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12 **UNITED STATES**
13 **ENVIRONMENTAL PROTECTION AGENCY**
14 **REGION IX**
15 **75 HAWTHORNE STREET**
16 **SAN FRANCISCO, CA 94105**
17

18 In the matter of:) Docket No. FIFRA-09-2015- 0011
19) **CONSENT AGREEMENT**
20 Fertilizer Company of) and
21 Arizona, Inc. d/b/a Fertizona) **FINAL ORDER PURSUANT TO**
22 Respondent.) **SECTIONS 22.13 AND 22.18**
23)
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25
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27 **I. CONSENT AGREEMENT**

28 The United States Environmental Protection Agency (“EPA”) and Fertilizer Company of
29 Arizona, Inc. d/b/a Fertizona (“Respondent”) agree to settle this matter and consent to the entry
30 of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
31 concludes this proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

32 **A. AUTHORITY AND PARTIES**

33 1. This administrative proceeding for the assessment of a civil administrative penalty is
34 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
35 U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the “Act”), and the Consolidated
Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

1 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

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

5 3. Respondent is an Arizona corporation whose corporate headquarters is located at 2850
6 South Peart Road, Casa Grande, Arizona.

7 **B. STATUTORY AND REGULATORY AUTHORITIES**

8 4. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), the term “person” means “any
9 individual, partnership, association, corporation, or any organized group of persons whether
10 incorporated or not.”

11 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), the term “pesticide” is, among other
12 things, any substance or mixture of substances intended for preventing, destroying, repelling, or
13 mitigating any pest.

14 6. Under section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is
15 “misbranded” if its label does not bear the registration number assigned under section 136(e) of
16 FIFRA to each establishment in which it was produced.

17 7. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term “label” means the
18 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its
19 containers or wrappers.

20 8. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term “to distribute or sell”
21 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
22 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
23 offer to deliver.

1 9. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
2 person in any state to distribute or sell to any person any pesticide which is adulterated or
3 misbranded.

4 10. Under section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), it is unlawful for any
5 person to refuse to prepare, maintain, or submit any records required by or under sections 5, 7, 8,
6 11, or 19 of FIFRA, 7 U.S.C. §§ 136c, 136e, 136f, 136i or 136q.

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

9 12. Under section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term “labeling”
10 means all labels and all other written, printed or graphic matter accompanying the pesticide or
11 device at any time.

12 13. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(1)(S), it is unlawful for any
13 person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and
14 136q.

15 14. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
16 regulations governing the labeling requirements for pesticides and devices, which are codified at
17 40 C.F.R. Part 156.

18 15. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
19 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
20 containers and pesticide containment structures (“the Container/Containment regulations”),
21 which are codified at 40 C.F.R. Part 165.

22 16. *Agricultural pesticide* means any pesticide product labeled for use in or on a farm,
23 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

1 17. *Appurtenance* means any equipment or device which is used for the purpose of
2 transferring a pesticide from a stationary pesticide container or to any refillable container,
3 including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering
4 devices. 40 C.F.R. § 165.3.

5 18. *Containment pad* means any structure that is designed and constructed to intercept
6 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40
7 C.F.R. § 165.3.

8 19. *Containment structure* means either a secondary containment unit or a containment
9 pad. 40 C.F.R. § 165.3.

10 20. *Facility* means all buildings, equipment, structures, and other stationary items which
11 are located on a single site or on contiguous or adjacent sites and which are owned or operated by
12 the same person (or by any person who controls, who is controlled by, or who is under common
13 control with such person). 40 C.F.R. § 165.3.

14 21. *Establishment* means any site where a pesticidal product, active ingredient, or device
15 is produced, regardless of whether such site is independently owned or operated, and regardless
16 of whether such site is domestic and producing a pesticidal product for export only, or whether
17 the site is foreign and producing any pesticidal product for import into the United States. 40
18 C.F.R. § 165.3.

19 22. *Operator* means any person in control of, or having responsibility for, the daily
20 operation of a facility at which a containment structure is located.

21 23. *Owner* means any person who owns a facility at which a containment structure is
22 required. 40 C.F.R. § 165.3.

23 24. *Pesticide dispensing area* means an area in which pesticide is transferred out of or

1 into a container. 40 C.F.R. § 165.3.

2 25. *Produce* means to manufacture, prepare, propagate, compound, or process any
3 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active
4 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container
5 of any pesticide or device. 40 C.F.R. § 165.3.

6 26. *Refilling establishment* means an establishment where the activity of repackaging
7 pesticide product into refillable containers occurs. *Refillable container* means a container that is
8 intended to be filled with pesticide more than once for sale or distribution. *Refiller* means a
9 person who engages in the activity of repackaging pesticide product into refillable containers. 40
10 C.F.R. § 165.3.

11 27. *Repackage* means, for the purposes of this part, to transfer a pesticide formulation
12 from one container to another without a change in the composition of the formulation, the
13 labeling content, or the product's EPA registration number, for sale or distribution. 40 C.F.R. §
14 165.3.

15 28. *Secondary containment unit* means any structure, including rigid diking, that is
16 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff
17 and leaching from stationary pesticide containers. 40 C.F.R. § 165.3.

18 29. *Stationary pesticide container* means a refillable container that is fixed at a single
19 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30
20 consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

21 30. *Transport vehicle* means a cargo-carrying vehicle such as an automobile, van, tractor,
22 truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode. 40 C.F.R.
23 § 165.3.

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2 **C. COMPLAINANT'S ALLEGATIONS**

3 31. Respondent is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. §
4 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

5 32. Respondent is an *owner* and *operator* of the following *facilities*, which are each an
6 *establishment*, as those terms are defined by 40 C.F.R. § 165.3: (a) 2850 South Peart Road, Casa
7 Grande, Arizona, which has EPA Establishment Number 051092-AZ-002 ("**Casa Grande**
8 **Establishment**"); (b) 26705 West Baseline Road, Buckeye, Arizona, which has EPA
9 Establishment Number 051092-AZ-003 ("**Buckeye Establishment**"); (c) 17102 West Olive Ave,
10 Waddell, Arizona, which has EPA Establishment Number 051092-AZ-004 ("**Fennemore**
11 **Establishment**"); (d) 512 East Maley Street, Willcox, Arizona, which has EPA Establishment
12 Number 051092-AZ-008 ("**Willcox Establishment**"); and (e) 4290 East County 10 ½ Street,
13 Yuma, Arizona, which has EPA Establishment Number 051092-AZ-006 ("**Yuma**
14 **Establishment**").

15 33. Respondent is a *refiller* that *repackages* the following *agricultural pesticides*, as
16 those terms are defined by 40 C.F.R. § 165.3, and dispenses pesticides at the following
17 establishments whose principal business is retail sale:

18 (a) Honcho Plus, EPA Reg. No. 524-454 ("Honcho Plus") at the Buckeye Establishment,
19 Casa Grande Establishment, Willcox Establishment, and the Yuma Establishment;

20 (b) Roundup Power Max, EPA Reg. No. 524-549 ("Roundup Power Max") at the
21 Buckeye Establishment and the Casa Grande Establishment;

22 (c) Vapam HL, EPA Reg. No. 5481-468 ("Vapam HL") at the Yuma Establishment;

23 (d) Telone Tech, EPA Reg. No. 62719-341 ("Telone Tech"), Telone II, EPA Reg. No.

1 62719-32 (“Telone II”), and Telone EC, EPA Reg. No. 62719-321 (“Telone EC”) at the Buckeye
2 Establishment; and

3 (e) 2 Lb. Sodium Chlorate, EPA Reg. No. 34704-1022-51092 (“Sodium Chlorate”) at the
4 Fennemore Establishment.

