UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO: 7012 2210 0000 1205 5138

Kent Johnson
CEO
Ag Production Company
P.O. Box 1325
Turlock, CA 95381

SEP 30 2019

Re: Consent Agreement and Final Order – Ag Production Company
Docket No.: FIFRA-09-2019- 0080

Dear Mr. Johnson:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 et seq., by Ag Production Company. The terms of the CAFO require the payment of $24,697 be received by EPA within 30 calendar days of the effective date (stamped filing date) of this CAFO. Your completion of all actions laid out in the CAFO will close this case.

If you have any questions, please contact Julie Jordan of my staff at 415-947-4207.

Sincerely,

Claire Trombadore
Acting Assistant Director,
Enforcement and Compliance Assurance Division

Enclosure

Printed on Recycled Paper

SYLVIA A. QUAST
Regional Counsel

EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
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** FILED **
30SEP2019 - 11:07AM
U.S.EPA - Region 09

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of: Ag Production Company, Respondent.	))))))))	Docket No. FIFRA-09-2019-00 80 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 Ag Production Company ("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)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136*l*(a)(1), for the assessment of a civil administrative penalty against Respondent for violations of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

2. Complainant is the Acting Assistant Director of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.

3. Respondent is Ag Production Company, a California corporation with headquarter offices located at 3106 South Faith Home Road in Turlock, California, 95380.

B. STATUTORY AND REGULATORY BASIS

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

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

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

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

8. Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

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

10. Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "to distribute or sell" means 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.

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

misbranded.

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

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

14. Pursuant to Sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide containers and pesticide containment structures ("the Container/Containment regulations"), which are codified at 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140-156.159.

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

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

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

18. "Containment structure" means either a secondary containment unit or a containment pad. 40 C.F.R. § 165.3.

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

20. "Facility" means all buildings, equipment, structures, and other stationary items

which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person). 40 C.F.R. § 165.3.

21. "Operator" means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

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

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

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

25. "Producer" means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40 C.F.R. § 165.3.

26. "Refilling establishment" means an establishment where the activity of repackaging pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

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

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

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

30. "Stationary pesticide container" means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30

consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

C. ALLEGED VIOLATIONS

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

32. Respondent is an "owner" and "operator" of a "facility" that is an "establishment," as those terms are defined by 40 C.F.R. § 165.3, located at 3106 South Faith Home Road in Turlock, California (the "Turlock Establishment").

33. The Turlock Establishment is a "refilling establishment" that "repackages" Credit 41 Extra Non-Selective Herbicide, EPA Reg. No. 71368-20 ("Credit 41 Extra"), and IAP 440 Spray Oil, EPA Reg. No. 71058-6 ("440 Spray Oil"), which are each "agricultural pesticides," as those terms are defined by 40 C.F.R. § 165.3, into refillable containers and whose principal business is retail sale. As such, the Turlock Establishment and the agricultural pesticides it repackages are subject to the Container/Containment regulations.

34. At all times relevant to this CAFO, Respondent was a "refiller" as that term is defined by 40 C.F.R. § 165.3.

35. At all times relevant to this CAFO, Respondent was not a "registrant" as that term is defined by 40 C.F.R. § 165.3.

36. At all times relevant to this CAFO, the Turlock Establishment included areas used to fill containers with Credit 41 Extra and 440 Spray Oil as well as areas used to refill stationary tanks with both of these pesticides. Each of these areas is both a "pesticide dispensing area" and a "containment pad," as those terms are defined by 40 C.F.R. § 165.3.

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

38. The containment pads in the pesticide dispensing areas used to fill containers with Credit 41 Extra and 440 Spray Oil as well as the pesticide dispensing areas used to refill stationary tanks with both of these pesticides at the Turlock Establishment were constructed on

or before November 16, 2006 and are each "existing containment structures," as that term is defined by 40 C.F.R. § 165.83(b).

39. On or about December 20, 2017, a California Department of Pesticide Regulation ("CDPR") inspector inspected the Turlock Establishment.

COUNT 1: Distribution or Sale of a Misbranded Pesticide

40. Every pesticide product shall bear a label containing, inter alia, the net contents as prescribed in paragraph (d) of this section. 40 C.F.R. § 156.10(a)(1)(iii). If the pesticide is a liquid, the net content statement shall be in terms of liquid measure at 68° F (20° C) and shall be expressed in conventional American units of fluid ounces, pints, quarts, and gallons. 40 C.F.R. § 156.10(d)(2).

41. On or about December 20, 2017, Respondent "distributed or sold" the pesticide, Credit 41 Extra, in a bulk stationary pesticide container at the Turlock Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

42. On or about December 20, 2017, Respondent failed to have a label attached to the bulk stationary pesticide container containing Credit 41 Extra at the Turlock Establishment that marked or identified the net contents in terms of liquid measure, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2).

