlines specified in Exhibit 1 may also lead to any or all of the following
19 actions:

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

25 (2) The U.S. Government may collect the debt by administrative offset
26 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
27 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
28 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 5 by the deadlines specified in Exhibit

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 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
16 either actual or average cost incurred (including both direct and indirect costs), for every month in
17 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, may
20 be assessed on all debts more than ninety (90) days delinquent.

21 **D. CERTIFICATION OF COMPLIANCE**

22 8. In executing this CAFO, Respondent certifies that, to the best of its knowledge and
23 belief: (1) it is not selling or distributing unregistered pesticides in violation of Section
24 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and (2) it has complied with all other FIFRA
25 requirements at all facilities under its control.

26 **E. RETENTION OF RIGHTS**

27 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
28 liabilities for federal civil penalties for the violations and facts specifically alleged in the

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

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

10 F. ATTORNEYS' FEES AND COSTS

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

13 G. EFFECTIVE DATE

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

17 H. BINDING EFFECT

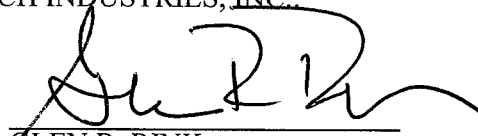
18 13. The undersigned representative of Complainant and the undersigned representative of
19 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions
20 of this CAFO and to bind the party he or she represents to this CAFO.

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

1 FOR RESPONDENT ABTECH INDUSTRIES, INC.:

2
3 1/7/10

4 DATE



GLEN R. RINK

President

Abtech Industries, Inc.

4110 N. Scottsdale Rd., Suite 235

Scottsdale, AZ 85251

7 FOR COMPLAINANT EPA:

8
9 1/22/09

10 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 Abtech Industries, Inc. having entered into the foregoing Consent Agreement,
3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008-0025) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of FOUR
5 THOUSAND AND FIVE HUNDRED DOLLARS (\$4,500), and comply with the terms and
6 conditions set forth in the Consent Agreement and Exhibit 1.
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8
9 01/25/2010
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 Abtech Industries, Inc.

Payment Number	Installment Payment Due	Principal	Interest (At 3% Annum)
1	\$2,250.00	\$2,250.00	\$0.00
2	\$2,272.19	\$2,250.00	\$22.19
Totals	\$4,522.19	\$4,500.00	\$22.19

1st Installment: \$2,250.00 (Due within 30 days of the effective date of the Consent Agreement and Final Order)

2nd Installment: \$2,272.19 (Due within 120 days of the effective date of the Consent Agreement and Final Order)

Total Payment: \$4,522.19

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Abtech Industries (FIFRA-09-2008-0025), with final order dated 01/25/2010, has been filed with the Regional Hearing Clerk, and a copy was served on Respondent, Counsel for Respondent, and Counsel for EPA, as indicated below:

BY FIRST CLASS MAIL:

(With Return Receipt)

Respondent -

Mr. Glenn Rink
Abtech Industries Inc.
4110 North Scottsdale Road
Scottsdale, AZ 85251

BY FIRST CLASS MAIL:

Counsel for
Respondent -

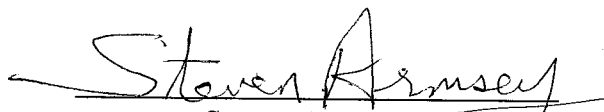
Dalva Moellenberg, Esq.
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, AZ 85016

HAND DELIVERED:

Complainant -
(By Counsel)

Edgar Coral, Esq.
Office of Regional Counsel
ENVIRONMENTAL PROTECTION AGENCY
75 Hawthorne Street
San Francisco, CA. 94105

Dated at San Francisco, Calif., this 25th day of January, 2010.


Steven Armsey
Regional Hearing Clerk
EPA, Region 9