



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone: 800-227-8917  
<http://www.epa.gov/region08>

2016 SEP 30 AM 11:55

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2016-0013

IN THE MATTER OF:

Mission Lawn and Landscape  
43569 North Foothills Drive  
Ronan, Montana 59864

RESPONDENT


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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29<sup>th</sup> DAY OF September, 2016.

  
\_\_\_\_\_  
Elyana Sutin  
Regional Judicial Officer



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Denver, CO 80202-1129  
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Ref: 8ENF-L

**MEMORANDUM**

**SUBJECT:** Combined Complaint and Consent Agreement - In the Matter of: Mission Lawn and Landscape.

**FROM:** James H. Eppers, Supervisory Attorney, Legal Enforcement Program, and David Cobb, Acting Supervisor, Technical Enforcement Program, Office of Enforcement, Compliance, and Environmental Justice

**TO:** Hon. Elyana R. Sutin, Regional Judicial Officer

With this memorandum, the Office of Enforcement, Compliance and Environmental Justice (ECEJ) is transmitting a combined complaint and consent agreement (CCCA) in the above-referenced matter. The factors set forth in section 14(a)(4) of FIFRA were considered in assessing the civil penalty in this matter. We request that you issue a final order approving it.

cc: Adam Wood, Mission Lawn and Landscape.  
Attachment (Combined Complaint and Consent Agreement)



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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Docket No.: FIFRA-08-2016-0013

COMBINED COMPLAINT AND  
CONSENT AGREEMENT

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual allegations in this Agreement.

II. ALLEGATIONS

6. Respondent, Mission Lawn and Landscape, is a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
7. Respondent's place of business is located at 43569 North Foothills Drive, Ronan, Montana 59864.

8. At all times relevant to the alleged violations, the Respondent was a “certified applicator” and a “commercial applicator” as those terms are defined at section 2(e) of FIFRA, 7 U.S.C. § 136(e), of a “pesticide” defined in FIFRA section 2(u), 7 U.S.C. § 136(u).
9. 40 C.F.R. section 156.10(a) requires that, “[e]very pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: (viii) The directions for use....”
10. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

### III. VIOLATIONS

#### Count 1

11. On May 26, 2015, Mr. Adam Wood, the owner of Mission Lawn and Landscape, and a certified commercial applicator, applied Glystar, EPA Registration No. 42750-61, to the Pierce Chevrolet Chrysler Dodge Jeep Dealership car lot south boundary fence line which borders three baseball fields in Ronan, Montana.
12. At the time of the application of the general use pesticide, Glystar, there were approximately 60 minor children under the age of ten years old playing T-ball on the three baseball fields south of the dealership parking lot.
13. The Glystar label’s directions for use state “Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.”
14. On May 27, 2015, the T-ball jersey shirt (sample ID 2795A) of a five year old child that was playing T-ball on the field south of the dealership was collected for analysis and subsequently determined to be positive for Glystar (Glyphosate 41% Plus).
15. Respondent failed to apply the Glystar in a manner that prevented contact with other persons that were not protected handlers in violation of section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

#### Count 2

16. On June 13, 2015, a follow up records inspection occurred at Respondent’s facility and documentation showing an application of a restricted use pesticide, Tordon 22K, EPA Registration No. 62719-6, on June 4, 2015, had occurred at 45164 Meadowlark Lane, Big Arm, Montana, within the exterior boundaries of the Flathead Indian Reservation (Indian Country).
17. Respondent was licensed (103286-12) to apply restricted use pesticides in the State of Montana.
18. In a letter dated October 27, 2014, the Montana Department of Agriculture informed all license applicators who apply restricted use pesticides in Indian Country that as of August, 6, 2014, a Federal Issue Card must be obtained prior to any application of the restricted use pesticide in Indian Country.

