

**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
Ely's, Incorporated,) **Docket No. FIFRA-07-2021-0084**
)
 Respondent.)
_____)

EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER

1. The U.S. Environmental Protection Agency (EPA) alleges that Ely's, Incorporated (Respondent) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c).

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under Section 7 of FIFRA, 7 U.S.C. § 136e, to inform the EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the producer is currently producing, which the producer has produced during the past year, and which the producer has sold or distributed during the past year. The information required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), must be kept current and submitted to the EPA annually as required under any regulation issued pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

3. The regulations at 40 C.F.R. Part 167 set out the registration and reporting requirements for pesticide and active ingredient producing establishments. Pursuant to 40 C.F.R. § 167.85(d), a producer operating an establishment must submit an initial report no later than 30 days after the first registration of each establishment the producer operates. Thereafter, the producer must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

4. Respondent operates the establishment assigned Establishment No. 51967-NE-1 located in Guide Rock, Nebraska.

5. Respondent failed to timely submit an annual pesticide production report on or before March 1, 2021 for Establishment No. 51967-NE-1.

6. Respondent's failure to timely submit an annual pesticide production report on or before March 1, 2021 for Establishment No. 51967-NE-1 is a violation of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

7. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (Agreement), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.13(b).

8. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements set forth above; (b) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

9. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation, and has submitted true and accurate documentation of such correction along with this Agreement; (b) has provided a deposit for payment of the civil penalty as set forth below; (c) has submitted a true and accurate proof of deposit for payment of the civil penalty along with this Agreement; and (d) agrees to release the deposit for payment to EPA upon entry of the Final Order attached hereto.

10. EPA and Respondent agree that settlement of this matter for a civil penalty in the amount of One Thousand Dollars (\$1,000.00) is in the public interest. Respondent certifies that it has provided a deposit for payment for the full civil penalty amount, and that such payment identified Respondent by name and docket number, was made by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

11. Respondent certifies that the original Agreement and a true and accurate copy of the deposit for payment was submitted to:

Milady Peters
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219, and to
peters.milady@epa.gov

12. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. The EPA reserves the right to take any enforcement action with respect to any other past, present, or future violations of FIFRA or any other applicable law.

13. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

14. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to FIFRA.

15. Each party shall bear its own costs and fees, if any.

16. This Agreement authorized by the EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

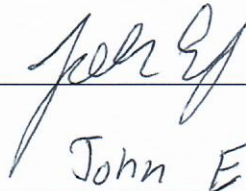
17. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

18. Respondent consents to receiving the filed Agreement electronically at the following e-mail address:

elysinc@windstream.net

RESPONDENT
ELY'S, INCORPORATED

Date: 10-21-21

By: 

Print Name

John Ely

Title

President

E-mail address elysinc@windstream.net

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Katherine Kacsur
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Expedited Settlement Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Expedited Settlement Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

kacsur.katherine@epa.gov

Copy via Email to Respondent:

elysinc@windstream.net

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Rodney P. Ely, Registered Agent
Ely's, Incorporated
University Avenue South
Guide Rock, Nebraska 68942

Dated this _____ day of _____, _____.

Signed