



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 23 2014

CERTIFIED MAIL

Receipt No. :7009 1680 7667 9916

REPLY TO THE ATTENTION OF:

Mr. Frank Ousley
Frank's Flying Service
12677 Black Road
Morrison, Illinois 61270

Re: In the Matter of: Frank Ousley d/b/a Frank's Flying Service, Docket number:
FIFRA-05-2014-0022

Dear Mr. Ousley:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency against Frank Ousley, d/b/a/ Frank's Flying Service, under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a), and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), at 40 C.F.R. Part 22.

As provided in the Complaint, if you would like to request a hearing, you must file an answer to the Complaint in which you specifically request a hearing. You must file your answer within 30 days after receiving the Complaint with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 and send a copy to Jeffery Trevino, Office of Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please note, if you do not file an answer to the Complaint within 30 days after receiving the Complaint, EPA may seek a default order assessing the proposed penalty and the assessed penalty will be due 30 days after the order becomes final.

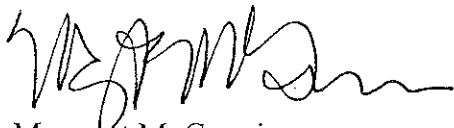
If you intend to file with the Regional Hearing Clerk, as part of the record in this matter, documents that include personal financial information (such as personal income tax returns), you may submit those documents "under seal." The rules for submitting confidential information under seal are set forth in the Consolidated Rules, 40 C.F.R. § 22.5(d). You also may want to refer to 40 C.F.R. Part 2, Subpart B. For more information on the procedures for submitting information under seal, go to: <http://epa.gov/oalj/orders/alj-practice-manual.pdf>. EPA reserves its right to object to the submission of documents under seal.

In addition, you may file under seal documents containing information that you believe may be subject to/in which you believe you have a personal privacy interest. Such personal privacy information may include social security numbers, personal addresses and telephone numbers,

dates of birth and medical information. When filing documents that you believe may be subject to/in which you believe you have a personal privacy interest, follow the procedures for submitting confidential business information at Section 22.5(d) of the Consolidated Rules, 40 C.F.R. § 22.5(d).

Whether or not you request a hearing, you may request an informal settlement conference. If you would like to request a conference, please contact Terence Bonace, Enforcement Officer, at (312) 886-3387. If you have any questions about this matter, please contact Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret M. Guerriero', written in a cursive style.

Margaret M. Guerriero
Director
Land and Chemicals Division

Enclosures

cc: Warren Goetsch, Illinois Department of Agriculture

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Frank Ousley, d/b/a/ Frank's Flying)
Service, Morrison, Illinois,)
)
Respondent.)
)
_____)

Docket No. FIFRA-05-2014-0022
Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

COMPLAINT

Statutory Authority

1. This is a civil administrative action instituted pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a), for the assessment of a civil penalty.

The Parties

2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Frank Ousley, d/b/a/ Frank's Flying Service, 12677 Black Road, Morrison, Illinois.

Statutory and Regulatory Provisions

4. It is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling. 7 U.S.C. § 136(j)(a)(2)(G).
5. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a penalty of not more than \$5,000 for each offense. 7 U.S.C. § 136l.



6. Any private applicator or other person not included in section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), who violates any provision of FIFRA subsequent to receiving a written warning from the EPA Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000.00 for each offense.

7 U.S.C. § 136l(a)(2).

7. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, *see* 61 Fed. Reg. 69360-69366 (Dec. 31, 1996) and 62 Fed. Reg. 13514-13517 (March 20, 1997), increased these amounts from \$1,000 to \$1,100 and from \$5,000 to \$7,500.

8. Before the application of any pesticide on or in an agricultural establishment, the handler employer shall provide the following information to any agricultural employer for the establishment or shall assure that any agricultural employer is aware of specific location and description of treated area, time and date of application, product name, EPA registration number and active ingredient(s), restricted entry interval, whether posting and oral notification are required and any other product specific requirements on the product labeling concerning protection of workers or other persons during or after an application. 40 C.F.R. § 170.224.

9. Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last five years, counting from the end of the month in which the training was completed. 40 C.F.R. § 170.230(a).

10. The person who conducts the training must meet at least one of the following criteria: be currently certified as an applicator of restricted use pesticides under 40 CFR Part 171, be

currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or have completed a pesticide safety train-the-trainer program approved by a State, Federal or Tribal agency having jurisdiction. 40 C.F.R. § 170.230(c)(2).

11. During any handling activity, the handler employer shall provide for handlers decontamination supplies for washing off pesticides and pesticide residues. 40 C.F.R. § 170.250(a).

12. To provide for emergency eye flushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible. 40 C.F.R. § 170.250(d).

General Allegations

13. On February 18, 2009, December 22, 2009, October 20, 2011, and March 20, 2013, the State of Illinois, Department of Agriculture, found Respondent violated the Illinois Pesticide Act, 415 ILCS 60/14(1)(D) and 415 ILCS 60/14(1)(L).

14. The State of Illinois assessed civil penalties of \$750.00, \$750.00, \$1,500.00, and \$750.00, respectively.

15. On or about August 2, 2013, Respondent was an organized group of persons, whether incorporated or not, operating under the laws of the State of Illinois.

16. Therefore, Respondent was a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s).
17. On or about August 2, 2013, Respondent employed persons to apply on agricultural establishments, pesticides used in the production of agricultural plants.
18. Therefore, Respondent was a "commercial pesticide handling establishment" as that term is defined by 40 C.F.R. § 170.3.
19. On or about August 2, 2013, Respondent employed for compensation persons to mix, load, transfer or apply pesticides.
20. Therefore, Respondent had "handlers" as that term is defined by 40 C.F.R. § 170.3.
21. Therefore, Respondent was an "agricultural employer" as that term is defined by 40 C.F.R. § 170.3.
22. On or about August 2, 2013, Respondent used or supervised the use of Headline Fungicide, EPA Reg. No. 7969-186; CPF 4E Chlorpyrifos Agricultural Insecticide, EPA Reg. No. 83222-20; and, Fanfare 2EC Insecticide/Miticide, EPA Reg. No. 66222-99.
23. Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide, were substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating pests.
24. Therefore, Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide were pesticides as that term is defined at section 2(u) of FIFRA, 7 U.S.C. § 136(u).

25. On or about August 2, 2013, the label and packaging of Headline Fungicide bore an EPA registered label, which contained a section entitled “Agricultural Use Requirements” which specifically stated, “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

26. The label of Headline Fungicide also required applicators and other handlers to use protective eyewear.

27. On or about August 2, 2013, CPF 4E Chlorpyrifos Agricultural Insecticide and Fanfare 2EC Insecticide/Miticide were classified as “restricted use pesticides.”

28. Therefore, Respondent was a “commercial applicator” as that term is defined at section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3).

29. On or about August 2, 2013, the label and packaging of CPF 4E Chlorpyrifos Agricultural Insecticide bore an EPA registered label, which contained a section entitled “Agricultural Use Requirements” which specifically stated “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

30. On or about August 2, 2013, the label and packaging of Fanfare 2EC Insecticide/Miticide bore an EPA registered label, which contained a section entitled “Agricultural Use Requirements” which specifically stated, “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

31. On or about August 2, 2013, Respondent applied Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide to 605.2 acres of agricultural corn crop owned by Richard Hoff, and located at Fenton, Illinois (Latitude

41.737606/Longitude -89.993373), Garden Plain, Illinois, (Latitude 41.843585/Longitude -90.118935), and Ustick, Illinois (Latitude 41.868462/Longitude -90.089639).

