

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

05 SEP 14 AM 8:27
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

J. T. Farm Service, Inc.)
P.O. Box 103)
4th & Cherry Street)
Verdon, Nebraska 68457)

) Docket No. FIFRA 07-2005-0290

) CONSENT AGREEMENT AND
) FINAL ORDER
)
)

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated on or about April 27, 2005, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (hereinafter called FIFRA), 7 U.S.C. §136l, when the United States Environmental Protection Agency (hereinafter referred to as "Complainant") issued a "Complaint and Notice of Opportunity for Hearing" to J. T. Farm Service, Inc. (hereinafter referred to as "Respondent").

The Complaint charged Respondent with one count of violating Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person to sell or distribute a misbranded pesticide.

Subsequently, Complainant and Respondent entered into negotiations in an attempt to resolve the Complaint. This Consent Agreement and Final Order set forth herein below is the result of these negotiations and represents settlement of this Complaint.

CONSENT AGREEMENT

It is hereby agreed, and accepted by Respondent, that:

1. This Consent Agreement is being entered into by the Parties in full settlement of, and release from all FIFRA civil penalties that might have attached as a result of the allegations in the Complaint. Respondent has read the Consent Agreement, finds it reasonable and consents to its issuance and its terms and explicitly waives its right to request a hearing on the Complaint, this Agreement, or the enclosed Final Order.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the factual allegations of the Complaint.

3. Respondent neither admits nor denies the violations of Section 12(a)(1)(E) of the FIFRA, 7 U.S.C. § 136j (a)(1)(E) as set forth in the Complaint and neither admits nor denies that such violations are violations of Section 14 of FIFRA, 7 U.S.C. § 136l.

4. Respondent certifies by signing this Consent Agreement and Final Order that it is presently in compliance with FIFRA, 7 U.S.C. § 136 *et seq.*, and all regulations promulgated thereunder.

5. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency.

6. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

7. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

8. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 2 of this Final Order.

9. The penalty payment made by Respondent pursuant to this Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and upon information contained in this Consent Agreement of the parties herein, IT IS HEREBY ORDERED THAT:

1. Respondent shall remain in compliance with FIFRA and all regulations promulgated thereunder.

2. Respondent agrees to pay a mitigated civil penalty of Four Thousand One Hundred Sixty Dollars (\$4,160). The civil penalty will be paid in three separate payments with One Thousand Four Hundred Dollars (\$1,400.00) paid within thirty (30) days of the effective date of the Consent Agreement and Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The second payment will be in the amount of One Thousand Four Hundred Dollars (\$1,400.00) and will be paid within one hundred and eighty (180) days of the effective date of the Consent Agreement and Final Order. The final payment of the remainder of the civil penalty in the amount of One Thousand Three Hundred and Sixty Dollars (\$1,360) and will be paid within one year of the effective date of the Consent Agreement

*In the matter of
J.T. Farm Service Inc.
Consent Agreement & Final Order*

and Final Order. Each check shall be made payable to the "Treasurer, United States of America," and shall be mailed to:

EPA-Region VII
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payment shall be identified as **In the Matter of J.T. Farm Service Inc.** A copy of the check shall be simultaneously sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101; and

Jonathan W. Meyer
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

3. Payment must be received at the above address on or before 30 days after the effective date of the Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

4. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the United States Department of Justice for collection.

5. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The

In the matter of
J.T. Farm Service Inc.
Consent Agreement & Final Order

interest will be assessed on the overdue amount from the due date through the date of payment.

A late payment handling charge of Fifteen Dollars (\$15) will be imposed for payments received thirty (30) days after any date of payments, and an additional Fifteen Dollars (\$15) will be charged for each subsequent thirty (30) day period.

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

7. This executed Consent Agreement and Final Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Jonathan W. Meyer
Jonathan W. Meyer
Assistant Regional Counsel
Office of Regional Counsel

Date: 9-13-05

RESPONDENT:

J.T. Farm Service Inc.
Verdon, Nebraska

By: [Signature]
Title: Owner / Mgr.
Date: 9-9-05

In the matter of
J.T. Farm Service, Inc.
Docket No. FIFRA-07-2005-0290

IT IS SO ORDERED. This Order shall become effective immediately.



Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

September 14, 2005
Date

IN THE MATTER OF J.T. Farm Service, Inc., Respondent
Docket No. FIFRA-07-2005-0290

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Terry Lotter
JT Farm Service
P.O. Box 103
Verdon, Nebraska 68457

Dated: 9/14/05


Kathy Robinson
Regional Hearing Clerk