



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 SEP -3 AM 9: 16

Docket No. **FIFRA-08-2009-0016**

FILED  
EPA REGION VIII  
HEARING CLERK

In the Matter of: )  
)  
Loon Lake Helicopter, LLC, ) COMBINED COMPLAINT AND  
31856 Buffalo Bridge Road ) CONSENT AGREEMENT  
Big Arm, MT 59910, )  
)  
Respondent. )

Complainant, United States Environmental Protection Agency ("EPA"), Region 8, and Respondent, Loon Lake Helicopter, 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 Loon Lake Helicopter, LLC ("Respondent") for violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).
2. The undersigned EPA officials issue this consent agreement under the authority vested in the Administrator of EPA by section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).
3. This section authorizes EPA to bring an action under section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), 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. § 136(s), and therefore subject to regulation.
2. Respondent is a for hire applicator as defined by section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2).

3. Pursuant to FIFRA § 12(a)(2)(G), 7 U.S.C. § 136(a)(2)(G), it is unlawful to use a pesticide in a manner inconsistent with its labeling. The term “to use any registered pesticide inconsistent with its labeling” further defined by FIFRA to include a use of a “registered pesticide in a manner not permitted by the labeling.” FIFRA § 2(ee), 7 U.S.C. § 136(ee).
4. The Confederated Salish and Kootenai Tribes, the Montana Department of Agriculture, and the EPA conducted an investigation of two aerial pesticide applications conducted by Respondent on June 6 and 7, 2008. The investigation was conducted to determine whether the pesticides ForeFront R&P, EPA Reg. No. 62719-524, and TELAR XP, EPA Reg. No. 352-654 were applied in a manner inconsistent with their labels. The labels for ForeFront R&P and TELAR XP provide directions for avoiding pesticide drift into non-target areas. The label directions also prohibit the application of ForeFront R&P and TELAR XP to canals. The investigation uncovered evidence showing pesticide residues in the inner banks of an irrigation canal and on adjacent non-target fields, both of which are applications not permitted by the pesticides’ labeling.
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 **\$520**.

**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 civil penalty in the amount of FIVE HUNDRED AND TWENTY dollars (\$520.00) 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 a cashier's or certified check, including the name and docket number of this case (**Loon Lake Helicopter, LLC; Docket No. FIFRA-08-2009-0016**), 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 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 (i.e., the 121st 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 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.

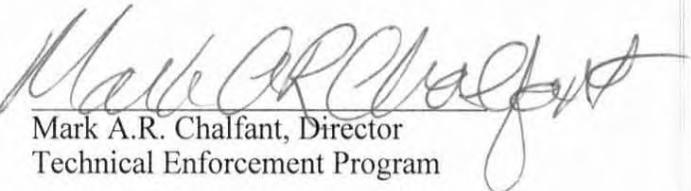
3. Nothing in this consent agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this consent agreement.
4. The undersigned representative 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: Loon Lake Helicopter, LLC (Big Arm, MT)  
Docket No: FIFRA-08-2009-0016  
(Continued)

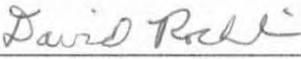
UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement,  
Compliance and Environmental Justice,

Complainant.

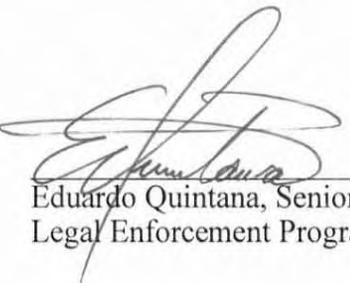
Date: 8/31/2009

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

Date: 8/31/09

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

Date: 8/31/2009

By:   
Eduardo Quintana, Senior Attorney  
Legal Enforcement Program

**In the Matter of: Loon Lake Helicopter, LLC (Big Arm, MT)**  
**Docket No: FIFRA-08-2009-0016**  
**(Continued)**

**Loon Lake Helicopter, LLC,**  
**Respondent.**

Date: 8/27/09

By: James M. Binger

Name, Title: Mr. James M. Binger,

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT CONSENT AGREEMENT/FINAL ORDER** in the matter of **LOON LAKE HELICOPTER, LLC.; DOCKET NO.: FIFRA-08-2009-0016** was filed with the Regional Hearing Clerk on September 3, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Eduardo Quintana, 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 September 3, 2009, to:

James M. Binger  
Loon Lake Helicopter, LLC.  
31856 Buffalo Bridge Road  
Big Arm, MT 59910

E-mailed to:

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

September 3, 2009



Tina Artemis  
Paralegal/Regional Hearing Clerk

