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13 **UNITED STATES**
14 **ENVIRONMENTAL PROTECTION AGENCY**
15 **REGION IX**
16 **75 HAWTHORNE STREET**
17 **SAN FRANCISCO, CA 94105**
18

19 In the matter of:) Docket No. FIFRA-09-2018- 0014
20 Nutrien Ag Solutions, Inc.) **CONSENT AGREEMENT**
21 f/d/b/a Crop Production) and
22 Services Inc.,) **FINAL ORDER PURSUANT TO**
23 Respondent.) **SECTIONS 22.13 AND 22.18**
24)
25

26 **I. CONSENT AGREEMENT**

27 The United States Environmental Protection Agency (“EPA”) and Nutrien Ag Solutions,
28 Inc., formerly doing business as Crop Production Services, Inc. (“Respondent”) have conferred
29 for the purpose of settlement pursuant to 40 C.F.R. 22.18 and desire to resolve this matter and
30 settle the allegations described herein without a formal hearing. Therefore, without the taking of
31 any evidence or testimony; the making of any argument; or the adjudication of any issue in this
32 matter, and in accordance with 40 C.F.R. 22.13(b), EPA and Respondent agree to settle this
33 matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”). This
34 CAFO simultaneously initiates and concludes this proceeding in accordance with 40 C.F.R.
35 §§22.13(b) and 22.18(b).

36 **A. AUTHORITY AND PARTIES**

37 1. This administrative proceeding for the assessment of a civil administrative penalty is
38 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7

1 U.S.C. § 136 et seq. (“FIFRA” or the “Act”), and the Consolidated Rules of Practice Governing
2 the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension
3 of Permits at 40 C.F.R. Part 22.

4 2. Complainant is the Assistant Director of the Water and Pesticide Branch, Enforcement
5 Division, EPA Region IX, who has been duly delegated the authority to commence and settle an
6 enforcement action in this matter.

7 3. Respondent is a Delaware corporation that owns, operates, or otherwise controls
8 facilities located in Arizona and central California. Now named Nutrien Ag Solutions, Inc.,
9 Respondent was doing business as Crop Production Services, Inc. prior to July 1, 2018.

10 **B. STATUTORY AND REGULATORY AUTHORITIES**

11 4. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), a *person* is “any individual,
12 partnership, association, corporation, or any organized group of persons whether incorporated or
13 not.”

14 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), a *pesticide* is, among other things,
15 “any substance or mixture of substances intended for preventing, destroying, repelling, or
16 mitigating any pest.”

17 6. A pesticide is *misbranded* if:

18 (a). its label does not bear the registration number assigned under section 136(e) of
19 FIFRA to each establishment in which it was produced. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. §
20 136(q)(1)(D);

21 (b). any word, statement, or other information required by or under the authority of
22 FIFRA to appear on the label or labeling is not prominently placed thereon. Section 2(q)(1)(E) of
23 FIFRA, 7 U.S.C. § 136(q)(1)(E); or

24 (c). there is not affixed to its container, and to the outside container or wrapper of the
25 retail package, if there be one, through which the required information on the immediate
26 container cannot be clearly read, a label bearing the net weight or measure of the content. Section
27 2(q)(2)(C)(ii) of FIFRA, 7 U.S.C. § 136(q) (2)(C)(ii).

28 7. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), a *label* is “the written, printed,
29 or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

30 8. Under section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term *labeling* means

1 “all labels and all other written, printed or graphic matter accompanying the pesticide or device at
2 any time.”

3 9. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term, *to distribute or sell*,
4 means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
5 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
6 offer to deliver.”

7 10. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
8 person in any state to distribute or sell to any person any pesticide that is adulterated or
9 misbranded.

10 11. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(1)(S), it is unlawful for any
11 person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and
12 136q.

13 12. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
14 regulations governing the labeling requirements for pesticides and devices, which are codified at
15 40 C.F.R. Part 156.

16 13. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
17 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
18 containers and pesticide containment structures (“the Container/Containment regulations”),
19 which are codified at 40 C.F.R. Part 165.

20 14. *Agricultural pesticide* means “any pesticide product labeled for use in or on a farm,
21 forest, nursery, or greenhouse.” 40 C.F.R. § 165.3.

22 15. *Appurtenance* means “any equipment or device which is used for the purpose of
23 transferring a pesticide from a stationary pesticide container or to any refillable container,
24 including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering
25 devices.” 40 C.F.R. § 165.3.

26 16. *Containment pad* means “any structure that is designed and constructed to intercept
27 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.” 40
28 C.F.R. § 165.3.

29 17. *Containment structure* means “either a secondary containment unit or a containment
30 pad.” 40 C.F.R. § 165.3.

1 18. *Facility* means “all buildings, equipment, structures, and other stationary items which
2 are located on a single site or on contiguous or adjacent sites and which are owned or operated by
3 the same person (or by any person who controls, who is controlled by, or who is under common
4 control with such person).” 40 C.F.R. § 165.3.

5 19. *Establishment* means “any site where a pesticidal product, active ingredient, or
6 device is produced, regardless of whether such site is independently owned or operated, and
7 regardless of whether such site is domestic and producing a pesticidal product for export only, or
8 whether the site is foreign and producing any pesticidal product for import into the United
9 States.” 40 C.F.R. § 165.3.

