

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

FILED
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U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of:) Docket No. FIFRA-09-2011- 0003
)
) **CONSENT AGREEMENT**
Tanner Flying Services, Inc.) and
) **FINAL ORDER PURSUANT TO**
) **SECTIONS 22.13 AND 22.18**
Respondent.)
_____)

I. CONSENT AGREEMENT

Complainant, the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Tanner Flying Services, Inc. (hereafter "**Respondent**") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("**CAFO**").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.* (hereinafter referred to as "**FIFRA**" or the "**Act**"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. Respondent is a Colorado corporation. Respondent is a "commercial applicator", as defined by Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3). Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 5-14,

dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director and the Associate Director for Agriculture of the Communities and Ecosystems Division. The Associate Director for Agriculture of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

4. 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

5. Warrior II with EPA Registration Number 100-1295 ("**Warrior II**"), is a "pesticide," as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Warrior II is a restricted use pesticide.

6. Bravo Weather Stik with EPA Registration Number 50534-188-100 ("**Bravo**"), is a "pesticide," as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

7. When working for Respondent to mix/load Warrior II and Bravo on July 30, 2009, Terry Tanner was wearing a short sleeved shirt.

8. The Warrior II label requires applicators and other handlers to wear a long-sleeved shirt. The Bravo label requires applicators and other handlers to wear a long-sleeved shirt.

9. When working for Respondent on July 30, 2009 to apply Warrior II and Bravo to a target crop of potatoes, Jack Tanner applied Bravo to a nontarget crop of alfalfa.

10. Application of Bravo to alfalfa is not authorized by the Bravo label.

11. Respondent violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), when

Terry Tanner used Bravo in a manner inconsistent with its labeling.

12. Respondent violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), when Terry Tanner used Warrior II in a manner inconsistent with its labeling.

13. Respondent violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), when Jack Tanner used Bravo in a manner inconsistent with its labeling.

D. RESPONDENT'S ADMISSIONS

14. 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

15. Respondent consents to the assessment of a penalty in the amount of **SIX THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$6,460)** as final settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO.

16. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

17. The civil penalty shall be paid 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," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

ABA = 051036706

Transaction Code 22 – checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

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

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Bill Lee
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

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

19. Respondent's failure to pay in full the civil administrative penalty by its due date also may 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

20. 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.

21. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

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

23. Except as set forth in Paragraph 19 above, each party shall bear its own costs, fees, and disbursements in this action.

24. 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.

25. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally

settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

26. 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.

27. 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 bind that party to it.

TANNER FLYING SERVICES, INC.:

Date: 9-24-10 By: Jack W Tanner
Name: Jack W Tanner
Title: President

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 10-25-2010 By: Katherine A Taylor
KATHERINE TAYLOR
Associate Director for Agriculture
Communities and Ecosystems 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 **SIX THOUSAND FOUR HUNDRED SIXTY DOLLARS (\$6,460)** in accordance with the terms set forth in the Consent Agreement.

Date: 10/26/10


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

CERTIFICATION / CERTIFICATE OF SERVICE

I certify that the original of the foregoing Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket No. FIFRA-9-2011-0003, was hand delivered to the Regional Hearing Clerk, United States Environmental Protection Agency - Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy thereof was placed in the United States Mail, certified mail (7008 1140 0004 5421 2641), return receipt requested, addressed to the following address:

Mr. Jack W. Tanner
President
Tanner Flying Services, Inc
20978 County Road U
Cortez, CO 81321

Date: 10/26/2010

By: 

For: STEVEN ARMSEY
Regional Hearing Clerk
United States Environmental
Protection Agency, Region IX
75 Hawthorne Avenue
San Francisco, California 94105-3143



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL

RETURN RECEIPT REQUESTED 7008 1140 0004 5421 2641

Date: OCT 26 2010

Mr. Jack W. Tanner
President
Tanner Flying Services, Inc.
20978 County Road U
Cortez, CO 81321

Subject: Tanner Flying Services, Inc
Consent Agreement and Final Order
Docket No. FIFRA-9-2011-0003

Dear Mr. Tanner:

Enclosed please find a Consent Agreement and Final Order (CAFO) concerning a violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Sections 136 et seq. for the above referenced case. The terms of the CAFO require the payment to be received by EPA within 30 days of the effective date of the CAFO.

If you have any questions, please contact Lawrence Torres at (415) 947-4211 or have your attorney contact Carol Bussey, Assistant Regional Counsel, at (415) 972-3950.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Taylor".

Katherine A. Taylor
Associate Director for Agriculture
Communities and Ecosystems Division

Enclosure

cc: Glenna Lee, Navajo Nation Environmental Protection Agency