



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

May 15, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7667 7950

Ms. Lynn Georges

2935 South Koke Mill Rd.

Springfield, Illinois 62711

Consent Agreement and Final Order, In The Matter of Nordox AS,  
Docket No. FIFRA-05-2012-0009

Dear Ms. Georges:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on May 15, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$22,500 is to be paid in the manner described in paragraphs 47 thru 48. Please be certain that the number **BD 2751245P008** and the docket number are written on both the transmittal letter and on the check. Payment is due by June 14, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess

Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2012-0009</b>
	)	
<b>Nordox AS</b>	)	
<b>Oslo, Norway</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
	)	<b>Under Section 14(a) of the Federal</b>
<b>Through its agent</b>	)	<b>Insecticide, Fungicide, and Rodenticide</b>
	)	<b>Act, 7 U.S.C. § 136l(a)</b>
<b>Monterey Agresource</b>	)	
<b>Fresno, California</b>	)	
	)	
<b>Respondent.</b>	)	
_____	)	

RECEIVED  
MAY 15 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Consent Agreement and Final Order**  
**Commencing and Concluding a Proceeding**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Nordox AS (Nordox), a partnership, association, corporation, or any organized group of persons whether incorporated or not, doing business in Oslo, Norway.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that to the best of its knowledge, it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

#### **Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also

Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

14. 40 C.F.R. § 152.50(b)(1) requires registrants not residing in the United States to designate an agent residing in the United States to act on the applicant's behalf.

15. 40 C.F.R. § 156.10(a)(4)(i) requires a pesticide's label to appear on or be securely attached to the immediate container of the pesticide product.

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

18. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

19. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states in part that a pesticide is "misbranded" if there is not affixed to its container a label.

20. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

21. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

22. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

23. At all times relevant to this CAFO, Respondent was a corporation or any organized group of persons and therefore was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

24. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

25. At all times relevant to this CAFO, Monterey Agresources, located at 3654 South Willow Avenue, Fresno, California 93725, was Respondent’s authorized agent, as required at 40 C.F.R. § 152.50(b)(1).

26. At all times relevant to this CAFO, Schenker Inc., located 2400 Esters Avenue, Dallas, Texas, was a broker/agent for Respondent.

27. On or about March 8, 2012, Respondent submitted NOAs under entry numbers 322-0661826-0 and 322-0668780-2, to EPA (March 8 NOAs). The March 8 NOAs stated that they were related to import shipments of the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Registration Number (EPA Reg. No.) 48142-2.

28. On or about March 20, 2012, Respondent submitted an NOA under entry number 322-0675099-8 to EPA (March 20 NOA). The March 20 NOA stated that it was related to an

import shipment of the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2.

29. The import shipment associated with entry number 322-0661826-0 entered the United States on or about March 8, 2012.

30. The import shipment associated with entry number 322-0668780-2 entered the United States on or about March 15, 2012.

31. The import shipment associated with entry number 322-0675099-8 entered the United States on or about March 24, 2012.

32. The March 8 NOAs and the March 20 NOA stated that Respondent, care of WOW Logistics, located at 3040 West Wisconsin Avenue, Appleton, Wisconsin 54914, was the importer of record.

33. Respondent, as the importer of record of “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

34. “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. The imported quantities of “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, associated with entry numbers 322-0661826-0, 322-0668780-2 and 322-0675099-8 and the March 8 and March 20 NOAs, failed to bear a label on the immediate containers of the pesticide product.

36. On or about March 8, 15, and 24, 2012, Respondent “distributed or sold” the misbranded pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

## Specific Allegations

### Count 1

37. Complainant incorporates by reference paragraphs 1 through 36 of this CAFO.

38. On or about March 8, 2012, in an import shipment associated with entry number 322-0661826-0, Respondent distributed or sold the misbranded pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

39. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### Count 2

40. Complainant incorporates by reference paragraphs 1 through 36 of this CAFO.

41. On or about March 15, 2012, in an import shipment associated with entry number 322-0668780-2, Respondent distributed or sold the misbranded pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

42. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

### Count 3

43. Complainant incorporates by reference paragraphs 1 through 36 of this CAFO.

44. On or about March 24, 2012, in an import shipment associated with entry number 322-0675099-8, Respondent distributed or sold the misbranded pesticide “Nordox Cuprous

Oxide Paint Grade,” EPA Reg. No. 48142-2, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

45. Respondent’s violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

46. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

47. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$22,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

48. Within 30 days of the effective date of this CAFO, Respondent must pay a \$22,500 civil penalty for the alleged FIFRA violations. Respondent agrees to pay the penalty by wire transfer directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency“



49. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, the billing document number and a copy of the wire transfer receipt should be sent to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Terence Stanuch (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

50. This civil penalty is not deductible for federal tax purposes.

51. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

52. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

### **General Provisions**

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

54. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

55. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

56. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

57. The terms of this CAFO bind Respondent, its successors, and assigns.

58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

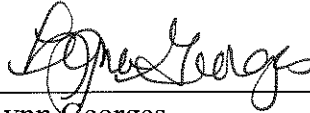
59. Each party agrees to bear its own costs and attorney fees in this action.

60. This CAFO constitutes the entire agreement between the parties.

**Respondent:**  
**Nordox AS,**  
**Through its agent**  
**Monterey Agresources,**  
**Fresno, California**

4/11/12

\_\_\_\_\_  
Date



\_\_\_\_\_  
Lynn Georges  
Agent for Nordox AS  
Monterey Agresources

**Complainant:**  
**Region 5**  
**U.S. Environmental Protection Agency**

5/7/12

\_\_\_\_\_  
Date



\_\_\_\_\_  
Margaret M. Guerriero, Director  
Land and Chemicals Division  
United States Environmental Protection Agency  
Region 5

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PROTECTION AGENCY

**In the Matter of:**  
**Nordox AS, through its agent, Monterey Agresources**  
**Docket No. FIFRA-05-2012-0009**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

5-9-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

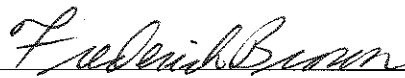
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Nordox AS, was filed on May 15, 2012, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7667 7950, a copy of the original to the Respondents:

Ms. Lynn Georges  
2935 South Koke Mill Rd.  
Springfield, Illinois 62711

and forwarded copies (intra-Agency) to:

John Breslin, Regional Judicial Officer, ORC/C-14J  
Terence Stanuch, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. FIFRA-05-2012-0009

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