10 20. *Operator* means “any person in control of, or having responsibility for, the daily
11 operation of a facility at which a containment structure is located.” 40 C.F.R. § 165.3.

12 21. *Owner* means “any person who owns a facility at which a containment structure is
13 required.” 40 C.F.R. § 165.3.

14 22. *Pesticide dispensing area* means “an area in which pesticide is transferred out of or
15 into a container.” 40 C.F.R. § 165.3.

16 23. *Produce* means “to manufacture, prepare, propagate, compound, or process any
17 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active
18 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container
19 of any pesticide or device.” 40 C.F.R. § 165.3.

20 24. *Refilling establishment* means “an establishment where the activity of repackaging
21 pesticide product into refillable containers occurs.” 40 C.F.R. § 165.3.

22 25. *Refillable container* means “a container that is intended to be filled with pesticide
23 more than once for sale or distribution.” 40 C.F.R. § 165.3.

24 26. *Refiller* means “a person who engages in the activity of repackaging pesticide product
25 into refillable containers.” 40 C.F.R. § 165.3.

26 27. *Repackage* means, for the purposes of this part, “to transfer a pesticide formulation
27 from one container to another without a change in the composition of the formulation, the
28 labeling content, or the product's EPA registration number, for sale or distribution.” 40 C.F.R. §
29 165.3.

30 28. *Secondary containment unit* means “any structure, including rigid diking, that is

1 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff
2 and leaching from stationary pesticide containers.” 40 C.F.R. § 165.3.

3 29. *Stationary pesticide container* means “a refillable container that is fixed at a single
4 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30
5 consecutive days, and that holds pesticide during the entire time.” 40 C.F.R. § 165.3.

6 30. *Transport vehicle* means “a cargo-carrying vehicle such as an automobile, van,
7 tractor, truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode.”
8 40 C.F.R. § 165.3.

9 31. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
10 distributor who violates any provision of the Act may be assessed a civil penalty of not more than
11 \$7,500 for each violation that occurred after January 12, 2009 through November 2, 2015, or is
12 assessed before August 1, 2016, and not more than \$19,446 for each violation that occurred after
13 November 2, 2015 and is assessed on or after January 15, 2018. Section 14(a)(1) of the Act, 7
14 U.S.C. § 136l(a)(1), as amended by the Federal Civil Penalties Inflation Adjustment Act
15 Improvement Act, 28 U.S.C. §2461 note, Pub. L. 114-74, and the Civil Monetary Penalty
16 Inflation Adjustment Rule, 40 C.F.R. Part 19.

17 C. COMPLAINANT’S ALLEGATIONS

18 32. Respondent is a *person* as that term is defined by section 2(s) of FIFRA, 7 U.S.C. §
19 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

20 33. Respondent is an *owner* and *operator* of businesses that are each a *facility* that is an
21 *establishment*, as those terms are defined by 40 C.F.R. § 165.3, located at: 1755 North Broadway
22 Avenue, Stockton, California, EPA Est. No. 51896-CA-65 (“Stockton Facility”); 12768 Avenue
23 402, Cutler, California, EPA Est. No. 51896-CA-33 (“Cutler Facility”); 16275 9th Street, Huron,
24 California, EPA Est. No. 51896-CA-46 (“Huron Facility”); 210 S Pacific Street, Coolidge, AZ,
25 EPA Est. No. 51896-AZ-2 (“Coolidge Facility”); 13241 Crown Avenue, Hanford, California,
26 EPA Est. No. 51896-CA-43 (“Hanford Facility”); 9355 Copus Road, Bakersfield, California,
27 EPA Est. No. 51896-CA-31 (“Bakersfield Facility”); 930 Woollomes Avenue, Delano,
28 California, EPA Est. No. 51896-CA-34 (“Delano Facility”); and 3135 Brown Road, Santa Maria,
29 California, EPA Est. No. 51896-CA-63 (“Santa Maria Facility”).

30 34. At all times relevant to this CAFO, Respondent repackaged for distribution and sale

1 the following *agricultural pesticides*, as that term is defined by 40 C.F.R. § 165.3: Narrow Range
2 415 Spray Oil, EPA Reg. No. 34704-1025 (“Narrow Range 415 Spray Oil”), at the Stockton,
3 Cutler, Hanford, Bakersfield, and Delano Facilities; Prowl H2O, EPA Reg. No. 241-418 (“Prowl
4 H2”) at the Stockton, Huron, Hanford, and Delano Facilities; First Choice Gavicide Super 90,
5 EPA Reg. No. 34705-1024 (“Gavicide Super 90”) at the Cutler, Bakersfield, and Delano
6 Facilities; Roundup PowerMax, EPA Reg. No. 524-549 (“Roundup PowerMax”) at the Huron,
7 Coolidge, Bakersfield and Delano Facilities; Makaze, EPA Reg. No. 34704-890 (“Makaze”) at
8 the Huron, Hanford, and Delano Facilities; Roundup WeatherMax, EPA Reg. No. 524-537
9 (“Roundup WeatherMax”), at the Huron and Hanford Facilities; Gramoxone SL 2.0, EPA Reg.
10 No. 100-1431 (“Gramoxone”) at the Huron and Hanford Facilities; Touchdown Total, EPA Reg.
11 No. 100-1169 (“Touchdown Total”) at the Huron Facility; Trifluralin, EPA Reg. No. 34704-792
12 (“Trifluralin”) at the Hanford Facility; Sectagon 42, EPA Reg. No. 61842-6 (“Sectagon 42”) and
13 Sectagon K54, EPA Reg. No. 61842-7 (“Sectagon K54”) at the Bakersfield Facility; Vapam HL,
14 EPA Reg. No. 5481-468, (“Vapam HL”) at the Bakersfield and Santa Maria Facilities; Gavicide
15 470 Spray Oil, EPA Reg. No. 34704-1066, (“Gavicide 470”) at the Delano Facility; and K-Pam
16 HL, EPA Reg. No. 5481-483 (“K-Pam HL”) at the Santa Maria Facility.

