

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2007 JUL 30 AM 9:35

Docket No. **FIFRA-08-2007-0010**

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Scott's Air Ag and) COMBINED COMPLAINT AND
Community Oil of the Glacial Lakes) CONSENT AGREEMENT
45149 152nd St.)
Summit, SD 57266)
EPA EST Nos.: 072059-SD-001,)
072059-SD-002, and 072059-SD-003,)
)
Respondent.)

Complainant, United States Environmental Protection Agency ("EPA"), Region 8, and Respondent, Scott's Air Ag and Community Oil of the Glacial Lakes, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement ("consent agreement") is issued to Scott's Air Ag and Community Oil of the Glacial Lakes ("Respondent") for a violation of FIFRA § 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L).
2. The undersigned EPA officials issue this consent agreement under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to 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 consent 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), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

B. ALLEGED VIOLATION

1. Respondent is a “person” within the meaning of section 2(s) of FIFRA, 7 U.S.C. section 136(s), and therefore subject to regulation.
2. Respondent is a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. section 136(w).
3. FIFRA section 7(c)(1), 7 U.S.C. section 136e(c)(1), requires all registered pesticide producers to file an annual report “...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides...” Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. section 167.85(d).
4. EPA reviewed its records and determined that Respondent did not submit a 2006 “Pesticide Report for Pesticide-Producing and Device-Producing Establishments” pursuant to section of 7 FIFRA, 7 U.S.C. section 136(e), for three of its establishments by March 1, 2007. Respondent did not submit a report of its two Scott’s Air Ag. establishments located in Summit (EPA Est. No. 072059-SD-001) and Roslyn (EPA Est. No. 072059-SD-002), and its Community Oil of the Glacial Lakes establishment located in Milbank (EPA Est. No. 072059-SD-003) by March 1, 2007. All three establishments are located in South Dakota. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. section 136j(a)(2)(L).
5. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent’s ability to continue in business, the size of Respondent’s business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this consent agreement under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **seven thousand eight hundred dollars (\$7,800.00).**

C. CIVIL PENALTY

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in this consent agreement, neither admits nor denies the specific factual allegations contained in this consent

agreement, and consents to the assessment of the penalty as stated in section B.5., above.

2. Respondent consents and agrees to pay a civil penalty in the amount of **seven thousand eight hundred dollars (\$7,800.00)**, in the manner described below in this paragraph:
 - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the Mellon Bank described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 02103004
TREAS NYC/CTR/
BNF=/AC-68010727

A copy of the check shall be sent simultaneously to:

Tim Osag,
Senior Enforcement Coordinator
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

And

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

- c. In the event 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 accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

D. TERMS AND CONDITIONS

- 1. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.
- 2. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, 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 Consent Agreement contains all terms of the settlement agreed to by the parties.

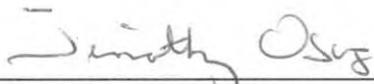
3. Nothing in this consent agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
4. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this consent agreement and to bind the party he/she represents to the terms and conditions of this consent agreement.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this consent agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this consent agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
7. This consent agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violation alleged in the consent agreement.
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent 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.

In the Matter of: Scott's Air Ag and Community Oil of the Glacial Lakes
Docket No:
(Continued)

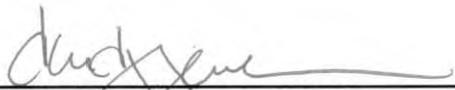
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,

Complainant.

Date: 7/24/07

By: 
Elisabeth Evans, Director
Technical Enforcement Program

Date: 7/27/07

By: 
Michael T. Risner, Director
David Janik, Supervisor
Legal Enforcement Program

Date: 7/24/2007

By: 
Eduardo Quintana, Senior Attorney
Legal Enforcement Program

In the Matter of: Scott's Air Ag and Community Oil of the Glacial Lakes
Docket No:
(Continued)

Scott's Air Ag and Community Oil of the Glacial
Lakes,

Respondent.

Date: 7/2/07

By: Kevin Haber

Name, Title: Kevin Haber, Bus Mgr

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached COMBINED COMPLAINT/CONSENT AGREEMENT/FINAL ORDER in the matter of **SCOTT'S AIR AG and COMMUNITY OIL OF THE GLACIAL LAKES, DOCKET NO.: FIFRA-08-2007-0010** was filed with the Regional Hearing Clerk on July 30, 2007, the **FINAL ORDER** was filed on July 31, 2007.

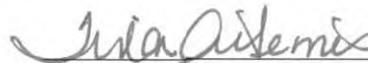
Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop St., Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 31, 2007, to:

Kevin Harber
Scott's Air Ag and Community Oil of the Glacial Lakes
P. O. Box 648
Huron, SD 57350

And e-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center Accounting
Fax: 513-487-2063

July 31, 2007



Tina Artemis
Paralegal/Regional Hearing Clerk

