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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2018-00 06
11)
12 The Terminix International Company)
Limited Partnership,) CONSENT AGREEMENT
13) AND FINAL ORDER
pursuant to 40 C.F.R. §§ 22.13(b),
14 Respondent.) 22.18(b)(2), and 22.18(b)(3)

15 I. CONSENT AGREEMENT

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

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for failure to keep and maintain records
25 required by or under Section 11 of FIFRA, 7 U.S.C. § 136i, in violation of Section 12(a)(2)(B)(i)
26 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and for use of registered pesticides in manners inconsistent
27 with their labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).
28

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

3 3. Respondent is a Delaware limited partnership with headquarters offices located at 860
4 Ridge Lake Boulevard in Memphis, Tennessee.

5 B. STATUTORY AND REGULATORY BASIS

6 4. Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), sets forth a classification system of
7 pesticides and limits application of pesticides that are classified for “restricted use” to a certified
8 applicator or persons under the direct supervision of a certified applicator.

9 5. Section 11 of FIFRA, 7 U.S.C. § 136i, sets forth general requirements for federal and
10 state programs that certify applicators of restricted use pesticides.

11 6. Section 11(a)(1) of FIFRA, 7 U.S.C. § 136i(a)(1), provides that in any state in which
12 EPA conducts a certification program, EPA may require any person who engages in the
13 commercial application of a restricted use pesticide to maintain such records and submit such
14 reports concerning the commercial application as the Administrator may prescribe by regulation.

15 7. Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2), provides that EPA can approve a
16 state plan to certify commercial applicators of restricted use pesticides provided that, inter alia,
17 the state plan conforms to the same standards as the federal certification program.

18 8. Pursuant to Section 11 of FIFRA, 7 U.S.C. § 136i, the EPA Administrator
19 promulgated regulations codified at 40 C.F.R. Part 171 that provide specific certification process
20 requirements that a state must meet in order for EPA to approve its plan to certify commercial
21 applicators of restricted use pesticides.

22 9. Pursuant to 40 C.F.R. § 171.7(b)(1)(iii)(E), EPA-approved state plans must require
23 commercial applicators to keep and maintain routine operational records containing information
24 on kinds, amounts, uses, dates, and places of applications of restricted use pesticides for a period
25 of at least two years.

26 10. Section 12(a)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), makes it unlawful for any
27 person to refuse to prepare, submit, or maintain any records required by or under Sections 5, 7, 8,
28 11, or 19 or any regulations promulgated thereunder.

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

3 C. ALLEGED VIOLATIONS

4 12. Respondent is a corporation and therefore a “person” as that term is defined by
5 Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject to FIFRA and the
6 implementing regulations promulgated thereunder.

7 13. Degesch Fumi-cel (EPA Reg. No. 72959-6), Profume (EPA Reg. No. 62719-376),
8 and Vikane (EPA Reg. No. 62719-4) are registered “pesticides” as that term is defined in Section
9 2(u) of FIFRA, 7 U.S.C. § 136(u).

10 14. Based on their active ingredients of 56% magnesium phosphide, 99.8% sulfur
11 fluoride, and 99.8% sulfur fluoride, respectively, Degesch Fumi-cel, Profume, and Vikane are
12 registered pesticides “classified for restricted use” pursuant to 40 C.F.R. § 152.175.

13 15. Respondent is a commercial applicator that employs “certified applicators” as that
14 term is defined by Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

15 16. Respondent is a “commercial applicator” as that term is defined by Section 2(e)(3) of
16 FIFRA, 7 U.S.C. § 136(e)(3).

17 17. Pursuant to Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2), and 40 C.F.R. Part
18 171, EPA approved the state of Hawaii’s plan for certification of commercial applicators of
19 restricted use pesticides.

20 18. Pursuant to 40 C.F.R. § 171.7(b)(1)(iii)(E), Hawaii’s plan requires that commercial
21 applicators of restricted use pesticides keep and maintain required records regarding the
22 applications of restricted use pesticides under Hawaii Administrative Rules § 4-66-62.