32. The corn at the Hoff locations was grown or maintained for commercial purposes.

33. Therefore, the corn at the Hoff locations was an “agricultural plant” as that term is defined at 40 C.F.R. § 170.3.

34. The Hoff locations were operations engaged in the outdoor production of agricultural plants.

35. Therefore, the Hoff locations were “farms” as that term is defined at 40 C.F.R. § 170.3.

36. Therefore, the Hoff farms were “agricultural establishments” as that term is defined at 40 C.F.R. § 170.3.

37. On or about August 8, 2013, the label and packaging of Headline Fungicide bore an EPA registered label, which contained a section entitled “Agricultural Use Requirements” which specifically stated, “[U]se this product only in accordance with its labeling and with the Worker Protection Standard at 40 C.F.R. Part 170.”

38. On or about August 8, 2013, Respondent applied Headline Fungicide to 330 acres of agricultural corn crop owned by Dave Cook, and located in Jordan, Illinois, (Latitude 41.884033/Longitude -89.743352), Clyde, Illinois, (Latitude 41.891303/Longitude -89.949217), Clyde, Illinois, (Latitude 41.877552/Longitude -89.964053), and Clyde, Illinois, (Latitude 41.889386/Longitude -89.917652).

39. The corn at the Cook locations was grown or maintained for commercial purposes.

40. Therefore, the corn at the Cook locations was an “agricultural plant” as that term is defined at 40 C.F.R. § 170.3.

41. The Cook locations were operations engaged in the outdoor production of agricultural plants.

42. Therefore, the Cook locations were “farms” as that term is defined at 40 C.F.R. § 170.3.

43. Therefore, the Cook farms were “agricultural establishments” as that term is defined at 40 C.F.R. § 170.3.

Specific Allegations

Count I

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. On or about August 2, 2013, Respondent aerially applied Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide, to a corn crop owned by Richard Hoff in Whiteside County, Illinois.

46. Respondent failed to provide application information to the agricultural employer for the corn crop owned by Richard Hoff before August 2, 2013.

47. Therefore, Respondent violated the regulation at 40 C.F.R. § 170.224 and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Count II

48. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

49. On or about August 8, 2013, Respondent aerially applied Headline Fungicide to a corn crop owned by Dave Cook.

50. Respondent failed to provide application information to the agricultural employer for the corn crop owned by Dave Cook in Whiteside County, Illinois, before August 8, 2013.

51. Therefore, Respondent violated the regulation at 40 C.F.R. § 170.224 and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Count III

52. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

53. On or about August 2, 2013, Respondent's handlers Shayne Boyungs and Roland Hill mixed and loaded Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide in an airplane for aerial application to corn.

54. Respondent's handlers were not trained in pesticide safety in accordance with 40 C.F.R. § 170.230.

55. Therefore, Respondent violated the regulation at 40 C.F.R. § 170.230 and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Count IV

56. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

57. On or about August 8, 2013, Respondent's handlers Shayne Boyungs and Roland Hill mixed and loaded Headline Fungicide in an airplane for aerial application to corn.

58. Respondent's handlers were not trained in pesticide safety in accordance with 40 C.F.R. § 170.230.

59. Therefore, Respondent violated the regulations at 40 C.F.R. § 170.230 and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Count V

60. Paragraphs 1 through 43 are realleged and incorporated herein by reference.
61. On or about August 2, 2013, Respondent's handlers Shayne Boyungs and Roland Hill mixed and loaded Headline Fungicide, CPF 4E Chlorpyrifos Agricultural Insecticide, and Fanfare 2EC Insecticide/Miticide in an airplane for aerial application to corn.
62. The label of Headline Fungicide required the use of protective eyewear during handling activities.
63. Respondent failed to assure that Shayne Boyungs and Roland Hill had immediately available to each for emergency eyeflushing at least 1 pint of water as required by 40 C.F.R. § 170.250(d).
64. Therefore, Respondent violated the regulations at 40 C.F.R. § 170.250(d) and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Count VI

65. Paragraphs 1 through 43 are realleged and incorporated herein by reference.
66. On or about August 8, 2013, Respondent's handlers Shayne Boyungs and Roland Hill mixed and loaded Headline Fungicide in an airplane for aerial application to corn.
67. The label of Headline Fungicide required the use of protective eyewear during handling activities.
68. Respondent failed to assure that Shayne Boyungs and Roland Hill had immediately available to each for emergency eyeflushing at least 1 pint of water as required by 40 C.F.R. § 170.250(d).

