



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

May 4, 2020

1:50 PM

Received by

EPA Region VIII

Hearing Clerk

DOCKET NO.: FIFRA-08-2020-0028

IN THE MATTER OF:

PLAZA-MAKOTI EQUITY ELEVATOR

FINAL ORDER

RESPONDENT

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby ORDERED to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 4<sup>th</sup> DAY OF May, 2020.

Katherin E. Hall
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF: )	Docket No. <u>FIFRA-08-2020-0028</u>	
Levi Deschamp )		
Plaza-Makoti Equity Elevator )	<b>EXPEDITED SETTLEMENT</b>	
Main Street )	<b>AGREEMENT</b>	May 4, 2020
Makoti, North Dakota 58756 )		1:50 PM
Est. No. 63819-ND-3 )		Received by
Respondent )		EPA Region VIII
		Hearing Clerk

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) alleges that Plaza-Makoti Equity Elevator (“Respondent”) failed to comply with section 7(c) of the Federal insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c), for its facility, EPA Establishment Number 63819-ND-3, located at Main Street, Makoti, North Dakota 58756.

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform the 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. In addition, 7 U.S.C. § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

3. 40 C.F.R. § 167.85(a) and (b) adds the following requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

4. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by the EPA. The applicable form, “EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments”, requires: identification of the

establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the “Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year January 1, 2018 through December 31, 2018” provides additional detail regarding information required on the Form.

5. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

6. The EPA reviewed its records and determined that Respondent did not submit the annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments pursuant to 40 C.F.R. § 167.85(d) and section 7(c)(1) of FIFRA, 7 U.S.C. § 136(e), for calendar year 2018, by March 1, 2019.

7. Respondent’s failure to comply with section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

8. The EPA and Respondent agree to settle this matter for a civil penalty \$1400.00 (one thousand four hundred dollars and zero cents). The parties agree that settlement of this matter is in the public interest.

9. The EPA is authorized to enter into this Expedited Settlement Agreement (“Agreement”), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to section 14(a) of FIFRA, 7 U.S.C. § 136f and 40 C.F.R. § 22.13(b) and § 22.18(b).

10. By signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraphs 2 through 5 above; (b) admits that the EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of the penalty set forth herein; and (e) waives any right to contest the allegations contained herein and its right to appeal the proposed Agreement.

11. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty of \$1400.00 (one thousand four hundred dollars and zero cents) for the FIFRA violations identified in this Agreement by sending a cashier's or certified check, payable to "Treasurer, United States of America" via either:

- U.S. mail to:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

- Or overnight/common carrier (i.e., FedEx, DHL, UPS) to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza SL-MO-C2-GL  
St. Louis, MO 63101

Alternatively, the penalty payment to "Treasurer, United States of America" may be made via:

- Electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

The check or electronic funds transfer instrument must state the case title ("In the Matter of: Plaza-Makoti Equity Elevator"), and docket number of this Agreement.

12. When it pays the penalty, Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number (along with a photocopy of the check or a statement of affirmation or receipt of an electronic funds transfer) to:

Shaula Eakins  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

13. Full payment of the penalty set forth in this Agreement shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

14. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

15. If Respondent does not timely pay the civil penalty, the EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalties are not reviewable in a collection action.

16. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this Agreement.

17. Respondent certifies that it has corrected the alleged violation(s) has submitted true and accurate documentation of such correction to the EPA, and is complying with section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and is implementing regulations set forth at 30 C.F.R. § 167.85.

18. Upon signing and returning this Agreement to the EPA, Respondent waives any and all remedies, claims for relief and other available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including the opportunity for a hearing or appeal pursuant to FIFRA and 40 C.F.R. Part 22 and any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

19. Each party shall bear its own costs and fees, if any.

20. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order.

21. The parties consent to service of this Agreement by e-mail at the following valid e-mail addresses: eakins.shaula@epa.gov (for Complainant), and <sup>Jeff</sup>tyler@plazamakotielevator.com (for Respondent).

IT IS SO AGREED,

FOR RESPONDENT:

Name (print): Jeff Kittell

Title (print): General MANAGER

Signature: 

Date: 3-11-20

FOR COMPLAINANT:

Name [of Agency delegated official] (print): Davis Cobb

Title (print): Section Chief

Signature: DAVID COBB Digitally signed by DAVID COBB  
Date: 2020.04.09 10:43:10 -06'00'

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT & FINAL ORDER** in the matter of **PLAZA-MAKOTI EQUITY ELEVATOR; DOCKET NO.: FIFRA-08-2020-0028** were filed with the Regional Hearing Clerk on May 4, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney, and sent via certified receipt email on May 4, 2020, to:

Respondent

Jeff Kittell  
Plaza-Makoti Equity Elevator  
jeff@plazamakotielelevator.com

And emailed to:

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

May 4, 2020

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2020.05.04  
14:02:13 -06'00'

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Melissa Haniewicz  
Regional Hearing Clerk