23 PIONEER PARENT SEED

24 19. On or about October 13, 2014, Respondent, in its capacity as a commercial
25 applicator, failed to keep and maintain for the period of at least two years required records
26 containing information on kinds, amounts, uses, dates, and places of applications of the restricted
27 use pesticide Degesch Fumi-cel at Pioneer Parent Seed on the island of Kauai as required by the
28 EPA-approved Hawaii state plan for the certification of commercial applicators of restricted use

1 pesticides and Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2).

2 20. By failing to maintain records in connection with its use of the restricted use
3 pesticide Degesch Fumi-cel at Pioneer Parent Seed on the island of Kauai as required under
4 Section 11 of FIFRA, 7 U.S.C. § 136i, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7
5 U.S.C. § 136j(a)(2)(B)(i).

6 21. On or about October 13, 2014, Respondent used, “in a manner inconsistent with its
7 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
8 pesticide Degesch Fumi-cel at Pioneer Parent Seed on the island of Kauai. Specifically, in a
9 manner not permitted by the pesticide Degesch Fumi-cel’s labeling, Respondent’s application of
10 the pesticide was performed by a person who was not a certified applicator or under the direct
11 supervision of a certified applicator.

12 22. By using the registered pesticide Degesch Fumi-cel in a manner inconsistent with its
13 labeling at Pioneer Parent Seed on the island of Kauai, Respondent violated Section 12(a)(2)(G)
14 of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

15 SYNGENTA SEEDS

16 23. On or about August 26, 2015, Respondent, in its capacity as a commercial applicator,
17 failed to keep and maintain for the period of at least two years required records containing
18 information on kinds, amounts, uses, dates, and places of applications of the restricted use
19 pesticide Profume at Syngenta Seeds on the island of Kauai as required by the EPA-approved
20 Hawaii state plan for the certification of commercial applicators of restricted use pesticides and
21 Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2).

22 24. By failing to maintain records in connection with its use of the restricted use
23 pesticide Profume at Syngenta Seeds on the island of Kauai as required under Section 11 of
24 FIFRA, 7 U.S.C. § 136i, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. §
25 136j(a)(2)(B)(i).

26 25. On or about August 26, 2015, Respondent used, “in a manner inconsistent with its
27 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
28 pesticide Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not

1 permitted by the pesticide Profume’s labeling, Respondent’s application of the pesticide was
2 performed by a person who was not a certified applicator or under the direct supervision of a
3 certified applicator.

4 26. On or about August 26, 2015, 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 Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not
7 permitted by the pesticide Profume’s labeling, Respondent applied the pesticide without using a
8 scale to weigh the fumigant to ensure that the correct dosage was used.

9 27. On or about August 26, 2015, Respondent used, “in a manner inconsistent with its
10 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
11 pesticide Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not
12 permitted by the pesticide Profume’s labeling, Respondent applied the pesticide without using or
13 keeping operational and on-site an approved positive pressure self-contained breathing apparatus
14 (“SCBA”) as respiratory protection during and after fumigation.

15 28. On or about August 26, 2015, Respondent used, “in a manner inconsistent with its
16 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
17 pesticide Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not
18 permitted by the pesticide Profume’s labeling, Respondent applied the pesticide without using an
19 approved detection device to monitor the pesticide’s concentration levels and to determine
20 clearance for re-entry after fumigation.

21 29. On or about August 26, 2015, Respondent used, “in a manner inconsistent with its
22 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
23 pesticide Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not
24 permitted by the pesticide Profume’s labeling, Respondent applied the pesticide without using
25 splash-resistant goggles or a full face shield for eye protection.

26 30. On or about August 26, 2015, Respondent used, “in a manner inconsistent with its
27 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
28 pesticide Profume at Syngenta Seeds on the island of Kauai. Specifically, in a manner not

1 permitted by the pesticide Profume's labeling, Respondent failed to direct the fumigant into the
2 blast of air from any fan(s) having a capacity of at least 1000 cubic feet per minute per pound of
3 Profume released per minute.

4 31. By using the registered pesticide Profume in manners inconsistent with its labeling at
5 Syngenta Seeds on the island of Kauai, Respondent violated Section 12(a)(2)(G) of FIFRA, 7
6 U.S.C. § 136j(a)(2)(G).

