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U.S. EPA - REGION IX

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

18
19 In the matter of:)
20) U.S. EPA Docket No. FIFRA-09-2021-0014
21 Helena Agri-Enterprises,)
22 LLC) **CONSENT AGREEMENT**
23) and
24) **FINAL ORDER PURSUANT TO**
25 Respondent.) **SECTIONS 22.13 AND 22.18**
26)
27)

28 **I. CONSENT AGREEMENT**

29 The United States Environmental Protection Agency (“EPA”) and Helena Agri-
30 Enterprises, LLC (“Respondent”) agree to settle this matter and consent to the entry of this
31 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
32 concludes this proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

33 **A. AUTHORITY AND PARTIES**

34 1. This administrative proceeding for the assessment of a civil administrative penalty
35 is initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
36 U.S.C. § 136, *et seq.* (hereinafter referred to as "FIFRA" or the “Act”), and the Consolidated
37 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
38 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

39 2. Complainant is the Manager of the Toxics Section of the Enforcement and
40 Compliance Assurance Division, EPA Region IX, who has been duly delegated to commence

1 and settle an enforcement action in this matter.

2 3. Respondent is a Delaware limited liability company subject to suit under a
3 common name with corporate headquarters in Collierville, TN and offices or businesses in
4 Exeter, Kerman, Modesto, and Oxnard California.

5 **B. STATUTORY AND REGULATORY AUTHORITIES**

6 4. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
7 regulations governing the labeling requirements for pesticides and devices, which are codified at
8 40 C.F.R. Part 156.

9 5. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
10 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
11 containers and pesticide containment structures (“the Container/Containment regulations”),
12 which are codified at 40 C.F.R. Part 165.

13 *Unlawful Acts*

14 6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that “it shall be
15 unlawful for any person in any State to distribute or sell to any person . . . any pesticide which is
16 adulterated or misbranded.”

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

20 8. Under section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B), it is unlawful for
21 any person to refuse to prepare, maintain, or submit any records required by or under sections 5,
22 7, 8, 11, or 19 of FIFRA, 7 U.S.C. §§ 136c, 136e, 136f, 136i, or 136q.

23 *Penalty*

24 9. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
25 distributor who violates any provision of the Act may be assessed a civil penalty of not more
26 than \$7,500 for violations that occurred after December 6, 2013 through November 2, 2015, or
27 are assessed before August 1, 2016; and \$20,288 for violations that occurred after November 2,
28 2015 and are assessed on or after January 13, 2020. Section 14(a)(1) of the Act, 7 U.S.C. §
29 136l(a)(1), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part
30 19.

FIFRA Definitions

1
2 10. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), a person is “any individual,
3 partnership, association, corporation, or any organized group of persons whether incorporated or
4 not.”

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

8 12. The term “to distribute or sell” means to distribute, sell, offer for sale, hold for
9 distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or
10 receive and (having so received) deliver or offer to deliver. Section 2(gg) of FIFRA, 7 U.S.C. §
11 136(gg).

12 13. A pesticide is *misbranded* if:

13 (a). its label does not bear the registration number assigned under section 136(e) of
14 FIFRA to each establishment in which it was produced. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. §
15 136(q)(1)(D);

16 (b). any word, statement, or other information required by or under the authority of
17 FIFRA to appear on the label or labeling is not prominently placed thereon. Section 2(q)(1)(E) of
18 FIFRA, 7 U.S.C. § 136(q)(1)(E); or

19 (c). there is not affixed to its container, and to the outside container or wrapper of the
20 retail package, if there be one, through which the required information on the immediate
21 container cannot be clearly read, a label bearing the net weight or measure of the content. Section
22 2(q)(2)(C)(ii) of FIFRA, 7 U.S.C. § 136(q) (2)(C)(ii).

23 14. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), a label is “the written,
24 printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or
25 wrappers.”

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

29 16. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term, to distribute or sell,
30 means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
31 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or

1 offer to deliver.”

