



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 27 2007

4APT-PTSB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Norman E. Snyder
Aspen Investments, Inc.
4505 E. Boonville – New Harmony Road
Evansville, IN 47725-9701

SUBJ: Docket No. FIFRA-04-2007- 3021(b)
Aspen Investments, Inc.

Dear Mr. Snyder:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 CFR Part 22.

Please make note of the provisions in the Final Order, with respect to payment of the assessed penalty of \$85,840. The initial payment in the amount of \$7,309.27 is due within 30 days from the effective date of the CAFO. Remaining payments are due as set forth in Section IV of the CAFO.

Also enclosed, please find a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document notifies you of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. EPA, Cincinnati Accounting Operations address identified in Section IV of the CAFO. Should you have any questions about your company's compliance status in the future, please do not hesitate to call me or Phillip Beard at (404) 562-9012.

Sincerely,



Joanne Benante
Chief
Pesticides and Toxic
Substances Branch

Enclosures (2)

cc: Flo Lamphier, North Carolina Department of Agriculture
and Consumer Services

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2007 JUN 27 AM 9:46
HEARING CLERK

In the Matter of:)
)
Aspen Investments, Inc.) Docket No. FIFRA-04-2007-3027(b)
)
)
Respondent.)
_____)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Aspen Investments, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Phillip Beard
Pesticides Management Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

5. The Respondent is Aspen Investments, Inc., an Indiana corporation located at 4505 E. Boonville – New Harmony Road, Evansville, Indiana 47725-9701.
6. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On or about May 20, 2004, an authorized representative of the EPA conducted an inspection at Respondent’s facility known as Ikex, Inc., located at P.O. Box 250, Middlesex, North Carolina 27557.
8. During the aforementioned inspection, the following list of pesticides were sold and distributed by the Respondent. The pesticides are:

Vereens 18-2-9 W/ .86% Pendimethalin 25% PSCU,
Vereens 25-3-11 W/ .86% Pendimethalin 40% PSCU,
Vereens 10-5-20 W/ .22% Dimmension,
Vereens 0-0-9 W/ .22% Dimmension,
Vereens 10-0-20 W/ .22% Dimmension,
Vereens 5-5-25 W/ .86% Pendimethalin,

Vereens 18-3-10 W/ .86 % Pendimethalin 25% PSCU,

Vereens 13-2-5 W/ .86% Pendimethalin.

9. The inspector documented five shipments of Vereens 18-2-9 W/ .86% Pendimethalin 25% PSCU from the Respondent to:

Shipped to	Invoice #	Date
Royster-clark, Collinsville, NC	0554570	February 11, 2004
Southernscapes of Greensboro, Greensboro, NC	0554910	February 18, 2004
Pinnacle, Inc., Zebulon, NC	0554876	February 18, 2004
Southernscapes, Inc., Greensboro, NC	0554959	February 19, 2004
Wakefield Nursery, Zebulon, NC	0556198	March 11, 2004

10. The inspector documented one shipment of Vereens 25-3-11 W/ .86% Pendimethalin 40% PSCU from the Respondent to:

Shipped to	Invoice #	Date
Carolina Green Lawn Service, Raleigh, NC	0554526	February 11, 2004

11. The inspector documented five shipments of Vereens 10-5-20 W/ .22% Dimmension from the Respondent to:

Shipped to	Invoice #	Date
Countryscapes, Robersonville, NC	0529621	February 26, 2003
Countryscapes, Robersonville, NC	0529868	March 7, 2003
Fontaine Landscaping, Inc., Apex, NC	0556209	March 11, 2004
Clawson's Landscaping & Lawn, Clayton, NC	0556863	March 22, 2004
Clawson's Landscaping & Lawn, Clayton, NC	0557932	April 5, 2004

