

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION VII**  
**901 N. FIFTH STREET**  
**KANSAS CITY, KANSAS 66101**

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 ENVIRONMENTAL PROTECTION  
 AGENCY-REGION VII  
 REGIONAL HEARING CLERK

IN THE MATTER OF )  
 )  
 Indy Crop Care, Inc. )  
 2383 Jamestown Avenue )  
 Independence, Iowa 50644 )  
 )  
 Respondent )

Docket No. FIFRA-07-2008-0030

08 SEP 15 PM 2:24  
 ENVIRONMENTAL PROTECTION  
 AGENCY-REGION VII  
 REGIONAL HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region VII and Indy Crop Care, Inc. (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).

**ALLEGATIONS**  
**Jurisdiction**

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 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 Indy Crop Care, Inc. (Indy Crop Care), a pesticide dealer with a facility located at 2383 Jamestown Avenue in Independence, Iowa 50644. The Respondent is and was at all times referred to in this Consent Agreement and Final Order (CAFO), a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and an Iowa corporation qualified to do business in the state of Iowa.

### Statutory and Regulatory Background

5. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. §136(a)(1)(F) 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 3(d) of FIFRA.

6. 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 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

7. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§136(a)(d)(1)(C)(i) and (ii), states 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.

### Factual Allegations

8. Respondent, at all times relevant, operated as a pesticide dealer in Independence, Iowa.

9. On December 20, 2006, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted a routine records inspection (inspection no. 122006 1840 01) at Respondent's facility in Independence, IA, for the purpose of determining Respondent's compliance with FIFRA, including review of restricted use pesticide (RUP) sales and application records.

10. Products with Atrazine included as an active ingredient are restricted use pesticides. The label of products with Atrazine as an active ingredient 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."

11. Aztec 2.1% Granular Insecticide ® is a restricted use pesticide that at the time of sale was registered to Bayer CropScience, Research Triangle Park, NC, under EPA Registrations No. 264-813. The label of Aztec 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."

### VIOLATIONS

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

Count 1

13. Complainant hereby incorporates the allegations contained in paragraphs 1 through 11 above, as if fully set forth herein.

14. On December 20, 2006, during the inspection referenced in paragraph 9 above, a representative of IDALS collected a copy of a sales invoice from Respondent. The sales invoice documents Respondent's distribution and sale of 200 pounds of the restricted use pesticide Aztec 2.1%, EPA Registration No. 264-813 to a non-certified individual on May 6, 2006.

15. At the time of the sale referred to in paragraph 14 above, the individual was not a certified applicator as the term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

16. The label of Aztec 2.1% Granular Insecticide @ herbicide, EPA Reg. No. 264-813, 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."

17. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136(j)(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. 136(a)(d).

Count 2

18. Complainant hereby incorporates the allegations contained in paragraphs 1 through 17 above, as if fully set forth herein.

19. On December 20, 2006, during the inspection referenced in paragraph 9 above, a representative of IDALS collected a copy of a sales invoice from Respondent. The sales invoice documents Respondent's distribution and sale of 150 pounds of the restricted use pesticide Aztec 2.1%, EPA Registration No. 264-813 to a non-certified individual on April 28, 2006.

20. At the time of the sale referred to in paragraph 19, this individual was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

21. The label of Aztec 2.1% Granular Insecticide @ herbicide, EPA Reg. No. 264-813, 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."

22. 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

23. The facts stated in paragraphs 1 through 22 are realleged and incorporated as if fully stated herein.

24. On December 20, 2006, during the inspection referenced in paragraph 9 above, a representative of IDALS collected a copy of a sales invoice from Respondent. The sales invoice documents Respondent's distribution and sale of 600 pounds of the restricted use pesticide Aztec 2.1%, EPA Registration No. 264-813 to a non-certified individual on May 8, 2006.

25. At the time of the sale referred to in paragraph 24, this individual was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

26. The label of Aztec 2.1% Granular Insecticide ® herbicide, EPA Reg. No. 264-813, 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."

27. 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 4

28. The facts stated in paragraphs 1 through 27 are realleged and incorporated as if fully stated herein.

29. On December 20, 2006, during the inspection referenced in paragraph 9 above, a representative of IDALS collected a copy of a sales invoice from Respondent. The sales invoice documents Respondent's distribution and sale of 2.5 gallons of the restricted use pesticide with the active ingredient, Atrazine 4L, to a non-certified individual on May 27, 2006.

30. At the time of the sale referred to in paragraph 29, this individual was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1) and was not directly supervised by a certified applicator at the time he applied the restricted use pesticide.

31. The label of products with Atrazine as an active ingredient 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.”

32. 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 Respondent that:

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order (CAFO) and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
2. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO.
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 and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney’s fees.
6. This CAFO addresses all civil administrative claims for the FIFRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.
7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent’s obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondent certifies by signing this CAFO that, to its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et. seq.* and all regulations promulgated thereunder.
10. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of Nineteen Thousand Two Hundred Dollars (\$ 19,200.00) as set forth in Paragraph 1 of the Final Order.
11. The effect of settlement described in paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above.
12. 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 CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
13. 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.

#### **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 above, shall pay by cashier or certified check, a mitigated civil penalty, for the violations cited herein, in the amount of Nineteen Thousand Two Hundred Dollars (\$19,200.00). The payment of the civil penalty shall be made within thirty days of the effective date of this Order.
2. Payment of the penalty shall be by cashier or certified check which shall reference Docket Number FIFRA-07-2008-0030 and In the Matter of Indy Crop Care, Inc. Cashier or certified check shall be made payable to "Treasurer, United States of America" and remitted to:

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

3. A copy of the check shall simultaneously be sent to the following:

Jennifer Trotter, Attorney  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
United States Environmental Protection Agency  
Region VII  
901 North 5th 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 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9-9-2008

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

Date: 9-9-2008

By: Jennifer Trotter  
Jennifer Trotter, Attorney  
Assistant Regional Counsel

RESPONDENT:

Indy Crop Care, Inc.

Date: 9-5-08

By: Mark Miller

Printed Name: Mark Miller

Title: Sec / Treasurer

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

Date: September 15, 2008



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

IN THE MATTER OF Indy Crop Care, Inc., Respondent  
Docket No. FIFRA-07-2008-0030

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:

Jennifer Trotter  
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:

Mark Miller  
Secretary/Treasurer  
2383 Jamestown Avenue  
Independence, Iowa 50644

Dated: 9/15/08

  
Kathy Robinson  
Hearing Clerk, Region 7