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EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

LARRY BOYER LAND and CATTLE
Nezperce, Idaho

Respondent

)
)
) DOCKET NO.
) FIFRA-10-2013-0069

)
) **CONSENT AGREEMENT**
) **FINAL ORDER**
)
)
)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10. The Regional Administrator of EPA Region 10 has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Larry Boyer Land and Cattle ("Respondent") hereby agrees to the issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.35, issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the statutory and factual basis for the alleged violations of FIFRA.

III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 24676 Garden Gulch Road in Culdesac, Idaho.

3.2. Respondent is an “other person” as defined in Section 14(a)(2) of FIFRA, 7 U.S.C. § 1361(a)(2).

3.3. On or about May 13, 2012, Respondent applied the pesticide TruSlate Pro (EPA Reg. No. 71368-88) to its field in Nezperce, Idaho.

3.4. The labeling on “TruSlate Pro” states, “Do not apply this product in a way that will contact workers or other persons, either directly or through drift.”

3.5. During the application described in paragraph 3.3, Respondent applied, either directly or through drift, “TruSlate Pro” to the adjacent property belonging to Forrest Wilmer, at 1990 Shortcut Road, Nezperce, Idaho 83543 (“Wilmer property”).

3.6. The Circuit Rider Program inspector took vegetation samples from the Wilmer property on May 18, 2012.

3.7. The samples were analyzed by the Idaho Food Quality Assurance Laboratory (IFQAL).

3.8. The IFQAL analysis indicated that there were traces of MCPA present in the vegetation samples.

3.9. MCPA is the active ingredient of "TruSlate Pro."

3.10. Under FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.11. Respondent violated FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), by applying "TruSlate Pro" in such a way that it will contact workers or other persons, either directly or through drift, which is inconsistent with its labeling. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), this violation subjects Respondent to the assessment of a civil penalty.

3.12. Pursuant to FIFRA Section 14(a)(2), 7 U.S.C. § 136l(a)(2), EPA may assess a civil penalty of not more than \$1,100 against an "other person" for violations involving pesticides that are non-classified or classified as general use if the "other person" previously received a written warning for violations of FIFRA.

3.13. EPA issued a civil penalty to Respondent for violations of FIFRA on December 5, 2006, and a written warning for violations of FIFRA on December 28, 2001.

IV. CONSENT AGREEMENT

4.1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations contained herein.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent waives any right to contest these allegations as well as the right to appeal the accompanying Final Order.

4.4. Respondent agrees that this settlement will be considered prior history of noncompliance under FIFRA.

4.5. Respondent consents to the assessment of a civil penalty in the amount of FIVE HUNDRED SIXTY DOLLARS (\$560). Respondent consents to issuance of the Final Order set forth in Part V, below, and agrees to make the payment within thirty (30) days of the effective date of this Final Order.

4.6. Payment under this CAFO shall be made by cashier's check or certified check, payable to the order of "Treasurer, United States of America" and shall be delivered to the following address:

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

Respondent shall note on the check the title and docket number of this case.

4.7. Respondent shall serve photocopies of the checks described in Paragraph 4.6, above, on the Regional Hearing Clerk and EPA Region 10 Office of Compliance and Enforcement at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
Office of Regional Counsel, ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Derrick Terada
U.S. Environmental Protection Agency, Region 10
Pesticides and Toxics Unit, OCE-084
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.8. Should Respondent fail to pay the penalty assessed herein in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136I(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.9. Should Respondent fail to pay any portion of the penalty assessed herein in full by its due date, Respondent shall also be responsible for payment of the following amount.

a. Interest: Any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Handling Charge: Pursuant to 31 U.S.C. § 3717(e)(2), a monthly handling charge of \$15 shall be paid if any portion of the assessed penalty is more than 30 days past due.

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

4.10. The penalty described in Paragraph 4.5, above, including any additional costs incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.12. Respondent shall bear its own costs and attorneys' fees in connection with this matter.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA.

For Respondent:

DATED:

3/29/13

BOYER:



BOYER

For Complainant:

DATED:

4/10/2013

U.S. ENVIRONMENTAL PROTECTION AGENCY:


EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of the settlement.

5.2. This CAFO shall constitute a settlement by EPA of all civil claims under FIFRA for the violations alleged above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of April, 2013.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the **Matter of: Larry Boyer Land and Cattle. Docket No. FIFRA 10-2013-0069** was filed, and served as follows, on the signature date below.

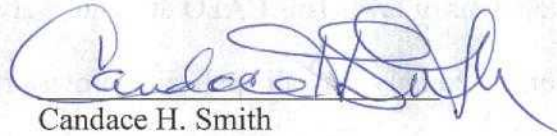
The undersigned certifies that a true and correct copy of the document was hand delivered to:

Mary Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

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

Larry Boyer, Registered Agent
24676 Garden Gulch Road
Culdesac, Idaho 83524

Dated: 16th April 2013



Candace H. Smith
Regional Hearing Clerk
EPA Region 10

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