17 35. At all times relevant to this CAFO, at the Hanford, Bakersfield, and Santa Maria
18 Facilities, Respondent provided commercial pesticide application services to customers.

19 36. At the Bakersfield facility, Respondent applies for compensation Telone II, EPA Reg.
20 No. 62719-32 (“Telone II”) which is an *agricultural pesticide*, as that term is defined by 40
21 C.F.R. § 165.3.

22 37. Each Facility listed in Paragraph **33** is a *refilling establishment* that *repackages*
23 *agricultural pesticides* and whose principal business is retail sale, or a business which applies an
24 *agricultural pesticide* for compensation, as those terms are defined by 40 C.F.R. § 165.3.

25 38. Owners or operators of businesses that (1) apply *agricultural pesticides* for
26 compensation or (2) are refilling establishments and that also have a stationary pesticide
27 container or a pesticide dispensing area must comply with the secondary container requirements
28 of the Container/Containment regulations. 40 C.F.R. § 165.80(b).

29 39. Each Facility listed in Paragraph **33** has one or more *stationary pesticide container*
30 that must comply with the secondary container requirements of the Container/Containment

1 regulations.

2 (A). Stationary pesticide containers designed to hold undivided quantities of agricultural
3 pesticides equal to or greater than 500 gallons of liquid pesticide must have secondary
4 containment units that comply with the provisions of the Containment regulations. 40 C.F.R. §
5 165.81.

6 (B). At all times relevant to this CAFO, the following tanks were located within the
7 following areas that are each a *secondary containment unit*, as that term is defined by 40 C.F.R. §
8 165.3:

9 (1) Stockton Tank 6 located within the Stockton tank farm 1 at the Stockton
10 Facility;

11 (2) Stockton Tank H29 located within Stockton tank farm 2 at the Stockton
12 Facility;

13 (3) Cutler Tanks 20 and 21 located within the Cutler containment area at the
14 Cutler Facility;

15 (4) Huron Tanks 1, 2, 5, 6, 7 and 13 located within the Huron containment area at
16 the Huron Facility;

17 (5) Two Roundup PowerMax Tanks located within the Coolidge containment
18 area at the Coolidge Facility;

19 (6) Hanford Tank 5 located within Hanford containment area 1 at the Hanford
20 Facility;

21 (7) Hanford Tank 1 located within Hanford containment area 2 at the Hanford
22 Facility;

23 (8) Hanford Narrow Range Tank located in Hanford containment area 3 at the
24 Hanford; Facility;

25 (9) Bakersfield Tanks 13 and 14 located within the Vapam HL secondary
26 containment area within the Bakersfield East tank farm area at the Bakersfield Facility;

27 (10) Bakersfield Tanks 17 and 19 located within Bakersfield containment pad 1
28 within the Bakersfield East tank farm area at the Bakersfield Facility;

29 (11) Bakersfield Tanks 28, 29, 30, 32, and 33 located within the Bakersfield South
30 tank farm area secondary containment area at the Bakersfield Facility;

1 (12) Delano Tanks 20, 21, 44 and 57 located within the combined Delano Spray
2 Oil containment area at the Delano Facility;

3 (13) Delano Tanks 51 and 52 located within the Delano Roundup containment
4 area at the Delano Facility; and

5 (14) Santa Maria K-Pam and Vapam Tanks located within the Santa Maria
6 containment area at the Santa Maria Facility.

7 (C). At all times relevant to this CAFO, each of the tanks listed in Paragraph 39 (A) was
8 a *stationary pesticide container*, as that term is defined by 40 C.F.R. § 165.3, holding undivided
9 quantities of agricultural pesticides equal to or greater than 500 gallons of liquid pesticide.

10 40. *Pesticide dispensing areas* are subject to the Container/Containment regulations and
11 must have a containment pad that complies with the requirements of the Containment regulations
12 if any of the following activities occur: (1) refillable containers of agricultural pesticides are
13 emptied, cleaned, or rinsed; (2) agricultural pesticides are dispensed from stationary pesticide
14 containers designed to hold undivided quantities equal or greater than 500 gallons of liquid
15 pesticides or 4,000 pounds of dry pesticides for any purpose; (3) agricultural pesticides are
16 dispensed from a transport vehicle for purposes of filling a refillable container; or (4) agricultural
17 pesticides are dispensed from any other container for the purpose of refilling a refillable
18 container for sale or distribution. 40 C.F.R. § 165.82(a).

