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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2017-0076
GENERAL AIRCRAFT SERVICES, LLC,)	
)	CONSENT AGREEMENT
)	
Pendleton, Oregon,)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and General Aircraft Services, LLC. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order 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 Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Under Section 12(a)(2)(G) of FIFRA, 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.

3.2. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.3. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), “pesticide” includes, *inter alia*, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

3.4. Under Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), “to use any registered pesticide in a manner inconsistent with its labeling” means “to use any registered pesticide in a manner not permitted by the labeling,” subject to limited exceptions.

3.5. Under Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), “labeling” includes, *inter alia*, “all labels and all other written printed, or graphic matter accompanying the pesticide or device at any time.”

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

3.7. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.8. “Fitness,” EPA Registration Number (EPA Reg. No. 34704-1031), is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.9. The labeling for Fitness states in part:

- It is a violation of Federal law to use this product in a manner inconsistent with its labeling.
- Do not apply this product in a way that will contact workers or other persons, either directly or through drift.
- Do not apply in a manner that will result in exposure to humans or animals.

3.10. Propiconazole is the active ingredient of Fitness.

3.11. Respondent owns and operates a business facility located at 5101 Northwest A Avenue, Pendleton, Oregon 97801-4570.

3.12. On May 3, 2016, Respondent applied Fitness to a field leased by George Diggins, referred to as the Sampson Field.

3.13. The Sampson Field is adjacent to property owned by a private individual.

3.14. On May 3, 2016, EPA received a complaint from the private individual regarding off target drift from a pesticide application on the Sampson Field.

3.15. In response to the May 3, 2016, complaint, on May 12, 2016, a federally credentialed inspector working for the Oregon Department of Agriculture (“Inspector”) collected a vegetation sample from each of the following locations, from farthest from the application site to closest: (1) north of the private individual’s home, (2) the individual’s front yard, and (3) the individual’s pasture (collectively, “the Samples”).

3.16. The Samples were analyzed by the Oregon Department of Agriculture Laboratory (“ODAL”) on May 24, 2016.

3.17. Test results by the ODAL of the Samples found propiconazole concentrations ranging from 0.013 ppm to 0.049 ppm in a gradient pattern increasing as the sample approached the Sampson Field.

3.18. Between May 3, 2016, and May 12, 2016, other than application by Respondent, there were no instances of application of propiconazole in the area adjacent to Wildbill’s property.

3.19. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying Fitness in a manner inconsistent with its labeling.

3.20. As described in Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), Respondent is an applicator not included in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), who applies

registered pesticides only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served.

3.21. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$1,772 for a first-time violation nor more than \$2,750 for each subsequent violation, per product, involving pesticides that are non-classified or classified as General Use.

3.22. On October 26, 2012, Respondent settled a similar violation of FIFRA with the Oregon Department of Agriculture through the filling of a Settlement Agreement and Final Order (ODA Pesticides Case #110223).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,080 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions

are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Young.teresa@epa.gov

Derrick Terada
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
Terada.derrick@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the

Treasury from the effective date of the Final Order contained herein, 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 contained herein.

4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. 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 shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

4.12. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.13. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.14. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

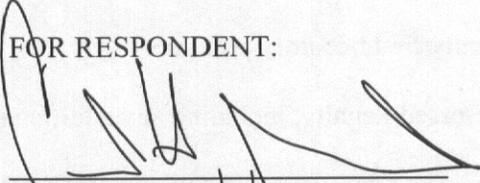
4.15. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.16. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/2/2017

FOR RESPONDENT:

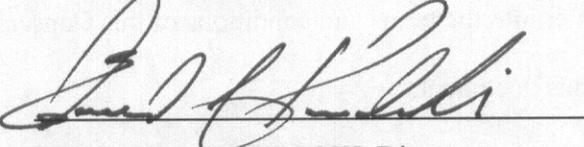


CARL HAGGLUND
General Aircraft Services, LLC

DATED:

3/9/2017

FOR COMPLAINANT:



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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2017-0076
GENERAL AIRCRAFT SERVICES, LLC,)	
)	FINAL ORDER
Pendleton, Oregon,)	
)	
Respondent.)	

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

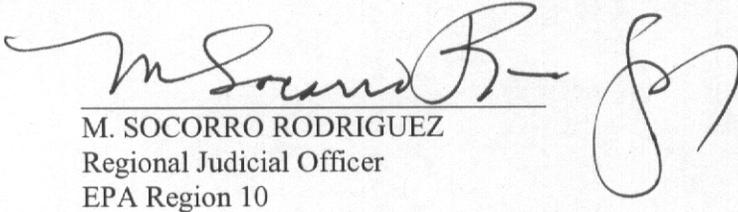
1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing

Clerk.

SO ORDERED this 13th day of March, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: General Aircraft Services, LLC, Docket No.: FIFRA-10-2017-0076**, 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:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, 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:

Carl Hagglund
General Aircraft Services, LLC
5101 Northwest A Avenue
Pendleton, Oregon 97801-4570

DATED this 13 day of March, 2017.



TERESA YOUNG
Regional Hearing Clerk
EPA Region 10

