

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2014-0022
)	
Frank Ousley, d/b/a/ Frank's Flying Service, Morrison, Illinois,)	Proceeding to Assess a Civil Penalty Under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.)	
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**COMPLAINANT MOTION TO POSTPONE HEARING
AND ASSOCIATED FILING DEADLINES**

Complainant files this Motion pursuant to 40 C.F.R. § 22.16 and requests the Court postpone for 30 days the hearing date and associated filing deadlines for this civil administrative action. Complainant offers the Court the following facts to support its request.

1. On January 30, 2015, the Court issued its "Notice of Hearing and Scheduling Order" which established a hearing date of March 18, 2015, and associated filing deadlines.
2. On February 5, 2015, the parties agreed to a settlement-in-principle to resolve this action without resort to hearing.
3. On February 13, 2015, Respondent signed and dated the Consent Agreement and Final Order (CAFO) to resolve this action. (Attached).
4. Complainant requires approximately 30 calendar days to sign and date the CAFO and file it with the Regional Hearing Clerk.
5. Respondent does not object to this Motion.

WHEREFORE, Complainant requests the Court postpone for 30 days the hearing date and associated filing deadlines for this action.

Respectfully submitted,

Jeffery M. Trevino

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CERTIFICATE OF SERVICE

I, Jeffery M. Trevino, Associate Regional Counsel, Region 5, U.S. Environmental Protection Agency, certify that I filed (electronically) with the Office of Administrative Law Judges for the U.S. Environmental Protection Agency, at its Office of Administrative Law Judges (OALJ) E-Filing System, available at www.epa.gov/oalj, this **COMPLAINANT MOTION TO POSTPONE HEARING AND ASSOCIATED FILING DEADLINES.**

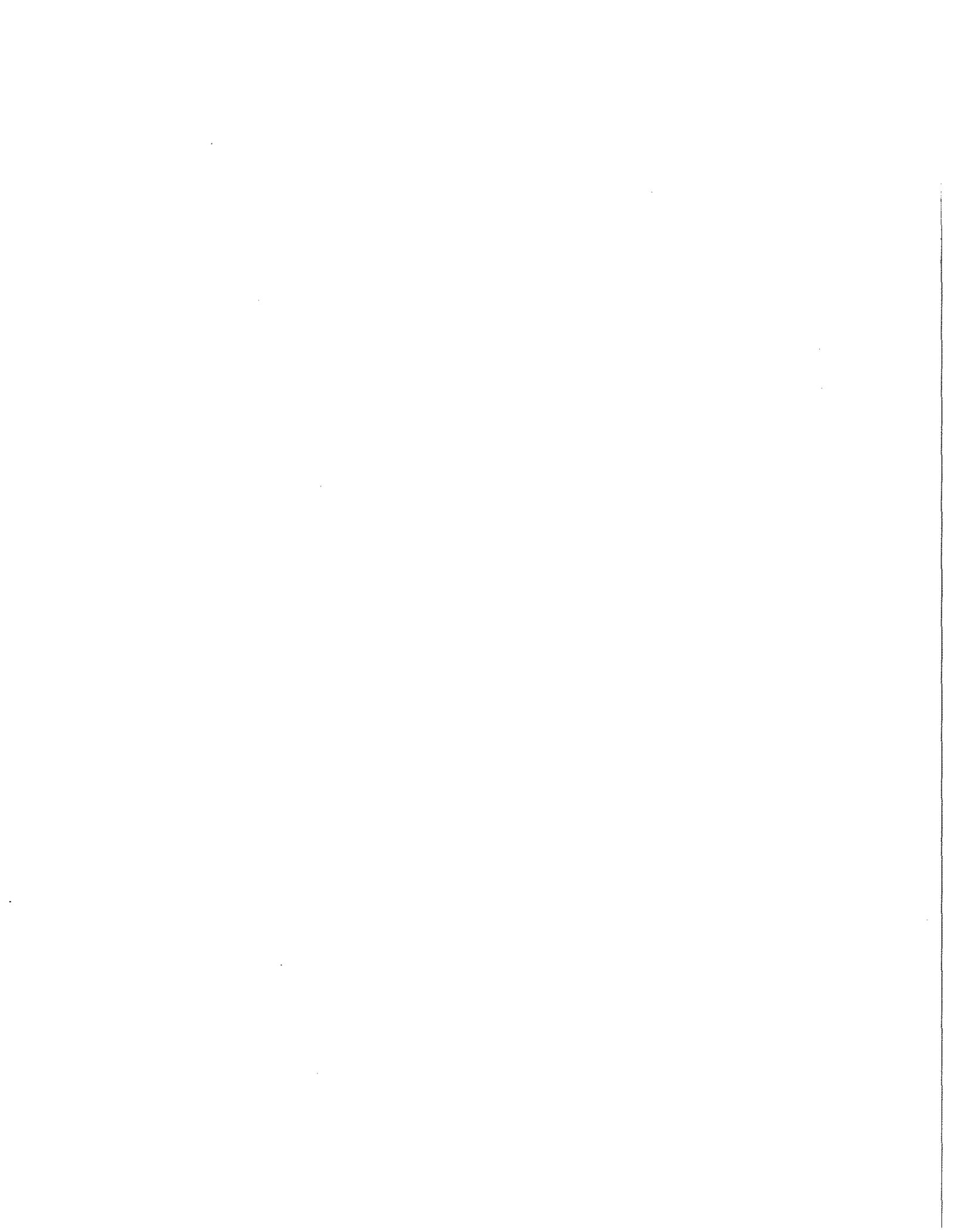
I further certify that I provided (electronically) to opposing counsel, Thomas W. Daggett, Esq., Daggett Law Firm, 1551 Larimer Street, Suite 1403, Denver, Colorado, 80202, at twdaggett@comcast.net, one copy of this **COMPLAINANT MOTION TO POSTPONE HEARING AND ASSOCIATED FILING DEADLINES.**

Jeffery M. Trevino

17 February 2015

Jeffery M. Trevino
Associate Regional Counsel

Date



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Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals 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).

2. On June 23, 2014, EPA filed the Complaint in this action against Respondent Frank Ousley doing business as Frank's Flying Service, Morrison, Illinois. The Complaint alleged that in August of 2013 Respondent failed to comply with Agricultural Worker Protection Standards in violation of 40 C.F.R. §§ 170.224, 170.230, and 170.250(d), and Section 12(a)(2)(G) of FIFRA, 7 U.S.C. 136j(a)(2)(G).

3. Respondent filed an Answer and 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 of the Complaint.
5. Respondent waives any right to contest the allegations in the 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,

and the Worker Protection Standards at 40 C.F.R. Part 170.

7. Respondent consents to all terms and conditions of this CAFO, including its civil penalty.

8. The parties agree the resolution of this action, without further litigation, and upon the terms of this CAFO, is in the public interest.

Civil Penalty

9. Complainant agrees to reduce the \$24,750.00 proposed civil penalty to a \$7,500.00 civil penalty due to factual evidence provided by Respondent, the civil penalty factors of Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$7,500.00 civil penalty by sending, by regular U.S. Mail, a cashier's or certified check, payable to the Order of the "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 state Respondent's name] and the docket number of this CAFO.

11. 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

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

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

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

13. 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). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. 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

15. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

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.

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

Frank Ousley d/b/a/ Frank's Flying Service, Morrison, Illinois

2/13/2015
Date

Frank Ousley
Frank Ousley

United States Environmental Protection Agency, Complainant

Date

Margaret M. Guerriero
Director
Land and Chemicals Division

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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.

Date

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5