7 KAPAA SHORES

8 32. On or about November 4, 2015, Respondent, in its capacity as a commercial
9 applicator, failed to keep and maintain for the period of at least two years required records
10 containing information on kinds, amounts, uses, dates, and places of applications of the restricted
11 use pesticide Vikane at the Kapaa Shores residence on the island of Kauai as required under the
12 EPA-approved Hawaii state plan for the certification of commercial applicators of restricted use
13 pesticides and Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2).

14 33. By failing to maintain records in connection with its use of the restricted use pesticide
15 Vikane at the Kapaa Shores residence on the island of Kauai as required by Section 11 of FIFRA,
16 7 U.S.C. § 136i, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

17 34. On or about November 4, 2015, Respondent used, "in a manner inconsistent with its
18 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
19 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
20 not permitted by the pesticide Vikane's labeling, Respondent's application of the pesticide was
21 performed by a person who was not a certified applicator or under the direct supervision of a
22 certified applicator.

23 35. On or about November 4, 2015, Respondent used, "in a manner inconsistent with its
24 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
25 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
26 not permitted by the pesticide Vikane's labeling, Respondent applied the pesticide without using a
27 scale to weigh the fumigant to ensure that the correct dosage was used.

28 36. On or about November 4, 2015, Respondent used, "in a manner inconsistent with its

1 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
2 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
3 not permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using
4 or keeping operational and on-site an approved positive pressure SCBA as respiratory protection
5 during and after fumigation.

6 37. On or about November 4, 2015, Respondent used, “in a manner inconsistent with its
7 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
8 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
9 not permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using
10 an approved detection device to determine clearance for re-entry after fumigation.

11 38. On or about November 4, 2015, Respondent used, “in a manner inconsistent with its
12 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
13 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
14 not permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using
15 splash-resistant goggles or a full face shield for eye protection.

16 39. On or about November 4, 2015, Respondent used, “in a manner inconsistent with its
17 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
18 pesticide Vikane at the Kapaa Shores residence on the island of Kauai. Specifically, in a manner
19 not permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without
20 securing the structure against unauthorized entry during the fumigation exposure period by using a
21 locking device such as a secondary lock or barricade on all exterior doors and doorways.

22 40. By using the registered pesticide Vikane in manners inconsistent with its labeling at
23 the Kapaa Shores residence on the island of Kauai, Respondent violated Section 12(a)(2)(G) of
24 FIFRA, 7 U.S.C. § 136j(a)(2)(G).

25 KEKAHA

26 41. On or about March 22, 2016, Respondent, in its capacity as a commercial applicator,
27 failed to keep and maintain for the period of at least two years routine operational records
28 containing information on kinds, amounts, uses, dates, and places of applications of the restricted

1 use pesticide Vikane at the Kekaha residence on the island of Kauai as required by the EPA-
2 approved Hawaii state plan for the certification of commercial applicators of restricted use
3 pesticides and Section 11(a)(2) of FIFRA, 7 U.S.C. § 136i(a)(2).

4 42. By failing to maintain records in connection with its use of the restricted use pesticide
5 Vikane at the Kekaha residence on the island of Kauai as required under Section 11 of FIFRA, 7
6 U.S.C. § 136i, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

7
8 43. On or about March 22, 2016, Respondent used, “in a manner inconsistent with its
9 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
10 pesticide Vikane at the Kekaha residence on the island of Kauai. Specifically, in a manner not
11 permitted by the pesticide Vikane’s labeling, Respondent’s application of the pesticide was
12 performed by a person who was not a certified applicator or under the direct supervision of a
13 certified applicator.

14 44. On or about March 22, 2016, Respondent used, “in a manner inconsistent with its
15 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
16 pesticide Vikane at the Kekaha residence on the island of Kauai. Specifically, in a manner not
17 permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using a
18 scale to weigh the fumigant to ensure that the correct dosage was used.

19 45. On or about March 22, 2016, Respondent used, “in a manner inconsistent with its
20 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
21 pesticide Vikane at the Kekaha residence on the island of Kauai. Specifically, in a manner not
22 permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using or
23 keeping operational and on-site an approved positive pressure SCBA as respiratory protection
24 during and after fumigation.

25 46. On or about March 22, 2016, Respondent used, “in a manner inconsistent with its
26 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
27 pesticide Vikane at the Kekaha residence on the island of Kauai. Specifically, in a manner not
28 permitted by the pesticide Vikane’s labeling, Respondent applied the pesticide without using an

1 approved detection device to determine clearance for re-entry after fumigation.