2 17. Agricultural pesticide means “any pesticide product labeled for use in or on a
3 farm, forest, nursery, or greenhouse.” 40 C.F.R. § 165.3.

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

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

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

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

18 22. *Operator* means “any person in control of, or having responsibility for, the daily
19 operation of a facility at which a containment structure is located.” 40 C.F.R. § 165.3.

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

22 24. Pesticide dispensing area means “an area in which pesticide is transferred out of
23 or into a container.” 40 C.F.R. § 165.3.

24 25. Produce means “to manufacture, prepare, propagate, compound, or process any
25 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active
26 ingredient or device, or to package, repack, label, relabel, or otherwise change the container
27 of any pesticide or device.” 40 C.F.R. § 165.3.

28 26. *Refilling establishment* means “an establishment where the activity of
29 repackaging pesticide product into refillable containers occurs.” 40 C.F.R. § 165.3.

30 27. *Refillable container* means “a container that is intended to be filled with pesticide
31 more than once for sale or distribution.” 40 C.F.R. § 165.3.

1 28. *Refiller* means “a person who engages in the activity of repackaging pesticide
2 product into refillable containers.” 40 C.F.R. § 165.3.

3 29. *Repackage* means, for the purposes of this part, “to transfer a pesticide
4 formulation from one container to another without a change in the composition of the
5 formulation, the labeling content, or the product’s EPA registration number, for sale or
6 distribution.” 40 C.F.R. § 165.3.

7 30. *Secondary containment unit* means “any structure, including rigid diking, that is
8 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff
9 and leaching from stationary pesticide containers.” 40 C.F.R. § 165.3.

10 31. *Stationary pesticide container* means “a refillable container that is fixed at a
11 single facility or establishment or, if not fixed, remains at the facility or establishment for at least
12 30 consecutive days, and that holds pesticide during the entire time.” 40 C.F.R. § 165.3.

13 32. *Transport vehicle* means “a cargo-carrying vehicle such as an automobile, van,
14 tractor, truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode.”
15 40 C.F.R. § 165.3.

16 C. COMPLAINANT’S ALLEGATIONS

17 Complainant alleges:

18 33. Respondent is a “*person*” as that term is defined by section 2(s) of FIFRA, 7
19 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

20 34. Respondent is a distributor of pesticides.

21 35. Respondent distributes and sells pesticides to customers located in California.

22 36. Respondent is an *owner* or *operator* of businesses that are each a *facility* that is an
23 *establishment*, as those terms are defined by 40 C.F.R. § 165.3, located at: at 25114 Road 204,
24 Exeter, California (the “Exeter Facility”); ”); 14600 W. Commerce Way, Kerman, California (the
25 “Kerman Facility”); 312 West Service Road, Modesto, California (the “Modesto Facility”); and
26 670 Pacific Ave, Oxnard, California (the “Oxnard Facility”).

27 37. At all times relevant to this CAFO, Respondent repackaged for distribution and
28 sale the following *agricultural pesticides*, as that term is defined by 40 C.F.R. § 165.3:

29 (a) Gramoxone SL 2.0, EPA Reg. No. 100-1431, at the Kerman Facility;

30 (b) Omni Oil 6, EPA Reg. No. 5905-598, at the Exeter and Oxnard Facilities;

31 (c) Omni Supreme Spray, EPA Reg. No. 5905-368, at the Exeter, Kerman, and

1 Modesto Facilities;

2 (d) Roundup PowerMax, EPA Reg. No. 524-549, at the Exeter, Kerman, and
3 Modesto Facilities; and

4 (e) Prowl H2O Herbicide, EPA Reg. No. 241-418, at the Modesto Facility.

5 38. Each of the Exeter, Kerman, Oxnard and Modesto Facilities is a *refilling*
6 *establishment* whose principal business is retail sale.

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

11 40. Each of the Exeter, Kerman, Oxnard and Modesto Facilities has one or more
12 *stationary pesticide container* that must comply with the secondary container requirements of the
13 Container/Containment regulations.

