## FILED

2013 AUG −1 PM 3: 16 1 ROBERT E. MOYER Acting Regional Counsel 2 US EPA - REGION IX EDGAR P. CORAL HEARING CLERK 3 Assistant Regional Counsel U.S. Environmental Protection Agency 4 Region IX 75 Hawthorne Street 5 San Francisco, CA 94105 (415) 972-3898 6 7 **UNITED STATES** ENVIRONMENTAL PROTECTION AGENCY 8 REGION IX 9 10 In the matter of: Docket No. FIFRA-09-2012-0006 11 Fry's Electronics, Inc., 12 CONSENT AGREEMENT AND FINAL ORDER 13 Respondent. 14 15 I. CONSENT AGREEMENT 16 Complainant, the Director of the Enforcement Division, United States Environmental 17 Protection Agency ("EPA"), Region IX, and Respondent, Fry's Electronics, Inc., agree to settle 18 this civil administrative action brought under the Federal Insecticide, Fungicide, and Rodenticide 19 Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 et seq., and consent to the entry of this Consent 20 Agreement and Final Order (the "CAFO"). 21 A. AUTHORITY 22 1. Complainant was the Associate Director for Agriculture of the Communities and 23 Ecosystems Division in EPA, Region IX who initiated this civil administrative proceeding for the 24 assessment of a civil penalty against Respondent under FIFRA pursuant to Section 14(a) of 25 FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative 26 Assessment of Civil Penalties, 40 C.F.R. Part 22, by issuing a Complaint and Notice of 27 Opportunity for Hearing ("the Complaint") against Respondent on September 24, 2012.

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- 2. The Complaint alleges that Respondent violated: (1) Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing unregistered pesticides; and (2) Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), by failing to file reports (Notices of Arrival for pesticide imports) required by the Act.
- 3. Complainant is now the Director of the Enforcement Division, who recently has been duly delegated the authority to pursue this action under FIFRA.
- Complainant and Respondent have agreed to resolve this civil administrative proceeding arising under FIFRA by executing this CAFO.

## **B. RESPONDENT'S ADMISSIONS**

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

## C. CIVIL ADMINISTRATIVE PENALTY

6. In settlement of the violations specifically alleged in the Complaint, Respondent shall pay a civil administrative penalty of FIFTY THOUSAND DOLLARS (\$50,000). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Maii:

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

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1	Wire Transfers:
2	i or ori will the following information.
3	Federal Reserve Bank of New York ABA = 021030004
4	Account = 68010727 SWIFT address = FRNYUS33
5	33 Liberty Street New York, NY 10045
6	Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
7	Overnight Mail: U.S. Bank
8	1005 Convention Plaza
9	Mail Station SL-MO-C2GL ATTN Box 979077 St. Louis, MO 63101
10	
11	ACH (also known as REX or remittance express): Automated Clearinghouse (ACH) for receiving U.S. currency PNC Bank
12	808 17th Street, NW
13	Washington, DC 20074 ABA = 051036706
14	Transaction Code 22 - checking Environmental Protection Agency
15	Account 31006 CTX Format
16	On Line Payment:
17	This payment option can be accessed from the information below: www.pay.gov
18	Enter "sfol.1" in the search field Open form and complete required fields
19	If clarification regarding a particular method of parameters in the contract remains a second co
20	needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.
21	A copy of each check, or notification that the payment has been made by one of the other
22	methods listed above, including proof of the date payment was made, shall be sent with a
23	transmittal letter, indicating Respondent's name, the case title, and docket number, to the
24	following addresses:
25	
26	Regional Hearing Clerk Office of Regional Counsel (ORC-1)
27	U.S. Environmental Protection Agency, Region IX 75 Hawthorne Street
28	San Francisco, CA 94105

Bill Lee Enforcement Division (ENF-3-3) U.S. Environmental Protection Agency, Region IX 75 Hawthorne Street San Francisco, CA 94105