5 34. Owners or operators of refilling establishments who repackage agricultural pesticides
6 and whose principal business is retail sale that have a stationary pesticide container or a pesticide
7 dispensing (including container refilling) area must comply with the requirements for pesticide
8 containment structures at Subpart E of the Container/Containment regulations. 40 C.F.R. §
9 165.80(b)(1).

10 35. Pesticide dispensing areas that are subject to the Container/Containment regulations
11 and must have a containment pad that complies with the requirements of the Containment
12 regulations include areas where agricultural pesticides are dispensed from a transport vehicle for
13 purposes of filling a refillable container. 40 C.F.R. § 165.82(a)(3).

14 36. Stationary pesticide containers designed to hold undivided quantities of agricultural
15 pesticides equal to or greater than 500 gallons of liquid pesticide are subject to the requirements
16 of Subpart E of the Container/Containment regulations and must have a secondary containment
17 unit that complies with the provisions of Subpart E unless: (1) the container is empty, that is, all
18 pesticide that can be removed by methods such as draining, pumping or aspirating has been
19 removed (whether or not the container has been rinsed or washed); (2) the container holds only
20 pesticide rinsates or wash waters and is labeled accordingly; (3) the container holds only
21 pesticides which would be gaseous when released at atmospheric temperature and pressure; or
22 (4) the container is dedicated to nonpesticide use and is labeled accordingly. 40 C.F.R. §
23 165.81(b).

Casa Grande Establishment

37. At all times relevant to this CAFO, the Casa Grande Establishment includes Casa Grande Tanks 1, 2, 3, 4, 5, 6, and 7, which are each a *stationary pesticide container* located within a *secondary containment unit*, as those terms are defined by 40 C.F.R. § 165.3.

38. At all times relevant to this CAFO, Casa Grande Tanks 1, 2, and 7 hold the pesticide Roundup Power Max and are located within a secondary containment unit (the “**Casa Grande Containment Area 1**”).

39. At all times relevant to this CAFO, Casa Grande Tanks 3, 4, 5, and 6 hold the pesticide Honcho Plus and are located within a secondary containment unit (the “**Casa Grande Containment Area 2**”).

40. At all times relevant to this CAFO, the Casa Grande Establishment has an area used to fill refillable containers with Roundup Power Max (“**Casa Grande Containment Pad 1**”) and an area used to fill refillable containers with Honcho Plus and to refill stationary tanks (“**Casa Grande Containment Pad 2**”) and each of these areas is a *pesticide dispensing area* and *containment pad*, as those terms are defined by 40 C.F.R. § 165.3.

41. Casa Grande Containment Areas 1 and 2 and Containment Pads 1 and 2 are each an *existing containment structure*, as that term is defined by 40 C.F.R. § 165.83(b).

42. Inspectors from the Arizona Department of Agriculture (“ADA”) inspected the Casa Grande Establishment on September 7, 2012, July 10, 2013 and October 16, 2013.

Count 1: Failure To Look For Signs Of Damage

43. An owner or operator of a pesticide containment structure must: (1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment

1 structure. This inspection must look for visible signs of wetting, discoloration, blistering,
2 bulging, corrosion, cracks or other signs of damage or leakage. (2) Initiate repair to any areas
3 showing visible signs of damage and seal any cracks and gaps in the containment structure or
4 appurtenances with material compatible with the pesticide being stored or dispensed no later than
5 the end of the day on which damage is noticed and complete repairs within a time frame that is
6 reasonable, taking into account factors such as the weather, and the availability of cleanup
7 materials, trained staff, and equipment. 40 C.F.R. § 165.90(b).

8 44. On or about September 7, 2012, the wall of a secondary containment unit had
9 unsealed cracks, including where a liner in the middle of the concrete broke the concrete surface
10 of the containment structure wall.

11 45. On or about July 10, 2013, a secondary containment unit had unsealed cracks,
12 including the unsealed crack along the top of the containment structure wall that existed on
13 September 7, 2012.

14 46. From on or about September 7, 2012 to on or about July 10, 2013, Respondent failed
15 to look for and note unsealed cracks in its containment structures during its monthly inspections,
16 as required by 40 C.F.R. § 165.90(b)(1).

17 47. From on or about September 7, 2012 to on or about July 10, 2013, Respondent
18 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to inspect each
19 stationary pesticide container and its appurtenances and each containment structure to look for
20 cracks or other signs of damage or leakage at each containment unit at the Casa Grande
21 Establishment as required by 40 C.F.R. § 165.90(b)(1).

22 **Count 2: Failure to Make Timely Repairs**

23 48. From on or about September 7, 2012 until on or about October 10, 2013, Respondent

1 failed to repair visible unsealed cracks in the wall and floor of containment areas no later than the
2 end of the day on which the damage is noticed and complete repairs within a time frame that is
3 reasonable, as is required by 40 C.F.R. § 165.90(b)(2).

4 49. From on or about July 25, 2013 until on or about October 10, 2013, the Honcho Plus
5 pump and the Roundup Power Max pump, which are each an *appurtenance* as that term is
6 defined by 40 C.F.R. § 165.3, were leaking.

7 50. Thus, from on or about July 25, 2013 until on or about October 10, 2013, Respondent
8 failed to initiate repairs to appurtenances no later than the end of the day on which damage is
9 noticed and complete repairs within a time frame that is reasonable, as required by 40 C.F.R. §
10 165.90(b)(2).

11 51. From on or about September 7, 2012 to on or about October 10, 2013, Respondent
12 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to initiate and
13 complete timely repairs at the Casa Grande Establishment, as required by 40 C.F.R. §
14 165.90(b)(2).

15 **Count 3: Failure to Keep Records Required by 40 C.F.R. § 165.95**

16 52. An owner or operator of a pesticide containment structure must maintain and furnish
17 for inspection and copying upon request by an employee of EPA or any entity designated by
18 EPA, such as a State, and keep for three years records of inspection and maintenance for each
19 containment structure and for each stationary pesticide container and its appurtenances, and these
20 records must include the following information: (1) name of the person conducting the inspection
21 or maintenance; (2) date the inspection or maintenance was conducted; (3) conditions noted; and
22 (4) specific maintenance performed. 40 C.F.R. § 165.95(a).

23 53. From on or about January 17, 2012 to on or about October 16, 2013, Respondent

1 failed to keep records of inspection and maintenance for each of Casa Grande Containment Pads
2 1 and 2, Casa Grande Containment Areas 1 and 2 and Casa Grande Tanks 1, 2, 3, 4, 5, 6, and 7
3 and each tank's appurtenances that included: the name of the person conducting the inspection;
4 date the inspection was conducted; conditions noted during inspections; the name of the person
5 conducting the maintenance; date the maintenance was conducted; and specific maintenance
6 performed, as required by 40 C.F.R. § 165.95(a).

7 54. From on or about January 17, 2012 to on or about October 16, 2013, Respondent
8 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
9 136j(a)(2)(S) by failing to keep records at the Casa Grande Establishment as required by 40
10 C.F.R. § 165.95.

11 **Count 4: Distribution and Sale of a Misbranded Pesticide (Honcho Plus)**

12 55. On or about July 10, 2013 and on or about October 16, 2013, Respondent *distributed*
13 *or sold* the pesticide Honcho Plus in Casa Grande Tank 4, as that term is defined by section 2(gg)
14 of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

15 56. When pesticide products are stored in bulk containers, whether mobile or stationary,
16 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
17 directions for use, must be securely attached to the container in the immediate vicinity of the
18 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). This label or labeling must include
19 marking the producing establishment registration number preceded by the phrase "EPA Est.", of
20 the final establishment at which the product was produced. 40 C.F.R. § 156.10(f).

