



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2017 JUL 13 PM 2:45

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0006

IN THE MATTER OF:

JOHNSONS AERO AG, INC.

RESPONDENT

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FINAL ORDER

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 13th DAY OF July, 2017.



Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARING CLERK

In the Matter of:)
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 Johnsons Aero Ag, Inc.)
 209 Klueffer Avenue)
 Rushville, Nebraska 69360)

Respondent)
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)

Docket No.: FIFRA-08-2017-0006

COMBINED COMPLAINT AND
CONSENT AGREEMENT

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Johnsons Aero Ag, Inc. (Respondent) for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The U.S. Environmental Protection Agency (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 who 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). The Administrator of the EPA has delegated this authority under FIFRA 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. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

II. ALLEGATIONS

6. Respondent is a corporation under the laws of the State of Nebraska and is therefore 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 209 Klueffer Avenue, Rushville, Nebraska 69360.
8. At all times relevant to the alleged violations, the Respondent was a “certified applicator” and a “commercial applicator” as those terms are defined at section 2(e) of FIFRA, 7 U.S.C. § 136(e), of a “pesticide” defined in FIFRA section 2(u), 7 U.S.C. § 136(u).
9. 40 C.F.R. § 156.10(a) requires that, “Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: (viii) The directions for use....”
10. 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 labeling.

III. VIOLATIONS

Count 1

11. On April 21, 2016, Mr. Kirkland Budd, a certified aerial applicator for Johnsons Aero Ag, applied 2,4-D-LV6 (EPA Registration No. 1381-101) and Ally-XP (EPA Registration No. 352-435) to a property near the Wolf Creek Elementary School of Pine Ridge Indian Reservation which is located at E Hwy 18, Pine Ridge, South Dakota 57770.
12. At the time of the application of the general use pesticides, 2,4-D-LV6 and Ally-XP, there were children and teachers present at the Wolf Creek Elementary School.
13. On April 22, 2016, an inspector with the EPA conducted “For Cause” inspections at Wolf Creek Elementary School, located on the Pine Ridge Indian Reservation, and at Johnsons Aero Ag, Inc. These inspections were conducted in response to an off target/drift complaint received on April 21, 2016, from a concerned caller at Wolf Creek Elementary. Another off target/drift complaint was received on April 22, 2016, from a concerned citizen with property near the Wolf Creek Elementary School.
14. The 2,4-D-LV6 and Ally-XP label’s directions for use state “Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. Avoiding spray drift is the responsibility of the applicator”

15. On April 22, 2016, samples were collected from Wolf Creek Elementary School playground and shipped to Montana Department of Agriculture-MSU Analytical Laboratory in Bozeman, MT for analysis.
16. On May 5, 2016, Montana Department of Agriculture-MSU Analytical Laboratory sent a report of the samples taken at Wolf Creek Elementary stating that the samples were positive for 2,4-Dichlorophenoxyacetic acid, the active ingredient found in 2,4-D-LV6.
17. Respondent failed to apply the 2,4-D-LV6 and Ally-XP in a manner that prevented contact with the children and the teachers present at the school who were not protected handlers.
18. Therefore, Respondent applied the 2,4-D-LV6 and Ally-XP in a manner inconsistent with its labeling in violation of section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

IV. PAYMENT OF CIVIL PENALTY

19. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty of up to \$19,057 for the violation referenced in paragraph 18, above.
20. 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.
21. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of \$1000 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.
22. 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 \$1000 within thirty days of the effective date of the Final Order as follows:
 - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. 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. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
Cincinnati Finance Center Box 979077 Contact: Craig Steffen
1005 Convention Plaza 513-487-2091
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
Randolph Maxwell: 202-874-7026
Remittance Express (REX): 1-866-234-5681

On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from www.pay.gov.

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

23. At the same time that payment is made, notice that the payment has been made shall be provided to:

Sherrie Kinard (8ENF-AT-TP)	and	Melissa Haniewicz (8RC)
Technical Enforcement Program		Regional Hearing Clerk
U.S. EPA Region 8		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

24. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
25. 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).
26. 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.

V. TERMS AND CONDITIONS

27. 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.

28. 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.
29. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
30. Each party shall bear its own costs and attorney fees in connection with this matter.
31. Respondent agrees that the penalty specified in this Agreement or any interest paid shall not be deductible for purposes of local, state, or federal taxes.
32. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
33. 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 violations alleged herein.
34. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
35. 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,**

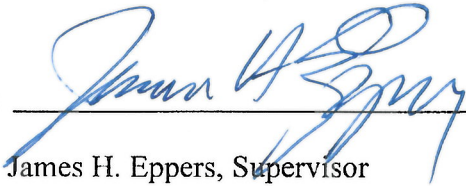
Office of Enforcement, Compliance and
Environmental Justice
Complainant

Date: 7/13/17

By:  _____


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

Date: 7/13/17

By: 
James H. Eppers, Supervisor
Attorney Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Johnson's Aero Ag, Inc.
Respondent

Date: 7/17

By: 

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **JOHNSONS AERO AG, INC.; DOCKET NO.: FIFRA-08-2017-0006** was filed with the Regional Hearing Clerk on July 13, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on July 13, 2017, to:

Respondent

Doug Johnson
Johnsons Aero Ag, Inc.
PO Box 414
Rushville, Nebraska 69360

And emailed to:

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

July 13, 2017



Melissa Haniewicz
Regional Hearing Clerk