



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

July 25, 2014

REPLY TO THE ATTENTION OF

E-19J

CERTIFIED MAIL

RETURN RECEIPT REQUESTED: 7009 1680 0000 7663 8937

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: Frank Ousley, d/b/a Frank's Flying Service
(Morrison, Illinois)
Docket No. FIFRA-05-2014-0022
Complaint Date: June 24, 2014
Total Proposed Penalty: \$24,750

Dear Judge Biro:

Enclosed is the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in cursive script that reads "LaDawn Whitehead".

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Thomas W. Daggett, Attorney
Daggett Law Firm
1551 Larimer Street, #1403
Denver, Colorado 80202
(312) 960-1600
TWDaggett@comcast.net

Jeffrey Trevino
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
Chicago, Illinois 60604
(312) 886-6729

In the Matter of: Frank Ousley, d/b/a Frank's Flying Service (Morrison, Illinois)
Docket No. FIFRA-05-2014-0022

Certificate of Service

I certify that I filed the original and one copy of the Respondent's Answer, and mailed the original copies and case file via certified mail to Ms. Sybil Anderson (MC: 1900R), Office of Administrative Law Judges, U.S. EPA, 1200 Pennsylvania Avenue, N. W. Washington, DC 20460. CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7663 8937

I certify that I delivered a copy of the Respondent's Answer by electronic mail to:

Jeffrey Trevino, Regional Counsel
Trevino.Jeffrey@epa.gov

Terence Bonace
Bonace.terence@epa.gov

Ann Coyle, Regional Judicial Officer
coyle.ann@epa.gov

I also certify that I e-mailed and mailed a filed hard copy of the Respondent's Answer to the Respondent Attorney's e-mail address and by first class mail to:

TWDaggatt@comcast.net

Thomas W. Daggett, Attorney
Daggett Law Firm
1551 Larimer Street, #1403
Denver, Colorado 80202
(312) 960-1600

On the 25 day of July, 2014.


LaDawn Whitehead
Regional Hearing Clerk
Region 5

Daggett Law Firm
Chicago, Illinois & Denver, Colorado
(312) 960-1600

email: TWDaggett@Comcast.net
www.DaggettLawFirm.com

July 23, 2014

via Overnight Delivery Service
Regional Hearing Clerk (E-19J)
U.S. EPA Region V
19th Floor
77 West Jackson Boulevard
Chicago, Illinois 60604



In the Matter of: Frank Ousley d/b/a Frank's Flying Service
Docket No.: FIFRA-05-2014-022

Please file the enclosed ANSWER by the Respondent in the above referenced matter. As Respondent's attorney for this matter, I am authorized to receive service of documents to be filed with your Office. For timely service of documents, I request that they be sent to my Firm's email address, TWDaggett@comcast.net, with a hard copy mailed to my Firm's Denver office at the address in the signature block, below.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. Daggett" with a stylized flourish at the end.

Thomas W. Daggett
Daggett Law Firm
1551 Larimer Street, #1403
Denver, Colorado 80202
(312) 960-1600

cc.

Jeffrey Trevino
Office of Regional Counsel (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

CERTIFICATE OF SERVICE

I hereby certify that I served an original and 2 copies of the enclosed ANSWER upon the Regional Hearing Clerk by deposit then in and overnight delivery service, and one copy upon Complainant's attorney Mr. Trevino by depositing it in the U.S. Mail, addressed as shown above and with postage prepaid, on this date.

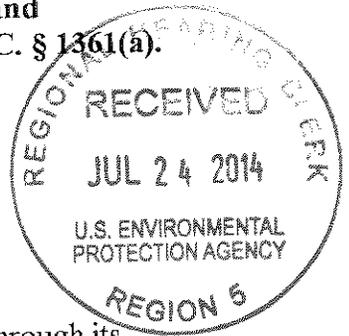
A handwritten signature in black ink that reads "Thomas W. Daggett" with a stylized flourish at the end.

Thomas W. Daggett - date
Attorney for Respondent

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. § 1361(a).



ANSWER

Respondent, Frank Ousley, d/b/a/ Frank's Flying Service ("FFS"), through its attorney, Thomas W. Daggett, provides this Answer under 40 C.F.R. 22.15(b) to "...admit, deny or explain each factual allegation..." in the June 24, 2014 Complaint in this matter, and outline other arguments against the proposed penalty. Respondent also requests a hearing to challenge the Complaint.