19 41. At all times relevant to this CAFO, Respondent used the following areas to dispense
20 and refill agricultural pesticides, and each is a *pesticide dispensing area* and *containment pad*, as
21 those terms are defined by 40 C.F.R. § 165.3, and subject to the Container/Containment
22 regulations: the Cutler loading pad at the Cutler Facility; the Huron loading pad at the Huron
23 Facility; Hanford pads 1, 2 and 3 at the Hanford Facility; Bakersfield containment pads 1 and 2 at
24 the Bakersfield Facility; and the Delano Spray Oil loading pad, the Delano Makaze Loading Pad,
25 and the Delano Roundup pesticide dispensing area at the Delano Facility.

26 42. At all times relevant to this CAFO, all containment structures relevant to this CAFO
27 at the Stockton, Cutler, Huron, Hanford, Bakersfield, Delano and Santa Maria Facilities were
28 constructed on or before November 16, 2006 and are each *existing containment structures*, as
29 that term is defined by 40 C.F.R. § 165.83(b).

30 43. Installation began on the Coolidge containment area after November 16, 2006. At all

1 times relevant to this CAFO, the Coolidge containment area is a new containment structure, as
2 that term is defined by 40 C.F.R. § 165.83(a).

3 44. On or about the following dates, inspectors from the Arizona Department of
4 Agriculture (“ADA”), EPA Region 9, and the California Department of Pesticide Regulation
5 (“CDPR”), conducted the following inspections of the Facilities listed in Paragraph **33**: March 5,
6 2015, at the Coolidge Facility by ADA inspectors; March 25, 2015 at the Hanford Facility and
7 June 22, 2016 at the Delano Facility by EPA Region 9 inspectors; and May 23, 2013 at the
8 Stockton Facility, October 2, 2013 at the Cutler Facility, February 4, 2015 at the Huron Facility,
9 December 10, 2015 at the Bakersfield Facility, April 23, 2014 at the Delano Facility, and
10 February 9, 2017 at the Santa Maria Facility by CDPR inspectors.

11 **Counts 1 - 4**

12 **Use of an external sight gauge prohibited by 40 C.F.R. § 165.45(f)(2)(ii)**

13 45. At all times relevant to this CAFO, Respondent is a refiller who is not the registrant
14 of the pesticides listed in Paragraph **34**.

15 46. Refillers of a pesticide product who are not the registrant of that pesticide product are
16 prohibited from having external sight gauges, which are pesticide-containing hoses or tubes that
17 run vertically along the exterior of the container from the top to the bottom, on stationary
18 containers of liquid pesticides designed to hold undivided quantities of pesticides equal to or
19 greater than 500 gallons (1,890 liters) of liquid pesticide. 40 C.F.R. §§ 165.40(b)(2) and
20 165.45(f)(2)(ii).

21 47. On and about May 23, 2013, Stockton Tank 6 holding Narrow Range 415 Spray Oil
22 at the Stockton Facility had a hose or tube running vertically along the exterior of the tank from
23 the top to the bottom showing the level of liquid pesticide held in that tank.

24 48. On and about June 22, 2016, Delano Tanks 20 and 21 holding Narrow Range 415
25 Spray Oil and Delano Tank 57 holding Makaze each had a hose or tube running vertically along
26 the exterior of the tank from the top to the bottom showing the level of liquid pesticide held in
27 that tank.

28 49. At all times relevant to this CAFO, the tubes running vertically on Stockton Tank 6,
29 and Delano Tanks 20, 21, and 57 are each an external sight gauge, as defined by 40 C.F.R. §
30 165.45(f)(2)(ii).

1 62. On or about February 4, 2015, the Huron containment area had unsealed cracks.

2 63. On or about March 25, 2015, Hanford containment area 1 and pad 1, Hanford
3 containment area 2 and pad 2, and Hanford containment area 3 and pad 3 each had unsealed
4 cracks.

5 64. On or about December 10, 2015, the Bakersfield containment pad 2 had unsealed
6 cracks.

7 65. On or about October 2, 2013, February 4, 2015, March 25, 2015, and December 10,
8 2015, Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by failing to
9 keep existing containment structures liquid-tight with cracks, seams and joints appropriately
10 sealed, as required by 40 C.F.R. § 165.87(a)(1), for the Cutler containment area and loading pad,
11 Huron containment area, Hanford containment area 1 and pad 1, Hanford containment area 2 and
12 pad 2, Hanford containment area 3 and pad 3, and the Bakersfield containment pad 2,
13 respectively.

14 **Count 16**

15 **Failure to meet material specifications as required by 40 C.F.R. §§ 165.82 and**
16 **165.87(a)(2)**

17 66. An existing containment structure for a pesticide dispensing area must not be
18 constructed of asphalt. 40 C.F.R. §§ 165.82 and 165.87(a)(2). (see Paragraph 40 above).

19 67. On or about June 22, 2016, the Delano Roundup pesticide dispensing area was
20 constructed of asphalt.

21 68. On or about June 22, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
22 U.S.C. § 136j(a)(2)(S) by having an existing containment structure at the Delano Facility that
23 was constructed of asphalt, in violation of 40 C.F.R. §§ 165.82 and 165.87(a)(2).

24 **Counts 17 - 18**

25 **Failure to have stationary pesticide containers in a containment structure that complies**
26 **with the material specifications of 165.87(a)(2), as required by 40 C.F.R. § 165.81**

27 69. A stationary pesticide container subject to the Container/Containment regulations
28 must have a secondary containment unit that is not constructed of asphalt. 40 C.F.R. §§ 165.81
29 and 165.87(a)(2).

