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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. FIFRA-10-2014-0054
PRIMELAND COOPERATIVES,	)	
	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
	)	
Respondent	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Primeland Cooperatives ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 1st Avenue West, Nezperce, Idaho, 83543.

3.2. Respondent is an “applicator not included in 14(a)(1) who holds or applies registered pesticides, or uses dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served” as described in Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2) as defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

3.3. On May 17, 2012, Respondent applied the pesticide “E-99” (EPA Reg. No. 1381-195) to a field (“target field”) located in Lewis County, Nezperce, Idaho at GPS Marker: 46.267134, -116.274508.

3.4. The active ingredient in E-99 is 2,4-Dichlorophenoxyacetic acid, butoxyethyl ester ("2,4-D").

3.5. On June 5, 2012 the owner of a field adjacent to the target field reported plant damage to his canola field. The adjacent field is located at GPS Marker: 46.266743, -116.277646.

3.6. On June 7, 2012, an inspector for EPA conducted a compliance inspection of the adjacent field. The inspector observed and took vegetation samples of the damaged canola plants.

3.7. The vegetation samples were analyzed by the Idaho Food Quality Assurance Laboratory (IFQAL).

3.8. IFQAL analysis indicated that there were traces of 2,4-D present in two of the vegetation samples taken from the adjacent property.

3.9. During Respondent's application conducted on May 17, 2012, described in paragraph 3.3 above, the pesticide was applied in a way that allowed 2,4-D to drift off-site to the adjacent property.

3.10. The EPA approved label for E-99 states in part:

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#### **Susceptible Plants**

Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption. Susceptible crops include, but are not limited to, cotton, okra, flowers, fruit trees, grapes (in growing stage), fruit trees (foliage), soybeans (vegetative stage),

ornamentals, sunflowers, tomatoes, beans, and other vegetables, or tobacco. Small amounts of spray drift that may not be visible may injure susceptible broadleaf plants.

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

3.12. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying the pesticide E-99 on May 17, 2012, inconsistent with its label when it applied the pesticide in such a way that it drifted to plants or a crop that might be damaged.

3.13. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), this violation subjects Respondent to the assessment of a civil penalty.

3.14. On September 14, 2012, Respondent was assessed a civil penalty for prior violations of FIFRA.

3.15. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$750 for a first-time violation and \$1,100 for subsequent violations, per product, for pesticides that are non-classified or classified as general use.

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. Respondent agrees that this settlement will be considered prior history of noncompliance for purposes of assessing penalties in any future enforcement actions brought by EPA against Respondent.

4.4. EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$640.

4.5. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.4 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.6. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.7. Respondent must serve photocopies of the check described in Paragraph 4.6 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Derrick Terada  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.8. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect any unpaid penalty

under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136I(a)(5), together with interest, handling charges, and nonpayment penalties described below.

4.9. If Respondent fails to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.9.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.9.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

4.9.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on portion of the assessed penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.4, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. Each party shall bear its own costs and attorneys fees in bringing or defending this action.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

14 April 2014

Nick Braemelung, Safety & Compliance Manager

Name, Position  
Primeland Cooperatives

DATED:

FOR COMPLAINANT:

May 6, 2014

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

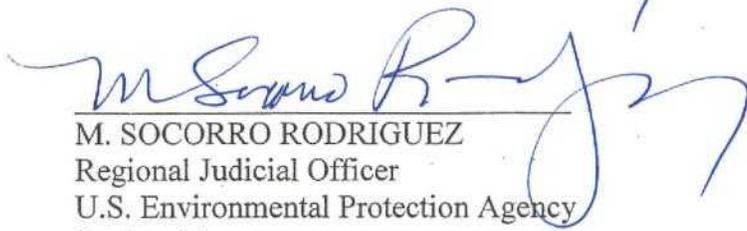
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 8<sup>th</sup> day of May 2014

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**Certificate of Service**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Primeland Cooperatives, Docket No.: FIFRA-10-2014-0054** was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

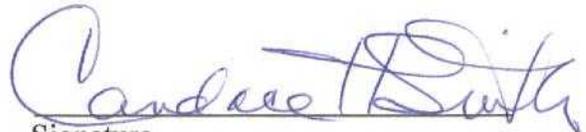
The undersigned certifies that a true and correct copy of the document was delivered to:

Juliane Matthews  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Nick Broemeling  
Primeland Cooperatives  
1200 Snake river Ave.  
Lewiston, Idaho 83501

DATED this 9<sup>th</sup> day of May, 2014

  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10