Answers to each numbered factual allegation in the Complaint are as follows:

Statutory Authority

1. Allegation 1 is not a factual allegation requiring an answer.

The Parties

2. Admitted.
3. Admitted.

Statutory and Regulatory Provisions

4. Allegation 4 is not a factual allegation requiring an answer.
5. Allegation 5 is not a factual allegation requiring an answer.
6. Allegation 6 is not a factual allegation requiring an answer.

7. Allegation 7 is not a factual allegation requiring an answer.
8. Allegation 8 is not a factual allegation requiring an answer.
9. Allegation 9 is not a factual allegation requiring an answer.
10. Allegation 10 is not a factual allegation requiring an answer.
11. Allegation 11 is not a factual allegation requiring an answer.
12. Allegation 12 is not a factual allegation requiring an answer.

General Allegations

13. Admitted.
14. Admitted.
15. Admitted.
16. Allegation 16 is not a factual allegation requiring an answer.
17. Admitted.
18. Allegation 18 is not a factual allegation requiring an answer.
19. Admitted.
20. Allegation 20 is not a factual allegation requiring an answer.
21. Allegation 21 is not a factual allegation requiring an answer.
22. Admitted.
23. Admitted.
24. Allegation 24 is not a factual allegation requiring an answer.
25. Admitted.
26. Admitted.
27. Allegation 27 is not a factual allegation requiring an answer.

28. Allegation 28 is not a factual allegation requiring an answer.
29. Admitted that Allegation 29 quotes one sentence from the several-paragraphs in Agricultural Use Requirements box on the label, which also sets out limitations to its applicability.
30. See Answer to Allegation 29.
31. Admitted.
32. Admitted.
33. Allegation 33 is not a factual allegation requiring an answer.
34. Admitted.
35. Allegation 35 is not a factual allegation requiring an answer.
36. Allegation 36 is not a factual allegation requiring an answer.
37. See Answer to Allegation 29.
38. Admitted.
39. Admitted.
40. Allegation 40 is not a factual allegation requiring an answer.
41. Admitted.
42. Allegation 42 is not a factual allegation requiring an answer.
43. Allegation 43 is not a factual allegation requiring an answer.

Specific Allegations

Count I

44. Answers 1 through 43 are incorporated by reference.
45. Admitted.
46. Denied.

47. Denied.

Count II

48. Answers 1 through 43 are incorporated by reference.

49. Admitted.

50. Denied.

51. Denied.

Count III

52. Answers 1 through 43 are incorporated by reference.

53. Admitted.

54. Denied.

55. Denied.

Count IV

56. Answers 1 through 43 are incorporated by reference.

57. Admitted.

58. Denied.

59. Denied.

Count V

60. Answers 1 through 43 are incorporated by reference.

61. Admitted.

62. Admitted.

63. Denied.

64. Denied.

Count VI

65. Answers 1 through 43 are incorporated by reference.

- 66. Admitted.
- 67. Admitted.
- 68. Denied.
- 69. Denied.

ADDITIONAL DEFENSES AND DISPUTED FACTS

A. Respondent disputes the allegations in Counts I and II that it did not assure that the appropriate parties were aware of the required application information at the properties sprayed;

B. Respondent disputes the allegations in Counts III and IV that it did not provide required training to its workers;

C. Respondent disputes the allegations in Counts V and VI that it did not make required emergency eyeflushing immediately accessible to its workers.

PROPOSED CIVIL PENALTY

Respondent disputes all allegations of violations in the Complaint, and requests that the proposed penalty be completely mitigated.

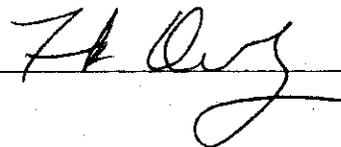
REQUEST FOR A HEARING

Respondent hereby requests a hearing in this matter.

Respectfully submitted,

FRANK OUSLEY, d/b/a/
FRANK'S FLYING SERVICE

by: _____



APPROVED AS TO FORM:


THOMAS W. DAGGETT
Attorney for Respondent

THOMAS W. DAGGETT
Daggett Law Firm
1551 Larimer St., #1403
Denver, CO 80202
(312) 960-1600
twdaggett@comcast.net