1 **Failure to meet capacity requirements for containment structures as required by 40**

2 **C.F.R. § 165.87(c)**

3 77. Existing secondary containment units for stationary containers of liquid pesticides
4 must have a capacity of at least 100 percent of the volume of the largest stationary pesticide
5 container plus the volume displaced by other containers and appurtenances within the unit. 40
6 C.F.R. § 165.87(c)(1).

7 78. On or about October 2, 2013, the largest pesticide tank in the Cutler containment area
8 held approximately 11,300 gallons and the Cutler containment area had a capacity less than
9 11,300 gallons.

10 79. On or about April 23, 2014 and June 22, 2016, the largest pesticide tank in the
11 Delano Spray Oil containment area held approximately 20,304 gallons, and the displacement of
12 other tanks was approximately 5,878 gallons and the Delano Spray Oil containment area had a
13 capacity under 21,000 gallons.

14 80. On or about April 23, 2014 and June 22, 2016, the largest pesticide tank in the
15 Delano Roundup containment area held approximately 4,176 gallons and the Delano Roundup
16 containment area had a capacity of under 4,176 gallons.

17 81. Respondent failed to meet capacity requirements as required by 40 C.F.R. §
18 165.87(c)(1) on or about October 2, 2013 for the Cutler containment area, on or about April 23,
19 2014 and June 22, 2016 for the Delano Spray Oil containment area, and on or about April 23,
20 2014 and June 22, 2016 for the Delano Roundup containment area.

21 82. Existing containment pads must have a holding capacity of at least 750 gallons in
22 pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with
23 a volume of 750 gallons or greater, and at least 100 percent of the volume of the largest pesticide
24 container or pesticide-holding equipment used on the pad in pesticide dispensing areas which do
25 not have a pesticide container or pesticide-holding equipment with a volume of at least 750
26 gallons. 40 C.F.R. §§ 165.87(c)(2) and (3).

27 83. On or about October 2, 2013, Respondent used the Cutler pad for pesticide holding
28 equipment (trucks) with a volume of 750 gallons or greater and the Cutler pad had a capacity
29 under 750 gallons.

1 84. On or about March 25, 2015, Respondent used the Hanford pad 1 for pesticide
2 holding equipment (trucks) with a volume of 750 gallons or greater and Hanford pad 1 had a
3 capacity under 750 gallons.

4 85. On or about March 25, 2015, Respondent used the Hanford pad 2 for pesticide
5 holding equipment (trucks) with a volume of 750 gallons or greater and the Hanford pad 2 had a
6 capacity under 750 gallons.

7
8 86. Respondent failed to meet capacity requirements as required by 40 C.F.R. §
9 165.87(c) on or about October 2, 2013 for the Cutler pad, and March 25, 2015 for Hanford pad 1
10 and Hanford pad 2.

11 87. Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by
12 failing to meet capacity requirements as required by 40 C.F.R. § 165.87(c) for each of the
13 following containment structures: Cutler pad, Cutler containment area, Hanford pad 1, Hanford
14 pad 2, Delano Spray Oil containment area, and Delano Roundup containment area.

15 **Counts 28 – 32**

16 **Failure to anchor or elevate each stationary container of liquid pesticides as required by 40**
17 **C.F.R. § 165.87(d)**

18 88. Each stationary container of liquid pesticides protected by an existing containment
19 unit must be anchored or elevated to prevent flotation in the event that the secondary containment
20 unit fills with liquid. 40 C.F.R. § 165.87(d).

21 89. On or about May 23, 2013, Respondent failed to anchor or elevate Stockton Tank 6
22 as required by 40 C.F.R. § 165.87(d).

23 90. On or about October 2, 2013, Respondent failed to anchor or elevate Cutler Tank 21
24 and Cutler Tank 20 as required by 40 C.F.R. § 165.87(d).

25 91. On or about March 25, 2015, Respondent failed to anchor or elevate the Hanford
26 Narrow Range Tank as required by 40 C.F.R. § 165.87(d).

27 92. On or about February 9, 2017, Respondent failed to anchor or elevate the Santa
28 Maria K-Pam Tank as required by 40 C.F.R. § 165.87(d).

29 93. Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by
30 failing to anchor or elevate Stockton Tank 6, Cutler Tank 20, Cutler Tank 21, the Hanford

1 Narrow Range Tank and the Santa Maria K-Pam Tank.

2 **Counts 33 - 35**

3 **Failure to ensure that pesticide spills and leaks on or in any containment structure are**
4 **collected and recovered as required by 40 C.F.R. § 165.90(a)(2)**

5 94. The owner or operator of a pesticide containment structure must ensure that pesticide
6 spills and leaks on or in any containment structure are collected and recovered in a manner that
7 ensures protection of human health and the environment (including surface water and
8 groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must
9 occur no later than the end of the day on which pesticides have been spilled or leaked except in
10 circumstances where a reasonable delay would significantly reduce the likelihood or severity of
11 adverse effects to human health or the environment. 40 C.F.R. § 165.90(a)(2).

12 95. On or about March 5, 2015, Respondent had not cleaned up old pesticide spills and
13 leaks in the Coolidge containment area by the end of the day and the Coolidge containment area
14 floor also had fresh pesticide spills and leaks that were not being collected and recovered.

