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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:

10 Docket No. FIFRA-⁰⁹~~0~~-2007-0004

11
12 Del Monte Fresh Produce Co.,

11
12 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, Del Monte Fresh
18 Produce Co., agree to settle this civil administrative action brought under the Federal Insecticide,
19 Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and consent to
20 the entry of this Consent Agreement and Final Order ("CAFO").
21

22 A. AUTHORITY

23 1. Complainant initiated this civil administrative proceeding for the assessment of a civil
24 penalty against Respondent under FIFRA pursuant to Section 14(a) of FIFRA, 7 U.S.C. §
25 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of
26 Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of Opportunity for Hearing
27 ("the Complaint") against Respondent on March 27, 2007.

28 2. The Complaint alleges that Respondent violated Section 12(a)(2)(G) of FIFRA, 7
U.S.C. § 136j(a)(2)(G), by using registered pesticides in manners inconsistent with their labeling.

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
9 contest the allegations contained in the Complaint; and (v) waives the right to appeal the
10 proposed Final 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 TWENTY-FOUR THOUSAND, SIX HUNDRED, AND
14 FORTY DOLLARS (\$24,640). Respondent shall pay this civil penalty within thirty (30) days of
15 the effective date of this CAFO, shall make this payment by cashier's or certified check payable
16 to the "Treasurer, United States of America," and shall send the check by certified mail, return
17 receipt requested, to the following address:

18 U.S. Environmental Protection Agency, Region IX
19 P.O. Box 371099M
20 Pittsburgh, PA 15251

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

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

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

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

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

14 7. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-
15 FOUR THOUSAND, SIX HUNDRED, AND FORTY DOLLARS (\$24,640), as identified in
16 Paragraph 5, by the deadline specified in that Paragraph, then Respondent shall also pay a
17 stipulated penalty to EPA. The amount of the stipulated penalty will be SIX THOUSAND, ONE
18 HUNDRED, AND SIXTY DOLLARS (\$6,160), and will be immediately due and payable on the
19 day following the deadline specified in Paragraph 5, together with the initially assessed civil
20 administrative penalty of TWENTY-FOUR THOUSAND, SIX HUNDRED, AND FORTY
21 DOLLARS (\$24,640), resulting in a total penalty due of THIRTY THOUSAND AND EIGHT
22 HUNDRED DOLLARS (\$30,800). Failure to pay the civil administrative penalty specified in
23 Paragraph 5 by the deadline specified in that Paragraph may also lead to any or all of the
24 following actions:

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

1 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
2 C.F.R. §§ 13(C) and 13(H).

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

6 (4) Pursuant to 31 U.S.C. § 3701 et seq. and 40 C.F.R. Part 13, the U.S.
7 Government may assess interest, administrative handling charges, and nonpayment penalties
8 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
9 civil administrative penalty specified in Paragraph 5 by the deadline specified in that Paragraph.

10 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R.
11 §13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
12 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
13 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
14 (30) days of the effective date of this CAFO.

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

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

22 D. CERTIFICATION OF COMPLIANCE

23 8. In executing this CAFO, Respondent certifies that (1) it is in compliance with Section
24 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by no longer using registered pesticides in
25 manners inconsistent with their labeling; and (2) it has complied with all other FIFRA
26 requirements at all facilities under its control.

27 E. RETENTION OF RIGHTS

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

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

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

11 F. ATTORNEYS' FEES AND COSTS

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

14 G. EFFECTIVE DATE

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

18 H. BINDING EFFECT


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

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

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FOR RESPONDENT DEL MONTE FRESH PRODUCE CO.:

5/22/07
DATE


BRUCE JORDAN
Senior Vice President
Del Monte Fresh Produce Co.
241 Sevilla Avenue
Coral Gables, FL 33114

FOR COMPLAINANT EPA:

6/08/07
DATE



ENRIQUE MANZANILLA
Director, 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 Del Monte Fresh Produce Co. having entered into the foregoing Consent
3 Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-⁰⁹~~9~~-2007-0004) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TWENTY-
6 FOUR THOUSAND, SIX HUNDRED, AND FORTY DOLLARS (\$24,640), and comply with
7 the terms and conditions set forth in the Consent Agreement.

8
9
10 6-11-07
DATE

11 
12 STEVEN L. JAWGIEL
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and that a true and correct copy of the Consent Agreement and Final Order was placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Mr. Bruce Jordan
Senior Vice President
Del Monte Fresh Produce Co.
241 Sevilla Avenue
Coral Gables, FL 33114
Certified Mail No. 7005 2570 0001 6436 4286

Dated:

June 11, 2007

By:

Danielle E. Carr

Danielle Carr

U.S. Environmental Protection Agency, Region IX