69. Therefore, Respondent violated the regulations at 40 C.F.R. § 170.250(d) and section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

Proposed Civil Penalty

Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violations alleged in this Complaint as follows:

Count I

Use of registered pesticides in a manner inconsistent with labeling.....\$7,150

Count II

Use of registered pesticides in a manner inconsistent with labeling.....\$1,100

Count III

Use of registered pesticides in a manner inconsistent with labeling.....\$7,150

Count IV

Use of registered pesticides in a manner inconsistent with labeling.....\$1,100

Count V

Use of registered pesticides in a manner inconsistent with labeling.....\$7,150

Count VI

Use of registered pesticides in a manner inconsistent with labeling.....\$1,100

Total Proposed Civil Penalty.....\$24,750

Respondent may pay this penalty of \$24,750 by certified or cashier's check payable to the "Treasurer of the United States of America," and remit the check to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of the check shall also be sent each to the Regional Hearing Clerk (E-19J), and to Terence Bonace (LC-8J), and Jeffery M. Trevino (C-14J), at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. A transmittal letter identifying the name and docket number should accompany both the remittance and the copies of the check.

Complainant derived the proposed penalty by applying the factors enumerated in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), to the violations alleged in this Complaint. The reasoning for the assessment is explained in detail in the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), July 2, 1990," a copy of which accompanies this Complaint.

OPPORTUNITY TO REQUEST A HEARING

As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 551 *et. seq.*, Respondent has the right to request a hearing regarding the Complaint, to contest any material fact contained in this Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. Any hearing that Respondent requests will be held and conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et. seq.*, and 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," 64 Fed. Reg. 40138 (July 23, 1999). A copy of these rules accompanies this Complaint.

If Respondent wishes to avoid being found in default, you must file a written Answer to this Complaint and Notice of Opportunity for Hearing with the Regional Hearing Clerk (address above) within 30 days of service of this Complaint. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer should also state:

1. The circumstances or arguments that you allege constitute the grounds of defense;
2. The facts that you dispute;
3. The basis for opposing the proposed penalty;
4. Whether you request a hearing.

Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations.

A copy of this Answer and any subsequent documents filed in this action should be sent to Jeffery M. Trevino, Associate Regional Counsel, (C-14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Mr. Trevino can be reached by telephone at (312) 886-6729. If Respondent fails to file a written Answer, with or without a Request for Hearing, within 30 days of receipt of this Complaint, the Regional Administrator or Presiding Officer may issue a Default Order. Issuance of this Default Order will constitute a binding admission of all facts alleged in the Complaint and a waiver of a right to a hearing under FIFRA. The civil

penalty proposed in this Complaint shall then become due and payable without further proceedings 60 days after a Final Order of Default is issued pursuant to the Consolidated Rules. Refusal to remit such penalty may result in the referral of this matter for collection to the United States Attorney. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act of 1966, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA will impose a late payment handling charge of \$15.00 after 30 days, with an additional charge of \$15.00 for each subsequent 30 day period over which an unpaid balance remains. In addition, EPA will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the date that the Default Order is signed by the Regional Administrator or Presiding Officer.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Terence Bonace at (312) 886-3387.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the proposed penalty

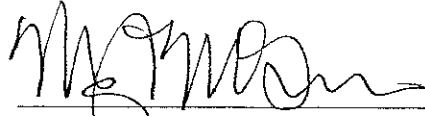
because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state or local law.

6/20/2014

Date



Margaret M. Guerriero, Director
Land and Chemicals Division

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving Frank's Flying Service was filed on June 24, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7667 9916 a copy of the original to the Respondent:

Mr. Frank Ousley
Frank's Flying Service
12677 Black Road
Morrison, Illinois 61270

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Jeffery Trevino, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. FIFRA-05-2014-0022