15 96. On or about March 25, 2015, Respondent had not cleaned up old pesticide spills and
16 leaks in Hanford containment structures by the end of the day.

17 97. On or about June 22, 2016, Respondent had not cleaned up old pesticide spills and
18 leaks in the Delano containment areas by the end of the day.

19 98. Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by
20 failing to ensure that pesticide spills and leaks on or in any containment structure are collected
21 and recovered in a manner that ensures protection of human health and the environment and
22 maximum practicable recovery of the pesticide spilled or leaked, as required by 40 C.F.R. §
23 165.90(a)(2) on or about March 5, 2015 at the Coolidge Facility, March 25, 2015 at the Hanford
24 Facility, and June 22, 2016 at the Delano Facility.

25 **Counts 36 - 37**

26 **Failure to seal cracks and gaps in containment structures as required by 40 C.F.R. §**
27 **165.90(b)(2)**

28 99. The owner or operator of a pesticide containment structure must initiate repair to any
29 areas showing visible signs of damage and seal any cracks and gaps in the containment structure
30 or appurtenances with material compatible with the pesticide being stored or dispensed no later

1 than the end of the day on which damage is noticed and complete repairs within a timeframe that
2 is reasonable.

3 100. On or about April 23, 2014, the Delano Spray Oil loading pads had unsealed cracks.
4 Between April 23, 2014 and June 22, 2016, Respondent's records of inspection of the Delano
5 Facility document cracks in containment structures but no repairs are documented.

6 101. On or about June 22, 2016, the Delano Makaze loading pad had unsealed cracks.

7 102. On or about June 22, 2016, the Delano spray oil loading pad had unsealed cracks.

8 103. On or about June 22, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
9 U.S.C. § 136j(a)(2)(S) by failing to seal cracks and gaps in each of the Delano Makaze loading
10 pad and the Delano Spray Oil loading pad no later than the end of the day on which damage is
11 noticed, as required by 40 C.F.R. § 165.90(b)(2).

12 **Counts 38 – 40**

13 **Failure to maintain records as required by 40 C.F.R. § 165.95(a)**

14 104. Facility owners or operators subject to the requirements of the Containment
15 regulations must maintain, and furnish for inspection and copying, records of inspection and
16 maintenance for each containment structure and for each stationary pesticide container and its
17 appurtenances, and must include the name of the person conducting the inspection or
18 maintenance, date the inspection or maintenance was conducted, conditions noted, and specific
19 maintenance performed, as required by 40 C.F.R. § 165.95(a).

20 105. On or about December 10, 2015, Respondent did not maintain records for each
21 containment structure of the Bakersfield South tank farm, the Bakersfield East tank farm,
22 Bakersfield containment pads 1 and 2, and for each stationary pesticide container and its
23 appurtenances that identified the conditions noted and specific maintenance performed as
24 required by 40 C.F.R. § 165.95(a).

25 106. On or about March 25, 2015, Respondent not maintain records Hanford
26 containment areas 1 and 2 and Hanford pads 1 and 2 and each stationary pesticide container and
27 its appurtenances that identified the conditions noted and specific maintenance performed as
28 required by 40 C.F.R. § 165.95(a).

29 107. On or about June 22, 2016, Respondent did not maintain records for each of the
30 Delano Spray Oil containment area, Delano Roundup containment area, Delano Spray Oil

1 loading pad, Delano Mazake loading pad, Delano Roundup pesticide dispensing area, and each
2 stationary pesticide container and its appurtenances that identified the conditions noted and
3 specific maintenance performed as required by 40 C.F.R. § 165.95(a).

4 108. Respondent violated section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S) by
5 failing to maintain records as required by 40 C.F.R. § 165.95(a) on or about December 10, 2015
6 at the Bakersfield Facility, March 25, 2015 at the Hanford Facility, and June 22, 2016 at the
7 Delano Facility.

8 **Counts 41 – 52**

9 **Distribution and Sale of Misbranded Pesticides**

10 109. When pesticide products are stored in bulk containers, whether mobile or stationary,
11 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
12 directions for use, must be securely attached to the container in the immediate vicinity of the
13 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B).

14 (a) The label includes marking the producing establishment registration number preceded
15 by the phrase “EPA Est.”, of the final establishment at which the product was produced. 40
16 C.F.R. § 156.10(f).

17 (b) The label includes marking the net contents as prescribed in 40 C.F.R. § 156.10(d). 40
18 C.F.R. § 156.10(a)(1)(iii). Variation above minimum content or around an average is permissible
19 only to the extent that it represents deviation unavoidable in good manufacturing practice.
20 Variation below a stated minimum is not permitted. 40 C.F.R. § 156.10(d)(6). For a pesticide
21 product packaged in a refillable container, an appropriately sized area on the label may be left
22 blank to allow the net weight to be marked in by the refiller prior to distribution or sale of the
23 pesticide, but the refiller must ensure that the net contents statement appears on the label. 40
24 C.F.R. §§ 156.10(d)(7) and 165.70(i).

25 (c) The label includes identification of container types as nonrefillable or refillable with
26 the statements required by 40 C.F.R. § 156.140.