21 57. On or about July 10, 2013 and October 16, 2013, Respondent did not have a copy of
22 the label or labeling attached to Casa Grande Tank 4 that included the EPA Establishment
23 Number of the final establishment at which the bulk product, Honcho Plus, was produced.

1 58. On or about July 10, 2013 and October 16, 2013, Respondent's failure to attach to
2 the Casa Grande Tank 4 a copy of the label for Honcho Plus that included the establishment
3 number of the final establishment at which Honcho Plus was last produced, as required by 40
4 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by
5 section 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

6 59. On or about July 10, 2013 and October 16, 2013, Respondent distributed or sold the
7 misbranded pesticide Honcho Plus at the Casa Grande Establishment in violation of section
8 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

9 **Count 5: Distribution and Sale of a Misbranded Pesticide (Roundup Power Max)**

10 60. On or about July 10, 2013 and on or about October 16, 2013, Respondent *distributed*
11 *or sold* the pesticide Roundup Power Max in Casa Grande Tanks 1, 2 and/or 7 as that term is
12 defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution,
13 sale, or shipment.

14 61. On or about July 10, 2013 and October 16, 2013, Respondent did not have a copy of
15 the label or labeling attached to Casa Grande Tanks 1, 2, and 7 that included the EPA
16 Establishment Number of the final establishment at which the bulk product, Roundup Power
17 Max, was produced.

18 62. On or about July 10, 2013 and October 16, 2013, Respondent's failure to attach to
19 the Casa Grande Tanks 1, 2, and 7 a copy of the label for Roundup Power Max that included the
20 establishment number of the final establishment at which Roundup Power Max was last
21 produced, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and 156.10(f), constitutes
22 *misbranding*, as that term is defined by section 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

23 63. On or about July 10, 2013 and October 16, 2013, Respondent distributed or sold the

1 misbranded pesticide Roundup Power Max at the Casa Grande Establishment in violation of
2 section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3 Buckeye Establishment

4 64. At all times relevant to this CAFO, Buckeye Tank 1 holds the pesticide Telone Tech
5 and Buckeye Tank 3 holds the pesticide Telone II.

6 65. At all times relevant to this CAFO, except January 18, 2013, Buckeye Tank 2 holds
7 Telone II.

8 66. Buckeye Tanks 1, 2, and 3 are each a *stationary pesticide container* located within a
9 *secondary containment unit* (“**Buckeye Containment Area 1**”).

10 67. At all times relevant to this CAFO, Buckeye Tank 4 holds the pesticide Telone EC
11 and is a *stationary pesticide container* located within a *secondary containment unit* (“**Buckeye**
12 **Containment Area 4**”).

13 68. At all times relevant to this CAFO, Buckeye Tank 7 holds the pesticide Honcho Plus
14 and is a *stationary pesticide container* located within a *secondary containment unit* (“**Buckeye**
15 **Containment Area 3**”).

16 69. At all times relevant to this CAFO, Buckeye Tank 8 holds Roundup Power Max and
17 is a *stationary pesticide container* located within a *secondary containment unit* (“**Buckeye**
18 **Containment Area 2**”).

19 70. At all times relevant to this CAFO, the Buckeye Establishment includes areas used
20 for refilling pesticide containers which are each a *pesticide dispensing area* and *containment pad*,
21 as those terms are defined by 40 C.F.R. § 165.3, including the area within Building #2 (the
22 “**Buckeye Building #2 Containment Pad**”); the area next to Building #2 and Buckeye
23 Containment Area 2 (the “**Buckeye Containment Pad 1**”); and the area next to Buckeye

1 Containment Area 1 (the “**Buckeye Containment Pad 2**”).

2 71. At all times relevant to this CAFO, Buckeye Containment Areas 1, 2, 3, 4, and 5 and
3 Buckeye Containment Pads 1, 2 and Buckeye Building #2 Containment Pad are each an *existing*
4 *containment structure*, as that term is defined by 40 C.F.R. § 165.83(b).

5 72. Inspectors from the ADA inspected the Buckeye Establishment on January 18, 2013.

6 73. Telone II is a restricted use pesticide, as that term is defined at 40 C.F.R. Part 152
7 Subpart I, due to high acute inhalation toxicity and carcinogenicity.

8 **Count 6: Failure to Clean up Leaking Pesticide (Telone II)**

9 74. The owner or operator of a pesticide containment structure must manage the structure
10 in a manner that prevents pesticides or materials containing pesticides from escaping from the
11 containment structure (including, but not limited to, pesticide residues washed off the
12 containment structure by rainfall or cleaning liquids used within the structure.). 40 C.F.R. §
13 165.90(a)(1).

14 75. The owner or operator of a pesticide containment structure must ensure that pesticide
15 spills and leaks on or in any containment structure are collected and recovered in a manner that
16 ensures protection of human health and the environment (including surface water and
17 groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must
18 occur no later than the end of the day on which pesticides have been spilled or leaked except in
19 circumstances where a reasonable delay would significantly reduce the likelihood or severity of
20 adverse effects to human health or the environment. 40 C.F.R. § 165.90(a)(2).

21 76. On or about January 18, 2013, the pesticide Telone II was leaking on and in Buckeye
22 Containment Area 1 from a joint of the pipe running between Tank 3 and the filling nozzle (the
23 “Leaking Joint”).

1
2 77. On or about January 18, 2013, Respondent failed to use spill containment equipment
3 or absorbent in Buckeye Containment Area 1 to collect and recover the spilled or leaked Telone
4 II pesticide.

5 78. On or about January 18, 2013, Respondent failed to ensure that the spilled or leaked
6 Telone II pesticide was collected and recovered in a manner that ensures protection of human
7 health and the environment and maximum practicable recovery of the pesticide, as required by 40
8 C.F.R. § 165.90(a).

9 79. On or about January 18, 2013, Respondent violated section 12(a)(2)(S) of FIFRA, 7
10 U.S.C. § 136j(a)(2)(S) by failing to manage Buckeye Containment Area 1 and cleanup spills and
11 leaks of the pesticide Telone II as required by 40 C.F.R. § 165.90(a).

12 **Count 7: Failure To Look For Signs Of Damage And Make Repairs**

13 80. The Leaking Joint is an *appurtenance*, as that term is defined by 40 C.F.R. § 165.3.

14 81. On or about January 18, 2013, the faceplate at the Leaking Joint was corroded and
15 cracked.

16 82. On or about January 18, 2013, Buckeye Containment Areas 2 and 3 had unsealed
17 cracks.

18 83. From on or about January 2012 to on or about January 18, 2013, Respondent failed in
19 its monthly inspections to look for and note unsealed cracks in Buckeye Containment Areas 2
20 and 3 and visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other
21 signs of damage or leakage of the Leaking Joint.

22 84. On or about January 18, 2013, Respondent failed to initiate and complete timely
23 repairs to cracks in containment areas and appurtenances showing visible signs of damage as

1 required by 40 C.F.R. § 165.90(b).

2 85. From on or about January 2012 to on or about January 18, 2013, Respondent violated
3 section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to inspect each stationary
4 pesticide container and its appurtenances at the Buckeye Establishment and each containment
5 structure to look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks
6 or other signs of damage or leakage and by failing to initiate and complete timely repairs at the
7 Buckeye Establishment as required by 40 C.F.R. § 165.90(b).

8 **Count 8: Failure to Keep Records Required by 40 C.F.R. § 165.95**

9 86. On and about January 18, 2013, Respondent's records of inspection and maintenance
10 for Buckeye Containment Areas 1 and 4, Buckeye Containment Pad 2, Buckeye Tanks 1, 2, 3,
11 and 4 and each tank's appurtenances for the period between January 2012 and December 2012
12 were combined in a monthly record identified as "Telone/Telone EC."