14 (a) Stationary pesticide containers designed to hold undivided quantities of
15 agricultural pesticides equal to or greater than 500 gallons of liquid pesticide must
16 have secondary containment units that comply with the provisions of the
17 Containment regulations. 40 C.F.R. § 165.81.

18 (b) At all times relevant to this CAFO, the following tanks were located within the
19 following areas that are each a *secondary containment unit*, as that term is defined
20 by 40 C.F.R. § 165.3:

21 1. Bulk tanks containing Omni Oil 6, EPA Reg. No. 5905-598, and Omni
22 Supreme Spray, EPA Reg. No. 5905-368, located within a containment area at
23 the Exeter Facility;

24 2. Bulk tanks containing Roundup PowerMax, EPA Reg. No. 524-549,
25 Omni Supreme Spray, EPA Reg. No. 5905-368, and Prowl H2O Herbicide, EPA
26 Reg. No. 241-418 located within a containment area at the Modesto Facility;

27 3. Bulk tanks containing Roundup PowerMax, EPA Reg. No. 524-549, and
28 Omni Supreme Spray, EPA Reg. No. 5905-368, located within a containment
29 area at the Kerman Facility;

30 4. Tanks 1 and 2 containing Omni Oil 6, EPA Reg. No. 5905-598 located
31 within a containment area at the Oxnard Facility;

1 (c) At all times relevant to this CAFO, each of the tanks listed in Paragraph 39 (B)
2 was a *stationary pesticide container*, as that term is defined by 40 C.F.R. § 165.3,
3 holding undivided quantities of agricultural pesticides equal to or greater than 500
4 gallons of liquid pesticide.

5 41. Pesticide *dispensing areas* are subject to the Container/Containment regulations
6 and must have a containment pad that complies with the requirements of the Containment
7 regulations if any of the following activities occur: (1) refillable containers of agricultural
8 pesticides are emptied, cleaned, or rinsed; (2) agricultural pesticides are dispensed from
9 stationary pesticide containers designed to hold undivided quantities equal or greater than 500
10 gallons of liquid pesticides or 4,000 pounds of dry pesticides for any purpose; (3) agricultural
11 pesticides are dispensed from a transport vehicle for purposes of filling a refillable container; or
12 (4) agricultural pesticides are dispensed from any other container for the purpose of refilling a
13 refillable container for sale or distribution. 40 C.F.R. § 165.82(a).

14 42. At all times relevant to this CAFO, Respondent used each of the loading pad at
15 the Exeter Facility, the loading pad at the Modesto Facility, and the loading pad at the Oxnard
16 Facility to dispense and refill agricultural pesticides, and each is a *pesticide dispensing area* and
17 *containment pad*, as those terms are defined by 40 C.F.R. § 165.3, and subject to the
18 Container/Containment regulations.

19 43. At all times relevant to this CAFO, all containment structures relevant to this
20 CAFO at the Exeter, Modesto and Oxnard Facilities were constructed on or before November 16,
21 2006 and are each *existing containment structures*, as that term is defined by 40 C.F.R. §
22 165.83(b).

23 44. Inspectors from the California Department of Pesticide Regulation (“CDPR”)
24 conducted inspections of the Facilities relevant to this CAFO on or about the following dates: On
25 or about January 17, 2018 at the Exeter Facility; On or about October 15, 2019 at the Kerman
26 Facility; On or about February 21, 2019 at the Modesto Facility, and on or about January 23,
27 2019 at the Oxnard Facility.

28 **Count 1**

29 **Failure to seal cracks and gaps in containment structures as required by 40 C.F.R. §**
30 **165.90(b)(2)**

31 45. The owner or operator of a pesticide containment structure must initiate repair to

1 any areas showing visible signs of damage and seal any cracks and gaps in the containment
2 structure or appurtenances with material compatible with the pesticide being stored or dispensed
3 no later than the end of the day on which damage is noticed and complete repairs within a
4 timeframe that is reasonable.

5 46. On or about February 21, 2019, the Modesto containment area had unsealed
6 cracks. On February 4, 2019, Respondent's records of inspection of the Modesto Facility
7 document cracks in this containment structure.

