

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

7/13/2022

IN THE MATTER OF: )

AIRTIME AERIAL, LLC )  
1076 County Road 161 )  
Pine Bluffs, WY 82082 )

) Docket No.  
)  
) FIFRA-08-2022-0041

9:40AM  
Received by  
EPA Region VIII  
Hearing Clerk

Respondent. )

)  
)  
)  
) CONSENT AGREEMENT  
)  
)

**i. INTRODUCTION**

1. This is an administrative penalty assessment proceeding pursuant to 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 of Practice), as codified at 40 C.F.R. part 22.

2. EPA and Airtime Aerial, LLC (Respondent), having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

**ii. JURISDICTION**

3. This Agreement is issued under the authority vested in the Administrator of the EPA by section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(1). The undersigned EPA official has been duly authorized to institute this action.

4. The regional judicial officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

5. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

**iii. GOVERNING LAW**

6. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) prohibits

any person from using any registered pesticide in a manner inconsistent with its label.

7. “The term ‘label’ means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” FIFRA § 2(p)(1), 7 U.S.C. § 136 (p)(1).

#### **IV. ALLEGED FACTS**

8. Respondent, Airtime Aerial, LLC, is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
9. Respondent is a corporation organized under the laws of the state of Wyoming and is authorized to do business in the state of Wyoming.
10. Respondent’s principal place of business is located at 1076 County Road 161 Pine Bluffs, Wyoming 82082.
11. At all times relevant to the alleged violation, Respondent was a “certified applicator” and a “commercial applicator” as those terms are defined in section 2(c) of FIFRA, 7 U.S.C. § 136(e), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136(u).
12. Tordon 22K is a restricted use pesticide with EPA Registration No. 62719-6.
13. The label on the Tordon 22K restricted use pesticide states: Avoid spray drift. Exposure to very small quantities of spray or drift, which may not be visible, may cause serious injury to susceptible plants during active growth or dormant periods.
14. Low Vol 6 Ester Weed Killer has EPA Registration No. 34704-125.
15. The label on the Low Vol 6 Ester Weed Killer pesticide states: Do not apply under circumstances where spray drift may occur to food, forage, or other plantings that might be damaged or crops thereof rendered unfit for sale, use or consumption.
16. On May 16, 2019, a Wyoming Department of Agriculture inspector conducted an investigation in Pine Bluffs, Wyoming, in response to a drift complaint.

17. The May 16, 2019 investigation revealed that Respondent had applied the Tordon 22K restricted use pesticide and the Low Vol 6 Ester Weed Killer pesticide in the area of the alleged drift on May 11 and May 12, 2019.

18. The samples that the Wyoming Department of Agriculture inspector took revealed that the Tordon 22K and Low Vol 6 Ester Weed Killer pesticides were found outside the application site.

6.

#### **v. ALLEGED VIOLATIONS OF LAW**

19. Respondent used registered pesticides in a manner inconsistent with their labels in violation of 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.

#### **vi. TERMS OF CONSENT AGREEMENT**

20. For the purpose of this proceeding, Respondent

- a. admits the jurisdictional allegations in section II of this Agreement;
- b. neither admits nor denies the factual allegations stated in section IV of this Agreement;
- c. consents to the assessment of a civil penalty as stated below;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- f. waives any and all available rights to judicial or administrative review or other remedies Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706; and
- g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or

Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

7. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes EPA to assess a civil penalty in this matter.

8. In determining the amount of the penalty to be assessed, EPA considered the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation, as required by section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

9. Based on the alleged violations of law, and after consideration of the statutory factors in paragraph 29 above, EPA has determined a civil penalty of \$4,048.00 is appropriate to settle this matter.

10. Penalty Payment. Respondent agrees to

- a. pay a civil penalty in the amount of \$4,048.00 on or before July 31, 2022;
- b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
- c. identify each payment with the docket number that appears on the final order;
- d. within 24 hours of payment, email proof of payment to Christine Tokarz and Erin Agee at [tokarz.christine@epa.gov](mailto:tokarz.christine@epa.gov) and [agee.erin@epa.gov](mailto:agee.erin@epa.gov) ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

11. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may

- a. request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;
- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

12. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

13. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control 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.

14. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

15. Except as qualified by paragraph 32, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

## **VII. EFFECT OF CONSENT AGREEMENT**

16. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

17. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the environmental appeals board/ regional judicial officer, or other delegatee.

18. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other

federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

19. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

20. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves all its legal and equitable rights.

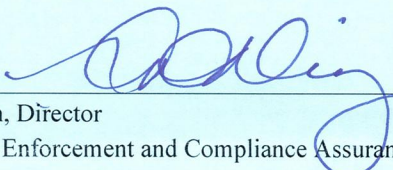
**VIII. EFFECTIVE DATE**

21. This Agreement shall become effective on the date the final order is filed by the hearing clerk.

22.

Consent Agreement In the Matter of AIRTIME AERIAL, LLC.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 8,  
Complainant.**

Date: 7/12/2022 By:   
*for* Suzanne J. Bohan, Director  
Enforcement and Compliance Assurance Division

**AIRTIME AERIAL, LLC  
Respondent.**

Date: 5/6/22 By:   
Kevin Hefley, President