

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF	)	
	)	Docket No. FIFRA-07-2007-0007
Scott Cooperative Association	)	
206 Wayne Street,	)	CONSENT AGREEMENT
Scott City, Kansas 67871	)	AND
	)	FINAL ORDER
Respondent	)	

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency, Region VII (“EPA” or “Complainant”), and Scott Cooperative Association (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).

**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), 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 Scott Cooperative Association, a pesticide producer and distributor, located at 206 Wayne Street, Scott City, Kansas 67871. The Respondent is and was at all times referred to in this Complaint, as 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.

### **Violations**

#### **General Allegations**

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

6. Respondent, Scott Cooperative Association, at all times relevant to this Complaint, operated a registered pesticide-producing establishment in Scott City, KS, under EPA Establishment No. 063433-KS-01.

7. On or about February 8, 2006, a representative of the Kansas Department of Agriculture (KDA) conducted an inspection at Respondent's facility located at 206 Wayne Street, Scott City, Kansas, 67871, for the purpose of determining Respondent's compliance with the requirements of FIFRA.

8. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states, in pertinent part, 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, 7 U.S.C. § 136a(d).

9. 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.

10. 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.

11. Lumax Herbicide, EPA Registration No. 100-1152, is a restricted use pesticide registered to Syngenta Crop Protection, Inc., Greensboro, North Carolina. The approved label of Lumax Herbicide clearly states, in pertinent part: "RESTRICTED USE PESTICIDE.....For retail sale and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification."

**Count 1**

12. The facts stated in paragraphs 1-11 are re-alleged and incorporated as if fully stated herein.

13. On or about February 8, 2006, during the inspection referenced in paragraph 7 above, KDA's representative collected, from Respondent, a copy of the sale receipt numbered 36605 and invoice number 077184. These records document Respondent's distribution and sale of 100 gallons of Lumax Herbicide, EPA Registration No. 100-1152, to an employee of Land Management by Design, L.L.C., Scott City, Kansas, on or about December 14, 2005.

14. Respondent distributed or sold, and thereby made available for use to Land Management by Design, L.L.C., Scott City, Kansas, the restricted use pesticide, Lumax Herbicide.

15. At the time of the sale referred to in paragraph 14, no employee of Land Management by Design, L.L.C., was a certified applicator as that term is defined in paragraph 10.

16. Richard Spencer of Land Management by Design L.L.C. applied the Lumax Herbicide. Richard Spencer was not certified as an applicator as that term is defined in paragraph 10, nor was he working under the direct supervision of a certified applicator at the time of application.

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

**Count 2**

18. The facts stated in paragraphs 1 - 17 are re-alleged and incorporated as if fully stated herein.

19. On or about February 8, 2006, during the inspection referenced in paragraph 7 above, KDA's representative collected, from Respondent, a copy of the sale receipt numbered 36611 and invoice number 077289. These records document Respondent's distribution and sale of 100 gallons of Lumax Herbicide to Land Management by Design, L.L.C., on or about January 4, 2006.

20. Respondent distributed or sold, and thereby made available for use to Land Management by Design, L.L.C., the restricted use pesticide, Lumax Herbicide.

21. At the time of the sale referred to in paragraph 19, no employee of Land Management by Design L.L.C. was certified as an applicator as that term is defined in paragraph 10.

22. Richard Spencer of Land Management by Design L.L.C. applied the Lumax Herbicide. Richard Spencer was not certified as an applicator as that term is defined in paragraph 10, nor was he working under the direct supervision of a certified applicator at the time of application.

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

### **Count 3**

24. The facts stated in paragraphs 1-23 are re-alleged and incorporated as if fully stated herein.

25. On or about February 8, 2006, during the inspection referenced in paragraph 7 above, KDA's representative collected, from Respondent, a copy of the sale receipt numbered 36618 and dated January 31, 2006. These records document Respondent's distribution and sale of 100 gallons of Lumax Herbicide to an employee of Land Management by Design, L.L.C., on or about January 31, 2006.

26. Respondent distributed or sold, and thereby made available for use to Land Management by Design, L.L.C., the restricted use pesticide, Lumax Herbicide as documented by sale receipt number 36618.

27. At the time of the sale referred to in paragraph 13, no employee of Land Management by Design, L.L.C., was a certified applicator as that term is defined in paragraph 10.

28. Richard Spencer of Land Management by Design L.L.C. applied the Lumax Herbicide. Richard Spencer was not certified as an applicator as that term is defined in paragraph 10, nor was he working under the direct supervision of a certified applicator at the time of application.

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

**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.

**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:

1. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashier's or certified checks, a civil penalty, for the violations cited herein, in the amount of Fifteen Thousand Six Hundred Dollars (\$15,600.00), on or before thirty (30) days of the effective date this Final Order.

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

**Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII,  
c/o Mellon Bank  
P.O. Box 371099M,  
Pittsburgh, Pennsylvania 15251.**

3. The payment shall reference Docket Number, FIFRA 07-2007-0007 and **In the Matter of Scott Cooperative Association.** Copies of the check shall be forwarded to:

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

and

Kathy Robinson  
Regional Hearing Clerk  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

4. 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.

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

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

COMPLAINANT:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

By: *William A. Spratlin* for  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division

Date: 6-29-07

By: *Demetra O. Salisbury*  
Demetra O. Salisbury  
Attorney  
Office of Regional Counsel

Date: June 28, 2007



RESPONDENT:

Scott Cooperative Association

By: Tony Winter  
Title: President  
Date: June 21, 2007

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



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

*July 10, 2007*  
Date

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IN THE MATTER OF Scott Cooperative Association, Respondent  
Docket No. FIFRA-07-2007-0007

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:

Demetra O. Salisbury  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Gary Friesen  
Scott Cooperative Association  
PO Box 350  
410 East First Street  
Scott City, Kansas 67871

and

Keen Brantley, Esq.  
Wallace Brantley, Shirley  
PO Box 605  
Scott City, Kansas 67871

7/11/07  
Dated

Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7