

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 N. 5th STREET

KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)	Docket No. FIFRA 07-2009-0023
)	
Canterbury Farm Center)	CONSENT AGREEMENT
102 South 2 nd Street)	AND
Wellsville, MO 63384)	FINAL ORDER
)	
Respondent)	

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Canterbury Farm Center (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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

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. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.

4. The Respondent, Canterbury Farm Center, is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

Alleged Violations

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

6. Respondent operates a facility which was required to file a Pesticide Report for Pesticide-Producing Establishments for Calendar Year 2008. The facility is located at 102 South 2nd Street, Wellsville, Missouri and its EPA Establishment Number is 64981-MO-001.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. §

136(c) and with the regulations found at 40 C.F.R. §167.85(d) in that it did not file the 2008 annual pesticides report for the above facilities by March 1, 2009, as required.

9. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any

other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent, in settlement of the allegations set forth in the Consent Agreement, shall pay by cashiers or certified check, a civil penalty, for the violations cited herein, in the amount of Three Hundred and Twenty Dollars (\$320.00). Payment will be made within thirty (30) days of the effective date of this Order. The payment shall be identified as **In the Matter of Canterbury Farm Center.**

11. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077

Canterbury Farm Center
FIFRA 07-2009-0023

St. Louis, MO 63197-9000

12. The payment shall reference Docket Number, FIFRA 07-2009-0023 and In the Matter of Canterbury Farm Center. Copies of the check shall be forwarded to:

Kent Johnson
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

13. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

14. In response to the violations of FIFRA alleged in this Consent Agreement and Final Order and in settlement of this matter, although not required by FIFRA or any other federal, state or local law, Respondent agrees to implement a supplemental environmental project (SEP), as described below, which the parties agree is intended to secure significant environmental or public health protection and improvement.

15. Within ninety (90) calendar days of the effective date of this CAFO, Respondent shall provide services in the form of glyphosate application to the Whetstone Creek Conservation Area, Williamsburg, Missouri to assist the Conservation Area in its

efforts to control and/or eliminate unwanted fescue establishment on approximately 128 acres in the conservation area. Fescue is considered an invasive plant at this location and the application is the first step in establishing additional natural wildlife habitat.

16. The value of the application services is calculated at \$7.50 per acre times 128 acres for a total value of the SEP of \$960.00.

17. Respondent agrees to apply or oversee the application of the products described in paragraph 15 within ninety (90) calendar days of the effective date of this CAFO. If weather conditions do not permit application in the fall of 2009, respondent shall notify the EPA Region 7 office in writing, stating (1) the reason the application did not occur, (2) that they will apply the product in the spring of 2010 or as indicated by the directions for use on the product label, and (3) request an extension of the SEP Completion Report due date to EPA. Application shall occur in accordance with the label requirements. Application will be made by or under the direction of a properly certified applicator if the product used is a Restricted Use Pesticide.

18. Respondent shall expend a minimum of \$960 in approvable costs to perform the SEP. Approvable costs shall only include specific costs approved by EPA that are directly related to the implementation of the project pursuant to the requirements of this Final Order. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

19. Within one hundred twenty (120) days of the effective date of this CAFO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:

- (a) a detailed description of the SEP as implemented including the name

of the product applied, the EPA Registration Number of the product and the date the product was applied.

(b) a description of any problems encountered in implementation of the project and the solution thereto;

(c) A signed affidavit from an authorized representative of the Whetstone Creek Conservation Area stating the quantity and type of product used and the date of the application by Respondent.

(d) A description of the specific environmental and /or public health benefits resulting from implementation of the SEP;

(e) Certification that the SEP has been fully implemented pursuant to the provisions of the CAFO; and

(f) Itemized costs.

20. The Interim SEP Report and the SEP Completion Report shall include the following statement of Respondent, through an officer, signed and certifying under penalty of law:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

21. The SEP Completion Report shall be submitted on or before the due date to:

Joy Haff
WWPD/TOPE
EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101

22. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 24, below.

23. If the SEP referenced in Paragraph 15 above is not timely completed to the satisfaction of EPA in accordance with the terms of CAFO, Respondent shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order

(i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.

(ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within ninety (90) days of the effective date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondent may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 22 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of receipt of a written demand from Complainant.

24. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

25. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

Final Order

Pursuant to the provisions of FIFRA, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Three Hundred and Twenty Dollars (\$320.00) within thirty (30) days of the effective date of this 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:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

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"

2. 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
901 North 5th Street
Kansas City, Kansas 66101; and

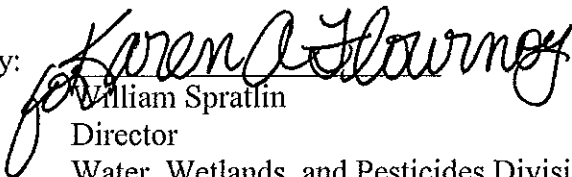
Kent Johnson, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

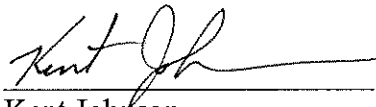
4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
William Spratlin
Director
Water, Wetlands, and Pesticides Division

Date: 10-8-09

By: 
Kent Johnson
Attorney
Office of Regional Counsel

Date: 10/5/09

RESPONDENT:

Canterbury Farm Center

By:

Dale Canterbury

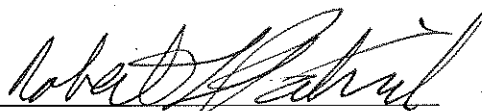
Title:

owner

Date:

10-2-09

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

October 20, 2009

Date

IN THE MATTER OF Canterbury Farm Center, Respondent
Docket No. FIFRA-07-2009-0023

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Kent Johnson
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dale Canterbury, Owner
Canterbury Farm Center
012 South 2nd Street
Wellsville, Missouri 63384

Dated: 10/21/09


Kathy Robinson
Hearing Clerk, Region 7