



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 25, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7676 5626
RETURN RECEIPT REQUESTED

Kenneth and Sandra Odelehr
Odelehr's Roadside Market
HC 82 Box 93A
Brussels, Illinois 62013

Consent Agreement and Final Order, In the Matter of
Odelehr's Roadside Market, Docket No. **FIFRA-05-2014-0032**

Dear Mrs. Odelehr:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on September 25, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$3,860 is to be paid in the manner described in paragraphs 66 and 67. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by October 24, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. FIFRA-05-2014-0032
)
)
Kenneth and Sandra Odelehr,)
d/b/a/ Odelehr's Roadside Market,) Proceeding to Assess a Civil Penalty
Brussels, Illinois,) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. § 136l(a)
Respondents.)
_____)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

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. Respondents are Kenneth and Sandra Odelehr doing business as Odelehr's Roadside Market in Brussels, Illinois.
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 it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

11. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

12. It is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling, 7 U.S.C. § 136(j)(a)(2)(G).

13. Any private applicator or other person not included in section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), who violates any provision of FIFRA subsequent to receiving a written warning from the U.S. EPA Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000.00 for each offense. 7 U.S.C. § 136l(a)(2).

14. After the application of any pesticide on an agricultural establishment, the

agricultural employer shall not allow or direct any worker to enter or remain in the treated area before the restricted entry interval specified on the pesticide labeling has expired. 40 C.F.R. § 170.112(a).

15. When workers are on an agricultural establishment and, within the last 30 days a pesticide covered by this subpart has been applied on the establishment, or a restricted-entry interval (REI) has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide, 40 C.F.R. § 170.122.

16. The information must be displayed in the location specified for the pesticide safety poster at 40 C.F.R. § 170.135(d), and shall be accessible and legible, as specified at 40 C.F.R. §§ 170.135(e) and (f), 40 C.F.R. § 170.122(a).

17. The information must be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information must be posted at the beginning of any worker's first work period. 40 C.F.R. § 170.122(b)(2).

18. The information must continue to be displayed for at least 30 days after the end of the REI, (or, if there is no REI, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier. 40 C.F.R. § 170.122(b)(3).

19. The information must include the location and description of the treated area, the product name, EPA registration number, and active ingredient(s) of the pesticide, the time and date the pesticide is to be applied, and the restricted entry interval for the pesticide. 40 C.F.R. § 170.122(c).

20. Before the sixth day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide subject to the Worker Protection Standard has been

applied, or a restricted entry interval for such a pesticide has been in effect, the agricultural employer shall assure that each worker has been trained in pesticide safety during the last five years, counting from the end of the month in which the training was completed. 40 C.F.R. § 170.130(a)(1) and (a)(3)(ii).

21. Before a worker enters a treated area on the agricultural establishment during a restricted entry interval to perform early entry tasks and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, the agricultural employer shall assure that the worker has been trained. 40 C.F.R. § 170.130(a)(2).

22. When workers or handlers are on an agricultural establishment and, within the last 30 days a pesticide covered by this subpart has been applied on the establishment, or a REI has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information including the name, address, and telephone number of the nearest emergency medical care facility specific information about the pesticide. 40 C.F.R. § 170.135(c) and 40 C.F.R. § 170.235(c).

23. The information must be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers and handlers and shall be accessible and legible, as specified at 40 C.F.R. §§ 170.135(e) and (f) and 40 C.F.R. § 170.235(e) and (f).

24. The agricultural employer must provide decontamination supplies for workers in accordance with this section whenever: (i) Any worker on the agricultural establishment is performing an activity in the area where a pesticide was applied or a REI was in effect within the last 30 days, and: (ii) The worker contacts anything that has been treated with the pesticide,

including, but not limited to, soil, water, plants, plant surfaces, and plant parts. 40 C.F.R. § 170.150(a)(1).

25. The agricultural employer shall provide workers with enough water for routine washing and emergency eye flushing. 40 C.F.R. § 170.150(b)(1).

