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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2011-0151
)	
STOUT FLYING SERVICE)	CONSENT AGREEMENT AND
)	FINAL ORDER
Lewiston, Idaho 83540)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegate this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Stout Flying Service (Stout) ("Respondent") hereby agrees to issuance of, the Final Order contained in Part V of this CAFO.

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II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO commences this proceeding which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

2.3. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of FIFRA.

III. ALLEGATIONS

3.1. Stout owns and operates a business facility located at 406 Burrell Avenue in Lewiston, Idaho.

3.2. Stout is a for-hire pesticide applicator as defined in Section 2(e)(2) of FIFRA, 7 U.S.C. § 136(e)(2).

3.3. On or about April 20, 2011, Respondent applied the pesticides Orion (EPA Reg. No. 100-1307) and Tilt (EPA Reg. No. 100-617) to a field belonging to Jody Hasenoehrl in Lapwai, Idaho.

3.4. The labeling on Orion and Tilt states, “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

3.5. The labeling on Orion states, “Do not apply Orion Herbicide directly to, or allow spray drift to come into contact with broadleaf crops including, but not limited to, alfalfa, canola, beans, cotton, flowers, grapes, lettuce, lentils, mustard, peas, potatoes, radishes, soybeans, sugar beets, sunflowers, tobacco, tomatoes, vegetables, or other desirable broadleaf crops or ornamental plants or soil where sensitive crops will be planted the same season.”

3.6. During the application described in paragraph 3.3, Respondent’s application moved off-site to the neighboring properties belonging to Beatrice Dorsett and Leo and Lynn Smith.

3.7. Beatrice Dorsett’s property is located at 22065 Spirea Lane, Lapwai, Idaho 83540.

1 4.4. Respondent shall serve photocopies of the checks described in Paragraph 4.3,
2 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
3 Enforcement at the following addresses:

4 Regional Hearing Clerk
5 U.S. Environmental Protection Agency Region 10
6 Office of Regional Counsel, ORC-158
7 1200 Sixth Avenue, Suite 900
8 Seattle, WA 98101

9 U.S. Environmental Protection Agency Region 10
10 Pesticides and Toxics Unit, OCE-084
11 1200 Sixth Avenue, Suite 900
12 Seattle, WA 98101
13 Attn: Derrick Terada

14 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due date,
15 the entire unpaid balance of penalty and accrued interest shall become immediately due and
16 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under
17 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with
18 interest, handling charges, and nonpayment penalties, as set forth below.

19 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in full by
20 its due date, Respondent shall also be responsible for payment of the following amounts:

- 21 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at
22 the rate established by the Secretary of the Treasury pursuant to 31 U.S.C.
23 § 3717(a)(1) from the effective date of the accompanying Final Order,
24 provided, however, that no interest shall be payable on any portion of the
25 assessed penalty that is paid within 30 days of the effective date of the
Final Order.
- 26 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling
27 charge of \$15 shall be paid if any portion of the assessed penalty is more
28 than 30 days past due.
- 29 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment
30 penalty of 6% per annum shall be paid on any portion of the assessed

1 penalty that is more than 90 days past due, which nonpayment penalty
2 shall be calculated as of the date the underlying penalty first becomes past
3 due.

4 4.7. The penalty described in Paragraph 4.2, above, including any additional costs
5 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA
6 and shall not be deductible for purposes of federal taxes.

7 4.8. The undersigned representative of Respondent certifies that he is fully authorized
8 to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

9 4.9. Except as described in Paragraph 4.6 of this CAFO, each party shall bear its own
10 costs in bringing or defending this action. The provisions of this CAFO shall bind Respondent
11 and its agents, servants, employees, successors, and assigns.

12 4.10. The above provisions are STIPULATED AND AGREED upon by Respondent
13 and EPA.

14 DATED:

15 9-12-11

16 FOR RESPONDENT:

17 

18 E.
19 RALPH STOUT
20 President, Stout Flying Services Inc.

21 DATED:

22 7/14/12

23 FOR COMPLAINANT:

24 

25 EDWARD J. KOWALSKI
Director, Office of Compliance and Enforcement
EPA Region 10

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V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 22 day of September, 2011.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that the original of the attached **CONSENT AGREEMENT**
3 **AND FINAL ORDER** in: **In the Matter of: Stout Flying Service No. FIFRA 10-2011-0151**,
4 was filed with the Regional Hearing Clerk on Sept. 22, 2011

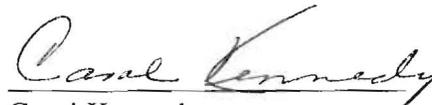
5 On Sept. 22, 2011 the undersigned certifies that a true and correct copy of the document
6 was hand delivered to:

7 Mercer St. Peter, Assistant Regional Counsel
8 U.S. Environmental Protection Agency, Region 10
9 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
10 Seattle, Washington 98101

11 Further, the undersigned certifies that a true and correct copy of the aforementioned
12 document was placed in the United States mail certified/return receipt on Sept. 22, 2011, to:

13 Ralph Stout
14 President
15 406 Burrell Avenue
16 Lewiston, Idaho 83540

17 Dated: Sept. 22, 2011

18 
19 Carol Kennedy
20 Regional Hearing Clerk