

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

2012 JUL 17 PM 2:33

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

BEFORE THE ADMINISTRATOR

In the Matter of )

Kay Farms Elevator, Inc. )  
Wheatland, Iowa )

Respondent )

) Docket No. FIFRA-07-2012-0013  
)  
) CONSENT AGREEMENT  
) AND  
) FINAL ORDER  
)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7, and Kay Farms Elevator, 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) and 22.18(b)(2) 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) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding 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 7, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region 7.

4. The Respondent, Kay Farms Elevator, Inc., is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

### Alleged Violations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

6. Respondent's facility is located at 220 Highway 30, Wheatland, Iowa, and is a registered pesticides producing establishment with EPA Establishment Number 53912-IA-001.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136(c), and with the regulations found at 40 C.F.R. § 167.85(d) in that it did not file the 2011 annual pesticides report for the above facility by March 1, 2012, as required.

9. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

### CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance, and will comply with the terms of the 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 the Final Order set forth below.

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 the Final Order accompanying this Consent Agreement.

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

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of 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.

7. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

8. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

9. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate 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 after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier or certified check, a mitigated civil penalty, for the violations cited herein, in the amount of Two Thousand Six Hundred and Forty Dollars (\$2,640.00). Payment will be made within thirty (30) days of the effective date of this Order.

11. Payment of the penalty shall be by cashier or certified check and shall reference Docket No. FIFRA-07-2012-0012, and be made payable to the "United States Treasury" and remitted to:

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

12. Copies of the check shall simultaneously be sent to the following:

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Kent Johnson  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

13. 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.

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

15. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Karen Flournoy  
Karen Flournoy  
Director  
Water, Wetlands, and Pesticides Division

Date: 7-17-12

By: Kent Johnson  
Kent Johnson  
Assistant Regional Counsel  
Office of Regional Counsel

Date: 7/16/12

RESPONDENT:  
KAY FARMS ELEVATOR, INC.

By: Branda K Kay

Title: Vice-President

Date: July 16, 2012

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



ROBERT L. PATRICK  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 7

Date: July 17, 2012

IN THE MATTER OF Kay Farms Elevator, Inc., Respondent  
Docket No. FIFRA-07-2012-0013

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Kent Johnson  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Brenda K Kay  
Vice President  
Kay Farms Elevator, Inc  
PO Box 477, 220 W HWY 30  
Wheatland, Iowa 52777-0477

Dated: 7/17/12

  
Kathy Robinson  
Hearing Clerk, Region 7