



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 MAR 31 AM 11:20

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: FIFRA-08-2010-0010

IN THE MATTER OF:

CROP PRODUCTION SERVICES, INC.

7251 W. 4<sup>th</sup> Street  
Greeley, CO 80634

RESPONDENT

)  
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FINAL ORDER

Pursuant to 40 C.F.R. §22.18, 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 receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 31<sup>st</sup> DAY OF March, 2010.

Elyana R. Sulin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

ENCLOSURE 26 AM 9:41

Docket No. FIFRA-08-2010-0010

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Crop Production Services, Inc. ) COMBINED COMPLAINT AND  
7251 W. 4<sup>th</sup> Street ) CONSENT AGREEMENT  
Greeley, CO 80634 )  
)  
Respondent. )

Complainant, United States Environmental Protection Agency (EPA), Region 8, and Respondent, Crop Production Services, Inc., by their undersigned representatives, hereby consent and agree as follows:

**A. JURISDICTION**

1. This Combined Complaint and Consent Agreement (consent agreement) is issued to Crop Production Services, Inc. (Respondent) for the alleged violations of FIFRA § 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) set forth in section B.4 below.
2. The undersigned EPA officials issue this consent agreement under the authority vested in the Administrator of EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. 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 person who has violated a requirement or prohibition of FIFRA.
4. This proceeding is subject to 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 consent 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), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

**B. ALLEGED VIOLATION**

1. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. §136(s), and therefore subject to regulation.
2. Respondent distributes or sells pesticides as defined by section 2(gg) of FIFRA, 7 U.S.C. §136(gg).

3. FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), prohibits the sale or distribution of pesticides that are not registered with the EPA except to the extent that a sale or distribution otherwise has been authorized by EPA under FIFRA.
4. EPA, the Kansas Department of Agriculture, and the Nebraska Department of Agriculture conducted dealer inspections of United Agri Products (UAP) dealerships in Greeley, Colorado; Goodland, Kansas; and Imperial, Nebraska on various dates in 2008. These inspections revealed that UAP made distributions of Kaput-D, a restricted use pesticide with a Colorado special needs label (SLN) label, EPA SLN No. CO-060010, that was labeled "for use and distribution only within the state of Colorado," into the state of Kansas, and from state of Kansas into state of Nebraska. On or about January 1, 2009 Crop Production Services, Inc. merged with UAP. This consent agreement settles all FIFRA section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A) and section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E) violations associated with the sales or distributions of Kaput-D with a Colorado SLN label, EPA SLN No. CO-060010, made by UAP to its facilities located in Goodland, Kansas and Imperial, Nebraska; and to customers of these facilities between December 1, 2006 and January 28, 2008.
5. Upon consideration of the nature, circumstances, extent and gravity of the violation and Respondent's ability to continue in business, the size of Respondent's business, prior history of compliance, degree of culpability, lack of economic benefit resulting from the violations, its good faith and immediate effort to comply once informed of the violations, other matters as justice may require, and upon consideration of the entire record herein, EPA offers this consent agreement under its expedited enforcement procedures in order to settle the violation based upon the findings noted above, for the total civil penalty amount of **\$19,500.**

**C. CIVIL PENALTY**

1. The Respondent signing below admits that EPA has jurisdiction over the subject matter alleged in this consent agreement, neither admits nor denies the specific factual allegations contained in this consent agreement, and consents to the assessment of the penalty as stated in section B.5., above.
2. Respondent consents and agrees to pay a mitigated civil penalty in the amount of NINETEEN THOUSAND FIVE HUNDRED dollars (\$19,500.00) in the manner described below in this paragraph:
  - a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the U.S. Bank. 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 an electronic payment or a cashier's or certified check, including the name and docket number of this case (**Crop Production Services, Inc.; Docket No. FIFRA-08-2010-0010**), for the above-described amount, payable to "Treasurer, United States of America" to:

(Via REGULAR MAIL):

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

(Via WIRE TRANSFERS):

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

(Via OVERNIGHT MAIL):

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Ms. Natalie Pearson (Tel.: 314-418-4087)

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

Automated Clearinghouse (ACH) for receiving US currency:

PNC Bank  
ABA: 051036706  
Account Number: 310006  
CTX Format Transaction Code 22 - checking

Environmental Protection Agency  
808 17<sup>th</sup> Street NW  
Washington DC 20074  
Contact: Jesse White, 301-887-6548

(Via 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](http://WWW.PAY.GOV).

Enter "sfo 1.1" in the search field. Open form and complete required fields.

A copy of the check shall be sent simultaneously to:

Ms. Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

- c. In the event 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 1<sup>st</sup> late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31<sup>st</sup> day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

**D. TERMS AND CONDITIONS**

- 1. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement.
- 2. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, 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 Consent Agreement contains all terms of the settlement agreed to by the parties.

3. Nothing in this consent agreement shall be construed as a waiver by 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 consent agreement.
4. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this consent agreement and to bind the party he/she represents to the terms and conditions of this consent agreement.
5. Each party shall bear its own costs and attorneys fees in connection with this matter.
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this consent agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this consent agreement to EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
7. This consent agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and final civil settlement of the specific violation(s) alleged in the consent agreement and shall resolve Respondent's liability for civil penalties for the violations and facts alleged in this consent agreement.
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent 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.

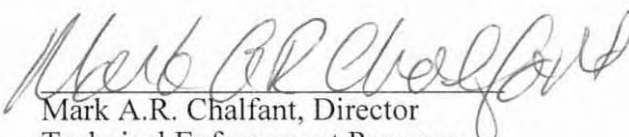


**In the Matter of: Crop Production Services, Inc. (Greeley, CO)**  
**Docket No: FIFRA-08-2010-0010**  
**(Continued)**

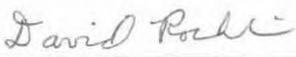
**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,**

**Complainant.**


Date: 3/24/2010

By:   
Mark A.R. Chalfant, Director  
Technical Enforcement Program

Date: 3/25/10

By:   
Michael Risner, Director  
David Rochlin, Acting Supervisory Attorney  
Legal Enforcement Program

Date: 3/24/2010

By:   
Eduardo Quintana, Senior Attorney  
Legal Enforcement Program

**In the Matter of: Crop Production Services, Inc. (Greeley, CO)**  
**Docket No: FIFRA-08-2010-0010**  
**(Continued)**

**Crop Production Services, Inc.,**  
**Respondent.**

Date: 3/19/2010

By: J. Billy Pirkle  
Name, Title: J. Billy PIRKLE.  
SR. DIRECTOR, EHS



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT and CONSENT AGREEMENT/FINAL ORDER** in the matter of **CROP PRODUCTION SERVICES, INC.; DOCKET NO.: FIFRA-08-2010-0010**. The **COMBINED COMPLAINT and CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on March 26, 2010. The **FINAL ORDER** was filed on March 31, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Eduardo Quintna, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on March 31, 2010.

Adam S. Cohen  
Davis, Graham & Stubbs, LLP.  
1550 Seventeenth Street, Suite 500  
Denver, CO 80202-1500

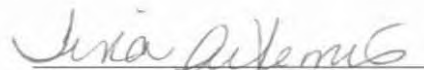
And

J. Billy Pirkle, Sr., Director, EHS  
Crop Production Services, Inc.  
7251 W. 4<sup>th</sup> Street  
Greeley, CO 80634

E-mailed to:

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

March 31, 2010



Tina Artemis  
Paralegal/Regional Hearing Clerk

