

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

** FILED **
29JUL2015 - 08:53AM
U.S.EPA - Region 09

In the matter of:) Docket No. FIFRA-09-2015- 0006
)
) **CONSENT AGREEMENT**
Crop First Aviation,) and
)
) **FINAL ORDER PURSUANT TO**
Respondent.) **SECTIONS 22.13 AND 22.18**
)
_____)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”) and Crop First Aviation (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is an administrative proceeding for the assessment of a civil administrative penalty initiated against Respondent pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. Part 22.
2. Complainant is the Assistant Director of the Water and Pesticide Branch, Enforcement Division, EPA Region IX, who has been duly delegated to commence and settle an enforcement action in this matter.
3. Respondent is an Arizona corporation whose principal place of business is located at 35620 W. Carranza Road in Stanfield, Arizona.

B. APPLICABLE STATUTES AND REGULATIONS

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that a “pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

6. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), provides that a “certified applicator” means any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, as authorized to use or supervise the use of any pesticide which is classified for restricted use.

7. Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), provides that a “commercial applicator” means an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than property owned or rented by the applicator or the applicator’s employer.

8. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), provides that “to use any registered pesticide in a manner inconsistent with its labeling” means to use any registered pesticide in a manner not permitted by the labeling...

9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

C. COMPLAINANT'S ALLEGATIONS

10. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

11. Respondent is a “commercial applicator” as defined by Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3).

12. Respondent’s operator, Christopher Carranza (“Carranza”) is a “certified applicator”

as defined by Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

13. Between 6:30am and 9:30am on March 16, 2012, Respondent through its operator, Carranza applied the substance, Lambda-CY (“Lambda-CY”) to an alfalfa crop growing in Field 24 (“Field 24”) of Lamb Farms located within the Gila River Indian Community.

14. Lambda-CY is a “pesticide,” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), that is registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, (EPA Reg. No. 70506-121) and classified for “restricted use” pursuant to Section 3(d)(1)(C) of FIFRA, 7 U.S.C. § 136a(d)(1)(C).

15. Lambda-CY, which has an active ingredient that is a synthetic pyrethroid, has a strong odor.

16. The wind direction and velocity on March 16, 2012 between 6:30am and 9:30am was NE 1/2.

17. At the time of Carranza’s application of Lambda-CY to Field 24 on March 16, 2012, workers at a nearby construction site located directly east of Field 24, south of W. Oxocillo Road and across from S. Old Price Road/88th Street in Chandler, Arizona (the “Intel Construction Site”) reported feeling, tasting, smelling and/or inhaling the chemical being sprayed, which had a “strong odor.”

18. During and shortly after Carranza’s application of Lambda-CY to Field 24, workers at the Intel Construction Site also reported symptoms such as headache, eye irritation, nausea, shortness of breath, dizziness, fatigue, abnormal facial sensation, and vomiting.

19. Headache, eye irritation, nausea, shortness of breath, dizziness, fatigue, abnormal facial sensation, and vomiting are symptoms associated with exposure to Lambda-CY.

20. Samples subsequently collected from the Intel Construction Site, including three work vests and four surface samples, tested positive for the active ingredient in Lambda-CY.

21. The “DIRECTIONS FOR USE” on the label for Lambda-CY state, “Do not apply this

product in a way that will contact workers or other persons either directly or through drift.”

22. During its application of Lambda-CY to Field 24 on March 16, 2012, Respondent through its operator, Carranza, applied Lambda-CY in a way that contacted workers at the nearby Intel Construction Site either directly or through drift.

23. Accordingly, on March 16, 2012, Respondent through its operator, Carranza, violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying the registered pesticide, Lambda-CY to Field 24 in a manner inconsistent with Lambda-CY’s labeling.