26. The agricultural employer shall provide soap and single-use towels in quantities sufficient to meet worker's needs. 40 C.F.R. § 170.150(b)(3).

27. The decontamination supplies shall be located together and be reasonably accessible to and not more than 1/4 mile from where workers are working. 40 C.F.R. § 170.150(c).

28. The person who conducts the training must meet at least one of the following criteria: be currently certified as an applicator of restricted use pesticides under 40 CFR Part 171, be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or have completed a pesticide safety train-the-trainer program approved by a State, Federal or Tribal agency having jurisdiction. 40 C.F.R. § 170.130(c)(2).

29. The Administrator of EPA may assess a civil penalty against any agricultural establishment which 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

30. On or about July 24, 2013, Respondents were individuals.

31. Therefore, Respondents were "persons" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s).

32. On or about July 24, 2013, Respondents grew peaches for commercial purposes.

33. Therefore, Respondents produced an “agricultural plant” as that term is defined by 40 C.F.R. § 170.3.

34. On or about July 24, 2013, Respondents engaged in the outdoor production of an agricultural plant.

35. Therefore, Respondents were a “farm” as that term is defined by 40 C.F.R. § 170.3.

36. Therefore, Respondents were an “agricultural establishment” as that term is defined by 40 C.F.R. § 170.3.

37. On or about July 24, 2013, Respondents employed persons for compensation to perform other activities relating to the production of agricultural plants.

38. Therefore, Respondents were an “agricultural employer” as that term is defined by 40 C.F.R. § 170.3.

39. On or about July 14, 2013, Respondents applied Topsin M WSB (EPA Reg. No. 73545-16-70506) to its peach orchards.

40. Topsin M WSB was a fungicide.

41. Therefore, Topsin M WSB was a “pesticide” as that term is defined by section 2(u) of FIFRA, 7 U.S.C. § 136(u).

42. The label and packaging of Topsin M WSP bore a U.S. EPA registered label, which contained a section on “Agricultural Use Requirements” which specifically stated, “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

43. The relevant restricted-entry interval for Topspin for peaches was 2 days.

44. On or about the afternoon of July 21, 2013, Respondents applied Captan 50 WP (EPA Reg. No. 42750-235 or 66330-234) to its peach orchards.

45. Captan 50 WP was a fungicide.

46. Therefore, Captan 50 WP was a “pesticide” as that term is defined by section 2(u) of FIFRA, 7 U.S.C. § 136(u).

47. The label and packaging of Captan 50 WP bore a U.S. EPA registered label, which contained a section on “Agricultural Use Requirements” which specifically stated, “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

48. The relevant restricted-entry interval for Captan 50 WP for peaches was 24 hours.

49. On July 22, 2013, Respondents’ workers entered the peach orchard.

50. Therefore, Respondents’ workers entered the peach orchard within the 24-hour restricted-entry interval of its application of Capstan 50 WP.

51. Therefore, Respondents violated the regulations at 40 C.F.R. § 170.112(a) and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

52. On July 24, 2013, Respondents’ workers were on Respondents’ agricultural establishment.

53. However, Respondents failed to display specific information about pesticides applied within the last 30 days, or a restricted-entry interval (REI) had been in effect within the last 30 days.

54. Therefore Respondents violated the regulation at 40 C.F.R. § 170.122(a), (b)(2), (b)(3), and (c), and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

55. On July 24, 2013, Respondents’ workers picked peaches in an area where a pesticide was applied within the last 30 days and a Restricted-Entry Interval had been in effect within the last 30 days.

56. However, Respondents failed to provide its workers with pesticide safety training before their 6th day of entering the area where pesticides had been applied within the last 30 days, or a restricted-entry interval had been in effect within the last 30 days.