8 47. On or about February 21, 2019, Respondent violated section 12(a)(2)(S) of
9 FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to seal cracks and gaps in the Modesto containment
10 area no later than the end of the day on which damage is noticed, as required by 40 C.F.R. §
11 165.90(b)(2).

12 **Counts 2, 3, 4, 5**

13 **Failure to meet material specifications as required by 40 C.F.R. § 165.87(a)(1)**

14 48. Existing containment structures must be liquid-tight with cracks, seams and joints
15 appropriately sealed. 40 C.F.R. § 165.87(a)(1).

16 49. On or about January 17, 2018, the Exeter containment area and the Exeter loading
17 pad had unsealed cracks.

18 50. On or about January 23, 2019, the Oxnard containment area had unsealed cracks.
19 On or about January 23, 2019, the Oxnard loading pad had unsealed cracks.

20 51. On or about January 17, 2018 and January 23, 2019, Respondent violated section
21 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) for each of the Exeter Facility's containment area
22 and loading pad and Oxnard Facility's containment area and loading pad by failing to keep
23 existing containment structures liquid-tight with cracks, seams and joints appropriately sealed, as
24 required by 40 C.F.R. § 165.87(a)(1).

25 **Count 6**

26 **Failure to meet capacity requirements for containment structure as required by 40 C.F.R.**

27 **§ 165.87(c)(2)**

28 52. Existing containment pads must have a holding capacity of at least 750 gallons in
29 pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with
30 a volume of 750 gallons or greater, and at least 100 percent of the volume of the largest pesticide
31 container or pesticide-holding equipment used on the pad in pesticide dispensing areas which do

1 not have a pesticide container or pesticide-holding equipment with a volume of at least 750
2 gallons. 40 C.F.R. §§ 165.87(c)(2) and (3).

3 53. On or about January 23, 2019, the containment pad at the Oxnard Facility had a
4 capacity under 750 gallons and Respondent used the containment pad at the Oxnard Facility for
5 pesticide holding equipment (trucks) with a volume of 750 gallons or greater.

6 54. Respondent failed to meet capacity requirements as required by 40 C.F.R. §
7 165.87(c) on or about January 23, 2019 for the containment pad at the Oxnard Facility.

8 55. Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by
9 failing to meet capacity requirements as required by 40 C.F.R. § 165.87(c) for the containment
10 pad at the Oxnard Facility.

11 **Counts 7 and 8**

12 **Failure to generate and maintain repackaging records required by 40 C.F.R. §** 13 **165.70(j)(2)**

14 56. Each time a refiller repackages a pesticide product into a refillable container and
15 distributes or sells the product, the retailer must generate and maintain for at least 3 years after
16 the date of repackaging records that contain: (i) the EPA registration number of the pesticide
17 product distributed or sold in the refillable container; (ii) the date of the repackaging; and (iii) the
18 serial number or other identifying code of the refillable container. 40 C.F.R. §§ 165.65(i),
19 165.70(e).

20 57. Before January 1, 2018 at the Exeter Facility, Respondent failed to generate and
21 maintain repackaging records containing the EPA registration number of the pesticide product
22 Roundup PowerMax, EPA Reg. No. 524-549, distributed or sold in a refillable container, the
23 date of the repackaging, and the serial number or other identifying code of the refillable
24 container, as required by 40 C.F.R. § 165.70(j)(2).

25 58. On or about October 15, 2019 at the Kerman Facility, Respondent failed to
26 generate and maintain repackaging records containing the EPA registration number of the
27 pesticide product Gramoxone SL 2.0, EPA Reg. No. 100-1431, distributed or sold in a refillable
28 container, as required by 40 C.F.R. § 165.70(j)(2).