43. Respondent's failure to mark or identify the net contents in terms of liquid measure on the labels attached to the bulk stationary pesticide container containing Credit 41 Extra at the Turlock Establishment, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2), constitutes "misbranding," as that term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

44. Consequently, on or about December 20, 2017, Respondent's distribution or sale of the pesticide, Credit 41 Extra, in a bulk stationary pesticide container at the Turlock Establishment constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded pesticide.

COUNT 2: Distribution and Sale of a Misbranded Pesticide

45. When pesticide products are stored in bulk containers, whether mobile or stationary, which remain in the custody of the user, a copy of the label or labeling, including all appropriate directions for use, must be securely attached to the container in the immediate vicinity of the discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a label containing, inter alia, the producing establishment number as prescribed in paragraph (f) of this section. 40 C.F.R. § 156.10(a)(1)(v). The producing establishment registration number preceded by the phrase "EPA Est.", of the final establishment at which the product was produced may appear in any suitable location on the label or immediate container. 40 C.F.R. § 156.10(f).

46. On or about December 20, 2017, Respondent "distributed or sold" the pesticide, 440 Spray Oil, in a bulk stationary pesticide container at the Turlock Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

47. On or about December 20, 2017, Respondent failed to have label attached to the bulk stationary pesticide container containing 440 Spray Oil at the Turlock Establishment that marked or identified the EPA producing establishment registration number of the final establishment at which the bulk product, 440 Spray Oil, was produced, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(v), and 156.10(f).

48. Respondent's failure to mark or identify the EPA producing establishment registration number of the final establishment at which the bulk product, 440 Spray Oil, was produced on the label attached to the bulk stationary pesticide container containing 440 Spray Oil at the Turlock Establishment, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(v), and 156.10(f), constitutes "misbranding," as that term is defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

49. Consequently, on or about December 20, 2017, Respondent's distributions or sales of the pesticide, 440 Spray Oil, in a bulk stationary pesticide container at the Turlock Establishment constitutes one violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded pesticide.

COUNT 3: Failure to Meet Recordkeeping Requirements for Repackaging a Pesticide Into Refillable Containers

50. A refiller of a pesticide product who is not the registrant of the pesticide product must comply with the repackaging requirements set forth at 40 C.F.R. § 165.70(e). Among other requirements, a refiller repackaging a pesticide product into refillable containers must maintain records in accordance with paragraph (j) of that section. 40 C.F.R. § 165.70(e)(10). Each time a pesticide product is repackaged into a refillable container and then distributed or sold, the serial number or other identifying code of the refillable container must be generated and maintained for at least three years after the date of repackaging. 40 C.F.R. § 165.70(j)(2)(iii).

51. On or about December 20, 2017, Respondent "distributed or sold" the pesticide, Credit 41 Extra, that had been repackaged into 30-gallon and 265-gallon refillable containers at the Turlock Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

52. On or about December 20, 2017, Respondent failed to maintain the serial number or other identifying code of the refillable containers for the repackaged Credit 41 Extra at the Turlock Establishment for at least three years after the date of repackaging, as required by 40 C.F.R. §§ 165.70(j)(2)(iii) and 165.70(e)(10).

53. On or about December 20, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to maintain the serial number or other identifying code of the refillable containers for the repackaged Credit 41 Extra at the Turlock Establishment for at least three years after the date of repackaging, as required by 40 C.F.R. § 165.70(e)(10).

COUNTS 4 and 5: Failure to Keep Containment Structures Liquid Tight

54. One of the material specifications for all existing containment structures (including containment pads) is that the structures must be liquid-tight with cracks, seams and joints appropriately sealed. 40 C.F.R. § 165.87(a)(1).

55. On or about December 20, 2017, the containment pads (*i.e.*, containment structures) located in the Credit 41 Extra and 440 Spray Oil pesticide dispensing areas at the Turlock Establishment had unsealed cracks and seams.

56. On or about December 20, 2017, Respondent failed to keep the Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

57. On or about December 20, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to keep the Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

COUNT 6: Failure to Meet Capacity Requirements for Existing Secondary Containment Units

58. Existing secondary containment units for stationary containers of liquid pesticides must meet the capacity requirements set forth at 40 C.F.R. § 165.87(c). In particular, existing secondary containment units for stationary containers of liquid pesticides must have a capacity of at least 100% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit. 40 C.F.R. § 165.87(c)(1).

59. On or about December 20, 2017, a CDPR inspector observed an existing secondary containment unit for a 3,400-gallon stationary container of liquid Credit 41 Extra at the Turlock Establishment that had a capacity (including other containers and appurtenances) of approximately 3,322 gallons. The Credit 41Extra secondary containment unit at the Turlock Establishment needed to have a holding capacity (including other containers and appurtenances) of 3,740 gallons.

