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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In the matter of: ) Docket No. FIFRA-09-2016-00 15  
Moana Nursery, )  
Respondent. )  
CONSENT AGREEMENT  
AND FINAL ORDER  
pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Moana Nursery ("Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(2), for the assessment of a civil administrative penalty against Respondent for the use of a registered pesticide in manners inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard set forth at 40 C.F.R. Part 170.

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

1           3. Respondent is Moana Nursery, a Nevada corporation with headquarter offices located  
2 at 1100 West Moana Lane in Reno, Nevada, 89509.

3                                   **B. STATUTORY AND REGULATORY BASIS**

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

6           5. Pursuant to 40 C.F.R. § 170.122, when workers are on an agricultural establishment  
7 and a pesticide has been applied on the establishment in the production of agricultural plants  
8 within the past 30 days, the agricultural employer shall display, in accordance with this section,  
9 specific information about the pesticide, including: (1) the location and description of the treated  
10 area; (2) the product name, EPA registration number, and active ingredient(s) of the pesticide; (3)  
11 the time and date the pesticide is to be applied; and (4) the restricted-entry interval for the  
12 pesticide.

13           6. Pursuant to 40 C.F.R. § 170.130, the agricultural employer shall assure that each  
14 worker, required by this section to be trained, has been trained according to this section during  
15 the last 5 years.

16           7. Pursuant to 40 C.F.R. § 170.135, when workers are on an agricultural establishment  
17 and, within the last 30 days, a pesticide covered by this subpart has been applied on the  
18 establishment or a restricted-entry interval has been in effect, the agricultural employer shall  
19 display, in accordance with this section, pesticide safety information on or near a pesticide safety  
20 poster in a central location where it can be readily seen and read by workers. Such information  
21 must include, inter alia, the name, address, and telephone number of the nearest emergency  
22 medical care facility.

23           8. Pursuant to 40 C.F.R. § 170.9(b), a person who has a duty under 40 C.F.R. Part 170,  
24 as referenced on the pesticide label, and who fails to perform that duty, violates Section  
25 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is subject to a civil penalty under Section  
26 14 of FIFRA, 7 U.S.C. § 136l.

1 C. ALLEGED VIOLATIONS

2 9. Respondent is a corporation and therefore fits within the definition of "person" as that  
3 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject to  
4 FIFRA and the implementing regulations promulgated thereunder.

5 10. At all times relevant to this matter, Respondent operated a facility (the "Facility")  
6 located at 11301 S. Virginia Street in Reno, Nevada.

7 11. This Facility is a "nursery" and therefore an "agricultural establishment" as those  
8 terms are defined at 40 C.F.R. § 170.3.

9 12. At all times relevant to this matter, the individuals employed by Respondent for the  
10 performance of activities relating to the production of agricultural plants at the Facility were  
11 "workers" as that term is defined at 40 C.F.R. § 170.3.

12 13. At all times relevant to this matter, Respondent was an "agricultural employer" as  
13 that term is defined at 40 C.F.R. § 170.3.

14 14. Lontrel (EPA Reg. No. 62719-305) is a registered "pesticide" as that term is defined  
15 in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16 15. At all times relevant to this matter, the planted trees site at the Facility was a "treated  
17 area" as that term is defined at 40 C.F.R. § 170.3.

18 16. On or about June 10, 2015, Respondent used, "in a manner inconsistent with its  
19 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered  
20 pesticide Lontrel at the Facility. Specifically, Respondent failed to provide workers with specific  
21 information about the application of this pesticide at the planted trees site at the Facility within  
22 the past 30 days. Pursuant to 40 C.F.R. § 170.122, this failure represents the use of a registered  
23 pesticide in a manner inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G)  
24 of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

25 17. On or about June 10, 2015, 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 Lontrel at the Facility. Specifically, after the application of this pesticide at the planted  
28 trees site at the Facility within the preceding 30 days, Respondent failed to assure that each of its

1 workers had received pesticide safety training during the preceding five years. Pursuant to 40  
2 C.F.R. § 170.130, this failure represents the use of a registered pesticide in a manner inconsistent  
3 with its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §  
4 136j(a)(2)(G).

5 18. On or about June 10, 2015, Respondent used, "in a manner inconsistent with its  
6 labeling" as that term is defined by Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), the registered  
7 pesticide Lontrel at the Facility. Specifically, Respondent failed to post pesticide safety  
8 information (e.g., nearest emergency medical care facility information) in a central location after  
9 this pesticide had been applied at the planted trees site at the Facility within the preceding 30  
10 days. Pursuant to 40 C.F.R. § 170.135, this failure represents the use of a registered pesticide in  
11 a manner inconsistent with its labeling and is thus a violation of Section 12(a)(2)(G) of FIFRA, 7  
12 U.S.C. § 136j(a)(2)(G).

13 19. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), as amended by the Civil Monetary  
14 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response  
15 Policy dated December 2009 provide for a penalty of up to \$1,100 for each violation.

