

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )  
)  
Sedan Farm Supply, Inc. )  
)  
)  
)  
Respondent )  
\_\_\_\_\_ )

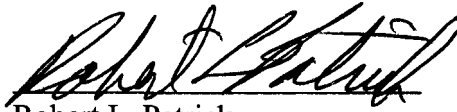
Docket No. FIFRA-07-2008-0034

ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 15 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 15, which shall replace the facsimile of page 15, within one day of receipt of the document from Respondent.

Dated:

*September 30, 2008*



Robert L. Patrick  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101**

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ERVIN J. ... ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	Docket No. FIFRA-07-2008-0034
Sedan Farm Supply, Inc.	)	
512 S. Chautauqua St.	)	CONSENT AGREEMENT
Sedan, KS 67361	)	AND
	)	FINAL ORDER
Respondent.	)	

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Sedan Farm Supply, Inc. (Respondent), have agreed to a settlement of this action before filing 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).

**FACTUAL ALLEGATIONS**

**Jurisdiction and Statutory Requirements**

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” or “Act”), 7 U.S.C. § 136j.
2. This Consent Agreement and Final Order (CAFO) 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 is Sedan Farm Supply, Inc., a pesticide distributor, located at 512 S. Chautauqua Street, Sedan, Kansas. The Respondent is, and was at all times referred to in this CAFO, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified to do business in the state of Kansas.

### **Statutory and Regulatory Background**

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to include, among other things, bacteria or other micro-organisms.
6. According to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
7. FIFRA § 2(dd), 7 U.S.C. § 136(dd), defines an establishment as any place where a pesticide is produced, or held, for distribution or sale.
8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 USC § 136a.
10. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
11. FIFRA § 7(a), 7 U.S.C. § 136e(a) states that no person may produce a pesticide subject to FIFRA unless the establishment in which it is produced is registered with EPA.
12. According to 40 C.F.R. § 152.3, package “means the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use, or storage.”
13. According to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, the term “produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, re-label, or otherwise change the container of any pesticide or device.
14. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.
15. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the label accompanying the pesticide does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any

requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.

16. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.

17. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. § 136a(d)(1)(C)(i) and (ii), state in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

18. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines certified applicator as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, to use or supervise the use of any pesticide which is classified for restricted use.

#### Factual Allegations

19. “JUST ONE BITE” is a pesticide registered under EPA Registration Number 270-372 to Farnam Companies, Inc., Phoenix, Arizona.

20. “TORDON 22K” is a restricted use pesticide registered to Dow Agrosciences LLC, Indianapolis, Indiana, under EPA Registration Number 62719-6. The label of TORDON 22K Herbicide states in pertinent part, “RESTRICTED USE PESTICIDE ... For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator’s certification.”

21. On or about December 28, 2006, a representative of the Kansas Department of Agriculture (KDA) inspected Respondent’s place of business located at 412 S. Chautauqua Street, Sedan, Kansas, to determine Respondent’s compliance with FIFRA. During the inspection, copies of invoices, statements, and photographs were collected, documenting the sale of the pesticides “JUST ONE BITE” and “TORDON 22K.”

#### Violations

22. Complainant hereby incorporates the allegations contained in paragraphs 1 through 21, above, as if fully set forth herein and alleges that Respondent has violated FIFRA and the regulations promulgated thereunder as follows:

#### Count 1

23. During the inspection referenced in paragraph 21, KDA’s representative collected from Respondent, a copy of an “Accounts Receivable History Report” dated November 30, 2006. The

report listed the Invoice No. 109882 which recorded Respondent's sale of one gallon of the Restricted Use Pesticide (RUP), TORDON 22K to Jeff Powell, owner of Otter Creek Services, on August 16, 2006.

24. At the time of the sale referenced in paragraph 23, Jeff Powell was not a certified applicator of the RUP TORDON 22K, nor was he working under the direct supervision of a certified applicator when he applied the RUP TORDON 22K.

25. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by distributing, selling or making available for use a registered pesticide classified for a restricted use for purposes other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

Count 2

26. Complainant hereby incorporates the allegations contained in paragraphs 1 through 25, above, as if fully set forth herein.

27. During the inspection referenced in paragraph 21, the KDA's representative documented that Respondent possessed a large plastic container of the pesticide JUST ONE BITE which contained 75 1.5 ounce individual place packs. This pesticide's allowable package, as defined by 40 C.F.R. § 152.3, is considered the large plastic container.