60. On or about December 20, 2017, Respondent's existing Credit 41 Extra secondary containment unit at the Turlock Establishment failed to have a holding capacity of at least 100% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit, as required by 40 C.F.R. § 165.87(c)(1).

61. On or about December 20, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 100% of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit for its existing Credit 41 Extra secondary containment unit at the Turlock Establishment, as required by 40 C.F.R. § 165.87(c)(1).

COUNTS 7 and 8: Failure to Meet Capacity Requirements for Existing Containment Pads

62. Existing containment pads in pesticide dispensing areas must meet the capacity requirements set forth at 40 C.F.R. § 165.87(c). In particular, existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons. 40 C.F.R. § 165.87(c)(2).

63. On or about December 20, 2017, a CDPR inspector observed two existing containment pads located in the Credit 41 Extra and 440 Spray Oil pesticide dispensing areas at the Turlock Establishment that had pesticide-holding equipment with a volume of 750 gallons or greater. The Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment had holding capacities of approximately 294 gallons and 488 gallons, respectively.

64. On or about December 20, 2017, Respondent's existing Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment each failed to have a holding capacity of at least 750 gallons, as required by 40 C.F.R. § 165.87(c)(2).

65. On or about December 20, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to have a holding capacity of at least 750 gallons for each of its existing Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment, as required by 40 C.F.R. § 165.87(c)(2).

COUNT 9: Failure to Maintain Records as a Facility Owner or Operator

66. A facility owner or operator must maintain records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances for three years. 40 C.F.R. § 165.95(a).

67. On or about December 20, 2017, Respondent failed to maintain records of inspection or maintenance for the Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment for three years, as required by 40 C.F.R. §§ 165.95(a).

68. On or about December 20, 2017, Respondent violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), by failing to maintain records of inspection or maintenance for the

Credit 41 Extra and 440 Spray Oil containment pads at the Turlock Establishment for three years, as required by 40 C.F.R. §§ 165.95(a).

D. RESPONDENT'S ADMISSIONS

69. 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 Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

70. In final settlement of the violations of FIFRA specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of TWENTY-FOUR THOUSAND, SIX HUNDRED, AND NINETY-SEVEN DOLLARS ($24,697). Respondent shall pay this civil penalty no later than thirty (30) calendar days from 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 Mail:

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

Wire Transfers:

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

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

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

ACH (also known as Remittance Express or REX):

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 = 310006, 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

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

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

Concurrently, a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following addresses:

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

Julie Jordan
Enforcement and Compliance Assurance Division (ENF-1-1)
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

71. 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.

72. If Respondent fails to pay the assessed civil administrative penalty of TWENTY-FOUR THOUSAND, SIX HUNDRED, AND NINETY-SEVEN DOLLARS ($24,697) as identified in Paragraph 70 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 THOUSAND, ONE HUNDRED, AND SEVENTY-FOUR DOLLARS ($6,174) and will be immediately due and payable upon EPA's written request, together with the initially assessed civil administrative penalty of TWENTY-FOUR THOUSAND, SIX HUNDRED, AND NINETY-SEVEN DOLLARS ($24,697), resulting in a total penalty due of THIRTY THOUSAND, EIGHT HUNDRED, AND SEVENTY-ONE DOLLARS ($30,871). Failure to pay the civil administrative penalty specified in Paragraph 70 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. Part 13, Subparts C and 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 70 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.

F. CERTIFICATION OF COMPLIANCE

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

G. RETENTION OF RIGHTS

74. 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 Section I.C of this CAFO. 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 Section I.C of this CAFO; 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 Section I.C of this CAFO.

75. 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.

H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

77. 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.

J. BINDING EFFECT

78. 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.

79. 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 AG PRODUCTION COMPANY:

9-11-19
DATE

KENT JOHNSON
CEO
Ag Production Company
3106 South Faith Home Road
Turlock, CA 95380

FOR COMPLAINANT EPA:

9-20-2019
DATE

CLAIRE TROMBADORE
Acting Assistant Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

EPA and Ag Production Company having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2019-0080) be entered, and Respondent shall pay a civil administrative penalty in the amount of TWENTY-FOUR THOUSAND, SIX HUNDRED, AND NINETY-SEVEN DOLLARS ($24,697), and comply with the terms and conditions set forth in the Consent Agreement.

September 27, 2019
DATE

BEATRICE WONG
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the original of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2019-0080**) 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:

Kent Johnson
CEO
Ag Production Company
P.O. Box 1325
Turlock, CA 95381

CERTIFIED MAIL NUMBER: 7012 2210 0000 1205 5138

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

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

Steven Armann
Regional Hearing Clerk
U.S. EPA, Region IX

2019-09-30
Date