#### 16 D. RESPONDENT'S ADMISSIONS

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

#### 24 E. CIVIL ADMINISTRATIVE PENALTY

25 21. In final settlement of the violations of FIFRA specifically alleged in Section I.C of  
26 this CAFO, Respondent shall pay a civil administrative penalty of TWO THOUSAND, SIX  
27 HUNDRED, AND FORTY DOLLARS (\$2,640). Respondent shall pay this civil penalty no later  
28 than thirty (30) calendar days from the effective date of this CAFO. The civil penalty shall be

1 paid by remitting a certified or cashier's check, including the name and docket number of this  
2 case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the  
3 other methods listed below) and sent as follows:

4  
5 Regular Mail:

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

11 Wire Transfers:

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

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

21 Certified or Overnight Mail:

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

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

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

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:

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

23                                    Edgar P. Coral  
24                                    Office of Regional Counsel (ORC-2)  
25                                    U.S. Environmental Protection Agency, Region IX  
26                                    75 Hawthorne Street  
27                                    San Francisco, CA 94105

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

29                                    23. If Respondent fails to pay the assessed civil administrative penalty of TWO  
THOUSAND, SIX HUNDRED, AND FORTY DOLLARS (\$2,640) as identified in Paragraph  
30 21 by the deadline specified in that Paragraph, then Respondent shall also pay a stipulated  
penalty to EPA upon EPA's written request. The amount of the stipulated penalty will be SIX  
HUNDRED AND SIXTY DOLLARS (\$660) and will be immediately due and payable upon

1 EPA's written request, together with the initially assessed civil administrative penalty of TWO  
2 THOUSAND, SIX HUNDRED, AND FORTY DOLLARS (\$2,640), resulting in a total penalty  
3 due of THREE THOUSAND AND THREE HUNDRED DOLLARS (\$3,300). Failure to pay the  
4 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph  
5 may also lead to any or all of the following actions:

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

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

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

19 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
20 Government may assess interest, administrative handling charges, and nonpayment penalties  
21 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
22 civil administrative penalty specified in Paragraph 21 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §  
24 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established  
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,  
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty  
27 (30) days of the effective date of this CAFO.

1 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
2 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
3 either actual or average cost incurred (including both direct and indirect costs), for every month  
4 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

8 F. CERTIFICATION OF COMPLIANCE

9 24. In executing this CAFO, Respondent certifies that (1) it is no longer using any  
10 registered pesticides in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and  
11 (2) it is currently in compliance with all other FIFRA requirements for all its ongoing operations.

12 G. RETENTION OF RIGHTS

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

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

24 H. ATTORNEYS' FEES AND COSTS

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



1 I. EFFECTIVE DATE

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

5 J. BINDING EFFECT

6 29. The undersigned representative of Complainant and the undersigned representative of  
7 Respondent each certifies that he or she is fully authorized to enter into the terms and conditions  
8 of this CAFO and to bind the party he or she represents to this CAFO.

9 30. The provisions of this CAFO shall apply to and be binding upon Respondent and its  
10 officers, directors, employees, agents, trustees, servants, authorized representatives, successors,  
11 and assigns.

12  
13  
14  
15 FOR RESPONDENT MOANA NURSERY:

16 04-22-2016  
17 DATE

18 Bruce Gescheider  
19 BRUCE GESCHEIDER  
20 General Manager  
21 Moana Nursery  
22 1100 West Moana Lane  
23 Reno, NV 89509

24 FOR COMPLAINANT EPA:

25 5-17-2016  
26 DATE

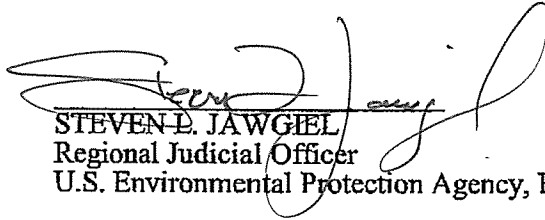
27 Kathleen H. Johnson  
28 KATHLEEN H. JOHNSON  
29 Director  
30 Enforcement Division  
31 U.S. Environmental Protection Agency, Region IX

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II. FINAL ORDER

EPA and Moana Nursery having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0015) be  
entered, and Respondent shall pay a civil administrative penalty in the amount TWO  
THOUSAND, SIX HUNDRED, AND FORTY DOLLARS (\$2,640), and comply with the terms  
and conditions set forth in the Consent Agreement.

05/18/16  
DATE

  
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-09-2016-0015) 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:

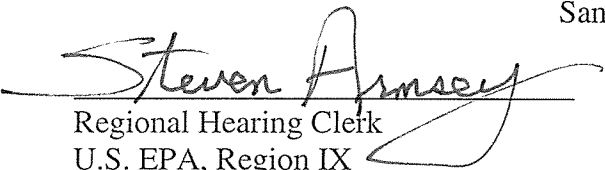
A copy was mailed via CERTIFIED MAIL to:

Bruce Gescheider, President  
Moana Nursery  
1100 West Moana Lane  
Reno, Nevada 89509

**CERTIFIED MAIL NUMBER: 7015 1520 0000 9141 9559**

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

May 18, 2016  
Date