29 59. Respondent violated sections 12(a)(2)(S) and 12(a)(2)(B) of FIFRA, 7 U.S.C. §§
30 136j(a)(2)(S) and 136j(a)(2)(B), by failing to generate and maintain repackaging records
31 containing information as required by 40 C.F.R. § 165.70(e)(10) and 165.70(j)(2) on or about

1 October 15, 2019 at the Kerman Facility and before January 1, 2018 at the Exeter Facility.

2 **Counts 9, 10, 11, 12, 13, 14, 15, 16, 17**

3 **Distribution and Sale of Misbranded Pesticides**

4 60. When pesticide products are stored in bulk containers, whether mobile or
5 stationary, which remain in the custody of the user, a copy of the label or labeling, including all
6 appropriate directions for use, must be securely attached to the container in the immediate
7 vicinity of the discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B).

8 (a) The label includes marking the producing establishment registration number
9 preceded by the phrase “EPA Est.”, of the final establishment at which the
10 product was produced. 40 C.F.R. § 156.10(f).

11 (b) The label includes marking the net contents as prescribed in 40 C.F.R. §
12 156.10(d). 40 C.F.R. § 156.10(a)(1)(iii). Variation above minimum content or
13 around an average is permissible only to the extent that it represents deviation
14 unavoidable in good manufacturing practice. Variation below a stated minimum is
15 not permitted. 40 C.F.R. § 156.10(d)(6). For a pesticide product packaged in a
16 refillable container, an appropriately sized area on the label may be left blank to
17 allow the net weight to be marked in by the refiller prior to distribution or sale of
18 the pesticide, but the refiller must ensure that the net contents statement appears
19 on the label. 40 C.F.R. §§ 156.10(d)(7) and 165.70(i).

20 61. On or about January 17, 2018 at the Exeter Facility, Respondent’s failure to attach
21 a copy of the label for each pesticide product that identified the establishment number of the final
22 establishment at which that pesticide was last produced as required by 40 C.F.R. §§
23 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section 2(q)
24 of FIFRA, 7 U.S.C. § 136(q), for each of the following: (a) The Exeter Tank containing Omni
25 Oil 6, EPA Reg. No. 5905-598; (b) The Exeter Tank containing Omni Supreme Spray, EPA Reg.
26 No. 5905-368; and (c) The Exeter Tank and containers ready for shipment at the Exeter Facility
27 containing Roundup PowerMax, EPA Reg. No. 524-549. For containers of Roundup PowerMax,
28 EPA Reg. No. 524-549, ready for shipment with labels missing the net contents, missing the
29 instruction booklets containing complete directions for use, and illegible labels from exposure to
30 outside elements, Respondent’s failure to mark the net contents as prescribed in 40 C.F.R. §
31 156.10(d), have all words clearly legible, and to have complete directions for use securely

1 attached to each container as required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(2) and
2 156.10(i) also constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7
3 U.S.C. § 136(q).

4 62. On or about January 23, 2019 at the Oxnard Facility, Respondent's failure to
5 attach a legible copy of the pesticide label that identified the establishment number of the final
6 establishment at which that pesticide was last produced, mark the net contents as prescribed in 40
7 C.F.R. § 156.10(d), have all words clearly legible, as required by 40 C.F.R. §§ 156.10(a)(1)(iii),
8 156.10(a)(2), 156.10(i), 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term
9 is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q) for Tank 1 and Tank 2 at the Oxnard
10 Facility containing Omni Oil 6E, EPA Reg. No. 5905-598. Tank 1 had a deteriorated label in
11 poor condition and Tank 2 had three labels none of which identified the producing establishment
12 where the bulk product was produced nor had net contents marked.

13 63. On or about February 21, 2019 at the Modesto Facility, Respondent's failure to
14 attach to the bulk tanks containing Omni Supreme Spray, EPA Reg. No. 5905-368, Roundup
15 PowerMax, EPA Reg. No. 524-549, and Prowl H2O Herbicide, EPA Reg. No. 241-418 a copy of
16 the label for each pesticide product that identified the establishment number of the final
17 establishment at which that pesticide was last produced in such terms as to render it likely to be
18 read and understood as required by 40 C.F.R. §§ 156.10(a) and 156.10(f), constitutes
19 *misbranding*, as that term is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q).

