

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

U.S. Ag Center, Inc.)
250 North Main Street)
Allison, Iowa 50602)

Docket No. FIFRA-07-2008-0023

Respondent.)

JOINT MOTION TO AMEND CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The United States Environmental Protection Agency (EPA), Region 7 and U.S. Ag Center, Inc. (Respondent) agreed to a settlement of Respondent's violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and memorialized the settlement through a Consent Agreement and Final Order (CAFO) filed on September 9, 2008. The Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), which states that it shall be unlawful for any person to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 136a(d) of this title and any regulations thereunder, except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator.

The CAFO ordered Respondent to pay a mitigated penalty of \$ 1,360.00. Respondent agreed as part of the settlement to perform a Supplemental Environmental Project (SEP) that was to be completed within nine (9) months of the effective date of the CAFO, or June 9, 2009. The Respondent has provided an interim and Final SEP report that show efforts have been made to complete the SEP during the time period set forth in the CAFO. As part of the SEP, the Respondent agreed to provide between two hundred eighty (280) and four hundred (400) pounds of Iowa Mix CP 25 grass mix to the North Butler Pheasants Forever chapter to assist that organization in its efforts to restore native Iowa grassland in the North Butler Wilderness Area located in Butler County, Iowa. The purpose of providing the grass mix was to create a natural buffer zone to prevent runoff from entering the West Fork Cedar River and nearby wetlands. The value of the grass seed to be provided was not to be less than \$3,840.00 based on the wholesale cost of the grass seed.

The Respondent purchased the seed and attempted to provide the seed to the North Butler Pheasants Forever organization in October 2008, but wet weather conditions prevented the organization from planting the seed. The Respondent attempted again in the spring and summer of 2009 to provide the seed to be planted, but again wet weather prevented the organization from planting the seed. The Respondent has indicated that the organization is prepared to plant the seed by the end of September 2009.

Based on this information, the Amended CAFO adjusts the completion date of the SEP in Paragraph 31 to October 1, 2009, and the due date for the Second Final SEP Report in Paragraph 32 to be November 1, 2009. All references to the Consent Agreement and Final Order have been changed to Amended Consent Agreement and Final Order (Amended CAFO). Respondent and Complainant have signed the Amended CAFO. Attachment 1.

Motion

Pursuant to 40 C.F.R. § 22.16, Complainant and Respondent hereby move for an Order granting this Joint Motion to file an Amended Consent Agreement and Final Order.

Respectfully Submitted,



Kelley Catlin
Counsel for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of September, 2009, I filed the Original Joint Motion to Amend Consent Agreement and Final Order with the Regional Hearing Clerk, EPA Region VII, 901 North Fifth Street, Kansas City, Kansas 66101. I also delivered copies of this document to the following:

VIA CERTIFIED MAIL:

Chad Henning
U.S. Ag Center, Inc.
250 North Main Street
Allison, Iowa 50602

Kelley Catlin

9/17/09

Date