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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:

Docket No. FIFRA-09-2008- 0024

11 Bug Stop Pest Control d/b/a Do It
12 Yourself Pest & Weed Control,

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 Bug Stop
17 Pest Control d/b/a Do It Yourself Pest & Weed Control ("Bug Stop Pest Control" or the
18 "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and
19 Final Order ("CAFO").
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of
24 a civil administrative penalty against Respondent for the sale and/or distribution of a registered
25 pesticide whose composition differed from the composition represented in the registration in
26 violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), and for the production of a
27 pesticide in an unregistered establishment in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C.
28 § 136j(a)(2)(L).

1 2. Complainant is the Associate Director for Agriculture of the Communities and
2 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional
3 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation
4 Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further
5 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture
6 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,
7 dated June 9, 2005.

8 3. Respondent is Bug Stop Pest Control, a corporation headquartered at 3215 East
9 Thunderbird Road in Phoenix, Arizona.

10 B. STATUTORY AND REGULATORY BASIS

11 4. Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C), makes it unlawful for any
12 person to distribute or sell to any person any registered pesticide the composition of which differs
13 at the time of its distribution or sale from its composition as described in the statement required
14 in connection with its registration under Section 3.

15 5. Section 3(c)(1)(D) of FIFRA, 7 U.S.C. § 136a(c)(1)(D), provides that each registration
16 for a pesticide shall contain a statement that includes the complete formula of the pesticide.

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

19 7. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce a
20 pesticide subject to FIFRA in any State unless the establishment in which it is produced is
21 registered with the EPA.

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).

25 9. “Methrin P.C.” (EPA Registration No. 4-350-60014) is a substance intended for
26 preventing, destroying, repelling, or mitigating any pest and is therefore a “pesticide” as that term
27 is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

1 10. On or about March 13, 2007, Respondent “distributed or sold,” as those terms are
2 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide “Methrin P.C.” by holding
3 and offering it for sale to the general public.

4 11. Laboratory analysis performed by the Arizona Department of Agriculture’s State
5 Agricultural Laboratory determined that the “Methrin P.C.” “distributed or sold” on or about
6 March 13, 2007 contained 39.03% active ingredient (permetrin) rather than the 13.03% active
7 ingredient (permetrin) represented in its registration.

8 12. By distributing or selling the registered pesticide “Methrin P.C.” on or about March
9 13, 2007, the composition of which differed at the time of its distribution or sale from that
10 represented in its registration, Respondent violated Section 12(a)(1)(C) of FIFRA, 7 U.S.C. §
11 136j(a)(1)(C).

12 13. At all times relevant to this CAFO, Respondent manufactured the registered pesticide
13 “Methrin P.C.” and is therefore a “producer” as that term is defined in Section 2(w) of FIFRA, 7
14 U.S.C. § 136(w).

15 14. At all times relevant to this CAFO, Respondent, by manufacturing “Methrin P.C.,”
16 operated a pesticide-producing facility that is an “establishment” as that term is defined by
17 Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

18 15. At all times relevant to this CAFO, Respondent’s pesticide-producing establishment
19 did not have an EPA pesticide production establishment number required pursuant to Section
20 7(a) of FIFRA, 7 U.S.C. § 136e(a).

21 16. By failing to register with EPA the pesticide production establishment in which the
22 pesticide “Methrin P.C.” was manufactured, Respondent violated Section 7(a) of FIFRA, 7
23 U.S.C. § 136e(a).

24 17. By violating Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), Respondent violated Section
25 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

26 18. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Civil Monetary Penalty Inflation
27 Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,
28 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be

1 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$6,500 for each
2 offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for
3 FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the
4 violations cited above would merit a pre-adjustment civil penalty of \$7,700, given the alleged
5 violations' gravity level, size of business, and applicable gravity adjustments.

6 D. RESPONDENT'S ADMISSIONS

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

14 E. CIVIL ADMINISTRATIVE PENALTY

15 20. In settlement of the violations specifically alleged in Section I.C of this CAFO,
16 Respondent shall pay a civil administrative penalty of FIVE HUNDRED DOLLARS (\$500).
17 Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO.
18 Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of
19 America," and shall be sent to the following address:

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

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

29
30 Regional Hearing Clerk
31 Office of Regional Counsel (ORC-1)
32 U.S. Environmental Protection Agency, Region IX
33 75 Hawthorne Street

1 San Francisco, CA 94105

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

7 Edgar P. Coral
8 Office of Regional Counsel (ORC-2)
9 U.S. Environmental Protection Agency, Region IX
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 21. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
13 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
14 use such payment as a tax deduction.

15 22. If Respondent fails to pay the assessed civil administrative penalty of FIVE
16 HUNDRED DOLLARS (\$500), as identified in Paragraph 20, by the deadline specified in that
17 Paragraph, then Respondent shall also pay a stipulated penalty to EPA. The amount of the
18 stipulated penalty will be TWO HUNDRED AND FIFTY DOLLARS (\$250), and will be
19 immediately due and payable on the day following the deadline specified in Paragraph 20,
20 together with the initially assessed civil administrative penalty of FIVE HUNDRED DOLLARS
21 (\$500), resulting in a total penalty due of SEVEN HUNDRED AND FIFTY DOLLARS (\$750).
22 Failure to pay the civil administrative penalty specified in Paragraph 20 by the deadline specified
23 in that Paragraph may also lead to any or all of the following actions:

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

(2) The U.S. Government may collect the debt 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 U.S. Government), which includes, but is not
limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40

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 20 by the deadline specified in that Paragraph.

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
17 in 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,
20 may be assessed on all debts more than ninety (90) days delinquent.

21 F. CERTIFICATION OF COMPLIANCE

22 23. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or
23 distributing any registered pesticide whose composition differs from that represented in the
24 registration in violation of Section 12(a)(1)(C) of FIFRA, 7 U.S.C. § 136j(a)(1)(C); (2) it is no
25 longer producing any pesticide in an unregistered establishment in violation of Section
26 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L); and (3) it has complied with all other FIFRA
27 requirements at all facilities under its control.
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G. RETENTION OF RIGHTS

24. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities 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.

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

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

27. 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

28. 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.

29. 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.

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order, Docket Number FIFRA-09-2008-0024 have been filed with the Regional Hearing Clerk and a copy was sent, certified mail to:

Jesse Smith
Owner
Bug Stop Pest Control
3215 E. Thunderbird Road
Phoenix, AZ 85032

Dated: SEP 26 2008

By: *Danielle Carr*

Danielle Carr
U.S. Environmental Protection Agency, Region IX