

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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**U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219**

**BEFORE THE ADMINISTRATOR**

**In the Matter of:** )  
 )  
 Willow Green Gardens ) **Docket No.:** FIFRA-07-2017-0344  
 and Tree Farm, LLC, )  
 )  
 Respondent. )

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA), Region 7 and Willow Green Gardens and Tree Farm, LLC (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is a limited liability company in good standing under the laws of the state of Missouri doing business in the state of Missouri.

### **Statutory and Regulatory Background**

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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

10. Section 25(a) of FIFRA, 7 U.S.C. § 136w(a), provides that the Administrator is authorized to prescribe regulations to carry out the provisions of Subchapter II, Environmental Pesticide Control, taking into account the difference in concept and usage between various classes of pesticides, including public health pesticides, and differences in environmental risk and the appropriate data for evaluating such risk between agricultural, nonagricultural, and public health pesticides.

11. The regulation at 40 C.F.R. § 170.7(a) provides that the agricultural employer or handler employer shall assure that each worker or handler receives the protections under Part 170-Worker Protection Standard, and assure that any pesticide is used in a manner consistent with the labeling of the pesticide.

12. The term “agricultural employer” is defined by 40 C.F.R. § 170.3 as meaning any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is and owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

13. The term “agricultural establishment” is defined by 40 C.F.R. § 170.3 as meaning any farm, forest, nursery, or greenhouse.

14. The term “handler” is defined by 40 C.F.R. § 170.3 as meaning any person who is employed for any type of compensation by an agricultural establishment and who is mixing, loading, transferring, or applying pesticides.

15. The term “handler employer” is defined by 40 C.F.R. § 170.3 as meaning any person who employs any handler, for any type of compensation.

16. The term “worker” is defined by 40 C.F.R. § 170.3 as meaning any person who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment.

17. The regulation at 40 C.F.R. § 170.9(a) states that for the purposes of the Part 170-Worker Protection Standard, EPA interprets the term “use” under FIFRA § 12(a)(2)(G) to include, inter alia: mixing and loading the pesticide, responsibilities for worker notification, training of handlers and workers, use of personal protective equipment, reducing risks from worker and handler occupational exposures during restricted-entry intervals, and worker notification. The regulation further states at 40 C.F.R. § 170.9(b) that a person who has a duty under the Worker Protection Standards and fails to perform that duty violates FIFRA § 12(a)(2)(G) and is subject to civil penalties under FIFRA § 14.

18. The regulation at 40 C.F.R. § 170.230(a) provides that the agricultural employer shall assure that each handler has been trained in pesticide safety during the last five years.

19. The regulation at 40 C.F.R. § 170.240(a) provides that any person who performs tasks as a pesticide handler shall use clothing and personal protective equipment specified on the labeling for use of the product.

20. Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), authorizes the EPA Administrator to assess a civil penalty of not more than \$1,000 for each offense. The Debt Collection Improvement Act of 2008 and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, and implementing regulations at 40 C.F.R. Part 19, adjusted the statutory maximum so that penalties of up to \$1,100 per day are authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$2,750 are authorized for violations that occur after November 2, 2015, and assessed before January 15, 2017.

### **General Factual Allegations**

21. Respondent is and, at all times referred to herein, was a “person”, an “agricultural employer”, and a “handler employer” within the meaning of FIFRA.

22. Respondent at all times referred to herein operated an “agricultural establishment” within the meaning of FIFRA, at its facility located at 150 Short Leaf Circle, Rogersville, Missouri.

23. Respondent used Sevin SL, EPA Registration Number 432-1227 at its facility on the dates specified in the violations cited below. This pesticide product has an EPA-approved label that states: "AGRICULTURAL USE REQUIREMENTS, Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170."

24. On September 29, 2015, a representative of the Missouri Department of Agriculture conducted an inspection at Respondent's agricultural establishment facility located at 150 Short Leaf Circle, Rogersville, Missouri. The inspection was conducted to determine the Respondent's compliance status with the Worker Protection Standards of FIFRA and its regulations. The inspection report was forwarded to the EPA for review.

25. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Count 1

26. The facts stated in Paragraphs 21 through 25 above are herein incorporated.

27. On or about September 28, 2015, Respondent used a quantity of Sevin SL, EPA Registration Number 432-1227 at its agricultural establishment facility located at 150 Short Leaf Circle, Rogersville, Missouri.

