

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

09 SEP 22 AM 9:50

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of	)	Docket No. FIFRA 07-2009-0029
	)	
Farmers Cooperative Company	)	CONSENT AGREEMENT
101 East Main Street	)	AND
Hinton, IA	)	FINAL ORDER
	)	
Respondent	)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Farmers Cooperative Company (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, Farmers Cooperative Company, is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Alleged Violations

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

6. Respondent operates four facilities which were required to file Pesticide Report for Pesticide-Producing Establishments for Calendar Year 2008. The facility locations and their establishment numbers are: 335 Commerce Avenue, Oyens, Iowa, EPA Establishment Number 51283-IA-001; 105 East Main, Hinton, Iowa, EPA Establishment Number 51283-IA-002; 30459 Highway 3, LeMars, Iowa, EPA Establishment Number 51283-IA-003; and, 110 River Road, Akron, Iowa, EPA Establishment Number 51283-IA-004.

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 the 2008 annual pesticides reports for the above facilities by March 1, 2009, 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**

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. 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.

5. Respondent certifies by signing this Consent Agreement and Final Order

that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. 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.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of One Thousand Two Hundred and Eighty Dollars (\$1,280.00). Payment will be made within thirty (30) days of the effective date of this Order. The payment shall be identified as In the Matter of Farmers Cooperative Company.

11. Payment of the penalty shall be by cashier or certified check made payable to  
“Treasurer, United States of America” and remitted to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

12. The payment shall reference Docket Number, FIFRA 07-2009-0029 and In  
the Matter of Farmers Cooperative Company. Copies of the check shall be forwarded to:

Kent Johnson  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

13. No portion of the civil penalty or interest paid by Respondent pursuant to the  
requirements of this Consent Agreement and Final Order shall be claimed by Respondent  
as a deduction for federal, state, or local income tax purposes.

14. In response to the violations of FIFRA alleged in this Consent Agreement and  
Final Order and in settlement of this matter, although not required by FIFRA or any other  
federal, state or local law, Respondent agrees to implement a supplemental environmental  
project (SEP), as described below, which the parties agree is intended to secure

significant environmental or public health protection and improvement.

15. Within two hundred and seventy (270) calendar days of the effective date of this CAFO, Respondent agrees to provide the following products to the Plymouth County Weed Board to assist the Board in its efforts to control and/or eliminate noxious weeds in its jurisdiction:

- (a) Dow AgriScience Tordon 22K, EPA Registration Number 62719-6
- (b) LoveLand Amine 4 Weed Killer, 4 D, EPA Registration Number 34704-120

16. The value of the products to be provided shall not be less than Three Thousand Eight Hundred and Forty Dollars (\$3,840.00) based upon the Respondent's wholesale cost of the product.

17. Respondent agrees to apply or oversee the application of the products described in paragraph 15 by July 31, 2010. Application shall occur in accordance with the label requirements. Application will be made by or under the direction of a properly certified applicator.

18. Respondent shall expend a minimum of \$3,840 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

19. Respondent shall begin implementation of the SEP on or before May 31, 2010, and complete the SEP no later than September 1, 2010. Within ten (10) calendar days of the distribution of the product described in paragraph 15, Respondent shall submit an Interim SEP Report to EPA. The Interim SEP Report shall confirm

distribution of the product to the Plymouth County Weed Board. The Interim SEP Report shall identify the name, complete address, and telephone number of the recipient of the product, and the wholesale value of the products. Included in the Interim SEP Report will be the name of the product, the EPA Registration Number of each product and the amount distributed of each product.

20. Within twelve (12) months of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- (a) a detailed description of the SEP as implemented;
- (b) a description of any problems encountered in implementation of the project and the solution thereto;
- (c) A signed affidavit from the Plymouth County Weed Board stating the quantity and type of product received from Respondent, and the quantity of product used by the Board.
- (d) A description of the specific environmental and /or public health benefits resulting from implementation of the SEP;
- (e) Certification that the SEP has been fully implemented pursuant to the provisions of the CAFO; and
- (f) Itemized costs.

21. The Interim SEP Report and the SEP Completion Report shall include the following statement of Respondent, through an officer, signed and certifying under penalty of law:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that,

based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

22. The Interim SEP Report and the SEP Completion Report shall be submitted on or before the due date to:

Joy Haff  
WWPD/TOPE  
EPA, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

23. Respondent agrees that failure to submit the Interim SEP Report and the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 24, below.

24. If the SEP referenced in Paragraph 15 above is not timely completed to the satisfaction of EPA in accordance with the terms of CAFO, Respondent shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

- (i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.
- (ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 22 above of the change in circumstances and

proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

25. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

26. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

### **Final Order**

Pursuant to the provisions of FIFRA, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of One Thousand Two Hundred and Eighty Dollars (\$1,280.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

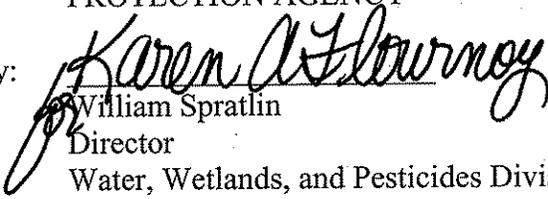
Kent Johnson, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By:   
William Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date: 9-17-09

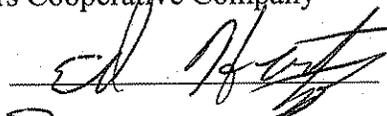
By:   
Kent Johnson  
Attorney  
Office of Regional Counsel

Date: 9/15/09

RESPONDENT:

Farmers Cooperative Company

By:



Title:

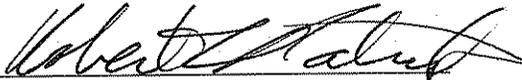
Board President

Date:

Sept 10, 2009

Farmers Cooperative Company  
FIFRA 07-2009-0029

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

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

September 22, 2009  
Date

IN THE MATTER OF Farmers Cooperative Company, Respondent  
Docket No. FIFRA-07-2009-0029

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  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Michael Thon  
Farmers Cooperative Company  
101 East Main Street  
Hinton, Iowa 51024

Dated: 9/22/09



Kathy Robinson  
Hearing Clerk, Region 7