



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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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-08-2007-0012

IN THE MATTER OF:

**PERFORMANCE AG SERVICES LLC**

38420 West Hwy. 12

Aberdeen, SD 57401

(EPA Est. #: 082559-SD-0001)

**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 2nd DAY OF August, 2007.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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Docket No. FIFRA-08-2007-0012

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EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Performance Ag Services, LLC ) COMBINED COMPLAINT AND  
38420 West HWY 12 ) CONSENT AGREEMENT  
Aberdeen, SD 57401 )  
EPA Est. #: 082559-SD-001, )  
)  
Respondent. )

Complainant, United States Environmental Protection Agency ("EPA"), Region 8, and Respondent, Performance Ag Services, LLC, by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement ("consent agreement") is issued to Performance Ag Services, LLC ("Respondent") for a violation of FIFRA § 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L).
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. This section authorizes EPA to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against Respondent 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. section 136(s), and therefore subject to regulation.
2. Respondent is a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. section 136(w).
3. FIFRA section 7(c)(1), 7 U.S.C. section 136e(c)(1), requires all registered pesticide producers to file an annual report “...of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides....” Further, regulations promulgated pursuant to FIFRA section 7 require such annual report to be filed on or before March 1 for the preceding calendar year. 40 C.F.R. section 167.85(d).
4. EPA reviewed its records and determined that Respondent did not submit the “Pesticide Report for Pesticide-Producing and Device-Producing Establishments” pursuant to section of 7 FIFRA, 7 U.S.C. section 136(e) for calendar year 2006, by March 1, 2007. Respondent is therefore in violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. section 136j(a)(2)(L).
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 **two thousand six hundred dollars (\$2,600.00)**.

**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 this consent agreement.
2. Respondent consents and agrees to pay a civil penalty in the amount of **two thousand six hundred dollars (\$2,600.00)**, in the manner described below in this paragraph:

- a. Respondent agrees to pay the **two thousand six hundred dollars (\$2,600.00)** penalty amount in eight (8) installments of **three hundred and twenty-five dollars (\$325)** each. Respondent specifically agrees that should it be delinquent with any installment payment, interest shall be calculated on the remaining unpaid balance of the particular installment payment amount from the date of the issuance of the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement, and as set forth in paragraph 2.b. below.
  
- b. The first penalty installment of \$325 is due on or before October 15, 2007. The second penalty installment of \$325 is due on or before January 15, 2008. The third penalty installment of \$325 is due on or before April 15, 2008. The fourth penalty installment of \$325 is due on or before July 15, 2008. The fifth penalty installment of \$325 is due on or before October 15, 2008. The sixth penalty installment of \$325 is due on or before January 15, 2009. The seventh penalty installment of \$325 is due on or before April 15, 2009. The eighth and final penalty installment of \$325 is due on or before July 15, 2009. If any of the due dates falls on a weekend or legal Federal holiday, that 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 Mellon Bank described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day. Respondent shall make these **eight** installment payments by remitting a cashier's or certified check for the specified amount, including the name and docket number of this case (the docket number is listed in the first page of this Consent Agreement), payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank  
Lockbox 360859  
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859  
Mellon Client Service Center Rm 154-0670  
500 Ross Street  
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68010727

- c. A copy of the check shall be sent simultaneously to:

Tim Osag, Senior Enforcement Coordinator  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

And

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

- d. In the event payment is not received by the specified due date, interest accrues from the date of the final consent 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). Respondent agrees and consents that if Respondent fails to pay the penalty amount on the due dates set forth in paragraph 2.b. above, any unpaid balance thereof, shall become due and owing by the Respondent, or EPA, in its sole discretion, may waive all or part of such acceleration and or such interest payment.
- e. In addition, in the event an installment payment is not received by the due date specified in paragraph 2.b., a handling charge of fifteen dollars (\$15) shall be assessed on the 31st 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. 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 the Complaint, or 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 full civil settlement of the specific violation alleged in the consent agreement.
8. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

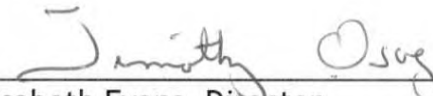
9. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
10. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

In the Matter of: Performance Ag Services, LLC (Aberdeen, SD)  
Docket No: FIFRA\_08-2007-0012  
(Continued)

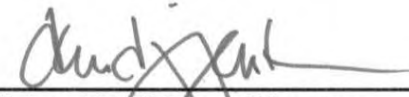
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,

Complainant.

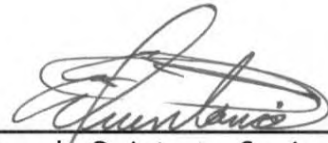
Date: 7/31/07

By:   
for Elisabeth Evans, Director  
Technical Enforcement Program

Date: 8.1.07

By:   
Michael T. Risner, Director  
David Janik, Supervisor  
Legal Enforcement Program

Date: 7/31/2007

By:   
Eduardo Quintana, Senior Attorney  
Legal Enforcement Program




In the Matter of: Performance Ag Services, LLC (Aberdeen, SD)  
Docket No: FIFRA-08-2007-0012  
(Continued)

Performance Ag Services, LLC,  
Respondent.

Date: 7-23-07

By:

Name, Title:

  
Jon Swenson  
owner

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT/CONSENT AGREEMENT/FINAL ORDER** in the matter of **PERFORMANCE AG SERVICES, LLC., DOCKET NO.: FIFRA-08-2007-0012** was filed with the Regional Hearing Clerk on August 2, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Eduardo Quintana, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop St., Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on August 2, 2007, to:

Jon Swenson, Owner  
Performance Ag Services, LLC  
38420 West Hwy. 12  
Aberdeen, SD 57401

And e-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center Accounting  
Fax: 513-487-2063

August 2, 2007



Tina Artemis  
Paralegal/Regional Hearing Clerk

