

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105**

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_____	)	Docket No. FIFRA-09-2015-0004
In the matter of:	)	
	)	
Pivot Chemical Company,	)	
	)	CONSENT AGREEMENT
Respondent.	)	AND FINAL ORDER
_____	)	

**I. CONSENT AGREEMENT**

The United States Environmental Protection Agency (“EPA”), Region IX and Pivot Chemical Company (“Respondent”) agree to settle this matter initiated against Respondent under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136, and consent to the entry of this Consent Agreement and Final Order (“CAFO”).

**A. AUTHORITY**

1. EPA Region IX, through the Assistant Director for the Water and Pesticides Branch, Enforcement Division (“Complainant”), initiated this administrative proceeding for the assessment of a civil administrative penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), by issuing a Complaint and Notice of Opportunity for Hearing (“Complaint”) against Respondent on April 29, 2015 in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.

2. The Complaint alleges that Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to complete and submit an initial pesticide production report within 30 days of registration of its establishment and failing to complete and submit an annual pesticide production report for the 2013 reporting year by March 1, 2014, 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.

3. EPA and Respondent have agreed to resolve this civil administrative proceeding by



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 US currency  
PNC Bank  
808 17th 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  
Enter "sfo1.1" in the search field  
Open form and complete required fields

**If clarification regarding a particular method of payment remittance is needed, please contact the EPA Cincinnati Finance Center at 513-487-2091.**

7. In addition, a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter indicating Respondent's name, the case title, and the docket number 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

Estrella Armijo  
Enforcement Division (ENF 3-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street

San Francisco, CA 94105

8. 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.

9. If Respondent fails to pay in full the civil administrative penalty assessed in Paragraph 5 by the date specified in Paragraph 5, 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 \$220. 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.

d. 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.

#### D. CERTIFICATION OF COMPLIANCE

10. In executing this CAFO, Respondent certifies that it has submitted its initial pesticide production report and its annual pesticide production report for the 2013 production year to the U.S. EPA Region IX Pesticides Office.

#### E. RETENTION OF RIGHTS

11. 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 the Complaint. 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 the Complaint; 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 the Complaint.

12. 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.

#### F. ATTORNEYS' FEES AND COSTS

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

G. EFFECTIVE DATE

14 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.

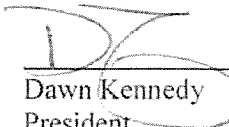
H. BINDING EFFECT

15. 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.

16. 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.

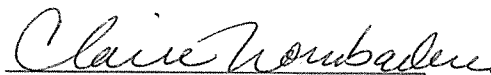
**FOR RESPONDENT, PIVOT CHEMICAL COMPANY:**

5/28/15  
DATE

  
\_\_\_\_\_  
Dawn Kennedy  
President  
Pivot Chemical Company

**FOR COMPLAINANT, EPA REGION IX:**

6/11/15  
DATE

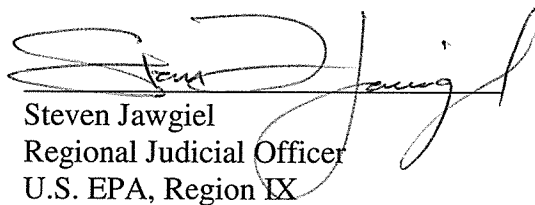
  
\_\_\_\_\_  
Claire Trombadore  
Assistant Director  
Water and Pesticides Branch, Enforcement Division  
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA Region IX and Respondent, having entered into the forgoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2015-0004) be  
entered, and Respondent shall pay a civil administrative penalty in the amount TWO  
THOUSAND AND TWO HUNDRED DOLLARS (\$2,200) in accordance with the terms set  
forth in the Consent Agreement.

06/16/15

DATE

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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, **(Docket No FIFRA-09-2015-0004)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Dawn Kennedy, President  
Pivot Chemical Company  
2962 East Sierra Madre Avenue  
Gilbert, AZ 85926

**CERTIFIED MAIL NUMBER:** 7011 1570 0000 6494 7200

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

Carol Bussey, Esq  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

Sharon Nakwada for

Regional Hearing Clerk  
U.S. EPA, Region IX

June 16, 2015

Date