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

- 7. 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.
- 8. If Respondent fails to pay the assessed civil administrative penalty of FIFTY THOUSAND DOLLARS (\$50,000), as identified in Paragraph 6, 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 TWENTY-FIVE THOUSAND DOLLARS (\$25,000), and will be immediately due and payable upon EPA's written request on the day following the deadline specified in Paragraph 6, together with the initially assessed civil administrative penalty of FIFTY THOUSAND DOLLARS (\$50,000), resulting in a total penalty due of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000). Failure to pay the civil administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph may also lead to any or all of the following actions:
- (1) EPA may refer the debt to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and appropriateness of the assessed penalty or of this CAFO is not subject to review in any such collection proceeding.
- (2) The U.S. Government may collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a

person to satisfy the debt the person owes the U.S. Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. §§ 13(C) and 13(H).

- (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds.
- (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S. Government may assess interest, administrative handling charges, and nonpayment penalties against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty specified in Paragraph 6 by the deadline specified in that Paragraph.
- (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of this CAFO.
- (b) Administrative Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on either actual or average cost incurred (including both direct and indirect costs), for every month in which any portion of the assessed penalty is more than thirty (30) days past due.
- (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2) and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually, may be assessed on all debts more than ninety (90) days delinquent.

#### D. CERTIFICATION OF COMPLIANCE

9. In executing this CAFO, Respondent certifies that, to the best of its knowledge: (1) it is not selling or distributing unregistered pesticides in violation of Section 12(a)(F)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); (2) it is not failing to file reports required by the Act in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N); and (3) it has complied with all other FIFRA requirements at all facilities under its control.

# E. <u>RETENTION OF RIGHTS</u>

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

### F. ATTORNEYS' FEES AND COSTS

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

#### G. EFFECTIVE DATE

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

#### H. BINDING EFFECT

- 14. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
- 15. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

## FOR RESPONDENT FRY'S ELECTRONICS, INC.:

President Fry's Electronics, Inc.

#### FOR COMPLAINANT EPA:

Director

Enforcement Division
U.S. Environmental Protection Agency, Region IX

### II. FINAL ORDER

EPA and Fry's Electronics, Inc. having entered into the foregoing Consent Agreement, IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2012-0006) be entered, and Respondent shall pay a civil administrative penalty in the amount of FIFTY THOUSAND DOLLARS (\$50,000), and comply with the terms and conditions set forth in the Consent Agreement.

05/01/13

STEVEN JAWGIEL.
Regional Judicial Office

U.S. Environmental Protection Agency, Region IX

Consent Agreement and Final Order In re Fry's Electronics, Inc.

#### **CERTIFICATE OF SERVICE**

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2012-0006) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 91405, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Mr. Randy Fry, President Fry's Electronics, Inc. 600 E. Brokaw Road San Jose, CA 95112

**CERTIFIED MAIL NUMBER:** 

7010 2780 0000 8388 6903

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

Edgar Coral, Esq Office of Regional Counsel U.S. EPA, Region IX 75 Hawthorne Street San Francisco, CA 94105

Bryan K. Goodwin

Regional Hearing Clerk

U.S. EPA, Region IX



#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

#### REGION IX

### 75 Hawthome Street San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIPT NO: 7010 2780 0000 8388 6903

Date: Alio 0.1 2013

Randy Fry President Fry's Electronics, Inc. 600 E. Brokaw Road San Jose, CA 95112

Re: Federal Insecticide, Fungicide and Rodenticide Act

Consent Agreement and Final Order - Fry's Electronics, Inc.

Docket No. FIFRA-09-2012-0006

Dear Mr. Fry:

Enclosed is a Consent Agreement and Final Order (CAFO) concerning violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq., by Fry's Electronics, Inc. The terms of the CAFO require the payment of \$50,000 to be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO.

If you have any questions, please contact William Lee of my staff at 415-947-4185.

Sincerely,

Kathleen H. Johnson

Director, Enforcement Division

**Enclosures** 

cc: Patrick Thalken, California Department of Pesticide Regulation