13 87. On and about January 18, 2013, Respondent's records of inspection and maintenance
14 for Buckeye Containment Areas 2 and 3, and Buckeye Containment Pad 1, Buckeye Tanks 7 and
15 8 and each tank's appurtenances for the period between January 2012 and December 2012 were
16 combined in a monthly record identified as "Roundup/Honcho."

17 88. From on or about January 2012 to on and about January 18, 2013, Respondent failed
18 to keep records of inspection and maintenance for each of Buckeye Containment Areas 1, 2, 3,
19 and 4, and Buckeye Containment Pads 1 and 2, Buckeye Tanks 1, 2, 3, 4, 7 and 8, and each
20 tank's appurtenances that included: the name of the person conducting the inspection; date the
21 inspection was conducted; conditions noted during inspections; the name of the person
22 conducting the maintenance; date the maintenance was conducted; and specific maintenance
23 performed, as required by 40 C.F.R. § 165.95(a).

1 89. From on or about January 2012 to on and about January 18, 2013, Respondent
2 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
3 136j(a)(2)(S) by failing to keep records at the Buckeye Establishment of inspection and
4 maintenance as required by 40 C.F.R. § 165.95.

5 **Count 9: Distribution and Sale of a Misbranded Pesticide (Honcho Plus)**

6 90. On or about January 18, 2013, Respondent *distributed or sold* the pesticide Honcho
7 Plus in Buckeye Tank 7, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg),
8 by holding the pesticide for distribution, sale, or shipment.

9 91. On or about January 18, 2013, Respondent did not have a copy of the label or
10 labeling attached to Buckeye Tank 7 that included the EPA Establishment Number of the final
11 establishment at which the bulk product, Honcho Plus, was produced.

12 92. On or about January 18, 2013, Respondent's failure to attach to Buckeye Tank 7 a
13 copy of the label for Honcho Plus that included the establishment number of the final
14 establishment at which Honcho Plus was last produced, as required by 40 C.F.R. §§
15 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section
16 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

17 93. On or about January 18, 2013, Respondent distributed or sold the misbranded
18 pesticide Honcho Plus at the Buckeye Establishment in violation of section 12(a)(1)(E) of
19 FIFRA, 7 U.S.C. § 136j(a)(1)(E).

20 **Count 10: Distribution and Sale of a Misbranded Pesticide (Roundup Power Max)**

21 94. On or about January 18, 2013, Respondent *distributed or sold* the pesticide Roundup
22 Power Max in Buckeye Tank 8, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. §
23 136(gg), by holding the pesticide for distribution, sale, or shipment.

1 95. On or about January 18, 2013, Respondent did not have a copy of the label or
2 labeling attached to Buckeye Tank 8 that included the EPA Establishment Number of the final
3 establishment at which the bulk product, Roundup Power Max, was produced.

4 96. On or about January 18, 2013, Respondent's failure to attach to the Buckeye Tank 8 a
5 copy of the label for Roundup Power Max that included the establishment number of the final
6 establishment at which Roundup Power Max was last produced, as required by 40 C.F.R. §§
7 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section
8 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

9 97. On or about January 18, 2013, Respondent distributed or sold the misbranded
10 pesticide Roundup Power Max at the Buckeye Establishment in violation of section 12(a)(1)(E)
11 of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

12 Willcox Establishment

13 98. At all times relevant to this CAFO, Willcox Tank 1 holds the pesticide Honcho Plus.
14 Willcox Tank 1 is a *stationary pesticide container* located within a *secondary containment unit*
15 ("**Willcox Containment Area 1**"), as those terms are defined by 40 C.F.R. § 165.3.

16 99. At all times relevant to this CAFO, the Willcox Establishment includes the following
17 areas, which is each a *pesticide dispensing area* and *containment pad*, as those terms are defined
18 by 40 C.F.R. § 165.3: an area in front of Willcox Containment Area 1 used for transferring
19 pesticide from delivering trucks into the stationary tank ("**Willcox Containment Pad 1**"); and an
20 area next to Willcox Containment Area 1 used for transfer of the pesticides during the
21 repackaging process ("**Willcox Containment Pad 2**").

22 100. Willcox Containment Area 1 and Willcox Containment Pad 1 are each an *existing*
23 *containment structure*, as that term is defined by 40 C.F.R. § 165.83(b).

1 101. Willcox Containment Pad 2 was constructed in 2013 and is a *new containment*
2 *structure*, as that term is defined by 40 C.F.R. § 165.83(a).

3 102. Inspectors from the ADA inspected the Willcox Establishment on June 13, 2013
4 and October 10, 2013.

5 **Count 11: Failure to Clean up Leaking Pesticide (Honcho Plus)**

6 103. On or about June 13, 2013, the pesticide Honcho Plus was leaking on and in
7 Willcox Containment Area 1 from a valve on Willcox Tank 1's transfer pump (the "Transfer
8 Pump").

9 104. On or about June 13, 2013, Respondent had last cleaned the spilled Honcho Plus
10 two days before.

11 105. On or about June 13, 2013, Respondent failed to cleanup the spilled Honcho Plus by
12 the end of the day on which the pesticides had leaked, as required by 40 C.F.R. § 165.90(a)(2)
13 and thus failed to ensure that the spilled or leaked Honcho Plus pesticide was collected and
14 recovered as required by 40 C.F.R. § 165.90(a).

15 106. On or about June 13, 2013, Respondent violated section 12(a)(2)(S) of FIFRA, 7
16 U.S.C. § 136j(a)(2)(S) by failing to manage Willcox Containment Area 1 and cleanup spills and
17 leaks of the pesticide Honcho Plus, as required by 40 C.F.R. § 165.90(a).

18 **Count 12: Failure To Look For Signs Of Damage**

19 107. From on or about January 2013 to June 13 2013, Respondent failed to conduct
20 monthly inspections of the containment structures, stationary pesticide containers and
21 appurtenances at the Willcox Establishment, as required by 40 C.F.R. § 165.90(b)(1).

22 108. From on or about June 13, 2013 to on or about October 10, 2013, the containment
23 floor of Willcox Containment Area 1 contained visible unsealed cracks.

1 109. From on or about June 13, 2013 to on or about October 10, 2013, Respondent
2 failed in its monthly inspections to look for and note unsealed cracks in Willcox Containment
3 Area 1, as required by 40 C.F.R. § 165.90(b)(1).

4 110. From on or about January 2013 to on and about October 10, 2013, Respondent
5 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to inspect each
6 stationary pesticide container and its appurtenances and each containment structure at the
7 Willcox Establishment at least monthly and look for visible signs of wetting, discoloration,
8 blistering, bulging, corrosion, cracks or other signs of damage or leakage, as required by 40
9 C.F.R. § 165.90(b)(1).

10 **Count 13: Failure to Make Timely Repairs**

11 111. From on or about June 13, 2013 to on or about October 10, 2013, Respondent failed
12 to initiate and complete timely repairs to unsealed cracks in Willcox Containment Area 1 as
13 required by 40 C.F.R. § 165.90(b)(2).

14 112. The Transfer Pump is an *appurtenance* as defined by 40 C.F.R. § 165.3.

15 113. On or about June 13, 2013, July 2, 2013, and August 13, 2013, the Transfer Pump
16 was leaking.

17 114. From on or about June 13 to on or after August 13, 2013, Respondent failed to
18 repair the Transfer Pump within a reasonable timeframe as required by 40 C.F.R. § 165.90(b)(2).

