

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

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Nutrien Ag Solutions, Inc.) **Docket No. FIFRA-07-2021-0016**
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Nutrien Ag Solutions, Inc. (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties initiated pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant is the Chief of the Chemical Branch, Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
4. The Respondent is Nutrien Ag Solutions, Inc., a company registered in the state of Colorado.

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*
6. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute, sell, or use any pesticide classified for restricted use for some or all purposes other than in accordance with Section 3 and any regulations thereunder, with an exception not relevant here.
7. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a(d), EPA promulgated regulations for the certification of applicators of restricted use pesticides at 40 C.F.R. Part 171. The regulation at 40 C.F.R. § 171.307 provides that all applicators of restricted use pesticides in Indian country must hold a certification valid in that area of Indian country or be working under the direct supervision of a certified applicator whose certification is valid in that area of Indian country.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).
9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.
12. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$20,288 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 13, 2020.

Factual Allegations

13. Respondent is an incorporated company and is therefore a “person” within the meaning of FIFRA.

14. On September 4, 2019, EPA conducted an inspection to investigate an aerial pesticide application made on August 7, 2019, to land within the Winnebago Reservation of the Winnebago Tribe of Nebraska.

15. On October 8, 2019, EPA sent to Respondent an information request letter pursuant to Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), to obtain additional information about the August 7, 2019 pesticide application and Respondent’s compliance with FIFRA. Respondent submitted a response to the letter on October 31, 2019.

16. Sniper, EPA Registration Number 34704-858, is a pesticide classified for restricted use with bifenthrin as the active ingredient. Sniper is extremely toxic to fish and aquatic invertebrates and hazardous to humans and domestic animals.

17. On or about July 26, 2019, Respondent sold or distributed the restricted use pesticide Sniper, EPA Reg. No. 34704-858, to a pesticide applicator for the August 7, 2019 application in Indian country.

18. On August 7, 2019, the pesticide applicator applied the restricted use pesticide Sniper, EPA Reg. No. 34704-858, to a 135-acre corn field located on the east side of the Village of Winnebago, immediately east of the Little Priest Tribal College.

Allegations of Violation

19. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

20. The facts stated in Paragraphs 13 through 18 above are herein incorporated.

21. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), provides that it shall be unlawful for any person to distribute, sell, or use any pesticide classified for restricted use for some or all purposes other than in accordance with Section 3 and any regulations thereunder, with an exception not relevant here.

22. The regulation at 40 C.F.R. § 171.307 provides that all applicators of restricted use pesticides in Indian country must hold a certification valid in that area of Indian country or be working under the direct supervision of a certified applicator whose certification is valid in that area of Indian country.

23. Respondent sold or distributed the restricted use pesticide Sniper, EPA Reg. No. 34704-858, to a pesticide applicator who did not hold a certification to apply restricted use pesticides within the Winnebago Reservation of the Winnebago Tribe of Nebraska and was not working under the direct supervision of a certified applicator during the August 7, 2019 application of Sniper, EPA Reg. No. 34704-858.

24. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or distributing the restricted use pesticide Sniper, EPA Reg. No. 34704-858, for purposes other than in accordance with Section 136a(d) and 40 C.F.R. § 171.307.

CONSENT AGREEMENT

25. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), if specified herein, Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

26. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

27. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

28. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail addresses: *sandi.shannonschultz@nutrien.com*.

Penalty Payment

29. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$5,874 as set forth below.

30. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be 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
PO Box 979077
St. Louis, Missouri 63197-9000

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

31. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kasey Barton, Office of Regional Counsel
barton.kasey@epa.gov.

32. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Effect of Settlement and Reservation of Rights

33. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

34. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

35. Respondent certifies by the signing of this Consent Agreement that based on information and belief formed after reasonable inquiry its retail branches and facilities located within EPA Region 7 are in compliance with the requirements of Section 12(a)(2)(F) of FIFRA and the implementing regulations.

36. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

37. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

38. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

39. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

41. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

RESPONDENT
NUTRIEN AG SOLUTIONS, INC.

Date: 12/30/2020

By: *Kent McDaniel*

Kent McDaniel
Print Name

Region Manager
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Kasey Barton
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 Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent 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
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that 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 via Email to Complainant:

Kasey Barton, *barton.kasey@epa.gov*
Mark Leshner, *lesher.mark@epa.gov*

Copy via Email to Respondent:

Sandi Shannon Shultz, *sandi.shannonshultz@nutrien.com*

Dated this _____ day of _____, _____.

Signed