

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2012 SEP 20 PM 12:55

Docket No. **FIFRA-08-2012-0017**

FILED
EPA REGION VIII
FBI/DOJ BY [unclear]

In the Matter of:)
)
Performance Ag. Services, LLC)
38420 W HWY 12)
Aberdeen, SD 57401)
Est. No. 82559-SD-001,)
)
Respondent.)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Complainant, the U.S. Environmental Protection Agency (EPA), Region 8, and Respondent, Performance Ag. Services, LLC, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (consent agreement) is issued to Performance Ag. Services, LLC, (Respondent) for a violation of section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j(a)(2)(L).
2. The undersigned EPA officials issue this consent agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes the EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This consent agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

B. ALLEGED VIOLATION

1. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. §136(s), and therefore subject to regulation.
2. Respondent is a "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. §136(w).
3. FIFRA section 7(c)(1), 7 U.S.C. §136e(c)(1), requires all registered pesticide producers to file an annual report "...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides..." Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. §167.85(d).

4. The EPA reviewed its records and determined that Respondent did not submit the "Pesticide Report for Pesticide-Producing and Device-Producing Establishments" pursuant to section 7 of FIFRA, 7 U.S.C. §136(e) for calendar year 2011, by March 1, 2012. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. section 136j(a)(2)(L).

5. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, the EPA offers this consent agreement under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **\$2,640**.

C. CIVIL PENALTY

1. The Respondent signing below admits that the EPA has jurisdiction over the subject matter alleged in this consent agreement, neither admits nor denies the specific factual allegations contained in this consent agreement, and consents to the assessment of the penalty as stated in section B.5., above.

2. Respondent consents and agrees to pay a civil penalty in the amount of two-thousand, six-hundred and forty dollars (**\$2,640.00**) in the manner described below:

a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the U.S. Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case (**Performance Ag. Services, LLC; Docket No. FIFRA-08-2012-0017**), for the above-described amount, payable to "Treasurer, United States of America" to:

(via REGULAR and OVERNIGHT MAIL) can be used for USPS, UPS, or FED EX:

US Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact for OVERNIGHT MAIL: Ms. Natalie Pearson (Tel.: 314-418-4087)

(via WIRE TRANSFERS):

Federal Reserve Bank of New York ABA: 021030004
Account Number: 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"

(via ACH (also known as REX or remittance express)):

Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 - checking
Environmental Protection Agency
808 17th Street NW
Washington DC 20074
Contact: Jesse White, 301-887-6548

(via ON LINE PAYMENT):

There is now an On Line Payment Option, available through the Dept. of Treasury. 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.

A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

c. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest accrues).

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent thirty day period that the debt, or any

portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

D. TERMS AND CONDITIONS

1. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the complaint, or this consent agreement.
2. This consent agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This consent agreement contains all terms of the settlement agreed to by the parties.
3. Nothing in this consent agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
4. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this consent agreement and to bind the party he/she represents to the terms and conditions of this consent agreement.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this consent agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this consent agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
7. This consent agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full resolution of the United States' claim for civil penalties for the specific violations alleged in the complaint.
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this consent agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. Failure by Respondent to comply with any of the terms of this consent agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

In the Matter of: Performance Ag. Services, LLC (Aberdeen, SD)
Docket No: FIFRA-08-2012-0017
(Continued)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,**

Complainant

SEP 19 2012

Date: _____

By: 

Darcy O'Connor, Acting Director,
Technical Enforcement Program
UIC-FIFRA-OPA
Office of Enforcement, Compliance and
Environmental Justice (8-ENF-UFO)
U.S. Environmental Protection Agency,
Region 8

SEP 19 2012

Date: _____

By: 

James H. Eppers, Supervisory Attorney,
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency,
Region VIII

In the Matter of: Performance Ag. Services, LLC (Aberdeen, SD)
Docket No: FIFRA-08-2012-0017
(Continued)

Performance Ag. Services, LLC,

Respondent

Date: 9-11-12

By:

Name, Title:


Owner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT AND FINAL ORDER** in the matter of **PERFORMANCE AG. SERVICES, LLC.; DOCKET NO.: FIFRA-08-2012-0017**, was filed with the Regional Hearing Clerk on September 20, 2012.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 20, 2012, to:

John Swenson, Owner
Performance Ag Services, LLC.
38420 W. Hwy. 12
Aberdeen, SD 57401

And emailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 20, 2012


Tina Artemis
Paralegal/Regional Hearing Clerk