2 47. On or about March 22, 2016, Respondent used, “in a manner inconsistent with its
3 labeling” as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered
4 pesticide Vikane at the Kekaha residence on the island of Kauai. Specifically, in a manner not
5 permitted by the pesticide Vikane’s labeling, Respondent failed to transport the cylinders
6 containing the pesticide securely only in an upright position.

7 48. By using the registered pesticide Vikane in manners inconsistent with its labeling at
8 the Kekaha residence on the island of Kauai, Respondent violated Section 12(a)(2)(G) of FIFRA,
9 7 U.S.C. § 136j(a)(2)(G).

10 49. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(2), as amended by the Civil Monetary
11 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response
12 Policy dated December 2009 provide for a penalty of up to (1) \$7,500 for each violation that
13 occurred on or before November 2, 2015, and (2) \$19,446 for each violation that occurred after
14 November 2, 2015 and assessed on or after January 15, 2018.

15 D. RESPONDENT’S ADMISSIONS, CONSENTS, AND WAIVERS

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

23 E. CIVIL ADMINISTRATIVE PENALTY

24 51. In final settlement of the violations of FIFRA specifically alleged in Section I.C of this
25 CAFO, Respondent shall pay a civil administrative penalty of ONE HUNDRED AND SIXTY-
26 EIGHT THOUSAND, FIVE HUNDRED, AND THIRTY-FIVE DOLLARS (\$168,535).
27 Respondent shall pay this civil penalty no later than thirty (30) calendar days from the effective
28 date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier’s check,

1 including the name and docket number of this case, for the amount, payable to “Treasurer, United
2 States of America,” (or be paid by one of the other methods listed below) and sent as follows:

3 Regular Mail:

4 U.S. Environmental Protection Agency
5 Fines and Penalties
6 Cincinnati Finance Center
7 PO Box 979077
8 St. Louis, MO 63197-9000

9 Wire Transfers:

10 Wire transfers must be sent directly to the Federal Reserve Bank in New
11 York City with the following information:

12 Federal Reserve Bank of New York
13 ABA = 021030004
14 Account = 68010727
15 SWIFT address = FRNYUS33
16 33 Liberty Street
17 New York, NY 10045
18 Beneficiary = U.S. Environmental Protection Agency

19 Certified or Overnight Mail:

20 U.S. Environmental Protection Agency
21 1005 Convention Plaza
22 Mail Station SL-MO-C2-GL
23 ATTN Box 979077
24 St. Louis, MO 63101

25 ACH (also known as Remittance Express or REX):

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

28 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

1 On Line Payment:

2 This payment option can be accessed from the information below:

3 www.pay.gov
4 Enter "SFO 1.1" in the search field
5 Open form and complete required fields

6 If clarification regarding a particular method of payment remittance is
7 needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

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

12 Regional Hearing Clerk
13 Office of Regional Counsel (ORC-1)
14 U.S. Environmental Protection Agency, Region IX
15 75 Hawthorne Street
16 San Francisco, CA 94105
17 r9hearingclerk@epa.gov

18 Scott McWhorter
19 SDWA/FIFRA Section
20 Enforcement Division (ENF-3-3)
21 U.S. Environmental Protection Agency, Region IX
22 75 Hawthorne Street
23 San Francisco, CA 94105
24 mcwhorter.scott@epa.gov

25 Edgar P. Coral
26 Office of Regional Counsel (ORC-2)
27 U.S. Environmental Protection Agency, Region IX
28 75 Hawthorne Street
29 San Francisco, CA 94105
30 coral.edgar@epa.gov

31 52. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
32 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
33 use such payment as a tax deduction.