20 64. On or about October 15, 2019 at the Kerman Facility, Respondent's failure to
21 attach to the bulk tanks containing Omni Supreme Spray, EPA Reg. No. 5905-368, a copy of the
22 label for each pesticide product that identified the net contents and to attach to the bulk tanks
23 containing Roundup PowerMax, EPA Reg. No. 524-549, a copy of the label for each pesticide
24 product that identified the establishment number of the final establishment at which that
25 pesticide was last produced in such terms as to render it likely to be read and understood as
26 required by 40 C.F.R. §§ 156.10(a) and 156.10(f), constitutes *misbranding*, as that term is
27 defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q).

28 65. Respondent violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by
29 distributing or selling the following misbranded pesticides on or about the following dates:

- 30 (a) Omni Oil 6, EPA Reg. No. 5905-598, Omni Supreme Spray, EPA Reg. No. 5905-
31 368, and Roundup PowerMax, EPA Reg. No. 524-549 at the Exeter Facility on

1 January 17, 2018;

2 (b) Omni Oil 6E, EPA Reg. No. 5905-598 at the Oxnard Facility on January 23,
3 2019;

4 (c) Omni Supreme Spray, EPA Reg. No. 5905-368, and Roundup PowerMax, EPA
5 Reg. No. 524-549 at the Kerman Facility on October 15, 2019; and

6 (d) Omni Supreme Spray, EPA Reg. No. 5905-368, Roundup PowerMax, EPA Reg.
7 No. 524-549, and Prowl H2O Herbicide, EPA Reg. No. 241-418, at the Modesto
8 Facility on February 21, 2019.

9
10 **D. RESPONDENTS' ADMISSIONS**

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

19 **E. CIVIL ADMINISTRATIVE PENALTY**

20 67. Respondent consents to the assessment of a civil administrative penalty in the
21 amount of **EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000)** as final settlement and
22 complete satisfaction of the civil claims against Respondent arising from the facts alleged in
23 Section I.C of the CAFO and under the Act.

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

- 26 i. Respondent may pay online through the Department of the Treasury
27 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
28 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
29 complete the SFO Form Number 1.1.
30
31 ii. Respondent may pay by remitting a certified or cashier's check, including
32 the name and docket number of this case, for the amount, payable to
33 "Treasurer, United States of America," and sent as follows:

1
2 Regular Mail:

3 U.S. Environmental Protection Agency
4 PO Box 979077
5 St. Louis, MO 63197-9000

6
7 Overnight/Signed Receipt Confirmation Mail:

8 U.S. Environmental Protection Agency
9 ATTN Box 979077
10 1005 Convention Plaza
11 Mail Station SL-MO-C2GL
12 St. Louis, MO 63101

- 13
14 iii. Respondent may also pay the civil penalty using any method, or
15 combination of methods, provided on the following website:

16
17 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

18
19 If clarification regarding a particular method of payment remittance is needed,
20 contact the EPA's Cincinnati Finance Center at (513) 487-2091.

21
22 b. Respondent shall identify payment with the name and docket number of this
23 case; and

24 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
25 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
26 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
27 other information required to demonstrate that payment has been made according to EPA
28 requirements, in the amount due, and identified with the name and docket number of this case),
29 including proof of the date payment was made, along with a transmittal letter, indicating
30 Respondent's names, the case title, and docket number, to the following addresses:

31 Regional Hearing Clerk
32 U.S. EPA, Region IX
33 r9HearingClerk@epa.gov

34
35 Brandon Boatman
36 Toxics Branch
37 Enforcement and Compliance Assurance Division
38 U.S. EPA, Region IX
39 Boatman.Brandon@epa.gov

40
41 68. In the event that Respondent fails to pay the civil administrative penalty assessed

1 above by the due date, Respondent shall pay to EPA a stipulated penalty in the amount of FIVE
2 HUNDRED DOLLARS (\$500) for each day that payment is late in addition to the unpaid
3 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
4 immediately become due and payable.

