



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

AUG 10 2007

REPLY TO THE ATTENTION OF:  
DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8931 9264

Jeffrey Pederson  
Pederson & Pederson, P.A.  
24 Colfax Ave. Southwest  
P.O. Box 623  
Wadena, MN 56482-0623

Consent Agreement and Final Order, Docket No. **FIFRA-05-2007-0038**

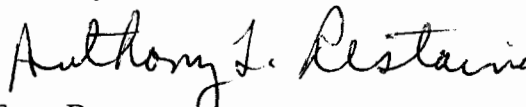
Dear Mr. Pederson:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on August 10, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,750 is to be paid in the manner prescribed in paragraphs 35, 36 and 37. Please be certain that the number **BD** 2750745P038 and the docket number are written on both the transmittal letter and on the check. Payment is due by September 10, 2007 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

*for*   
Terry Bonace  
Pesticides Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)  
Richard Nagle, ORC/C-14J (w/Encl.)  
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

|                              |   |  |
|------------------------------|---|--|
| <b>In the Matter of:</b>     | ) | <b>Docket No. FIFRA-05-2007-0038</b>           |
|                              | ) |  |
| <b>Leaf River Ag Service</b> | ) | <b>Proceeding to Assess a Civil Penalty</b>    |
| <b>Wadena, Minnesota</b>     | ) | <b>Under Section 14(a) of the Federal</b>      |
|                              | ) | <b>Insecticide, Fungicide, and Rodenticide</b> |
| <b>Respondent.</b>           | ) | <b>Act, 7 U.S.C. § 136l(a)</b>                 |
| <hr/>                        |   |  |

**Consent Agreement and Final Order**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules), as codified at 40 C.F.R. Part 22 (2005).

2. Complainant, the Chief of the Chemicals Management Branch, Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Leaf River Ag Service, a corporation doing business in the State of Minnesota.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b) (2005).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20(a), no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator.

10. Under Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, any producer operating an establishment registered with the U.S. EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167, shall inform the Administrator within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides which the producer is currently producing, which the producer has produced in the past year, and which the producer has sold or distributed during the past year.

11. Under 40 C.F.R. § 167.85(c), the report required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 (Annual Pesticide Production Report) must be made on forms supplied by U.S. EPA. It is the responsibility of companies to obtain, complete,

and submit the forms each year. (The U.S. EPA form is known as the “Pesticides Report for Pesticide-Producing Establishments” form, or EPA Form 3540-16.)

12. Under 40 C.F.R. § 167.85(d), the producer must submit the Annual Pesticide Production Report for the preceding year to U.S. EPA on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

13. 40 C.F.R. § 167.3 defines “produce” as to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of the pesticide or device.

14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

15. The U.S. EPA Administrator may assess a civil penalty of up to \$5,500 for each violation of FIFRA that occurred on or after January 31, 1997 through March 15, 2004, and may assess a civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004, under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

#### **Factual Allegations and Violations**

16. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, Northern Cooperative Services registered as a company (27130-MN-001) engaged in the production of pesticides at West Highway 10, P.O. Box 511, Wadena, Minnesota on or about October 9, 1981.

17. On or about January 11, 2002, Respondent, Leaf River Ag Services incorporated in the State of Minnesota.

18. On or about January 13, 2003, Respondent notified U.S. EPA that it had replaced Northern Cooperative Services as the registered pesticide-producing establishment at West Highway 10, Box 511, Wadena, Minnesota (facility).

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

21. Respondent operates an “establishment” as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

22. DuPont Steadfast<sup>7</sup> (Steadfast) is a corn herbicide intended to kill foxtails, wooly cupgrass, quackgrass, and sandbur.

23. Steadfast is a “pesticide,” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. On February 7, 2005, an inspector employed by the Minnesota Department of Agriculture and authorized to conduct inspections under FIFRA, conducted an inspection under Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), at Respondent’s Wadena, Minnesota, establishment.

25. During the February 7, 2005 inspection, the inspector obtained copies of pesticide production records for calendar years 2002 and 2003 at Respondent’s Wadena, Minnesota, establishment.

26. On or about January 13, 2003, Respondent submitted a pesticide production report for Respondent’s establishment showing no pesticide production in calendar year 2002.

27. Respondent’s establishment repackaged and sold Steadfast in calendar year 2002.

28. Respondent's establishment produced a pesticide during calendar year 2002.

29. Respondent's failure to report to U.S. EPA the types and amounts of Steadfast that it produced, sold and/or distributed during calendar year 2002 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and was an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

30. On or about June 19, 2004, Respondent submitted a pesticide production report for Respondent's establishment showing no pesticide production in calendar year 2003.

31. Respondent's establishment repackaged and sold Steadfast in calendar year 2003.

32. Respondent's establishment produced a pesticide during calendar year 2003.

33. Respondent's failure to report to U.S. EPA the types and amounts of Steadfast that it produced, sold and/or distributed during calendar year 2003 violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) and was an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### **Civil Penalty**

34. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on Respondent's ability to continue in business, the gravity of the violation, and Respondent's willingness to perform a supplemental environmental project, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$2,750.