27 110. On or about May 23, 2013, Respondent’s failure to attach to Stockton Tank 6 a
28 copy of the label for Narrow Range 415 Spray Oil that identified the net contents and the
29 establishment number of the final establishment at which the pesticide was last produced as
30 required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B), 156.10(f), and 156.10(d),

1 constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q).

2 111. On or about May 23, 2013, Respondent's failure to attach to Stockton Tank H29 a
3 copy of the label for Prowl H2O that included the container type statements required by 40
4 C.F.R. § 156.140 constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7
5 U.S.C. § 136(q).

6 112. On or about October 2, 2013, Respondent's failure to attach to Cutler Tank 20 a
7 copy of the label for Gavicide Super 90 that identified the net contents and establishment number
8 of the final establishment at which the pesticide was last produced, as required by 40 C.F.R. §§
9 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B), 156.10(f), and 156.10(d), constitutes *misbranding*, as that
10 term is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q).

11 113. On or about October 2, 2013, Respondent's failure to attach to Cutler Tank 21 a
12 copy of the label for Narrow Range 415 Spray Oil that identified the net contents and
13 establishment number of the final establishment at which the pesticide was last produced, as
14 required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B), 156.10(f), and 156.10(d),
15 constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7 U.S.C. § 136(q).

16 114. On or about February 4, 2015, Respondent's failure to attach to Huron Tank 1 a
17 copy of the label for Roundup PowerMax that identified the net contents of the amount of
18 pesticide last put into the tank, as required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B),
19 and 156.10(d), constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7
20 U.S.C. § 136(q).

21 115. On or about February 4, 2015, Respondent's failure to attach to Huron Tank 5 a
22 copy of the label for Roundup WeatherMax that identified the net contents of the amount of
23 pesticide last put into the tank, as required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B),
24 and 156.10(d), constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7
25 U.S.C. § 136(q).

26 116. On or about February 4, 2015, Respondent's failure to attach to Huron Tank 2 a
27 copy of the label for Makaze that identified the establishment number of the final establishment
28 at which the pesticide was last produced, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and
29 156.10(f), constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7 U.S.C. §
30 136(q).

1 117. On or about March 25, 2015, Respondent's failure to attach to Hanford Tank 1 a
2 copy of the label for Trifluralin that identified the net contents of the amount of pesticide last put
3 into the tank and the EPA establishment number of the final establishment at which the pesticide
4 was last produced as required by 40 C.F.R. §§ 156.10(a)(1)(iii), 156.10(a)(4)(ii)(B), 156.10(f),
5 and 156.10(d), constitutes *misbranding*, as that term is defined by section 2(q) of FIFRA, 7
6 U.S.C. § 136(q).

7 118. On or about March 25, 2015, Respondent's failure to attach to Hanford Narrow
8 Range Tank a copy of the label for Narrow Range 415 Spray Oil that identified the net contents
9 of the amount of pesticide last put into the tank, as required by 40 C.F.R. §§ 156.10(a)(1)(iii),
10 156.10(a)(4)(ii)(B), and 156.10(d), constitutes *misbranding*, as that term is defined by section
11 2(q) of FIFRA, 7 U.S.C. § 136(q).

12 119. On or about December 10, 2015, Respondent's failure to attach to Bakersfield Tank
13 28 a copy of the label for Sectagon 42 that identified the establishment number of the final
14 establishment at which the pesticide was last produced, as required by 40 C.F.R. §§
15 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section 2(q)
16 of FIFRA, 7 U.S.C. § 136(q).

17 120. On or about December 10, 2015, Respondent's failure to attach to Bakersfield Tank
18 30 a copy of the label for Sectagon K54 that identified the establishment number of the final
19 establishment at which the pesticide was last produced, as required by 40 C.F.R. §§
20 156.10(a)(4)(ii)(B) and 156.10(f), constitutes *misbranding*, as that term is defined by section 2(q)
21 of FIFRA, 7 U.S.C. § 136(q).

22 121. On or about December 10, 2015, Respondent's failure to attach to Bakersfield
23 Tanks 13 and 14 a copy of the label for Vapam HL that identified the net contents of the amount
24 of pesticide last put into the tank and the EPA establishment number of the final establishment at
25 which the pesticide was last produced as required by 40 C.F.R. §§ 156.10(a)(1)(iii),
26 156.10(a)(4)(ii)(B), 156.10(f), and 156.10(d), constitutes *misbranding*, as that term is defined by
27 section 2(q) of FIFRA, 7 U.S.C. § 136(q).

28 122. Respondent violated section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by
29 distributing or selling misbranded pesticides on or about the following dates: Narrow Range 415
30 Spray Oil on May 23, 2013, October 2, 2013, and March 25, 2015, Prowl H2O on May 23, 2013,

1 Gavicide Super 90 on October 2, 2013, Roundup PowerMax, Roundup WeatherMax and Makaze
2 on February 4, 2015, Trifluralin on March 25, 2015, and Sectagon 42, Sectagon K54 and Vapam
3 HL on December 10, 2015.

4 D. RESPONDENT'S ADMISSIONS

5 123. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding,
6 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
7 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section
8 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to
9 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this
10 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and
11 (vi) waives the right to appeal the proposed final order contained in this CAFO.

12 E. CIVIL ADMINISTRATIVE PENALTY

13 124. Respondent consents to the assessment of a joint and severable civil administrative
14 penalty in the amount of **THREE HUNDRED THIRTY-ONE THOUSAND THREE**
15 **HUNDRED FIFTY-THREE DOLLARS (\$331,353)** as final settlement and complete
16 satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C of
17 the CAFO and under the Act.