57. Therefore, Respondents violated the regulations at 40 C.F.R. § 170.130(a)(1) and (2), and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

58. On July 24, 2013, Respondents' workers were on Respondents' agricultural establishment.

59. However, on July 24, 2013, Respondents failed to display on its safety poster or near its safety poster emergency medical care information including the name, address, and telephone number of the nearest emergency medical care facility.

60. Therefore, Respondents failed to display on its safety poster or near its safety poster emergency medical care information including the name, address, and telephone number of the nearest emergency medical care facility, when workers were on its agricultural establishment and, within the last 30 days, a pesticide covered by this subpart, had been applied on the establishment or a restricted-entry interval had been in effect.

61. Therefore, Respondents violated the regulations at 40 C.F.R. § 170.135(c) and 40 C.F.R. § 170.235(c) and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

62. On July 24, 2013, Respondents' workers picked peaches in an area where Respondents applied pesticides within the last 30 days and a restricted entry interval had been in effect within the last 30 days.

63. However, on July 24, 2013, Respondents failed to provide its workers with enough water for routine washing and emergency eyeflushing, to provide soap and single-use towels in quantities sufficient to meet worker's needs, to have the decontamination supplies located

together and be reasonably accessible to and not more than 1/4 mile from where workers were working.

64. Therefore, Respondents violated the regulations at 40 C.F.R. § 170.150(a)(1), (b)(1)(b)(3) and (c), and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Civil Penalty

65. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$3,860.00. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

66. Respondent shall pay the \$3,860.00 civil penalty, in four separate payments with interest as follows:

<u>Installment</u>	<u>Due by</u>	<u>Payment</u>	<u>Principal</u>	<u>Interest</u>
Payment 1	Within 30 days of effective date of CAFO	\$968.22	\$965.00	\$3.22
Payment 2	Within 150 days of effective date of CAFO	\$972.24	\$965.00	\$7.24
Payment 3	Within 240 days of effective date of CAFO	\$969.83	\$965.00	\$4.83
Payment 4	Within 330 days of effective date of CAFO	\$967.41	\$965.00	\$2.41

Respondents must pay the four separate payments by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

The checks must note the case title, "K & S Odelehr" and the docket number of this CAFO.

67. Respondents must include with their payments a transmittal letter, stating, their names, "K & S Odelehr," the case title, "K & S Odelehr," their complete address, and the case docket number. Respondents must send a copy of the check and transmittal letter to:

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

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604]

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

69. If Respondents do 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.

70. Pursuant to 31 C.F.R. § 901.9, Respondents 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

71. This CAFO resolves only Respondents' liability for federal civil penalties for the violations and facts alleged in the CAFO.

72. 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.

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

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

75. The terms of this CAFO bind Respondents, their successors, and assigns.

76. 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.

77. Each party agrees to bear its own costs and attorney's fees, in this action.

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

In the Matter of:

**Kenneth and Sandra Odelehr d/b/a/ Odelehr's Roadside Market, Brussels, Illinois
Docket No.**

8/20/14
Date

Kenneth Odelehr
Kenneth Odelehr
Odelehr's Roadside Market

8/20/14
Date

Sandra Odelehr
Sandra Odelehr
Odelehr's Roadside Market

United States Environmental Protection Agency, Complainant

9/19/2014
Date

Margaret M. Guerriero
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:

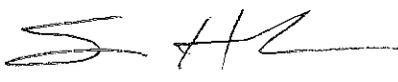
Kenneth and Sandra Odelehr d/b/a/ Odelehr's Roadside Market, Brussels, Illinois

Docket No. FIFRA-05-2014-0032

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.

9-22-2014
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 Odelehr's Roadside Market, was filed on September 25, 2014, with the Regional Hearing Clerk (E-19J), 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 7676 5626, a copy of the original to the Respondent:

Mrs. Sandra Odelehr
Odelehr's Roadside Market
HC 82 Box 93A
Brussels, Illinois 62013

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery M. Trevino, Regional Judicial Officer, ORC/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

Docket No. FIFRA-05-2014-0032