



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2013 SEP 26 AM 9:48

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-08-2013-0005

IN THE MATTER OF:

WILTON FARMERS UNION ELEVATOR CO.

P. O. Box 188

Wilton, ND 58579

Est. No. 073193-ND-0001

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 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 26th DAY OF September, 2013.

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. FIFRA-08-2013-0005

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HEARING CLERK

In the Matter of:)
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Wilton Farmers Union Elevator Co.) COMBINED COMPLAINT AND
P.O. Box 188) CONSENT AGREEMENT
Wilton, ND 58579)
Est. No. 073193-ND-001,)
)
Respondent.)

Complainant, the U.S. Environmental Protection Agency (EPA), Region 8, and Respondent, Wilton Farmers Union Elevator Co., by their undersigned representatives, hereby consent and agree as follows:

A. JURISDICTION

1. This Combined Complaint and Consent Agreement (consent agreement) is issued to Wilton Farmers Union Elevator Co. (Respondent) for a violation of section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 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 the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).
3. This section authorizes the 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 the 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 "producer" as defined by section 2(w) of FIFRA, 7 U.S.C. §136(w).
3. FIFRA section 7(c)(1), 7 U.S.C. §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. §167.85(d).

4. The EPA reviewed its records and determined that Respondent did not submit the "Pesticide Report for Pesticide-Producing and Device-Producing Establishments" pursuant to section 7 of FIFRA, 7 U.S.C. §136(e) for calendar year 2012, by March 1, 2013. 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, the 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 **\$2,640**.

C. CIVIL PENALTY

1. The Respondent signing below admits that the 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 two-thousand, six-hundred and forty dollars (**\$2,640.00**) in the manner described below:

- a. Payment shall be in a single payment of two thousand six hundred and forty dollars (\$2,640), due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment 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 check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

Automated Clearinghouse (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
800-234-5681

On-line Debit and Credit Card 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
Enter sfo 1.1 in the search field
Open form and complete required fields.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

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

- c. If the 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 (e.g., on the 1st late day, 30 days of interest will have accrued).
- d. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 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 outstanding handling charges, second to penalty assessments, third to accrued interest, and then 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 the EPA and upon Respondent and Respondent's 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 the 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.

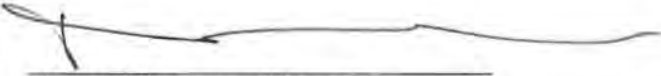
6. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this consent agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this consent agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant 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 resolution of the United States' claim for civil penalties for the specific violations 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: Wilton Farmers Union Elevator Co. (Wilton, ND)
Docket No: FIFRA-08-2013-0005
(Continued)

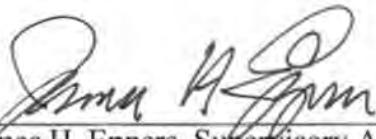
**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement,
Compliance and Environmental Justice,**

Complainant

Date: Sept 26, 2013

By: 
Darcy O'Connor, Director,
Technical Enforcement Program
UIC-FIFRA-OPA
Office of Enforcement, Compliance and
Environmental Justice (8-ENF-UFO)
U.S. Environmental Protection Agency,
Region 8

Date: Sept. 26, 2013

By: 
James H. Eppers, Supervisory Attorney,
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. Environmental Protection Agency,
Region 8

In the Matter of: Wilton Farmers Union Elevator Co. (Wilton, ND)
Docket No: FIFRA-08-2013-0005
(Continued)

Wilton Farmers Union Elevator Co.,

Respondent Wilton Farmers Union Elevator Co.
PO Box 188
Wilton, ND 58576

Date: 9/23/13

By: Brian Dudgeon

Name, Title: MGR.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT and FINAL ORDER** in the matter **WILTON FARMERS UNION ELEVATOR CO.; DOCKET NO.: FIFRA-08-2013-0005**. The **COMBINED COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER** was filed with the Regional Hearing Clerk on September 26, 2013.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Eduardo Quintana, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt on September 26, 2013 to:

Brian Guderjahn, Manager
Wilton Farmers Union Elevator Co.
P. O. Box 188
Wilton, ND 58579

And emailed to:

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

September 26, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk

