

07 JUL 31 PM 03:00
2007 10 23 10:19 AM
10/23/07 10:19 AM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____)
In the Matter of:)
Smith-Kem Ellensburg, Inc.;) Docket No. FIFRA-10-2007-0103
Respondent.)
_____)
_____)

CONSENT AGREEMENT

1. This administrative proceeding is simultaneously being commenced and concluded by issuance of this Consent Agreement along with the accompanying Final Order. The authority for this procedure is set forth at 40 C.F.R. § 22.13(b). This Consent Agreement contains terms for the settlement of claims between the United States Environmental Protection Agency (EPA) and Smith-Kem Ellensburg, Inc. (Respondent). The pursuit of these claims by EPA is authorized by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136(a).

2. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein, but neither admits nor denies the specific factual allegations put forth by EPA. Nevertheless, Respondent waives the right to contest those allegations as well as the right to appeal the accompanying Final Order. Respondent also consents to payment of the penalty as stated below.

3. Respondent has a business facility located at 200 Railroad Avenue in Ellensburg, Washington. This facility has been registered with EPA as a pesticide-producing establishment since

Consent Agreement Smith-Kem Ellensburg, Inc.
FIFRA-10-2007-0103

1 July 7, 1989. The registration number for this establishment is 062437-WA-001. Among other
2 responsibilities, Respondent is required by 40 C.F.R. § 167.85(d) to provide EPA, on an annual
3 basis, a written report which documents the type(s) and amount(s) of pesticides produced and
4 distributed during the past calendar year, along with the type(s) and amount(s) of pesticides currently
5 produced at the establishment. Respondent is further required to submit the written annual report,
6 covering the prior calendar year, by no later than March 1st. The annual written report for calendar
7 year 2003 was submitted by Respondent on July 27, 2004, almost five months after the reporting
8 deadline. EPA sent a letter notifying Respondent of this failure to file a timely report, and warning
9 Respondent that another such failure within the following 3-year period would likely subject
10 Respondent to the imposition of a civil penalty. Despite this warning, Respondent did not file either
11 the 2005 or 2006 written report in a timely manner. These failures to file timely written reports
12 constitute two violations of 40 C.F.R. § 167.85(d), and Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §
13 136j(a)(2)(L).

14 4. Subsequent to being notified of the violations, Respondent provided EPA with a written
15 request to terminate its status as a pesticide-producing establishment. Based upon this request, the
16 establishment registration for Respondent has been terminated by EPA, and Respondent is no longer
17 authorized to produce pesticides. Should Respondent choose to once again produce pesticides,
18 Respondent must first have its establishment registered with EPA.

19 5. Subsequent to being notified of the violations, Respondent also provided EPA with the
20 written reports for calendar years 2005 and 2006. According to those reports, Respondent produced
21 pesticides during each of those years; however, additional information provided by Respondent
22 shows that the amount of pesticides produced was actually less than what is identified in the reports.
23 The discrepancy is the result of Respondent reporting the amount of pesticide used in custom
24 pesticide application services. According to FIFRA, this activity is not "pesticide production," and
25 Respondent should have reported only the amount of pesticides sold and transferred into customers'
26 application equipment. According to Respondent, this latter pesticide production practice only
27 occurred once or twice each year. As a basis for terminating its status as a pesticide-producing

1 establishment, Respondent has agreed to cease the practice of transferring pesticide products into
2 customers' equipment. Given that Respondent has requested to terminate its establishment
3 registration, Respondent produced such a small amount of pesticides during the 2005 and 2006
4 calendar years, and in accordance with the "Enforcement Response Policy for FIFRA Section 7(c)
5 Pesticide Producing Establishment Reporting Requirement," EPA has chosen to forego the collection
6 of a penalty for the calendar year 2006 violation noted above.

