

FILED

2010 SEP 21 PM 3: 15

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:

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DOCKET NO. FIFRA 06-2010-0311

Darvel Devaun Richins Farm
Cotton City, NM
d.b.a 1431 State Hwy 338, HC 65,
Animas, NM

COMPLAINT
CONSENT AGREEMENT AND
FINAL ORDER

RESPONDENT

COMPLAINT
CONSENT AGREEMENT AND FINAL ORDER

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Darvel Devaun Richins Farm located near Cotton City, NM (Respondent) in the above referenced action, have consented to the terms of this Complaint Consent Agreement and Final Order (Complaint CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint CAFO.

I.
PRELIMINARY STATEMENT

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a) (FIFRA) which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500¹ for each violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G). This

¹The Civil Penalty Inflation Adjustment Rule (62 Fed Reg. 13514, March 20, 1997 and 69 Fed Reg. 7121, February 13, 2004) provides for increases in the statutory penalty provisions for violations which occur after the date the increases take effect. For violations after March 14, 2004, the potential maximum penalty for such violations changed from \$5,500 to \$6,500. The Agency is required to review its penalties once every four years and adjust them for inflation. The Final Rule published at 73 Fed Reg. 75340 raised the FIFRA penalty to \$7,500 for violations occurring after December 11, 2008.

proceeding is initiated by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein.

2. The Complaint alleges Respondent violated regulations promulgated pursuant to FIFRA.

3. For purposes of this proceeding, Respondent admits to the jurisdiction of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this Complaint CAFO hereinafter recited and consents to the assessment and, payment of the stated civil penalty in the amount and by the method set out in this Complaint CAFO in settlement of the violations alleged in this Complaint CAFO.

5. By signature on this Complaint CAFO, Respondent waives any right to a hearing and/or any appeal of this proceeding.

6. Respondent represents that it is duly authorized to execute this Complaint CAFO and that the party signing this Complaint CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint CAFO.

7. Respondent agrees that the provisions of this Complaint CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

II. **STATUTORY AND REGULATORY BACKGROUND**

8. Section 2(s) of FIFRA defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Section 2(p) of FIFRA defines “label” as the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

11. Section 2(ee) of FIFRA defines “to use any registered pesticide in a manner inconsistent with its labeling” as to use any registered pesticide in a manner not permitted by the labeling...”

12. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(1), any private applicator, who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$1,000² for each offense.

13. Pursuant to Section 12(a)(2)(G) of FIFRA, and 40 CFR § 170.9, it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”

14. Pursuant to Section 12(a)(2)(G) of FIFRA, and 40CFR § 170.110, “During the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow any person, other than an appropriately trained and equipped handler, to enter or remain in the treated area.”

15. Based on documentation received by EPA, which indicates that all the assets associated with the Farm have been liquidated, Complainant has determined to waive the penalty for this enforcement action.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. The Respondent is a Farm operated by Darvel Devaun Richins, which is located in a field near Cotton City, New Mexico 88020 (Farm).

²See footnote 1.

17. Respondent is a “person” as that term is defined in Section 2(s) of FIFRA.

18. Respondent is also other person subject to the civil penalty provisions of Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

19. Respondent used the product Copper Hydroxide, EPA Registration Number 42750-75, NU COP 31, which is a registered pesticide as defined in FIFRA Section 2(u) in his Farm.

20. On or about August 1, 2007, the Respondent had 20 field workers hoeing chile in his Farm.

21. On our about August 1, 2007, that field was sprayed with copper hydroxide, NU-Cop 3L, while those workers were still in the field working.

IV. **VIOLATIONS**

22. Complainant incorporates by reference the allegations contained in paragraphs 1-21 of this Complaint CAFO.

23. Section 12(a)(2)(G) of FIFRA states that it shall be unlawful for any person it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”

24. Section 12(a)(2)(G) of FIFRA also states that during the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow any person, other than an appropriately trained and equipped handler, to enter or remain in the treated area.

25. By allowing any persons other than appropriately trained workers and equipped handlers to enter or remain in the treated area, Respondent used the pesticide described in paragraph 19, in a manner inconsistent with its labeling.

26. Respondent’s use of the pesticide inconsistent with its labeling constituted an unlawful act in violation of Section 12(a)(2)(G) of FIFRA.

V.
CIVIL PENALTY AND
TERMS OF SETTLEMENT

27. For the reasons set forth above, Respondent and Complainant have agreed to waive payment of a civil penalty, which has been determined in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and the Civil Penalty Inflation Adjustment Rule³ which authorizes EPA to assess a civil penalty of up to ONE THOUSAND DOLLARS (\$1,000.00)³ for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated December 2009, located at:

<http://www.epa.gov/compliance/resources/policies/civil/fifra/fifra-erp1209.pdf>, a copy of which is enclosed with this Complaint CAFO as well as EPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention Violations; Notice," dated December 22, 1995, as amended ("Audit Policy"). It is ORDERED that Respondent be waived a civil penalty.

28. If applicable, within thirty (30) days of Respondent's receipt of this fully executed Complaint CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

³ See footnote 1.

Payment shall be remitted in one of the alternatives provided in the collection information section below:

COLLECTION INFORMATION

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "sfo 1.1" in the search field;

Open form and complete required fields following directions for EPA Miscellaneous payments.

[EPA Miscellaneous Payments - Cincinnati Finance Center](#)

Form Number: **SFO Form Number 1.1**

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments

PLEASE NOTE: Docket number FIFRA-06-2010-0311 shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Gregory Weiler
Pesticides Section (6PD-P)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given to the mater at hand.

29. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

30. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United

States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

31. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

VI. **COSTS**

32. Each party shall bear its own costs and attorneys fees.

IT IS SO AGREED:

FOR THE RESPONDENT:

Date: 9-8-10

Darvel Devaun Richins Farm
by Lillian Richins
Ms. Lillian Richins
Devaun Richins Farm
1431 State Hwy 338, HC 65,
Animas, NM 60048

FOR THE COMPLAINANT:


Date: 9/20/10

David W. McQuiddy
David W. McQuiddy
Chief
Pesticides Section

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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 Final Order shall resolve only those causes of action and/or violations alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated September 21, 2010



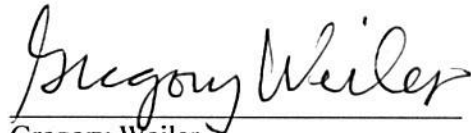
Michael C. Barra
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of Sept, 2010, the original and one copy of the foregoing Complaint Consent Agreement and Final Order ("Complaint CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Lillian Richins
Devaun Richins Farm
1431 State Hwy 338, HC 65,
Animas, NM 60048



Gregory Weiler
Enforcement Officer
Pesticides Section