18 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
19 date of this CAFO by one of the methods listed below:

- 20 i. Respondent may pay online through the Department of the Treasury
21 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
22 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
23 complete the SFO Form Number 1.1.
24
25 ii. Respondent may pay by remitting a certified or cashier's check, including
26 the name and docket number of this case, for the amount, payable to
27 "Treasurer, United States of America," and sent as follows:
28

29 Regular Mail:

30 U.S. Environmental Protection Agency
31 PO Box 979077
32 St. Louis, MO 63197-9000
33

34 Overnight/Signed Receipt Confirmation Mail:

35 U.S. Environmental Protection Agency
36 ATTN Box 979077

1 1005 Convention Plaza
2 Mail Station SL-MO-C2GL
3 St. Louis, MO 63101
4

- 5 iii. Respondent may also pay the civil penalty using any method, or
6 combination of methods, provided on the following website:
7

8 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
9

10 If clarification regarding a particular method of payment remittance is needed,
11 contact the EPA's Cincinnati Finance Center at (513) 487-2091.
12

13 b. Respondent shall identify each and every payment with the name and docket
14 number of this case; and

15 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
16 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
17 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
18 other information required to demonstrate that payment has been made according to EPA
19 requirements, in the amount due, and identified with the name and docket number of this case),
20 including proof of the date payment was made, along with a transmittal letter, indicating
21 Respondent's names, the case title, and docket number, to the following addresses:

22 Regional Hearing Clerk
23 Office of Regional Counsel (ORC-1)
24 U.S. Environmental Protection Agency, Region IX
25 75 Hawthorne Street
26 San Francisco, CA 94105
27

28 Panah Stauffer
29 Enforcement Division (ENF 3-3)
30 U.S. Environmental Protection Agency, Region IX
31 75 Hawthorne Street
32 San Francisco, CA 94105
33

34 125. In the event that Respondent fail to pay the civil administrative penalty assessed
35 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
36 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
37 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
38 immediately become due and payable.

1 can result in significant penalties, including the possibility of fines and imprisonment for
2 knowing submission of such information.

3 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

4 128. This Consent Agreement constitutes the entire agreement between the Respondent
5 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
6 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
7 liability against Respondent for the violations alleged in Section I.C of this CAFO.

8 129. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
9 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
10 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
11 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
12 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
13 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
14 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
15 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
16 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
17 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
18 permits.

19 130. Except as set forth in Paragraph **126** above, EPA and Respondent shall each bear its
20 own attorney's fees, costs, and disbursements in this action.

21 131. For the purposes of state and federal income taxation, Respondent shall not claim a
22 deduction for any civil penalty payment made pursuant to this CAFO.

23 132. This CAFO will be available to the public and does not contain any confidential
24 business information.

25 133. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
26 CAFO shall be the date on which the accompanying Final Order, having been signed by the
27 Regional Judicial Officer, is filed.

28 134. The provisions of this CAFO shall be binding on Respondent and on Respondent's
29 officers, directors, employees, agents, servants, authorized representatives, successors, and
30 assigns.

1 135. The undersigned representatives of each party to this Consent Agreement certify
2 that each is duly authorized by the party whom he or she represents to enter into the terms and
3 conditions of this Consent Agreement and Final Order and bind that party to it.


4
5 **NUTRIEN AG SOLUTIONS, INC., f/d/b/a CROP PRODUCTION SERVICES, INC.:**

6
7
8 Date: 7-3-18 By: Sherri Kuhlmann

9
10
11 Name: Sherri Kuhlmann

12
13
14 Title: V.P.

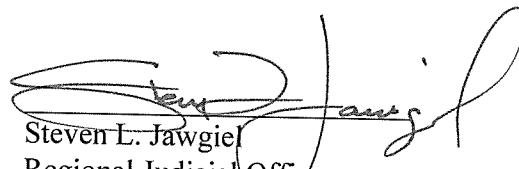
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20 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

21
22
23
24 Date: 8/20/2018 By: 
25 ENZABETH BERG
26 Acting Assistant Director
27 Water & Pesticides Branch
28 Enforcement Division
29 U.S. Environmental Protection Agency,
30 Region IX
31
32

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **THREE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED FIFTY-THREE DOLLARS (\$331,353)** in accordance with the terms set forth in the Consent Agreement.

Date: 08/20/18


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2018-0014) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

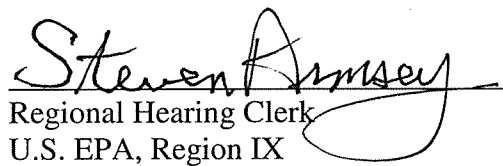
A copy was mailed via CERTIFIED MAIL to:

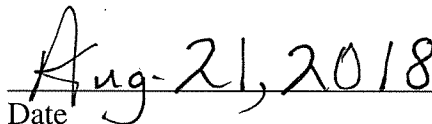
Sherri Kuhlmann
Vice President and Chief Counsel
Nutrien Ag Solutions, Inc.
3005 Rocky Mountain Avenue
Loveland, CO 80538

CERTIFIED MAIL NUMBER: 7015 0640 0001 1121 8311

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date