7 6. Respondent consents to the assessment of a civil penalty in the amount of two thousand
8 four hundred ninety-six dollars and no cents (\$2,496.00) for the calendar year 2005 violation. The
9 payment of this penalty shall be made by Respondent within thirty (30) days of the filing of the Final
10 Order. This payment shall be by cashier's or certified check made payable to the order of "Treasurer,
11 United States of America." The check shall be submitted to: United States Environmental
12 Protection Agency, Region 10, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251. Along with
13 payment, Respondent shall provide a transmittal letter which sets forth the information contained in
14 the caption of this case, including the case title and docket number, together with a description of the
15 obligation being satisfied by Respondent. At the time of payment, Respondent shall also provide a
16 copy of the check and transmittal letter to Richard Mednick, Associate Regional Counsel, and Carol
17 Kennedy, Regional Hearing Clerk. The mailing address for Mr. Mednick and Ms. Kennedy is:
18 United States Environmental Protection Agency, 1200 Sixth Avenue, ORC-158, Seattle, Washington
19 98101.

20 7. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire
21 unpaid balance of penalty and accrued interest shall become immediately due and owing. Should
22 such a failure to pay occur, Respondent may be subject to a civil action under Section 14(a)(5) of
23 FIFRA, 7 U.S.C. § 1361(a)(5), to collect any unpaid penalties, together with interest, handling
24 charges, and nonpayment penalties, as set forth below.

25 8. Should Respondent fail to pay any portion of the penalty assessed herein in full by its due
26 date, Respondent shall also be responsible for payment of the following amounts:

27 a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate

28 Consent Agreement

1 established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective
2 date of the accompanying Final Order, provided, however, that no interest shall be payable on any
3 portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4 h. Handling Charge: Pursuant to 31 U.S.C. § 3717(c)(1), a monthly handling charge of \$15
5 shall be paid if any portion of the assessed penalty is more than 30 days past due.

6 c. Nonpayment Penalty: Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6%
7 per annum shall be paid on any portion of the assessed penalty that is more than 90 days past due,
8 which nonpayment penalty shall be calculated as of the date the underlying penalty first becomes
9 past due.

10 9. This Consent Agreement is binding upon Respondent, including all officers, directors,
11 servants, employees, agents, successors, and assigns of Respondent.

12 10. Respondent shall bear its own costs and attorneys fees in connection with this matter.

13 11. EPA and Respondent agree to the accompanying Final Order as presented to the
14 Regional Judicial Officer.

15

16 United States Environmental
Protection Agency

Smith-Kem Ellensburg, Inc.

17 
18 Richard D. Mednick
19 Associate Regional Counsel



20

21

22

23

24

25

26

27

28 Consent Agreement

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Smith-Kem Ellensberg, Inc.;

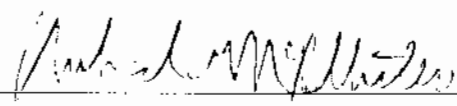
Respondent.

Docket No. FIFRA-10-2007-0103

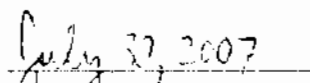
FINAL ORDER

It is hereby ordered that Smith-Kem Ellensberg, Inc. ("Respondent") comply with all terms of the Consent Agreement executed by Region 10 of the United States Environmental Protection Agency ("EPA") and Respondent in this matter. This compliance obligation is effective upon the date of filing of the Consent Agreement along with this Final Order.

This Final Order resolves only those causes of action that have been specifically alleged by EPA in the Consent Agreement, and which are individually identified therein. This Final Order does not waive, extinguish, or otherwise affect the obligation of Respondent to comply with all applicable provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations promulgated thereunder.



Richard G. McAllister
Regional Judicial Officer
EPA Region 10


Date

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Smith-Kem Ellensburg, Inc., DOCKET NO.: FIFRA-10-2007-0103** was filed with the Regional Hearing Clerk on July 31, 2007.


On July 31, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:

Richard Mednick, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on July 31, 2007, to:

Andrew C. Erickson
Smith-Kem Ellensburg, Inc.
200 Railroad Avenue
P.O. Box 774
Ellensburg, WA 98926

DATED this 31st day of July 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10