19 115. From on or about June 13, 2013 to on or about October 10, 2013, Respondent
20 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to initiate and
21 complete timely repairs at the Willcox Establishment, as required by 40 C.F.R. § 165.90(b)(2).
22

1 **Count 14: Failure to Keep Records Required by 40 C.F.R. § 165.95**

2 116. From on or about January 2013 to on and about October 10, 2013, Respondent
3 failed to keep records of inspection and maintenance for each of Willcox Containment Area 1,
4 Willcox Containment Pads 1 and 2, Willcox Tank 1 and its appurtenances that included: the
5 name of the person conducting the inspection; date the inspection was conducted; conditions
6 noted during inspections; the name of the person conducting the maintenance; date the
7 maintenance was conducted; and specific maintenance performed, as required by 40 C.F.R. §
8 165.95(a).

9 117. From on or about January 2013 to on and about October 10, 2013, Respondent
10 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
11 136j(a)(2)(S) by failing to keep records at the Willcox Establishment of inspection and
12 maintenance as required by 40 C.F.R. § 165.95.

13 **Count 15: Distribution and Sale of a Misbranded Pesticide (Honcho Plus)**

14 118. On or about June 13, 2013, Respondent *distributed or sold* the pesticide Honcho
15 Plus in eight refillable containers, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. §
16 136(gg), by holding the pesticide for distribution, sale, or shipment.

17 119. On or about October 10, 2013, Respondent *distributed or sold* the pesticide Honcho
18 Plus in Willcox Tank 1 and in seven refillable containers, as that term is defined by section 2(gg)
19 of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

20 120. On or about October 10, 2013, Respondent did not have a copy of the label or
21 labeling attached to Willcox Tank 1 that included the EPA Establishment Number of the final
22 establishment at which the bulk product, Honcho Plus, was produced.

23 121. On or about June 13, 2013 and October 10, 2013, Respondent did not have a label

1 or labeling bearing the EPA Establishment Number of the establishment in which it was
2 produced on the refillable containers.

3 122. On or about October 10, 2013, Respondent's failure to attach to the Willcox Tank 1
4 a copy of the label for Honcho Plus that included the establishment number of the final
5 establishment at which Honcho Plus was last produced, as required by 40 C.F.R. §§
6 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section
7 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

8 123. On or about June 13, 2013 and October 10, 2013, Respondent's failure to attach to
9 each of the refillable containers a label or labeling bearing the EPA Establishment Number of the
10 establishment in which it was produced constitutes *misbranding*, as that term is defined by
11 section 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

12 124. On or about June 13, 2013 and October 10, 2013, Respondent distributed or sold the
13 misbranded pesticide Honcho Plus at the Willcox Establishment in violation of section
14 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

15 Yuma Establishment

16 125. At all times relevant to this CAFO, at the Yuma Establishment, Respondent holds
17 the pesticide Vapam HL in Yuma Tanks 1 and 3; and the pesticide Honcho Plus in Yuma Tank 2.
18 Yuma Tanks 1, 2 and 3 are each a *stationary pesticide container* located within a *secondary*
19 *containment unit* (the "**Yuma Containment Area**") as those terms are defined by 40 C.F.R. §
20 165.3.

21 126. At all times relevant to this CAFO, the Yuma Establishment has an area in front of
22 the Yuma Containment Area used for transferring pesticides (the "**Yuma Containment Pad**"),
23 which is a *pesticide dispensing area* and *containment pad*, as those terms are defined by 40

1 C.F.R. § 165.3.

2 127. At all times relevant to this CAFO, at the Yuma Establishment, pesticides were
3 being stored or dispensed in Yuma Containment Area and the Yuma Containment Pad. The
4 Yuma Containment Area is an *existing containment structure*, as that term is defined by 40
5 C.F.R. § 165.83(b). The Yuma Containment Pad is a *new containment structure*, as that term is
6 defined by 40 C.F.R. § 165.83(a).

7 128. Inspectors from the ADA inspected the Yuma Establishment on March 5, 2013 and
8 May 14, 2014.

9 **Count 16: Failure to Keep Records Required by 40 C.F.R. § 165.95**

10
11 129. From on or about August 7, 2013 to on and about June 2, 2014, Respondent failed
12 to keep records of inspection and maintenance for each of the Yuma Containment Area, the
13 Yuma Containment Pad, Yuma Tanks 1, 2, 3, and each tank's appurtenances that included: the
14 name of the person conducting the inspection; date the inspection was conducted; conditions
15 noted during inspections; the name of the person conducting the maintenance; date the
16 maintenance was conducted; and specific maintenance performed, as required by 40 C.F.R. §
17 165.95(a).

18 130. From on or about August 7, 2013 to on and about June 2, 2014, Respondent
19 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
20 136j(a)(2)(S) by failing to keep records as required by 40 C.F.R. § 165.95.

21 **Count 17: Failure to Have Vapam HL Refiller Residue Removal Procedure**

22 131. On and about March 5, 2013, Respondent was refilling the pesticide Vapam HL for
23 distribution or sale at the Yuma Establishment.

24 133. Respondent is a *refiller* of Vapam HL, as that term is defined by 40 C.F.R. § 165.3,

1 but not the registrant.

2 134. Refillers of a pesticide product who are not the registrant of that pesticide product
3 must comply with the standards in section 165.70 of the Repackaging Pesticide Products
4 Regulations. 40 C.F.R. § 165.70(a).

5 135. Before repackaging a pesticide product into any refillable container for distribution
6 or sale, a refiller must have at its establishment specified documents and information, including
7 the registrant's written refilling residue removal procedure for the pesticide product. 40 C.F.R. §
8 165.70(e)(5)(iii).

9 136. A refiller must maintain records as required by 40 C.F.R. § 165.70(j), and parts 167
10 and 169 [see 40 C.F.R. § 165.70(e)(10), (11), and (12)], including maintaining for the current
11 operating year and for 3 years after, for each pesticide product distributed or sold in refillable
12 containers, the written refilling residue removal procedure for the pesticide product. 40 C.F.R. §
13 165.70(j)(1)(ii).

14 137. On and about March 5, 2013, Respondent failed to have the written refiller residue
15 removal procedures for Vapam HL at the Yuma Establishment, as required by 40 C.F.R. §
16 165.70(e)(5)(iii).

17 138. On and about March 5, 2013, Respondent violated sections 12(a)(2)(B) and
18 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and 136j(a)(2)(S), by repackaging Vapam HL
19 for distribution or sale without having refiller residue removal procedures for Vapam HL at the
20 Yuma Establishment, as required by 40 C.F.R. § 165.70(e)(5)(iii).

21

1 **Count 18: Distribution and Sale of a Misbranded Pesticide (Vapam HL)**

2 139. On or about March 5, 2013 and on or about May 14, 2014, Respondent *distributed*
3 *or sold* the pesticide Vapam HL in Yuma Tanks 1 and/or 3 and also packaged in refillable
4 containers, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the
5 pesticide for distribution, sale, or shipment.

6 140. On or about March 5, 2013 and May 14, 2014, Respondent did not have a copy of
7 the label or labeling attached to Yuma Tanks 1 and 3 that included the EPA Establishment
8 Number of the final establishment at which the bulk product, Vapam HL, was produced.

