

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Max Birney Aerial Spraying, Inc.)
2151 190th Street)
Copeland, KS 67837)

Respondent)

Docket No. FIFRA-07-2007-0017

CONSENT AGREEMENT AND
FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Max Birney Aerial Spraying, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.

4. The Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is and was at all times referred to in this Complaint, a Kansas corporation.

Alleged Violations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

6. Respondent's facility, located in Copeland, Kansas, is a registered pesticides producing establishment.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136(c) and with the regulations found at 40 C.F.R. § 167.85(d) in that it did not file a 2006 annual

pesticides report by March 1, 2007, as required.

9. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

CONSENT AGREEMENT

10. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

11. Respondent admits the factual allegations set forth above.

12. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

13. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

14. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated thereunder. Respondent has now submitted its 2006 annual pesticides report.

15. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

16. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Complaint, shall not be assessed a civil penalty. Respondent's establishment-number will be terminated at Respondent's request.
2. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.
3. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.
4. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 

William A. Spfatlin
Director
Water, Wetlands, and Pesticides Division

Date: 09/27/07

By: 

Kent Johnson
Attorney
Office of Regional Counsel

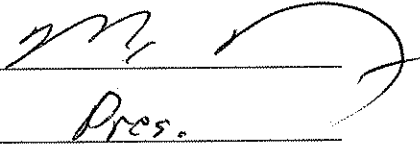
Date: 9/27/07

Max Birney Aerial Spraying, Inc.
FIFRA-07-2007-0017

RESPONDENT:

Max Birney Aerial Spraying, Inc.

By:



Title:


Pres.

Date:

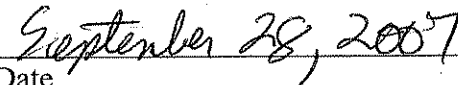
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Max Birney Aerial Spraying, Inc.
FIFRA-07-2007-0017

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII



Date

IN THE MATTER OF Max Birney Aerial Spraying, Inc., Respondent
Docket No. FIFRA-07-2007-0017

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Max Birney, President
Max Birney Aerial Spraying, Inc.
2151 190th Street
Copeland, Kansas 67837

Dated: 9/28/07


Kathy Robinson
Hearing Clerk, Region 7