



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2018 FEB -7 AM 10:03

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2018-0004

IN THE MATTER OF:)	
)	
MEHLING SPRAYING SERVICES, LLC)	FINAL ORDER
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 6th DAY OF February, 2018.

Kathryn E. Hall
Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Mehling Spraying Services, LLC)
Route 1 Box 1067)
Hardin, Montana 59034)
)
Respondent)
)
)
)
_____)

Docket No.: FIFRA-08-2018-0004

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for a violation section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent that the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), which has been delegated to the signatories of this Agreement.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Solely for the purposes of this proceeding, Respondent admits the jurisdictional allegations of this Agreement. Respondent consents to the assessment of the civil penalty referenced below, waives any right to a hearing before any tribunal or to contest any statement of law or fact in this Agreement, and waives any right to appeal any final order approving this Agreement (Final Order). Respondent does not admit or deny the factual allegations in this Agreement.

II. ALLEGATIONS

6. Respondent, Mehling Spraying Services, 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.

7. Respondent's place of business is located at Route 1 Box 1067 Hardin, Montana 59034 (Facility).
8. 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(e) of FIFRA, 7 U.S.C. § 136(e), of a "pesticide" as defined in FIFRA section 2(u), 7 U.S.C. § 136(u).
9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any person to use any registered pesticide in a manner inconsistent with its label.
10. "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 section 2(p)(1), 7 U.S.C. § 136 (p)(1).
11. The label on the restricted use pesticide Govern states:

Do not allow spray to drift from the application site and contact people, structures people occupy at any time and the associated property, parks and recreation areas, non-target crops, aquatic and wetland sites, woodlands, pastures, rangelands, or animals. Avoiding spray drift at the application site is the responsibility of the applicator.

III. VIOLATION

12. On May 28, 2015, EPA conducted an investigation in Garryowen, Montana, in response to a drift complaint. This investigation revealed that the pesticide Govern (EPA Reg. No. 62719-220-55467) was found outside the application site.
13. As a follow up to the May 28, 2015 EPA investigation, the Montana Department of Agriculture conducted an inspection at the Facility on June 1, 2015.
14. The June 1, 2015 inspection revealed that on May 25, 2015, Respondent applied two pesticides. These two pesticides were: Lambda-Cyhalothrin 1EC (EPA Reg. No. 228-708), and Govern (EPA Reg. No. 62719-220-55467).
15. EPA determined that the May 25, 2015 application of Govern by Respondent drifted outside the application site.
16. Respondent violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), when it applied a restricted use pesticide in a manner inconsistent with its label.

III. PAYMENT OF CIVIL PENALTY

17. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
18. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider 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.

19. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$3,566.00 against Respondent for the above-described violation.
20. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$3,566.00 within 30 days of receipt of the Final Order, according to the following:
- a. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. Respondent shall:
 - i. Pay the penalty using any method provided on the following website:
<https://www.epa.gov/financial/makepayment>;
 - ii. Identify the payment with the docket no. assigned to the Final Order and
 - iii. Within 24 hours of payment, email proof of payment to Erin Agee at 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 that payment has been made according to EPA requirements, in the amount due, and identified with the docket number assigned to the Final Order.
21. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).
22. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

IV. TERMS AND CONDITIONS

23. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status 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. This Agreement contains all terms of the settlement agreed to by the parties.

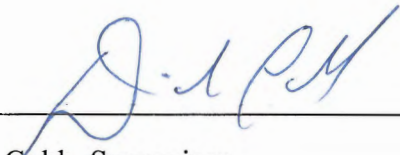
24. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
25. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Agreement and to bind Respondent to the terms and conditions of this Agreement.
26. Each party shall bear its own costs and attorney fees in connection with this matter.
27. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty, shall resolve Respondent's liability for civil penalties for the violation alleged herein.
28. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
29. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
30. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Office of Enforcement, Compliance
and Environmental Justice

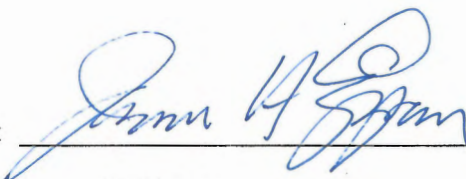
Complainants

Date: 2/6/18

By: 

David Cobb, Supervisor
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

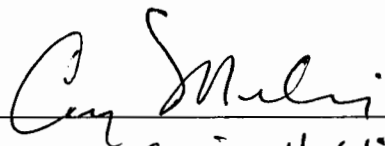
Date: 2/6/18

By: 

James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

**MEHLING SPRAYING SERVICES, LLC.,
Respondent**

Date: 1-12-18

By: 

Printed Name: Craig Mehling

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **MEHLING SPRAYING SERVICES, LLC; DOCKET NO.: FIFRA-08-2018-0004** was filed with the Regional Hearing Clerk on February 7, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Erin Agee, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on February 7, 2018, to:

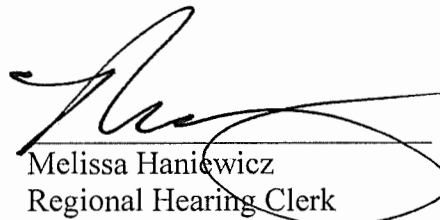
Respondent

Craig Mehling
Mehling Spraying Services, LLC
Route 1 Box 1067
Hardin, Montana 59034

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

February 7, 2018



Melissa Haniewicz
Regional Hearing Clerk