35. Respondent must pay the \$2,750 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

36. Respondent must send the check to:

U.S. EPA, Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

37. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Terence Bonace (DT-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Richard Nagle (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not timely pay the civil penalty, U.S. EPA may refer the matter to the Attorney General, who will recover such amount by action in the appropriate United States district court, under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

40. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a 6 percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

## **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

41. In resolution of this matter, Respondent agreed to complete a Supplemental Environmental Project (SEP) designed to modify the establishment's fertilizer receiving area in order to decrease fertilizer loss from incoming truck and railroad shipments, and to prevent rainwater from entering the fertilizer receiving area and fertilizer storage area. This project was reviewed and approved by the Minnesota Department of Agriculture and completed on May 7, 2007.

a. In order to decrease fertilizer spillage upon receipt of fertilizer truckloads, the stainless steel fertilizer conveyor was extended from the train hopper outward, creating a new and separate truck hopper, within an enlarged concrete pad. This allowed Respondent to receive truck fertilizer shipments, formerly unloaded in the train hopper, with decreased fertilizer spillage.

b. To prevent water entry into the fertilizer conveyor and the fertilizer storage building, the entire fertilizer conveyor area, including both the truck and rail hoppers,



have been provided with a heavy, ¾ inch thick, 28 feet long by 5 feet wide, rubber pad that will be placed on top of the conveyor when it is not in use.

c. Respondent constructed around the fertilizer conveyor a 27 feet, 4 inch length, 16 feet, 4 inch width concrete pad, eight inches thick with #4 rebar placed 12 inches apart, to collect spilled fertilizer. The pad has a three inch slope downward from the center line paralleling the conveyor to carry rain water away from the conveyor pits. Respondent constructed a six inch curb, four inches in thickness, inside the entry door of the fertilizer storage building to prevent water entry in building.

d. Respondent installed a concrete trough 79 feet in length and 1 foot wide along the front of the fertilizer storage building, running north and south most of the length of the building, to prevent water from entering the fertilizer storage building.

e. After each shipment of fertilizer, Respondent must sweep and remove the fertilizer dust from the pad and return it to bulk storage (or otherwise appropriately use or dispose of it) with a hydraulic broom, or by other similar means, each day the pad is in use.

42. Respondent certifies that it was not required to perform the SEP by any law, regulation, grant, order, or any other agreement, or as injunctive relief as of the date they sign this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action. U.S. EPA may inspect Respondent's establishment in Wadena, Minnesota, at any time to monitor Respondent's compliance with this CAFO's SEP requirements. Any access to this building will be provided upon reasonable notice to Respondent. Respondent has submitted a SEP completion report for its Wadena, Minnesota

establishment, including a description of the completed SEP, itemized costs, and certifies in this CAFO that the SEP as described has been completed.

43. Respondent spent \$5,060 for the concrete pad and trough, \$8,500 for the conveyor extension, and \$437 for the rubber mat, to complete the SEP.

#### **Final Statement**

44. Respondent has submitted corrected pesticide production reports for the years 2002 and 2003 and has since submitted accurate reports for 2004, 2005 and 2006.

45. This CAFO resolves Respondent's liability for civil penalties for violations alleged in the Violations section of this CAFO which are based on the information described in the Factual Allegations section of this CAFO.

46. This CAFO, as part of the U.S. EPA's administrative penalty assessment process, can not and does not address criminal violations of any kind.

47. This CAFO does not affect Respondent's responsibility to otherwise comply with FIFRA and other applicable federal, state and local laws and regulations

48. Respondent certifies that it is complying fully with Section 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(ii).

49. The terms of this CAFO bind Leaf River Ag Service, and its successors, and assigns.

50. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

51. Each party agrees to bear its own costs and attorneys' fees in this action.
52. This CAFO constitutes the entire agreement between the parties.

CONSENT AGREEMENT AND FINAL ORDER  
In the Matter of Leaf River Ag Service

**Leaf River Ag Service, Respondent**

7/25/2007  
Date

Scott Dau  
Scott Dau, General Manager  
Leaf River Ag Service

**United States Environmental Protection Agency, Complainant**

8/2/07  
Date

for Anthony J. Restorina  
Mardi Klevs, Chief  
Chemicals Management Branch  
Land and Chemicals Division

8/2/07  
Date

Margaret Guerriero  
Margaret Guerriero, Director  
Land and Chemicals Division

**FIFRA-05-2007-0038**

SEARCHED  
SERIALIZED  
INDEXED  
AUG 10 2007  
FBI - MEMPHIS

**CONSENT AGREEMENT AND FINAL ORDER**

**In the Matter of: Leaf River Ag Service**

**Docket No. FIFRA-05-2007-0038**

**Final Order**

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

Date

8-8-07



Mary A. Gade  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Leaf River Ag Service, was filed on August 10, 2007 with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8931 9264, a copy of the original to the Respondents:

Jeffrey Pederson  
Pederson & Pederson, P.A.  
24 Colfax Ave. Southwest  
P.O. Box 623  
Wadena, MN 56482-0623

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Richard Nagle, Counsel for Complainant/C-14J  
Eric Volck, Cincinnati Finance/MWD

  
\_\_\_\_\_

Elizabeth Lytle  
Pesticides Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0038**

03 01 2007

JUSTICE  
CLERK