28. Representatives of KDA photographed Respondent holding for sale the individual packs for 50 cents each. On each individual place pack, in bold red letters, was the statement "Not for Individual Resale." Also on the place packs was the statement "It is illegal to sell these place packs individually." Neil Armstrong, Sedan Farm Supply, also signed a statement declaring that Respondent was selling individual packs of JUST ONE BITE. Respondent's act of selling the individual packs is considered repackaging.

29. 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold. Therefore, by repackaging the pesticide, JUST ONE BITE, Respondent created an unregistered pesticide.

30. The repackaged pesticide product, the 1.5 ounce pack of JUST ONE BITE, described in paragraph 28, was not encompassed within the terms of the product registration under EPA Registration Number 270-372, and required a separate product registration under Section 3 of FIFRA.

31. Respondent's act of repackaging the unregistered pesticides JUST ONE BITE constitutes "production" as that term is defined under Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

32. Since Respondent produced the pesticide JUST ONE BITE at its facility identified in

paragraph 4, it was required to register as a pesticide-producing establishment pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e. However, during the inspection referenced in paragraph 21, it was determined that Respondent failed to properly register the facility as required by FIFRA § 7(a), 7 U.S.C. § 136e.

33. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it was considered a producer and failed to comply with the provisions of Section 7 of FIFRA by producing a pesticide in an unregistered establishment.

#### Count 3

34. Complainant hereby incorporates the allegations contained in paragraphs 1 through 33, above, as if fully set forth herein.

35. During the inspection referenced in paragraph 21, KDA's representative collected, from Respondent, a copy of an "Accounts Receivable History Report" dated December 28, 2006. That report listed sales invoice number 115803 which documented the sale of an individual pack of JUST ONE BITE on December 11, 2006.

36. The repackaged pesticide product, the 1.5 ounce pack of JUST ONE BITE, described in paragraph 28, is not encompassed within the terms of the product registration under EPA Registration Number 270-372. The 1.5 ounce individual pack of JUST ONE BITE is not separately registered with EPA as required by Section 3 of FIFRA, 7 USC § 136a and 40 C.F.R. § 152.15. Therefore, the 1.5 ounce individual pack of JUST ONE BITE is an unregistered pesticide.

37. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling the unregistered pesticide product, the 1.5 ounce individual packs of JUST ONE BITE.

#### Count 4

38. Complainant hereby incorporates the allegations contained in paragraphs 1 through 37, above, as if fully set forth herein.

39. During the inspection referenced in paragraph 21, KDA's representative documented the holding for sale of the unregistered pesticide product, the 1.5 ounce individual packs of JUST ONE BITE.

40. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "to distribute or sell" includes holding of a pesticide for sale or distribution. Therefore, Respondent distributed the unregistered pesticide product, the 1.5 ounce individual packs of JUST ONE BITE.

41. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for

distribution or sale, the unregistered pesticide product, the 1.5 ounce individual packs of JUST ONE BITE.

Count 5

42. Complainant hereby incorporates the allegations contained in paragraphs 1 through 41, above, as if fully set forth herein.

43. During the inspection referenced in paragraph 21, KDA's representative collected, from Respondent, a copy of an "Accounts Receivable History Report" dated December 28, 2006. That report listed sales invoice number 115803 which documented the sale of an individual pack of JUST ONE BITE on December 11, 2006.

44. During the inspection referenced in paragraph 21, KDA's representative photographed the individual packs of JUST ONE BITE. The packs failed to bear adequate directions for use, and in fact directed the user to "Refer to the outer label for complete 'DIRECTIONS FOR USE'."

45. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), the label of each of the 1.5 ounces individual packs of JUST ONE BITE were misbranded because the label did not contain important required information including but not limited to the "Directions For Use."

46. Since the JUST ONE BITE 1.5 ounce individual packs did not have most of the required labeling, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a pesticide which was misbranded.

Count 6

47. Complainant hereby incorporates the allegations contained in paragraphs 1 through 46 above, as if fully set forth herein.

48. During the inspection referenced in paragraph 21, KDA's representative photographed and documented the holding for sale of the individual packs of JUST ONE BITE. The packs failed to bear adequate directions for use, and in fact directed the user to "Refer to the outer label for complete 'DIRECTIONS FOR USE'."

49. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), the label of each of the 1.5 ounces individual packs of JUST ONE BITE were misbranded because the label did not contain important required information including, but not limited to the "Directions For Use."

