

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)

Yates Center Elevator, Inc.)

109 N. Pratt)

Yates Center, KS 66783)

RESPONDENT)

Docket No. FIFRA-07-2005-0235

CONSENT AGREEMENT

AND

FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of a civil penalty was initiated on May 5, 2005, pursuant to Section 14 of the of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C § 136 et seq, when Complainant issued a Complaint and Notice of Opportunity For Hearing ("Complaint") to Yates Center Elevator, Inc. (Respondent).

The parties subsequently entered negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order is the result of such negotiations.

CONSENT AGREEMENT

1. Respondent admits the jurisdictional allegations of the Complaint.
2. Respondent neither admits nor denies the specific factual allegations contained in the Complaint.
3. Respondent consents to the assessment of the stated civil penalty in the Final Order as mitigated below and to the conditions specified in this Consent Agreement.

4. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

5. Respondent agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Final Order.

6. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. The penalty amount specified in the Complaint is mitigated in recognition of Respondent's financial position, as demonstrated by documentation provided to Complainant. The penalty amount is further mitigated in recognition of Respondent's attitude and good faith efforts to comply with FIFRA.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. The settlement pursuant to this Consent Agreement shall resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

FINAL ORDER

1. Respondent certifies that, upon information and belief, it is in compliance with FIFRA, 7 U.S.C. 136 et seq., and all regulations promulgated thereunder.

2. Respondents shall pay a mitigated civil penalty, in the amount of Thirteen Thousand Four Hundred Fifty-Five Dollars and Twenty-One Cents (\$13,455.21) plus interest for two years (\$112.07). The civil penalty will be paid in four (4) semi-annual payments of Three Thousand Three Hundred Ninety-One Dollars and Eighty-Two Cents.(\$3,391.82) each. The first

payment must be received at the address below on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the “due date”). Each succeeding payment will be due 180 days after the previous payment. The payment shall be identified as **In the Matter of Yates Center Elevator, Inc.** Payments made by Respondent shall identify the Respondent by name and docket number and shall be made by certified or cashier's check payable to the United States Treasury and remitted to:

Mellon Bank
EPA - Region 7
P.O. Box 371099M
Pittsburgh, PA 15251

3. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

4. Respondents understand that its failure to timely pay any portion of the civil penalty stated in Paragraph 2 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed for payments received 30 days after the due date, and an additional \$15 will be charged for each subsequent 30 day period. As provided

by 31 U.S.C. § 3717(e)(2), a 6% per annum penalty (late charge) will be assessed on any amount not paid within 90 days of the due date.

5. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas, 66101.

6. Each party shall bear its own costs and attorney's fees in connection with this action.

In the Matter of

Yates Center Elevator, Inc.
Docket No. FIFRA-07-2005-0235

RESPONDENT:

YATES CENTER ELEVATOR, INC.

By:



Title:

MANAGER

Date:

8-14-05

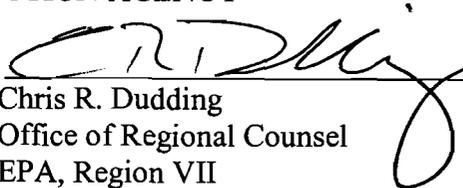
In the Matter of

Yates Center Elevator, Inc.
Docket No. FIFRA-07-2005-0235

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

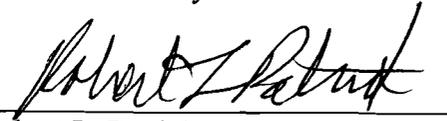
By:


Chris R. Dudding
Office of Regional Counsel
EPA, Region VII

Date:

8/23/05

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


Robert L. Patrick
Regional Judicial Officer

Date:

August 23, 2005

IN THE MATTER OF Yates Center Elevator, Inc., Respondent
Docket No. FIFRA-07-2005-0235

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:

Chris R. Dudding
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:

John T. Davis
Yates Center Elevator, Inc.
709 N. Pratt
Yates Center, Kansas 66783

and

Copy by Facsimile and
First Class Pouch Mail to:

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW/Mail Code 1900L
Washington, D.C. 20460

and

Honorable Spencer T. Nissen
Administrative Law Judge
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW/Mail Code 1900L
Washington, D.C. 20460

Dated: 8/23/05


Kathy Robinson
Regional Hearing Clerk