

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

Lindell Aerial Ag Service, Inc. )

1276 Hwy. 94 )

Aledo, Illinois 61231 )

Respondent )

Docket No. FIFRA-07-2007-0020

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Lindell Aerial Ag Service, Inc. (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), 22.18(b)(2) and 22.18(b)(3) 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), 22.18(b)(2) and 22.18(b)(3).

ALLEGATIONS

Jurisdiction

1. This 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 is Lindell Aerial Ag Service, Inc., a commercial pesticide applicator, located at 1276 Hwy. 94, Aledo, Illinois, 61231. The Respondent is a "person" as defined by

Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation incorporated in Illinois and qualified to do business in the state of Iowa.

Violations

Count 1

5. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

6. The label of Nufos® 4E Insecticide, EPA Registration No. 67760-28, states, in pertinent part: “RESTRICTED USE PESTICIDE . . . Active Ingredient: Chlorpyrifos . . .44.9% . . .General Use Precautions and Restrictions: . . . Do not apply this product in a way that will contact workers or other persons, either directly or indirectly or through drift. Only protected handlers may be in the area during application. 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, nontarget crops, aquatic and wetland areas, woodlands, pastures, rangelands, or animals.”

7. On August 30, 2006, Respondent aerially applied the restricted use pesticide Nufos 4E, EPA Registration No. 67760-28, to a soybean field located on the north side of Highway 92 in Washington, Iowa.

8. On August 31, 2006, a resident of Washington, Iowa, who resides directly south of the application site described in paragraph 7, filed a complaint with the Pesticide Bureau of the Iowa Department of Agriculture and Land Stewardship (IDALS) and stated that the pesticide applied aerially to his neighbor’s soybean field had drifted onto his body, his residence and its associated property.

9. On August 31, 2006, a representative of the IDALS conducted a complaint investigation of the application and collected vegetative and other samples from the resident’s property.

10. Information obtained during the inspection referenced in paragraph 9 above, along with results from laboratory analysis of the samples collected during the inspection, indicate that Nufos 4E had drifted from the application site and had contacted people and associated property.

11. Respondent’s application, described in paragraph 7, was inconsistent with labeling directions in that, whether by application or drift, it was allowed to contact people and the associated property.

12. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by using a registered pesticide in a manner inconsistent with label directions.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and 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 this Consent Agreement and Final Order.

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 this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses and resolves all civil administrative claims for the FIFRA violation identified above. Complainant reserves the right to take any enforcement action with respect to any other violation of FIFRA or any other applicable law.

7. Nothing contained in 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.

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. Respondent certifies by signing this Consent Agreement and Final Order that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Five Thousand Two Hundred Dollars (\$5,200) as set forth in Paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate, terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay by cashier or certified check, a civil penalty, in the amount of Five Thousand Two Hundred Dollars (\$5,200), on or before thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check which shall reference docket number (FIFRA-07-2007-0020), and shall be made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency  
c/o Mellon Bank  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

Copies of the check shall be mailed to:

Jonathan W. Meyer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

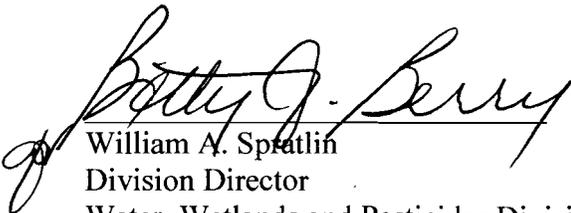
Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

3. 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.

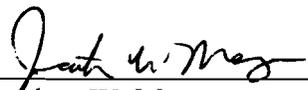
4. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

**For the Complainant:**

The United States Environmental Protection Agency

  
\_\_\_\_\_  
William A. Spratlin  
Division Director  
Water, Wetlands and Pesticides Division

09/24/07  
Date

  
\_\_\_\_\_  
Jonathan W. Meyer  
Assistant Regional Counsel

9-24-07  
Date

**For the Respondent:**  
Lindell Aerial Ag Service, Inc.

  
Printed Name: Garrett Lindell  
Title: President

17 September 2007  
Date

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

  
Robert L. Patrick  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region VII  
September 25, 2007  
Date

IN THE MATTER OF Lindell Aerial Ag Service, Inc., Respondent  
Docket No. FIFRA-07-2007-0020

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:

Jonathan W. Meyer  
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:

Garrett Lindell, President  
Lindell Aerial Ag Service, Inc.  
1276 Hwy. 94  
Aledo, Illinois 61231

Dated: 9/25/07



Kathy Robinson  
Hearing Clerk, Region 7