50. Since the JUST ONE BITE 1.5 ounce individual packs did not have most of the required labeling, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for sale or distribution a pesticide which was misbranded.

### **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, finds it reasonable, 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. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.
8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.
9. 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.
10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to



the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.
12. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.
13. 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.
14. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

### **FINAL ORDER**

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

#### **A. Payment of Civil Penalty**

1. Respondent shall pay a mitigated civil penalty of \$4,760, plus interest of \$272, for a total of \$5,032. This penalty shall be paid according to the following schedule:
  - (a) A payment of \$629.00 shall be due within thirty (30) days following the effective date of this Consent Agreement and Final Order.
  - (b) Payments of \$629.00 each shall be due on each of the following dates:
    - December 8, 2008;
    - March 8, 2009;
    - June 8, 2009;
    - September 8, 2009;
    - March 8, 2010;
    - June 8, 2010;
    - September 8, 2010.
2. Failure to submit any of the required payments by the respective due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling

charges, penalties, and accumulated interest. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. Interest shall accrue thereon at the rate determined by the Secretary of the Treasury.

3. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

4. The Respondent shall reference the Docket Number FIFRA 07-2008-0034 and **In the Matter of Sedan Farm Supply, Inc.**, on each check. A copy of each check shall also be mailed to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, Kansas 66101

and

Demetra O. Salisbury  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
901 N. 5th Street  
Kansas City, KS 66101.

5. 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.

#### **B. Supplemental Environmental Project**

6. In response to the violations of FIFRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by FIFRA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below in paragraphs 7 through 10, which the parties agree is intended to secure significant environmental or public health protection and improvement.

7. Within sixty (60) calendar days of the effective date of this CAFO Respondent agrees to provide the following products to the Quivira Council of the Boy Scouts of America (“Boy Scouts”) to assist the Boy Scouts in their efforts to control and/or eliminate noxious weeds on their land:

- (a) Approximately 1000 fluid ounces of Escort XP, EPA Reg. No. 352-439
- (b) Approximately 125 gallons of Activator 90, California Reg. No. 36208-50014

8. The value of the products to be provided, identified in paragraph 7, shall not be less than Eleven Thousand Two Hundred and Forty Dollars (\$11,240.00) based upon the Respondent's wholesale cost of the product.

9. Respondent agrees to apply or oversee the application of the products described in paragraph 7 by October 31, 2009. Application shall occur in accordance with the label requirements. The first application shall occur during the fall of 2008. The second application shall occur during the spring of 2009. If weather does not permit the fall of 2008 application of the products, Respondent shall (a) in the Interim SEP Report described in paragraph 11, note that the application did not occur and state the reasons; (b) apply or oversee the application of the products during the fall of 2009.

10. Respondent shall expend a minimum of \$11,240 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

11. Respondent shall begin implementation of the SEP on or before October 1, 2008, and complete the SEP no later than October 31, 2009. Within sixty-one (61) calendar days of the effective date of this CAFO, Respondent shall submit an Interim SEP Report to EPA. The Interim SEP Report shall confirm distribution and application of the products pursuant to Paragraphs 7 and 9 of the Final Order. The Interim SEP Report shall identify the name, complete address, and telephone number of the recipient of the product, and the wholesale value of the products. The Interim SEP Report shall also describe whether or not the products were applied in the fall of 2008.

12. Within fourteen (14) months of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;

- (b) A description of any problems encountered in implementation of the project and the solution thereto;
- (c) A signed affidavit from the Boy Scouts, on letterhead, if appropriate, stating the quantity and type of product received from Respondent, and the quantity of product used by the Boy Scouts within the time period described above. The affidavit shall be signed by the director or an officer of the Boy Scouts;
- (d) A description of the specific environmental and/or public health benefits resulting from implementation of the SEP;
- (e) Certification that the SEP has been fully implemented pursuant to the provisions of the CAFO; and
- (f) Itemized costs.

13. In itemizing its costs in the Interim SEP Report and the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, acceptable documentation includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

14. The Interim SEP Report and the SEP Completion Report shall include the following statement of Respondent, through an officer, signed and certifying under penalty of law:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

15. The Interim SEP Report and the SEP Completion Report shall be submitted on or before the due date to:

Joy Haff  
WWPD/TOPE  
Environmental Protection Agency, Region 7  
901 North 5th Street  
Kansas City, Kansas 66101.