9 141. On or about March 5, 2013, and May 14, 2014, Respondent's failure to attach to the
10 Yuma Tanks 1 and 3 a copy of the label for Vapam HL that included the establishment number
11 of the final establishment at which Vapam HL was last produced, as required by 40 C.F.R. §§
12 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section
13 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

14 142. The label of each pesticide product packaged in a refillable container must include
15 residual removal instructions for disposal that is one of the following two statements: (1)
16 "Cleaning the container before final disposal is the responsibility of the person disposing of the
17 container. Cleaning before refilling is the responsibility of the refiller." (2) "Pressure rinsing the
18 container before final disposal is the responsibility of the person disposing of the container.
19 Cleaning before refilling is the responsibility of the refiller." 40 C.F.R. § 156.156(a). This
20 sentence must be consistent with the residue removal instructions required for cleaning each
21 refillable container prior to container disposal required by 40 C.F.R. § 156.156(b), which
22 requires that the residue removal instructions must be appropriate for the characteristics and

1 formulation of the pesticide product and must be adequate to protect human health and the
2 environment. 40 C.F.R. § 156.156(a) and (b).

3 143. On or about May 14, 2014 and March 5, 2013, Respondent did not have a label on
4 each refillable container of Vapam HL packaged in a refillable container that included residual
5 removal instructions for disposal that was one of the two statements required by 40 C.F.R. §
6 156.156(a), and this constitutes *misbranding*, as that term is defined by section 2(p)(1) of FIFRA,
7 7 U.S.C. § 136(q)(1)(D).

8 144. On or about March 5, 2013 and May 14, 2014, Respondent distributed or sold the
9 misbranded pesticide Vapam HL at the Yuma Establishment in violation of section 12(a)(1)(E)
10 of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

11 **Count 19: Distribution and Sale of a Misbranded Pesticide (Honcho Plus)**

12 145. On or about March 5, 2013 and on or about May 14, 2014, Respondent *distributed*
13 *or sold* the pesticide Honcho Plus in Yuma Tank 2, as that term is defined by section 2(gg) of
14 FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale or shipment.

15 146. On or about March 5, 2013 and May 14, 2014, Respondent did not have a copy of
16 the label or labeling attached to Yuma Tank 2 that included the EPA Establishment Number of
17 the final establishment at which the bulk product, Honcho Plus, was produced.

18 147. On or about March 5, 2013 and May 14, 2014, Respondent's failure to attach to the
19 Yuma Tank 2 a copy of the label for Honcho Plus that included the establishment number of the
20 final establishment at which Honcho Plus was last produced, as required by 40 C.F.R. §§
21 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section
22 2(p)(1) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

23 148. On or about March 5, 2013 and on or about May 14, 2014, Respondent distributed

1 or sold the misbranded pesticide Honcho Plus at the Yuma Establishment in violation of section
2 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3 Fennemore Establishment

4 149. Inspectors from the ADA inspected the Fennemore Establishment on January 9,
5 2014.

6 150. Respondent seasonally repackages, distributes and sells the pesticide Sodium
7 Chlorate from the Fennemore Establishment during cotton defoliation season.

8 151. During the cotton defoliation season, Respondent holds Sodium Chlorate for
9 distribution or sale in a refillable container fixed at the Fennemore Establishment (the
10 “**Fennemore Tank**”).

11 152. At all times relevant to this CAFO, including in 2012, 2013 and 2014, the
12 Fennemore Tank held fertilizer for the majority of the year, and Respondent emptied the fertilizer
13 from the Fennemore Tank during the cotton defoliation season, washed and then refilled the
14 Fennemore Tank with Sodium Chlorate.

15 153. At all times relevant to this CAFO, Respondent emptied the pesticide left in the
16 Fennemore Tank after the cotton defoliation season into a trailer tank, washed and then refilled
17 the Fennemore Tank with fertilizer.

18 154. The Fennemore Tank is capable of holding approximately 6,000 gallons of liquid
19 pesticide.

20 155. From on or about October 23, 2013 to after or about November 25, 2013, the
21 Fennemore Tank held Sodium Chlorate.

22 156. At all times relevant to this CAFO, the Fennemore Tank is a *stationary pesticide*
23 *container* and a *refillable container*, as those terms are defined by 40 C.F.R. § 165.3.

1 157. Stationary pesticide containers designed to hold undivided quantities of agricultural
2 pesticides equal to or greater than 500 gallons of liquid pesticide are subject to the requirements
3 of Subpart E of the Container/Containment regulations and must have a secondary containment
4 unit that complies with the provisions of Subpart E unless: (1) the container is empty, that is, all
5 pesticide that can be removed by methods such as draining, pumping or aspirating has been
6 removed (whether or not the container has been rinsed or washed); (2) the container holds only
7 pesticide rinsates or wash waters, and is labeled accordingly; (3) the container holds only
8 pesticides which would be gaseous when released at atmospheric temperature and pressure; or
9 (4) the container is dedicated to nonpesticide use and is labeled accordingly. 40 C.F.R. §
10 165.81(b).

11 158. On and about January 9, 2014, the Fennemore Tank was not empty, not labeled as
12 dedicated to nonpesticide use, nor was it labeled as holding only pesticide rinsates or wash
13 waters.

14 159. At all times relevant to this CAFO, the Fennemore Tank is subject to the
15 requirements of Subpart E of the Container/Containment regulations. 40 C.F.R. § 165.81.

16 160. At all times relevant to this CAFO, the Fennemore Establishment has an area used
17 for transferring pesticides in and out of containers (the “**Fennemore pad**”) which is a *pesticide*
18 *dispensing area* and *containment pad*, as those terms are defined by 40 C.F.R. § 165.3.

19 161. The Fennemore pad is an *existing containment structure*, as that term is defined by
20 40 C.F.R. § 165.83(b).

21 162. On or about January 9, 2014, Respondent was holding Sodium Chlorate in a tank on
22 a trailer (“the **Trailer Tank**”) parked on the Fennemore pad.

23 163. The Trailer Tank is a *refillable container*, as that term is defined by 40 C.F.R. §

1 165.3, which is capable of holding undivided quantities equal to or greater than 500 gallons of
2 liquid pesticide.

3 164. On or about January 9, 2014, the Trailer Tank contained Sodium Chlorate filled at
4 the Fennemore Establishment from the Fennemore Tank.

5 **Count 20: Use Of a Pesticide In A Manner Inconsistent With Its Label**

6 165. It is a violation of section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) for any
7 person to use any registered pesticide in a manner inconsistent with its labeling.

8 166. The Sodium Chlorate label states for refillable containers “Refill this container with
9 pesticide only. Do not reuse this container for any other purpose.”

10 167. On and about January 9, 2014, the Fennemore Tank held fertilizer.

11 168. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
12 used Sodium Chlorate in a manner inconsistent with its label by using the Fennemore Tank to
13 hold fertilizer after using this refillable container to hold Sodium Chlorate.

14 169. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
15 violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) by using Sodium Chlorate in a
16 manner inconsistent with its label.

17 **Count 21: Failure to Have Secondary Containment Structure**

18 170. Existing containment structures must be constructed of steel, reinforced concrete or
19 other rigid material capable of withstanding the full hydrostatic head, load and impact of any
20 pesticides, precipitation, other substances, equipment and appurtenances placed within the
21 structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.
22 40 C.F.R. § 165.87(a)(1).

23 171. From on or about October 23, 2013 to on or about January 9, 2014, Respondent was

1 required to have the Fennemore Tank in a secondary containment unit constructed of steel,
2 reinforced concrete or other rigid materials as required by of 40 C.F.R. § 165.87(a)(1).

3 172. On and about January 9, 2014, the Fennemore Tank was sitting in dirt, not in a
4 secondary containment area.

5 173. On and before January 9, 2014, Respondent failed to have the Fennemore Tank
6 within a secondary containment structure designed and constructed of steel, reinforced concrete,
7 or other rigid materials, as required by of 40 C.F.R. § 165.87(a)(1).

8 174. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
9 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to have the Fennemore
10 Tank within a secondary containment structure as required by of 40 C.F.R. § 165.87(a)(1).