12. The inspector documented five shipments of Vereens 0-0-9 W/ .22% Dimmension from the Respondent to:

Shipped to	Invoice #	Date
Michael's Extra Hand, Swansboro, NC	0529243	February 11, 2003
Colorscapes Landscape, Cary, NC	0540489	April 11, 2003
Michael's Extra Hand, Swansboro, NC	0555410	February 27, 2004
Seltzer's Services, Wilson, NC	0555630	March 3, 2004
Walnut Hill Nursery, Wendell, NC	0555802	March 5, 2004

13. The inspector documented two shipments of Vereens 10-0-20 W/ .22% Dimmension from the Respondent to:

Shipped to	Invoice #	Date
Gold Valley Landscapes, Spring Hope, NC	0555922	March 8, 2004
Harris Lawn Care, Inc., Wilson, NC	0559976	April 27, 2004

14. The inspector documented five shipments of Vereens 5-5-25 W/ .86% Pendimethalin from the Respondent to:

Shipped to	Invoice #	Date
Eastern Carolina Lawn Care, Snow Hill, NC	0554751	February 16, 2004
Selzer's Services, Wilson, NC	0555630	March 3, 2004
Jay's Lawn & Landscape Co., Wendell, NC	0556633	March 17, 2004
Wakefield Nursery, Zebulon, NC	0556962	March 23, 2004
Atlantic Property Services, Raleigh, NC	0558378	April 8, 2004

15. The inspector documented five shipments of Vereens 18-3-10 W/ .86% Pendimethalin 25% PSCU from the Respondent to:

Shipped to	Invoice #	Date
Premier Landscaping, Wilson, NC	0530089	March 13, 2003
Southernscapes of Greensboro, Greensboro, NC	0530189	March 14, 2003
Corbett's Nursery, Zebulon, NC	0530545	March 25, 2003
Community Christian School, Wilson, NC	0541149	April 24, 2003
Jordan's Nursery & Landscaping, Knightdale, NC	0542024	May 14, 2003

16. The inspector documented five shipments of Vereens 13-2-5 W/ .86% Pendimethalin 25% PSCU from the Respondent to:

Shipped to	Invoice #	Date
The Brickman Group #116, Durham, NC	0554758	February 16, 2004
The Brickman Group #127, Durham, NC	0554759	February 16, 2004
AFH-Greenview Sod Farm, Huntersville, NC	0555931	March 8, 2004
Touch of Green, Charlotte, NC	0556220	March 11, 2004
Touch of Green, Charlotte, NC	0558066	April 16, 2004

17. Vereens 18-2-9 W/ .86 Pendimethalin 25% PSCU, Vereens 25-3-11 W/ .86% Pendimethalin 40% PSCU, Vereens 10-5-20 W/ .22% Dimmension, Vereens 0-0-9 W/ .22% Dimmension, Vereens 10-0-20 W/ .22% Dimmension, Vereens 5-5-25 W/ .86% Pendimethalin, Vereens 18-3-10 W/ .86 % Pendimethalin 25% PSCU, and Vereens 13-2-5 W/ .86% Pendimethalin are pesticides as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u). The definition of pesticide includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
19. Respondent, “distributes or sells” pesticides as defined by Section 2(gg) of FIFRA 7 U.S.C. § 136(gg).
20. At the time of the inspection, the Vereens 18-2-9 W/ .86% Pendimethalin 25% PCSU, Vereens 18-2-9 W/ .86 Pendimethalin 25% PCSU, Vereens 25-3-11 W/ .86% Pendimethalin 40% PCSU, Vereens 10-5-20 W/ .22% Dimmension, Vereens 0-0-9 W/ .22% Dimmension, Vereens 10-0-20 W/ .22% Dimmension, Vereens 5-5-25 W/ .86% Pendimethalin, Vereens 18-3-10 W/ .86 % Pendimethalin 25% PCSU, and Vereens 13-2-5 W/ .86% Pendimethalin labels were not registered as pesticides with EPA.
21. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
22. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least thirty-three separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
23. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.

24. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
25. 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 EIGHTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$85,840), plus interest at four percent per annum, 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.

III. Consent Agreement

26. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
27. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
28. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
29. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
30. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state

statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

31. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

32. Respondent is assessed a civil penalty of EIGHTY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$85,840), plus interest at four percent per annum, which shall be paid according to the schedule agreed upon, as shown as Attachment A.
33. **The first installment payment of \$7,309.27 shall be made on September 1, 2007, or within 30 days from the date this CAFO is filed with the Regional Hearing Clerk, whichever is later.**

The remaining installment payments will be made as set forth in Attachment A.

34. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send each check via U.S. mail to the following address:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lock Box 371099M
Pittsburgh, PA 15251-7099.

Each check shall reference the name and the Docket Number of the CAFO ("Aspen Investments, Inc., FIFRA-04-2007-3021(b)").

35. At the time of payment, Respondent shall send a separate copy of each check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Phillip Beard
Pesticides Management Section
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA – Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

36. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
37. 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 handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
38. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
39. This CAFO shall be binding upon the Respondent, its successors and assigns.

40. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

41. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Aspen Investments, Inc.

By: Norman E. Snyder (Signature) Date: 6/12/07
Name: Norman E. Snyder (Typed or Printed)
Title: Vice Pres. (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 6/21/07
Beverly H. Banister, Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 26th day of June, 2007.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

Loan Amortization Schedule

Attachment A

Enter values	
Loan amount	\$ 85,840.00
Annual interest rate	4.00 %
Loan period in years	1
Number of payments per year	12
Start date of loan	8/1/2007
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 7,309.27
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$ -
Total interest	\$ 1,871.21

Lender name: case for Phillip Beard

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	9/1/2007	\$ 85,840.00	\$ 7,309.27	\$ -	\$ 7,309.27	\$ 7,023.13	\$ 286.13	\$ 78,816.87	\$ 286.13
2	10/1/2007	78,816.87	7,309.27	-	7,309.27	7,046.54	262.72	71,770.32	548.86
3	11/1/2007	71,770.32	7,309.27	-	7,309.27	7,070.03	239.23	64,700.29	788.09
4	12/1/2007	64,700.29	7,309.27	-	7,309.27	7,093.60	215.67	57,606.69	1,003.76
5	1/1/2008	57,606.69	7,309.27	-	7,309.27	7,117.25	192.02	50,489.44	1,195.78
6	2/1/2008	50,489.44	7,309.27	-	7,309.27	7,140.97	168.30	43,348.47	1,364.08
7	3/1/2008	43,348.47	7,309.27	-	7,309.27	7,164.77	144.49	36,183.70	1,508.57
8	4/1/2008	36,183.70	7,309.27	-	7,309.27	7,188.66	120.61	28,995.04	1,629.19
9	5/1/2008	28,995.04	7,309.27	-	7,309.27	7,212.62	96.65	21,782.43	1,725.84
10	6/1/2008	21,782.43	7,309.27	-	7,309.27	7,236.66	72.61	14,545.77	1,798.44
11	7/1/2008	14,545.77	7,309.27	-	7,309.27	7,260.78	48.49	7,284.98	1,846.93
12	8/1/2008	7,284.98	7,309.27	-	7,284.98	7,260.70	24.28	0.00	1,871.21

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of: Aspen Investments, Inc., Docket No. FIFRA-04-2007-3021(b), and served same on the date shown below, to the parties listed in the manner indicated:

Phillip Beard
U.S. EPA, Region 4
Air, Pesticides, and Toxics
Management Division
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt
Requested)

Mr. Norman E. Snyder
Aspen Investments, Inc.
4505 E. Boonville-New Harmony Rd.
Evansville, IN 47725-9701

Date: 6-27-07



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 6/21/07
(Name) (Date)

in the DEA, OATGL at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Aspen Investments Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 85,840
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFPA 04 2007-3021

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |