



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 05 2012

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Jim Wright  
Director of Environmental & Regulatory Compliance  
Southern States Simpson Cooperative, Inc.  
6606 West Broad Street  
Richmond, Virginia 23230

Re: Southern States Simpson Cooperative, Inc.  
Ratified Consent Agreement and Final Order  
Docket No.: FIFRA-04-2012-3027(b)

Dear Mr. Wright:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mrs. Molly Miller of the EPA Region 4 staff at (404) 562-9684.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannette M. Gettle".

Jeannette M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2012 SEP -5 AM 9:22  
HEARING CLERK

In the Matter of: )  
)  
Southern States Simpson Cooperative, Inc. )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No.: FIFRA-04-2012-3027(b)

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Southern States Simpson Cooperative, Inc.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as

the Complainant in this matter, and has the authority to sign consent agreements memorializing settlements between EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## **II. Preliminary Statements**

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Molly Miller  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9684.

5. Respondent is Southern States Simpson Cooperative, Inc., a Kentucky corporation, located at 301 Finn Street, Franklin, Kentucky.
6. Respondent is a "person" as 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.

## **III. Specific Allegations**

7. On or about April 22, 2011, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 301 Finn Street, Franklin, Kentucky. Additionally, inspections were conducted between March 29, 2011, and May 25, 2011, at greenhouses and a fruit orchard located at 650 Jake Link Road, Cottontown, Tennessee,

during which samples of foliage, soil and fruit were collected.

8. As a result of the aforementioned inspections and sampling, it was determined that on or about March 22, 2011, a pesticide applicator working under the direction of the Respondent made an aerial application of the pesticide 2,4D Lo-V Ester, EPA Registration Number 1386-60-72693, onto a wheat field belonging to Mr. Larry McFarlin located on Jake Link Road in Cottontown, Tennessee. Inspection reports indicate that during this application, some of the pesticide spray mist drifted to the greenhouses and fruit orchard located at 650 Jake Link Road, across the street from the treated wheat field, and caused injury to plants, including tomatoes, strawberries, blackberries and peaches.
9. The label for 2,4D Lo-V Ester, EPA Registration Number 1386-60-72693, states “Do not apply directly to vegetables, grapes, fruit trees, ornamentals, cotton, soybeans, tomatoes, or other desirable plants which are sensitive to 2,4D and do not permit spray mist to drift onto them since even minute quantities may cause severe injury...”
10. The applicator, working under the direction of the Respondent, applied the registered pesticide 2,4D Lo-V Ester, EPA Registration Number 1386-60-72693, in a manner that permitted spray mist to drift onto desirable plants and cause injury in proximity to the treatment area.
11. Under Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.
12. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
13. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection

Improvement Act of 1996, authorizes the assessment of a civil penalty.

14. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
15. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **FOUR HUNDRED FORTY DOLLARS (\$440)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

#### **IV. Consent Agreement**

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
17. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
18. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
20. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither the EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial

endangerment, or to pursue criminal enforcement.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

**V. Final Order**

22. Respondent is assessed a civil penalty of **FOUR HUNDRED FORTY DOLLARS (\$440)** which shall be paid within 30 days from the effective date of this CAFO.
23. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

**The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.**

24. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Molly Miller  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson

Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

25. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
26. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
28. This CAFO shall be binding upon the Respondent, its successors and assigns. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

**The remainder of this page intentionally left blank.**

29. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**Respondent:** Southern States Simpson Cooperative, Inc.  
**Docket No.:** FIFRA-04-2012-3027(b)

By: Leslie T. Newton (Signature) Date: 8-17-12  
Name: Leslie T. Newton (Typed or Printed)  
Title: Treasurer (Typed or Printed)

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

By: Douglas Neeley for Date: 8/24/12  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

**APPROVED AND SO ORDERED** this 4 day of September 2012.

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer



**CERTIFICATE OF SERVICE**

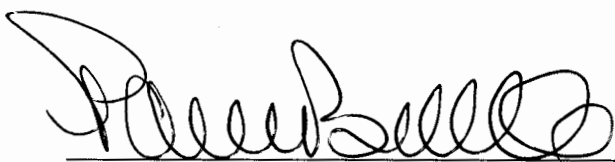
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order In the Matter of Southern States Simpson Cooperative, Inc., Docket Number: FIFRA-04-2012-3027(b), to the addressees listed below:

Mr. Jim Wright (via Certified Mail, Return Receipt Requested)  
Director of Environmental & Regulatory Compliance  
Southern States Simpson Cooperative, Inc.  
6606 West Broad Street  
Richmond, Virginia 23230

Molly Miller (via EPA's internal mail)  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Date: 9-5-12

  
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Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511