11 **Count 22: Failure to Protect Appurtenances**

12 175. The owner or operator of the refilling establishment must protect appurtenances and
13 pesticide containers against damage from operating personnel and moving equipment. Means of
14 protection include, but are not limited to, supports to prevent sagging, flexible connections, the
15 use of guard rails, barriers, and protective cages. 40 C.F.R. § 165.87(b)(1).

16 176. At all times relevant to this CAFO, the Fennemore Tank had a valve and connecting
17 hose, which are *appurtenances* as that term is defined by 40 C.F.R. § 165.3.

18 177. On and about January 9, 2014, the Fennemore Tank's *appurtenances* were
19 unprotected from damage from operating personnel and moving equipment.

20 178. On and before January 9, 2014, Respondent failed to protect appurtenances against
21 damage from operating personnel and moving equipment, as required by 40 C.F.R. §
22 165.87(b)(1).

23 179. From on or about October 23, 2013 to on or about January 9, 2014, Respondent

1 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to protect
2 appurtenances as required by 40 C.F.R. § 165.87(b)(1).

3 **Count 23: Failure to Have Containment Pad with Required Holding Capacity**

4 180. Existing containment pads in pesticide dispensing areas must have sufficient
5 holding capacity of either 750 gallons if the pad has a pesticide container or pesticide-holding
6 equipment with a volume of 750 gallons or greater. 40 C.F.R. § 165.87(c)(2) and (c)(3).

7 181. At all times relevant to this CAFO, the largest pesticide container used on the
8 Fennemore pad was over 750 gallons. Therefore, the Fennemore pad was required to have a
9 holding capacity of 750 gallons.

10 182. Existing containment pads in pesticide dispensing areas must be designed and
11 constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing
12 area, and allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or
13 discharged material and rainfall, such as by a manually activated pump. 40 C.F.R. § 165.87(e)(1)
14 and (3).

15 183. On and about January 9, 2014, the Fennemore pad was constructed of flat concrete
16 that was flush with the surrounding dirt.

17 184. On and before January 9, 2014, Respondent failed to construct the Fennemore pad
18 with the design features necessary to hold 750 gallons, intercept leaks and spills of pesticides,
19 and allow for removal and recovery of spilled, leaked, or discharged material and rainfall.

20 185. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
21 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to have the Fennemore
22 pad designed and constructed with the design features required by 40 C.F.R. § 165.87(c) and 40
23 C.F.R. § 165.87(e).

1 **Count 24: Failed to Construct Containment Pad with Sufficient Freeboard**

2 186. A containment structure must be constructed with sufficient freeboard to contain
3 precipitation and prevent water and other liquids from seeping into or flowing onto it from
4 adjacent land or structures. 40 C.F.R. § 165.87(b)(3).

5 187. On and about January 9, 2014, the Fennemore pad was constructed without
6 sufficient freeboard and water and other liquids were not prevented from seeping into or flowing
7 onto the Fennemore pad from adjacent land or structures.

8 188. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
9 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to have the Fennemore
10 pad constructed with sufficient freeboard to contain precipitation and prevent water and other
11 liquids from seeping into or flowing onto it from adjacent land or structures, as required by 40
12 C.F.R. § 165.87(b)(3).

13 **Count 25: Failure to Keep Records Required by 40 C.F.R. § 165.95**

14 189. An owner or operator subject to Subpart E of the Container/Containment
15 regulations must maintain and furnish for inspection and copying upon request by an employee
16 of EPA or any entity designated by EPA, such as a State, and keep for three years records of any
17 non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides
18 equal to or greater than 500 gallons (1,890 liters) of liquid pesticide that holds pesticide but is not
19 protected by a secondary containment unit meeting the standards under the
20 Container/Containment regulations. Records on these non-stationary pesticide containers must
21 include the time period that the container remains at the same location. 40 C.F.R. § 165.95(b).

22 190. At all times relevant to this CAFO, the Trailer Tank was not protected by a
23 secondary containment unit meeting the standards under the Container/Containment regulations.

1
2 191. Respondent failed to keep records for the Trailer Tank.

3 192. On and before January 9, 2014, Respondent failed to maintain, furnish for
4 inspection and copying upon request of ADA inspectors, and keep inspection and maintenance
5 records for the Fennemore pad, the Fennermore Tank and its appurtenances, and any other
6 stationary pesticide containers, as required by 40 C.F.R. § 165.95(a).

7 193. On and before January 9, 2014, Respondent failed to maintain, furnish for
8 inspection and copying upon request of ADA inspectors, and keep records of the time periods at
9 the Fennemore Establishment of non-stationary pesticide containers designed to hold undivided
10 quantities of agricultural pesticides equal to or greater than 500 gallons not protected by a
11 secondary containment unit meeting the standards under the Container/Containment regulations
12 and holding Sodium Chloride, as required by 40 C.F.R. § 165.95(b).

13 194. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
14 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
15 136j(a)(2)(S), by failing to maintain, furnish upon request, and keep records at the Fennemore
16 Establishment of non-stationary pesticide containers designed to hold undivided quantities of
17 agricultural pesticides equal to or greater than 500 gallons not protected by a secondary
18 containment unit and of inspection and maintenance for each containment structure and for each
19 stationary pesticide container and its appurtenances, as required by 40 C.F.R. § 165.95.

20 **Count 26: Failure to Generate and Maintain Production Records**

21 195. Respondent is a refiller who is not the registrant of Sodium Chlorate.

22 196. Each time a refiller who is not the registrant repackages a pesticide product into a
23 refillable container and distributes or sells the product, the retailer must generate and maintain for

1 at least 3 years after the date of repackaging records that contain: (i) The EPA registration
2 number of the pesticide product distributed or sold in the refillable container; (ii) The date of the
3 repackaging; (iii) The serial number or other identifying code of the refillable container. 40
4 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2).

5 197. On and about January 9, 2014, Respondent failed to generate, maintain, and furnish
6 upon request of ADA inspectors, production records for each time Respondent repackaged into a
7 refillable container and distributed or sold Sodium Chlorate, containing: (i) the EPA registration
8 number of the pesticide product distributed or sold in the refillable container; (ii) the date of the
9 repackaging; and (iii) the serial number or other identifying code of the refillable container, as
10 required by 40 C.F.R. § 165.70(j)(2).

11 198. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
12 violated sections 12(a)(2)(B) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B) and
13 136j(a)(2)(S), by failing to generate, maintain at the Fennemore Establishment, and furnish to
14 ADA inspectors all of the records required by 40 C.F.R. § 165.70(e)(10) and (j).

15 **Count 27: Use of External Sight Gauge**

16 199. Refillers of a pesticide product who are not the registrant of that pesticide product
17 are prohibited from having external sight gauges, which are pesticide-containing hoses or tubes
18 that run vertically along the exterior of the container from the top to the bottom, on stationary
19 containers of liquid pesticides designed to hold undivided quantities of pesticides equal to or
20 greater than 500 gallons (1,890 liters) of liquid pesticide. 40 C.F.R. §§ 165.40(b)(2) and
21 165.45(f)(2)(ii).

22 200. On and about January 9, 2014, the Fennemore Tank had a hose or tube running
23 vertically along the exterior of the Fennemore Tank from the top to the bottom showing the level

1 of liquid held in the Fennemore Tank.

2 201. At all times relevant to this CAFO, when the Fennemore Tank held Sodium
3 Chlorate, the tube running vertically on the Fennemore Tank was pesticide-containing.

4 202. At all times relevant to this CAFO, the tube running vertically on the Fennemore
5 Tank is an *external sight gauge* as defined by 40 C.F.R. § 165.45(f)(2)(ii).