5 69. If Respondent fails to pay the penalty assessed by this CAFO in full by the date
6 specified in Paragraph 67, the entire unpaid balance and accrued interest shall become
7 immediately due and owing. Respondent's tax identification numbers may be used for collecting
8 or reporting any delinquent monetary obligation arising from this CAFO (see 31 U.S.C. § 7701).
9 If payment is not received in full by the date specified in Paragraph 67, interest, penalty and
10 administrative costs will accrue from the effective date of this CAFO as described at 40 CFR
11 §13.11. In addition, if this matter is referred to another department or agency (e.g., the
12 Department of Justice, the Internal Revenue Service), that department or agency may assess its
13 own administrative costs, in addition to EPA's administrative costs, for handling and collecting
14 Respondent's overdue debt. Respondent's failure to pay in full the civil administrative penalty by
15 its due date also may also lead to any or all of the following actions:

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

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

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

30 **F. RESPONDENT CERTIFICATION**

31 70. In executing this CAFO, Respondent certifies that the information it has supplied

1 concerning this matter was at the time of submission, and is at the time of signature to this
2 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
3 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading
4 information can result in significant penalties, including the possibility of fines and
5 imprisonment for knowing submission of such information.

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

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

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

22 73. Except as set forth in Paragraph 69 above, EPA and Respondent shall each bear
23 its own fees, costs, and disbursements in this action.

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

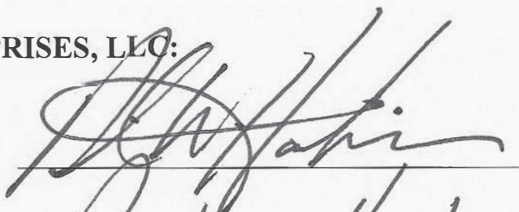
26 75. This CAFO constitutes an enforcement action for purposes of considering
27 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
28 available to the public and does not contain any confidential business information.

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

1 77. The provisions of this CAFO shall be binding on Respondent and on
2 Respondent's officers, directors, employees, agents, servants, authorized representatives,
3 successors, and assigns.

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

7
8 **HELENA AGRI-ENTERPRISES, LLC:**

9
10 Date: 11/11/2020 By: 

11
12
13 Name: David W. Hawkins

14
15
16 Title: V.P. Chief Legal Officer
17
18

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

2
3
4 Date: 12/1/2020

5 By:

6 **MATTHEW**
7 **SALAZAR**

Digitally signed by
MATTHEW SALAZAR
Date: 2020.12.01
14:03:34 -08'00'

8 MATT SALAZAR
9 Manager, Toxics Section
10 Enforcement and Compliance Assurance Division
11 U.S. Environmental Protection Agency,
12 Region IX
13

1 II. FINAL ORDER

2
3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket No.
4 FIFRA-09-2021-0014) be entered and that Respondent shall pay a civil administrative penalty
5 in the amount of **EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000)** in accordance with the
6 terms of this Consent Agreement and Final Order.
7

8
9
10 Date: _____
11
12
13
14
15

Steven L.
Jawgiel

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

Digitally signed by Steven
L. Jawgiel
Date: 2020.12.16 15:11:07
-08'00'

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Helena Agri-Enterprises LLC (FIFRA-09-2021-0014), has been filed with the Regional Hearing Clerk, and a copy was served on the Respondent and on the Complainant as indicated below:

RESPONDENT


David W. Hawkins,
C/O David Wieties
V.P. Chief Legal Officer
Helena Agri-Enterprises, LLC
WietiesD@helenaagri.com
HawkinsD@helenaagri.com

COMPLAINANT

Margaret Alkon
Assistant Regional Counsel
U.S. EPA - Region 9
Alkon.Margaret@epa.gov

Date Filed: _____, 2020

STEVEN
ARMSEY

 Digitally signed by STEVEN
ARMSEY
Date: 2020.12.21 07:28:49
-08'00'

Steven Armsey
Regional Hearing Clerk
EPA, Region 9