28. On or about September 28, 2015 the handler at the Respondent's agricultural establishment was not trained as required pursuant to 40 C.F.R. § 170.230(a) and the label for the pesticide product.

29. Respondent violated Section 12(a)(1)(G) of FIFRA, 7 U.S.C. § 136j(a)(1)(G), by using a registered pesticide in a manner inconsistent with its labeling.

Count 2

30. The facts stated in Paragraphs 21 through 25 above are herein incorporated.

31. On or about September 28, 2015, Respondent used a quantity of Sevin SL, EPA Registration Number 432-1227 at its agricultural establishment facility located at 150 Short Leaf Circle, Rogersville, Missouri.

32. On or about September 28, 2015 a pesticide handler at Respondent's agricultural establishment did not use personal protective equipment as required pursuant to 40 C.F.R. § 170.240(a) and the label for the pesticide product.

33. Respondent violated Section 12(a)(1)(G) of FIFRA, 7 U.S.C. § 136j(a)(1)(G), by using a registered pesticide in a manner inconsistent with its labeling.

Count 3

34. The facts stated in Paragraphs 21 through 25 above are herein incorporated.

35. On or about September 28, 2015, Respondent used a quantity of Sevin SL, EPA Registration Number 432-1227 at its agricultural establishment facility located at 150 Short Leaf Circle, Rogersville, Missouri.

36. On or about September 28, 2015, the Respondent failed to use the mix ratio as described on the label for the pesticide product.

37. Respondent violated Section 12(a)(1)(G) of FIFRA, 7 U.S.C. § 136j(a)(1)(G), by using a registered pesticide inconsistent with its labeling.

### **CONSENT AGREEMENT**

38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

39. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

40. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

41. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Two Thousand Four Hundred and Seventy-Two Dollars (\$2,472.00),

as set forth below.

42. Respondent shall pay the penalty within 30 days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

43. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Robert W. Richards, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

44. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

45. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty.

#### **Effect of Settlement and Reservation of Rights**

46. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.

Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

47. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

48. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

49. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

50. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

51. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

52. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

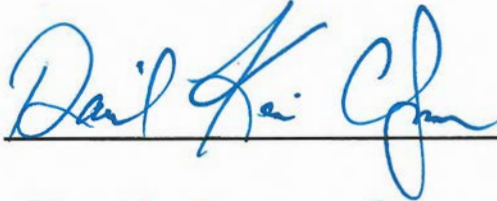
53. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

54. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns.

**RESPONDENT**  
**WILLOW GREEN GARDENS AND TREE FARM, LLC**

Date: 12-1-2017

By:



\_\_\_\_\_

David Kevin Chapman

Print Name

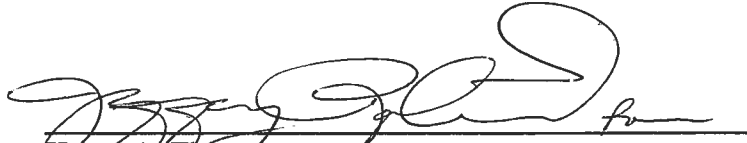
manager

Title




**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 12/28/17

  
\_\_\_\_\_  
Karen A. Flournoy  
Director  
Water, Wetlands and Pesticides Division

Date: 12/28/17

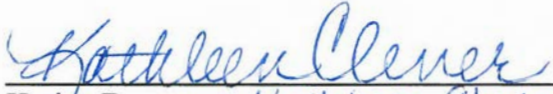
  
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Erin Weekley  
Office of Regional Counsel

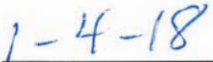
**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 72 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

  
~~Karina Borromeo~~ Kathleen Clever  
Regional Judicial Officer

  
Date

**CERTIFICATE OF SERVICE**

I certify that on the date below, I hand delivered the original, true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy via Certified Mail, Return Receipt Requested to Respondent:

John E. Price  
Carnahan, Evans, Cantwell & Brown, P.C.  
2805 S. Ingram Mill Road  
P.O. Box 10009  
Springfield, Missouri 65808

Dated this 15<sup>th</sup> day of January, 2018.

R. Melloni  
Signed \_\_\_\_\_