6 203. From on or about October 23, 2013 to on or about January 9, 2014, Respondent
7 violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by using an external sight gauge
8 prohibited by 40 C.F.R. § 165.45(f)(2)(ii) on a stationary pesticide container at the Fennemore
9 Establishment.

10 **D. RESPONDENT'S ADMISSIONS**

11 204. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding,
12 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
13 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section
14 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to
15 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this
16 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and
17 (vi) waives the right to appeal the proposed final order contained in this CAFO.

18 **E. CIVIL ADMINISTRATIVE PENALTY**

19 205. Respondent consents to the assessment of a penalty in the amount of **ONE**
20 **HUNDRED ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$111,800)** as final
21 settlement and complete satisfaction of the civil claims against Respondent arising from the facts
22 alleged in Section I.C of the CAFO and under the Act. Respondent shall pay this civil penalty
23 within thirty (30) days of the effective date of this CAFO as follows:

1 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
2 date of this CAFO by one of the methods listed below:

3
4 i. Respondent may pay online through the Department of the Treasury
5 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
6 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
7 complete the SFO Form Number 1.1.

8
9 ii. Respondent may pay by remitting a certified or cashier's check, including
10 the name and docket number of this case, for the amount, payable to
11 "Treasurer, United States of America," and sent as follows:

12
13 Regular Mail:

14 U.S. Environmental Protection Agency
15 Fines and Penalties
16 Cincinnati Finance Center
17 PO Box 979077
18 St. Louis, MO 63197-9000

19
20 Overnight/Signed Receipt Confirmation Mail:

21 U.S. Environmental Protection Agency
22 ATTN Box 979077
23 1005 Convention Plaza
24 Mail Station SL-MO-C2GL
25 St. Louis, MO 63101

26
27 iii. Respondent may also pay the civil penalty using any method, or
28 combination of methods, provided on the following website:

29
30 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

31
32 If clarification regarding a particular method of payment remittance is needed,
33 contact the EPA's Cincinnati Finance Center at (513) 487-2091.

34
35 b. Respondent shall identify each and every payment with the name and docket
36 number of this case; and

37 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
38 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
39 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any

1 other information required to demonstrate that payment has been made according to EPA
2 requirements, in the amount due, and identified with the name and docket number of this case),
3 including proof of the date payment was made, along with a transmittal letter, indicating
4 Respondent's name, the case title, and docket number, to the following addresses:

5 Regional Hearing Clerk
6 Office of Regional Counsel (ORC-1)
7 U.S. Environmental Protection Agency, Region IX
8 75 Hawthorne Street
9 San Francisco, CA 94105

10
11 Scott McWhorter
12 Enforcement Division (ENF 3-3)
13 U.S. Environmental Protection Agency, Region IX
14 75 Hawthorne Street
15 San Francisco, CA 94105

16
17 Margaret Alkon
18 Office of Regional Counsel (ORC-2)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105
22 [or via email to: alkon.margaret@epa.gov]

23 206. In the event that Respondent fails to pay the civil administrative penalty assessed
24 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
25 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
26 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
27 immediately become due and payable.

28 207. If Respondent fails to pay the penalty assessed in this CAFO in full by its due date,
29 the entire unpaid balance and accrued interest shall become immediately due and owing.
30 Respondent's tax identification number may be used for collecting or reporting any delinquent
31 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received

1 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the
2 effective date of this CAFO as described at 40 CFR §13.11. Respondent's failure to pay in full
3 the civil administrative penalty by its due date also may also lead to any or all of the following
4 actions:

5 a. The debt being referred to a credit reporting agency, a collection agency, or to
6 the Department of Justice for filing of a collection action in the appropriate United States District
7 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
8 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

9 b. The debt being collected by administrative offset (i.e., the withholding of
10 money payable by the United States to, or held by the United States for, a person to satisfy the
11 debt the person owes the Government), which includes, but is not limited to, referral to the
12 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
13 and H.

14 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
15 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
16 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
17 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
18 of-credit. 40 C.F.R. §§ 13.17.

19 **F. CERTIFICATION OF COMPLIANCE**

20 208. In executing this CAFO, Respondent certifies that the information it has supplied
21 concerning this matter was at the time of submission, and is at the time of signature to this
22 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
23 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading information

1 can result in significant penalties, including the possibility of fines and imprisonment for
2 knowing submission of such information.

3 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

4 209. This Consent Agreement constitutes the entire agreement between the Respondent
5 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
6 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
7 liability against Respondent for the violations alleged in Section I.C of this CAFO.

8 210. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
9 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
10 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
11 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
12 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
13 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
14 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
15 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
16 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
17 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
18 permits.

19 211. Except as set forth in Paragraph 207 above, each party shall bear its own fees, costs,
20 and disbursements in this action.

21 212. For the purposes of state and federal income taxation, Respondent shall not claim a
22 deduction for any civil penalty payment made pursuant to this CAFO.

23 213. This CAFO constitutes an enforcement action for purposes of considering

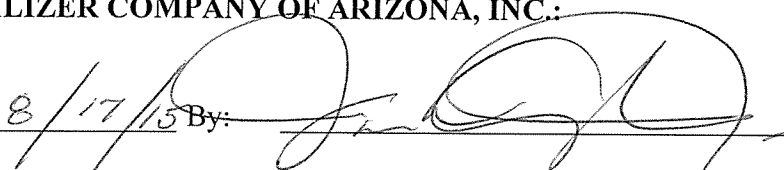
1 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
2 available to the public and does not contain any confidential business information.

3 214. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
4 CAFO shall be the date on which the accompanying Final Order, having been signed by the
5 Regional Judicial Officer, is filed.

6 215. The provisions of this CAFO shall be binding on Respondent and on Respondent's
7 officers, directors, employees, agents, servants, authorized representatives, successors, and
8 assigns.

9 216. The undersigned representatives of each party to this Consent Agreement certify
10 that each is duly authorized by the party whom he or she represents to enter into the terms and
11 conditions of this Consent Agreement and Final Order and bind that party to it.

12
13 **FERTILIZER COMPANY OF ARIZONA, INC.:**

14
15
16 Date: 8/17/15 By: 

17
18
19 Name: James R. Compton, Jr.

20
21
22 Title: President

1
2 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**
3

4
5
6 Date: 9/17/15 By:



7 CLAIRE TROMBADORE

8 Assistant Director

9 Water and Pesticide Branch, Enforcement Division

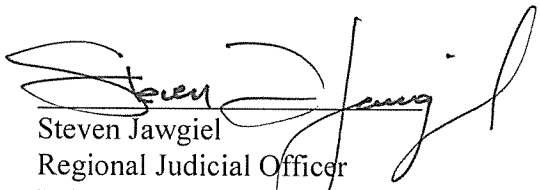
10 U.S. Environmental Protection Agency,

11 Region IX
12
13

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **ONE HUNDRED ELEVEN THOUSAND EIGHT HUNDRED DOLLARS (\$111,800)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/18/15


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-09-2015-0011) 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:

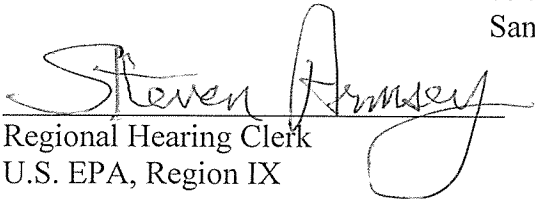
A copy was mailed via CERTIFIED MAIL to: 7011 0470 0002 9198 1941

James R. Compton, Jr.
President
Fertilizer Company of Arizona, Inc.
2850 S Peart Rd
Casa Grande, AZ 85193

CERTIFIED MAIL NUMBER:

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

Margaret Alkon
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


Date