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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2011-0117
)	
T & K FARMS INCORPORATED)	CONSENT AGREEMENT AND
1621 SR 223)	FINAL ORDER
Toppenish, Washington 98948)	
)	
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 redelegated 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 T & K Farms ("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. T&K Farms owns and operates a business facility at 1621 State Highway 223, Granger, Washington 98832.

3.2. T&K Farms is a private pesticide applicator as defined in Section 2(e)(2) of FIFRA, 7 U.S.C. § 136(e)(2).

3.3. On or about June 10, 2010, Respondent applied the pesticide Honcho Plus (EPA Reg. No. 524-454) to a ditch bank in Granger, Washington. The labeling on Honcho Plus states, “Do not apply directly to water, to areas where surface water is present or to intertidal areas below the mean high water mark.”

3.4. During the application described in paragraph 3.3, Respondent applied Honcho Plus to vegetation growing over water in the ditch.

3.5. During a June 11, 2010, FIFRA inspection, the Yakama Nation Pesticide Program inspector took vegetation samples of mixed weeds growing over the water in the ditch.

3.6. The samples, analyzed by the Washington State Department of Agriculture on July 26, 2010, contained 27 parts per million of glyphosate, the active ingredient of Honcho Plus.

3.7. FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), states that it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.8. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying pesticide over surface water, thereby applying the product in a manner inconsistent with

1 its labeling. This violation subjects Respondent to the assessment of a civil penalty in
2 accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

3 3.9. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19,
4 EPA may assess a civil penalty of not more than \$1,100 for each offense against any private
5 applicator who previously received a written warning for violations of FIFRA. On
6 September 21, 2009, Respondent received a Warning Letter from the EPA regarding violations
7 of FIFRA Section 12(a)(2)(G).

8 **IV. CONSENT AGREEMENT**

9 4.1. For the purpose of this proceeding, Respondent admits the jurisdictional
10 allegations contained herein, but neither admits nor denies the specific factual allegations put
11 forth by EPA. Respondent waives any right to contest these allegations as well as the right to
12 appeal the accompanying Final Order. Respondent also agrees that this settlement will be
13 considered prior history under FIFRA once finalized and consents to payment of the penalty as
14 stated below.

15 4.2. Respondent consents to the assessment of a civil penalty in the amount of
16 EIGHT HUNDRED AND EIGHTY DOLLARS (\$880.00). Respondent consents to issuance of
17 the Final Order set forth in Part V, below, and agrees to pay the total civil penalty set forth in this
18 paragraph within thirty (30) days of the effective date of this Final Order.

19 4.3. Payment under this CAFO shall be made by cashier's check or certified check,
20 payable to the order of "Treasurer, United States of America" and delivered to the following
21 address:

22 US Bank - USEPA - Region 10
23 Fines and Penalties
24 Cincinnati Finance Center
25 PO Box 979077
St. Louis, MO 63197-9000

Respondent shall note on the check the title and docket number of this action.

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

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

6 U.S. Environmental Protection Agency Region 10
7 Pesticides and Toxics Unit, OCE-084
8 1200 Sixth Avenue, Suite 900
9 Seattle, WA 98101
10 Attn: Derrick Terada

11 4.5. Should Respondent fail to pay the penalty assessed herein in full by its due
12 date, the entire unpaid balance of penalty and accrued interest shall become immediately due and
13 owing. Should such a failure to pay occur, Respondent may be subject to a civil action under
14 Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with
15 interest, handling charges, and nonpayment penalties, as set forth below.

16 4.6. Should Respondent fail to pay any portion of the penalty assessed herein in
17 full by its due date, Respondent shall also be responsible for payment of the following amounts:

- 18 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at
19 the rate established by the Secretary of the Treasury pursuant to 31 U.S.C.
20 § 3717(a)(1) from the effective date of the accompanying Final Order,
21 provided, however, that no interest shall be payable on any portion of the
22 assessed penalty that is paid within 30 days of the effective date of the
23 Final Order.
- 24 b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling
25 charge of \$15 shall be paid if any portion of the assessed penalty is more
than 30 days past due.
- c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment
penalty of 6% per annum shall be paid on any portion of the assessed
penalty that is more than 90 days past due, which nonpayment penalty
shall be calculated as of the date the underlying penalty first becomes past
due.

1 4.7. The penalty described in Paragraph 4.2, above, including any additional costs
2 incurred under Paragraph 4.6, above, represents an administrative civil penalty assessed by EPA
3 and shall not be deductible for purposes of federal taxes.

4 4.8. The undersigned representative of Respondent certifies that he is fully
5 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
6 document.

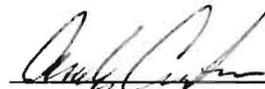
7 4.9. Except as described in Paragraph 4.6 of this CAFO, each party shall bear its
8 own costs in bringing or defending this action. The provisions of this CAFO shall bind
9 Respondent and its agents, servants, employees, successors, and assigns.

10 4.10. The above provisions are STIPULATED AND AGREED upon by Respondent
11 and EPA.

12 DATED:

FOR RESPONDENT:

13 _____

14  _____

15 Signature

16 Print Name: Andy Cullinan

17 Title: VP

18 DATED:

FOR COMPLAINANT:

19 9/15/2011

20  _____

21 EDWARD J. KOWALSKI

22 Director, Office of Compliance and Enforcement

23 EPA Region 10

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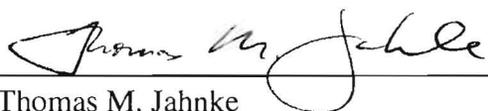
V. FINAL ORDER

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 22nd 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 the Matter of: **T&K Farms No. FIFRA 10-2011-0117**, was filed
4 with the Regional Hearing Clerk on Sept. 22, 2011.

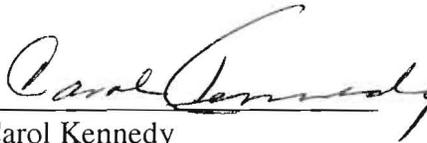
5 On Sept. 22, 2011 the undersigned certifies that a true and correct copy of the document
6 was hand delivered to:

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 Andy Kirkland
14 T&K Farms
15 1621 State Highway 223,
16 Granger, Washington 98832

17 Dated: Sept. 22, 2011

18 
19 Carol Kennedy
20 Regional Hearing Clerk