D. RESPONDENT’S ADMISSIONS

24. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

25. Respondent consents to the assessment of a penalty in the amount of **FOUR THOUSAND, FIVE HUNDRED AND SIXTY DOLLARS (\$4,560)** as final settlement and complete satisfaction of the civil claims against Respondent under the Act arising from the facts alleged in Section I.C of the CAFO.

a. Respondent shall pay the civil penalty within thirty (30) days of the effective date of this CAFO by one of the methods listed below:

- i. Respondent may pay online through the Department of the Treasury website at www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments - Cincinnati Finance Center, and complete the SFO Form Number 1.1.

- ii. Respondent may pay by remitting a certified or cashier's check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," and sent as follows:

Regular Mail:

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

Overnight/Signed Receipt Confirmation Mail:

U.S. Environmental Protection Agency
ATTN Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

- iii. Respondent may also pay the civil penalty using any method, or combination of methods, provided on the following website:

<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

b. Respondent shall identify the payment with the name and docket number of this case; and

c. Within 24 hours of payment, Respondent shall provide EPA with proof of payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the name and docket number of this case), including proof of the date payment was made, along with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Estrella Armijo
Enforcement Division (ENF 3-3)

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Margaret Alkon
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
[or via email to: alkon.margaret@epa.gov]

26. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **ONE HUNDRED DOLLARS (\$100)** for each day that payment is late in addition to the unpaid balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall immediately become due and payable.

27. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance and accrued interest shall become immediately due and owing. Respondent's tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the effective date of this CAFO as described at 40 CFR §13.11. Respondent's failure to pay in full the civil administrative penalty by its due date also may also lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the

Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

F. CERTIFICATION OF COMPLIANCE

28. In executing this CAFO, Respondent certifies (1) that it has taken steps to ensure that all employees are properly trained and know the importance of following pesticide label instructions; and (2) that it has complied with all other FIFRA requirements at all facilities under its control.

G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

29. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violation alleged in Section I.C of this CAFO.

30. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violation and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

31. Except as set forth in Paragraph 27 above, each party shall bear its own fees, costs, and disbursements in this action.

32. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

33. This CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action. This CAFO will be available to the public and does not contain any confidential business information.

34. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

35. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

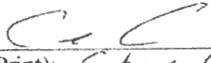
36. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and bind that party to it.

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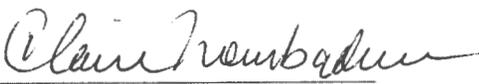
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FOR RESPONDENT, CROP FIRST AVIATION, INC.:

Date: 7-7-15 By: 
Name (Print): Chris Carranza
Title (Print): President
Crop First Aviation, Inc.

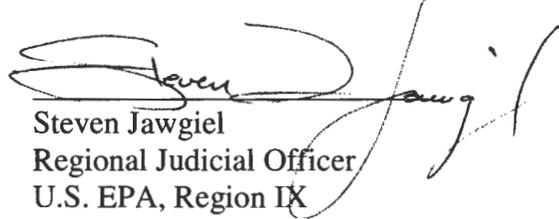
**FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION IX:**

Date: 7/23/15 By: 
CLAIRE TROMBADORE
Assistant Director
Water and Pesticide Branch, Enforcement Division
U.S. Environmental Protection Agency, Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **FOUR THOUSAND, FIVE HUNDRED AND SIXTY DOLLARS (\$4,560)** in accordance with the terms set forth in the Consent Agreement.

Date: 07/28/15


Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and a true and correct copy of the fully executed Consent Agreement and Final Order, (**Docket No FIFRA-09-2015- 0006**) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

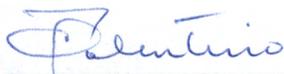
A copy was mailed via CERTIFIED MAIL to:

Chris Carranza, Owner
Crop First Aviation
35620 W Carranza Rd
Stanfield, AZ 85172

CERTIFIED MAIL NUMBER: 7011 1570 0000 6494 7224

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



FOR: _____
Regional Hearing Clerk
U.S. EPA, Region IX



Date