34 53. If Respondent fails to pay the assessed civil administrative penalty of ONE
35 HUNDRED AND SIXTY-EIGHT THOUSAND, FIVE HUNDRED, AND THIRTY-FIVE
36 DOLLARS (\$168,535) as identified in Paragraph 51 by the deadline specified in that Paragraph,

1 then Respondent shall also pay a stipulated penalty to EPA upon EPA's written request. The
2 amount of the stipulated penalty will be FORTY-TWO THOUSAND, ONE HUNDRED, AND
3 THIRTY-FOUR DOLLARS (\$42,134) and will be immediately due and payable upon EPA's
4 written request, together with the initially assessed civil administrative penalty of ONE
5 HUNDRED AND SIXTY-EIGHT THOUSAND, FIVE HUNDRED, AND THIRTY-FIVE
6 DOLLARS (\$168,535), resulting in a total penalty due of TWO HUNDRED AND TEN
7 THOUSAND, SIX HUNDRED, AND SIXTY-NINE DOLLARS (\$210,669). Failure to pay the
8 civil administrative penalty specified in Paragraph 51 by the deadline specified in that Paragraph
9 may also lead to any or all of the following actions:

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

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

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

23 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
24 Government may assess interest, administrative handling charges, and nonpayment penalties
25 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
26 civil administrative penalty specified in Paragraph 51 by the deadline specified in that Paragraph.

27 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
28 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established

1 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
2 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
3 (30) days of the effective date of this CAFO.

4 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
5 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
6 either actual or average cost incurred (including both direct and indirect costs), for every month in
7 which any portion of the assessed penalty is more than thirty (30) days past due.

8 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
9 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may
10 be assessed on all debts more than ninety (90) days delinquent.

11 F. CERTIFICATION OF COMPLIANCE

12 54. In executing this CAFO, Respondent's representative certifies based on a reasonable
13 inquiry of the person or persons who manage Respondent's compliance systems, that the
14 following is true and accurate to the best of his knowledge and belief: (1) it is no longer failing to
15 keep and maintain fumigation records required under Section 11 of FIFRA, 7 U.S.C. § 136i, in
16 violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i); (2) it is no longer using
17 any registered fumigant pesticides in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §
18 136j(a)(2)(G); and (3) it is currently in compliance with all other FIFRA fumigation requirements
19 for all its ongoing operations.

20 G. RETENTION OF RIGHTS

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

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

4 H. ATTORNEYS' FEES AND COSTS

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

7 I. EFFECTIVE DATE

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

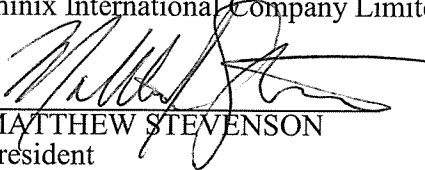
11 J. BINDING EFFECT

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

15 60. The provisions of this CAFO shall apply to and be binding upon Respondent and its
16 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,
17 and assigns.


18
19 FOR RESPONDENT The Terminix International Company Limited Partnership:

20 02/21/18
21 DATE

22 
23 MATTHEW STEVENSON
24 President
25 The Terminix International Company Limited Partnership

26
27 FOR COMPLAINANT EPA:

28 3/8/18
DATE

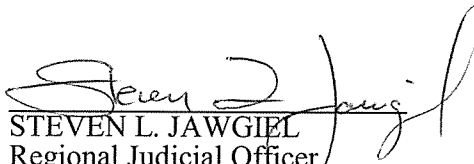

KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and The Terminix International Company Limited Partnership having entered into
3 the foregoing Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2018-0006) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of ONE
6 HUNDRED AND SIXTY-EIGHT THOUSAND, FIVE HUNDRED, AND THIRTY-FIVE
7 DOLLARS (\$168,535), and comply with the terms and conditions set forth in the Consent
8 Agreement.

9
10
11 03/13/18
12 DATE

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

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2018-0006) 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:

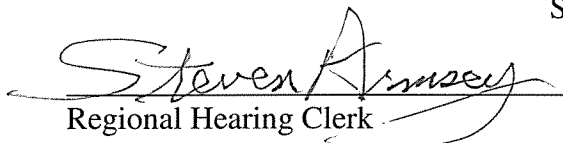
A copy was mailed via CERTIFIED MAIL to:

Matthew Stevenson
President
Terminix Int'l Company, L.P.
860 Ridge Lake Blvd, #101
Memphis, TN 38120-9424

CERTIFIED MAIL NUMBER: 7016 1370 0000 0749 1477

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

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


Regional Hearing Clerk
U.S. EPA, Region IX

March 15, 2018
Date