



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 30 2019

REPLY TO THE ATTENTION OF

VIA EMAIL

Mr. Robert L. Brubaker
Porter Wright Morris & Arthur LLP
41 South High Street
Suite 2900
Columbus, OH 43215

rbrubaker@porterwright.com

**Re: Consent Agreement and Final Order - In the Matter of: David E. Easterday & Co.,
Inc. d/b/a Woodwright Finishing**

Mr. Brubaker:

Enclosed, please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above-referenced matter. This document was filed on August 30, 2019, with our Regional Hearing Clerk.

The civil penalty in the amount of \$25,000 is to be paid in the manner described in paragraphs 9-10. Please be certain that David E. Easterday & Co., Inc. and the docket number of this case are written on both the transmittal letter and the check, or in the comments field if you are paying by electronic funds transfer. Payment is due within 60 calendar days of the filing date.

Thank you for your cooperation to resolve this matter. Please do not hesitate to contact me if you have any questions regarding this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure

cc: Robert Guenther, C-14J
Christopher Grubb, C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



IN THE MATTER OF:)
)
DAVID E. EASTERDAY & CO., INC.,)
d/b/a WOODWRIGHT FINISHING,)
WILMOT, OHIO,)
)
RESPONDENT.)
_____)

Docket No.: FIFRA-05-2019-0005

CONSENT AGREEMENT AND FINAL ORDER

1. Complainant, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), by filing a Complaint on December 19, 2018, in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits set forth at 40 C.F.R. Part 22.

2. On or about May 22, 2019, Complainant filed an Amended Complaint in this action against Respondent David E. Easterday & Co., Inc., d/b/a/ Woodwright Finishings. The Amended Complaint alleges that Respondent violated sections 3(a) and 7(a) of FIFRA, 7 U.S.C. §§ 136a(a) and 136e(a), at its facility in Wilmot, Ohio, by distributing or selling unregistered pesticides on 18 occasions and producing pesticides at an establishment not registered with EPA.

3. Respondent filed its Answer to Complainant's Amended Complaint on or about June 25, 2019, and previously requested a hearing under section 14 of FIFRA, 7 U.S.C. § 136l, and 40 C.F.R. § 22.15.

Stipulations

4. Respondent admits the jurisdictional allegations in the Amended Complaint and neither admits nor denies the factual allegations in the Amended Complaint.
5. Respondent waives any right to contest the allegations in the Amended Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).
6. Respondent certifies that it is complying fully with FIFRA, 7 U.S.C. §§ 136-136y.
7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.
8. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalty

9. In consideration of the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, the gravity of the violations, and other factors as justice may require, Complainant agrees to mitigate the proposed penalty of \$69,600 to \$25,000. Within 60 days after the effective date of this CAFO, Respondent must pay a \$25,000 civil penalty for the violations described in this CAFO by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note the caption and the docket number of this CAFO.

10. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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

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

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

12. If Respondent does not pay timely the civil penalty, EPA may refer this 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). Respondent agrees that the validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

13. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

14. In accordance with 40 C.F.R. § 22.18(c), this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Amended Complaint.

15. The parties consent to service of this CAFO by e-mail at the following valid email addresses: guenther.robert@epa.gov (for Complainant), and rbrubaker@porterwright.com (for Respondent).

16. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

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

18. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

19. The terms of this CAFO bind Respondent, its successors and assigns.


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

21. Each party agrees to bear its own costs and attorneys fees in this action.

22. This CAFO constitutes the entire agreement between the parties.

David E. Easterday & Co., Inc., Respondent

8-7-19
Date


Erik Easterday, President
David E. Easterday & Co., Inc.

United States Environmental Protection Agency, Complainant

8/28/2019
Date

Michael D. Harris
Michael D. Harris
Acting Director
Enforcement and Compliance Assurance Division

In the Matter of:
David E. Easterday & Co., Inc., Respondent
Docket No. FIFRA-05-2019-0005

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/28/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: David E. Easterday & Co., Inc. d/b/a Woodwright Finishing

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, Docket Number: FIFRA-05-2019-0005, which was filed on August 30, 2019, 2019, in the following manner to the following addressees:

Copy by E-mail to
Respondent:

Mr. Robert L. Brubaker
Porter Wright Morris & Arthur LLP
41 South High Street
Suite 2900
Columbus, OH 43215
rbrubaker@porterwright.com

Copy by E-mail to
Attorneys for Complainant:

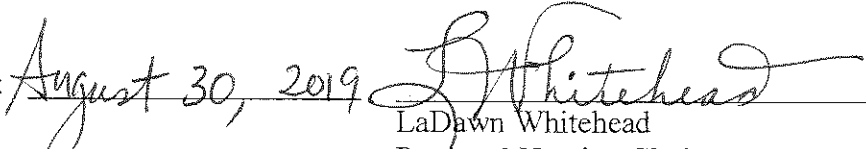
Mr. Robert Guenther
guenther.robert@epa.gov

Mr. Christopher Grubb
grubb.christopher@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann L. Coyle
coyle.ann@epa.gov

Dated: August 30, 2019



LaDawn Whitehead
Regional Hearing Clerk
United States Environmental Protection Agency
Region 5