

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

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BEFORE THE ADMINISTRATOR

In the Matter of: )  
 )  
D & S Fertilizer and Propane Inc., ) Docket No. FIFRA-07-2020-0026  
 )  
 )  
Respondent. )

**EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER**

1. The U.S. Environmental Protection Agency (EPA) alleges that D & S Fertilizer and Propane Inc. (Respondent) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c).

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under Section 7 of FIFRA, 7 U.S.C. § 136e(c), to inform the EPA 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 during the past year, and which the producer has sold or distributed during the past year. The information required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), must be kept current and submitted to the EPA annually as required under any regulation issued pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

3. The regulations at 40 C.F.R. Part 167 set out the registration and reporting requirements for pesticide and active ingredient producing establishments. Pursuant to 40 C.F.R. § 167.85(d), a producer operating an establishment must submit an initial report no later than 30 days after the first registration of each establishment the producer operates. Thereafter, the producer must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

4. Respondent operates the establishment assigned Establishment No. 63322-MO-1 located in Clinton, Missouri.

5. Respondent failed to timely submit an annual pesticide production report on or before March 1, 2019 for Establishment No. 63322-MO-1.

6. Respondent's failure to timely submit an annual pesticide production report on or before March 1, 2019 for Establishment No. 63322-MO-1 is a violation of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c).

7. The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order (Agreement), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.13(b).

8. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements set forth above; (b) admits that the EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

9. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation, and has submitted true and accurate documentation of such correction along with this Agreement; (b) has provided a deposit for payment of the civil penalty as set forth below; (c) has submitted a true and accurate proof of deposit for payment of the civil penalty along with this Agreement; and (d) agrees to release the deposit for payment to EPA upon entry of the Final Order attached hereto.

10. EPA and Respondent agree that settlement of this matter for a civil penalty in the amount of Five Hundred Dollars (\$500.00) is in the public interest. Respondent certifies that it has provided a deposit for payment for the full civil penalty amount, and that such payment identified Respondent by name and docket number, was made by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

11. Respondent certifies that the original Agreement and a true and accurate copy of the deposit for payment was submitted to:

Milady Peters  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

12. Full payment of the civil penalty shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. The EPA reserves the right to take any

enforcement action with respect to any other past, present, or future violations of FIFRA or any other applicable law.

13. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

14. Upon signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing or appeal pursuant to FIFRA.

15. Each party shall bear its own costs and fees, if any.

16. This Agreement authorized by the EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

17. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

**RESPONDENT**  
**D & S FERTILIZER AND PROPANE INC.**

Date: 2-13-20

By: *Kurt Smith*

Kurt Smith  
Print Name

President  
Title

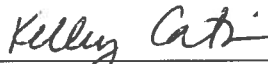
**COMPLAINANT**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 2/20/20



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David Cozad  
Director  
Enforcement and Compliance Assurance Division



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Kelley Catlin  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 14(a) of 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, 40 C.F.R. Part 22, the foregoing Expedited Settlement Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

March 3, 2020  
Date

**CERTIFICATE OF SERVICE**

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

Copy via Email to Complainant:


catlin.kelley@epa.gov

AND

Copy via First Class Mail to Respondent:

D & S Fertilizer, Inc.  
502 North 7<sup>th</sup> Street  
Clinton, Missouri 64735

Dated this 3<sup>rd</sup> day of March, 2020.

  
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for Signed  
Lisa Hangers  
Region 7  
Hearing Clerk