

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed

2.3. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of FIFRA.

III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 403 Fourth Street in Nezperce, Idaho. Respondent is a “person” under FIFRA § 2(s), 7 U.S.C. § 136(s).

3.2. Respondent is a commercial pesticide applicator who on June 4, 2011, applied the pesticide Silencer, (EPA Reg. No. 66222-104), a restricted use pesticides, as defined under FIFRA Section 3(d)(1)(C), 7 U.S.C. § 136a(d)(1)(C), to a field belonging to the Doggett family in Nezperce, Idaho.

3.3. On June 4, 2011, Respondent also applied the non-classified or general use pesticides Powerflex (EPA Reg. No. 62719-569), Quilt (EPA Reg. No. 100-1178), Rhonox (EPA Reg. No. 11685-21-71368), Starane Flex (EPA Reg. No. 62719-604), as defined under FIFRA Section 3(d)(1)(B), 7 U.S.C. § 136a(d)(1)(B), to a field belonging to the Doggett family in Nezperce, Idaho.

3.4. On June 4, 2011, the pesticides Respondent applied to the field belonging to the Doggett family were found on neighboring properties belonging to Nathan Riggers, Nezperce, Idaho.

3.5. The labeling on “Powerflex” states, “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

3.6. The labeling on "Powerflex" also states, "Do not apply PowerFlex directly to, or otherwise permit it to come into direct contact with, susceptible crops or desirable plants including alfalfa, barley, canola, beans, cotton, flowers, grapes, lettuce, lentils, mustard, oats, peas, potatoes, radishes, soybeans, sugar beets, sunflowers, tobacco, tomatoes, vegetables, or other desirable broadleaf crops or ornamental plants. Do not permit spray mists containing PowerFlex to drift onto such plants."

3.7. The labeling on "Powerflex" also states, "Do not apply PowerFlex directly to, or allow spray drift to come into contact with, broad leaf crops including alfalfa, barley, canola, beans, cotton, flowers, grapes, lettuce, lentils, mustard, oats, peas, potatoes, radishes, soybeans, sugar beets, sunflowers, tobacco, tomatoes, vegetables, or other desirable broadleaf crops or ornamental plants or soil where sensitive crops will be planted the same season."

3.8. The labeling on "Quilt" states, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

3.9. The labeling on "Quilt" also states, "Do not apply in a manner that will result in exposure to humans or animals."

3.10. The labeling on "Quilt" also does permit its use on Canola.

3.11. The labeling on "Rhonox" states, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

3.12. The labeling on "Rhonox" also does permit its use on Canola.

3.13. The labeling on "Silencer" states, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

3.14. The labeling on "Starane Flex" states, "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

3.15. The labeling on "Starane Flex" also states, "Do not apply Starane Flex directly to, or otherwise permit it to come into direct contact with, susceptible crops or desirable plants including alfalfa, edible beans, canola, flowers and ornamentals, lentils, lettuce, peas, potatoes, radishes, soybeans, sugar beets, sunflowers, tomatoes, or tobacco. Do not permit spray mists containing Starane Flex to drift onto such plants."

3.16. The labeling on "Starane Flex" also states, "Do not apply Starane Flex directly to, or allow spray drift to come into contact with, broadleaf crops including, but not limited to, alfalfa, canola, beans, cotton, flowers, grapes, lettuce, lentils, mustard, peas, potatoes, radishes, soybeans, sugar beets, sunflowers, tobacco, tomatoes, vegetables, or other desirable broadleaf crops or ornamental plants or soil where sensitive crops will be planted the same season."

3.17. During the application described in paragraph 3.3, Respondent's application moved off-site to the neighboring property belonging to Steve Riggers.

3.18. An inspector took vegetation samples from the properties belonging to Steve Riggers.

3.19. The samples were analyzed by the Idaho Food Quality Assurance Laboratory (IFQAL).

3.20. IFQAL analysis indicated that there were traces of azoxystrobin, fluroxypyr, lambda cyhalothrin, MCPA, propiconazole, and pyroxsulam, the active ingredients in "Quilt," "Starane Flex," "Silencer," "Rhonox," and "Powerflex," present in the vegetation samples.

3.21. Steve Riggers' property, described in paragraph 3.23, is located at 46.262567,-116.322759.

3.22. Under FIFRA Section 12(a)(2)(G), 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.

3.23. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying the non-classified or general use pesticides "Powerflex," "Quilt," "Rhonox," and "Starane Flex", in such a way that they moved off-site, which is inconsistent with their labeling. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), this violation subjects Respondent to the assessment of a civil penalty.

3.24. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), EPA may assess a civil penalty of not more than \$750 for a first-time violation, per product, for pesticides that are non-classified or classified as general use.

3.25. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying the pesticide "Silencer," in such a way that it moved off-site, which is inconsistent with its labeling.

3.26. "Silencer" is a Restricted Use Pesticide.

3.27. FIFRA Section 2(e)(3), 7 U.S.C. § 136(e)(3), defines a commercial applicator as an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on the property of another person.

3.28. Pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 136(a)(1), EPA may assess a civil penalty of not more than \$7,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA.

IV. CONSENT AGREEMENT

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order.

4.4. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA.

4.5. Respondent consents to the assessment of a civil penalty in the amount of FOUR THOUSAND SIX HUNDRED FORTY DOLLARS (\$4,640). Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to make the payment within thirty (30) days of the effective date of this Final Order.

4.6. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.7. Respondent shall serve photocopies of the checks described in Paragraph 4.6, above, on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Derrick Terada
U.S. Environmental Protection Agency, Region 10
Pesticides and Toxics Unit, OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.9. Should Respondent fail to pay any portion of the penalty assessed herein in full by its due date, Respondent shall also be responsible for payment of the following amount.

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(2), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due, which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.10. The penalty described in Paragraph 4.5, above, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. Respondent shall bear its own costs and attorneys fees in connection with this matter.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

For Respondent:

DATED:

2/12/13

SUPER KAT, INC.:

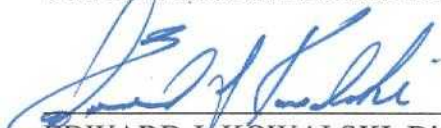
 VICE PRESIDENT
SUPER KAT

For Complainant:

DATED:

2/27/2013

U.S. ENVIRONMENTAL PROTECTION AGENCY:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all civil claims under FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 1st day of March, 2013.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Super Kat, Inc., Docket No.: FIFRA-10-2013-0041**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Mary Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Kerry A. Wagner, Esq.
Cox & Wagner, P.L.L.C.
PO Box 446
Lewiston, Idaho 83501

DATED this 1st day of March, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