16. Respondent agrees that failure to submit the Interim SEP Report and the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 21 below.

17. No portion of Respondent's expenditures on the SEP required under this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for state or local income tax purposes. Additionally, for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

18. Respondent agrees that in any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP, Respondent shall include a statement that the SEP was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Federal Insecticide, Fungicide, and Rodenticide Act.

19. Respondent hereby certifies that, as of the date of this CAFO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is the Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

20. After receipt of the SEP Completion Report described in paragraph 12 above, EPA will notify the Respondent, in writing, regarding: i) any deficiencies in the SEP Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily, or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 21 herein.

#### **D. Stipulated Penalties**

21. In the event Respondent fails to satisfactorily complete the SEP identified in paragraphs 7 through 10 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraphs 7 through 10 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) Except as provided in subparagraph (b) immediately below, for a SEP

which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in an amount not to exceed \$11,240.

- (b) If the SEP is not completed in accordance with Paragraphs 7 through 10, but EPA determines that the Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (c) In the event the Respondent satisfactorily completes the SEP, but fails to spend at least 90% of the amount required for Total SEP Expenditures, the Respondent shall pay a stipulated penalty not to exceed \$2,000.
- (d) If the SEP is completed in accordance with paragraphs 7 through 10, and the Respondent spent at least 90 percent of the amount of the money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (e) If Respondent fails to timely and completely submit the Interim SEP Report or the SEP Completion Report required by Paragraphs 11 and 12, Respondent shall be liable for and shall pay a stipulated penalty in the amount of \$100.00 for each day after the due date until a complete report is submitted.

Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

22. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

23. Respondent shall pay any stipulated penalties within fifteen (15) days after the date of receipt of a written demand from EPA for payment. The method of payment shall be in accordance with the provisions of paragraphs 3 and 4 of the Final Order. Interest and penalty on any failure to pay a demanded stipulated penalty shall be calculated in accordance with paragraph 2 of the Final Order.

24. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

25. This Final Order shall apply to and be binding upon EPA and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

26. Payment Provision: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and a handling delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate. A charge of fifteen dollars (\$15.00) will be assessed to cover the costs of debt collection, including processing and handling costs. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

In the Matter of Sedan Farm Supply, Inc.  
Docket No. FIFRA-07-2008-0034  
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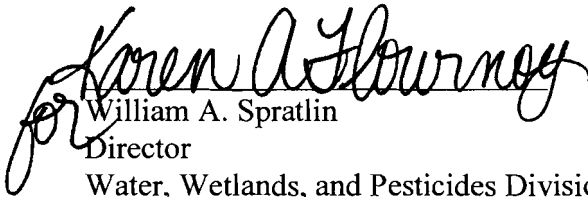
**For the Respondent:**  
Sedan Farm Supply, Inc.

By: Lana L. Everett  
Printed Name: Lana L. Everett  
Title: manager

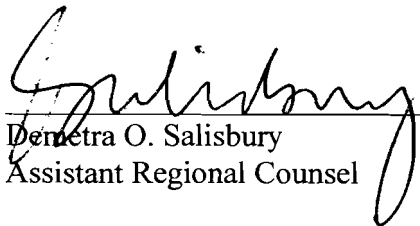
Sept. 26, 2008  
Date



**For the Complainant:**  
The United States Environmental Protection Agency

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

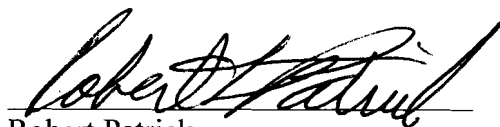
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Demetra O. Salisbury  
Assistant Regional Counsel

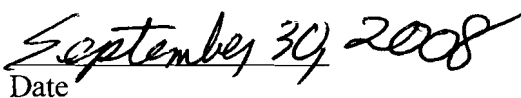
9/29/08  
Date

In the Matter of Sedan Farm Supply, Inc.  
Docket No. FIFRA-07-2008-0034  
Page 17 of 17

IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.



Robert Patrick  
Regional Judicial Office



Date

IN THE MATTER OF Sedan Farm Supply, Inc., Respondent  
Docket No. FIFRA-07-2008-0034

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Edward L. Robinson  
Morris Laing Evans Brock & Kennedy  
300 N. Mead, Suite 200  
Wichita, Kansas 67202-2745

Dated: 9/30/08



Kathy Robinson  
Hearing Clerk, Region 7