19. Respondent applied for a Federal Issue Card by requesting a pesticide applicator certification in Indian Country on or about June 19, 2015.
20. The Respondent's application of the Tordon 22K referenced in paragraph 18, *supra*, constitutes a violation of section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

### **III. PAYMENT OF CIVIL PENALTY**

21. Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
22. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
23. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of \$500 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 1361(a), may be assessed by Administrative Order.
24. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$500 within thirty days of the effective date of the Final Order as follows:
  - a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

#### **Regular Mail:**

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

Federal Express, Airborne, or other commercial carrier:

US Bank  
Cincinnati Finance Center Box 979077  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Craig Steffen  
513-487-2091

**Wire Transfers:**

Wire transfers must indicate the name and docket number of this case and 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"

**ACH (also known as REX or remittance express):**

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Physical location of US Treasury Facility  
5700 Rivertech Court  
Riverdale, MD 20737  
US Treasury Contact Information:  
Randolph Maxwell: 202-874-7026  
Remittance Express (REX): 1-866-234-5681

**On-line Payment:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov).

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field. Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

25. At the same time that payment is made, notice that the payment has been made shall be provided to:

Daniel Webster (8ENF-UFO) and  
Technical Enforcement Program  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

Melissa Haniewicz (8RC)  
Regional Hearing Clerk  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

26. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.
27. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).
28. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

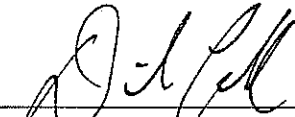
#### **IV. TERMS AND CONDITIONS**

29. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
30. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
31. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
32. Each party shall bear its own costs and attorney fees in connection with this matter.
33. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
34. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
35. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.

36. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

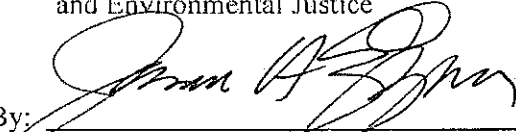
**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8,**  
Office of Enforcement, Compliance  
and Environmental Justice  
Complainant

Date: 9/29/16

By: 

David Cobb, Acting Supervisor  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice


Date: 9/29/16

By: 

James H. Eppers, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**MISSION LAWN AND LANDSCAPE,**  
Respondent

Date: 9-27-16

By: 



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Respondent )  
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**Docket No.:** FIFRA-08-2016-0013  
**Request to File a PDF Signature**

COMES NOW Complainant, United States Environmental Protection Agency, Region 8, by and through its undersigned attorney, and submits the following Request to File a PDF Signature. Respondent has provided a pdf signature of its agreement to the Combined Complaint and Consent Agreement (CCCA) that will be replaced upon receipt of the original signature. Complainant respectfully requests to file Respondent's PDF signature page in lieu of the original signature page until the original signature page is received.

Respectfully submitted this 29<sup>th</sup> day of September 2016.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.



Brenda Morris, Enforcement Attorney  
U.S. EPA, Region 8  
1595 Wynkoop St. (8ENF-L)  
Denver, CO 80202-1129  
Telephone: 303/312-6891  
Facsimile: 303/312-6953

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 29, 2016, the original and one copy of the Request to File a PDF Signature and the Combined Complaint and Consent Agreement were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop St., Denver, Colorado, and that true copies of the same were delivered as follows:

Copy hand-carried to:  
Honorable Elyana R. Sutin  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
1595 Wynkoop St. (8RC)  
Denver, CO 80202-1129

Copy by email and regular mail to:

Mr. Adam Wood, President  
Mission Lawn and Landscape  
43569 North Foothills Drive  
Ronan, Montana 59864

Date:

9/29/16

By:



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

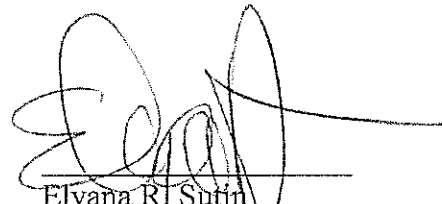
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IN THE MATTER OF: )  
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Docket No. FIFRA-08-2016-0013  
ORDER AUTHORIZING  
FACSIMILE FILING

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 6 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 6 within one day of receipt of that document from Respondent.

Dated: 9/30/16

  
Elyana R. Sutin  
Regional Judicial Officer

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **Mission Lawn and Landscape; DOCKET NO.: FIFRA-08-2016-0013** was filed with the Regional Hearing Clerk on September 29, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/30/16.

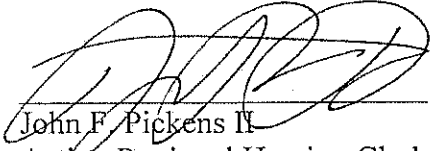
Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Brenda Morris, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/30/16, to:

Respondent

Adam Wood  
Mission Lawn and Landscape  
43569 North Foothills Drive  
Ronan, Montana 59864

And emailed to:

Jessica Farmer  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

  
John F. Pickens II  
Acting Regional Hearing Clerk

