

**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-07-2023-0075**
 South Sioux City, Nebraska,)
)
 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. § 136f and in accordance with the Consolidated Rules of Practice.
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, by delegation from the Administrator of EPA, the Regional Administrator of EPA Region 7, and the Director of the Enforcement and Compliance Assurance Division of EPA Region 7, is the Branch Chief of the Chemical Branch of EPA Region 7.
4. The Respondent is a corporation authorized to do business in the state of Nebraska.

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 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).

7. 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.

8. 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.

9. Section 2(e) of FIFRA, 7 U.S.C. § 136(e), defines “commercial applicator” to mean an applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property.

10. Section 2(e) of FIFRA, 7 U.S.C. § 136(ee), defines “to use any registered pesticide in a manner inconsistent with its labeling” to mean to use any registered pesticide in a manner not permitted by the labeling.

11. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

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 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 \$23,494, for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023.

General Factual Allegations

13. Respondent is and at all times referred to herein was, a “person” within the meaning of FIFRA.

14. Respondent employs commercial applicators of pesticides.

15. Respondent uses the restricted use pesticide Engenia Herbicide, EPA Reg. No. 7969-472 (“Engenia Herbicide”), in commercial applications.

16. The label for Engenia Herbicide contains the following instructions:

- (i) “DO NOT spray during an inversion; only spray between one hour after sunrise and two hours before sunrise.”
- (ii) “Only apply during the following period: DO NOT make applications at night. Applications are only permitted beginning one hour after sunrise, and ending two hours before sunset.”
- (iii) “DO NOT apply Engenia to non-dicamba-tolerant soybean varieties other than as directed or severe soybean injury will occur.”

17. On August 30, 2021, the EPA conducted an inspection at Respondent’s facility located at 4505 Dakota Ave., South Sioux City, Nebraska 68776.

Allegations of Violations

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

Count 1

19. The facts stated in Paragraphs 13 through 17 above are herein incorporated.

20. Pursuant to 7 U.S.C. 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

21. The EPA inspection revealed that Respondent employed a commercial applicator who applied Engenia Herbicide to a field owned by Travis Bodlak on June 21, 2021.

22. On June 21, 2021, the sun rose at 5:49 am and set at 9:07 pm.

23. During the application onto Travis Bodlak’s property, the applicator applied Engenia Herbicide from 6:30 pm to 8:13 pm, which was outside the range of 6:49 am to 7:07 pm that the Engenia label instructed application to take place within.

24. During the application onto Travis Bodlak’s property, the applicator applied Engenia Herbicide onto a neighboring field where soybeans were growing that were not dicamba-tolerant.

25. On the date of the application of Engenia Herbicide, Respondent used the pesticide Engenia Herbicide (1) at an improper time of day, and (2) on an improper crop, which were manners not permitted, and therefore inconsistent, with its labeling.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by applying a pesticide in a manner inconsistent with its labeling.

CONSENT AGREEMENT

27. For the purpose of this proceeding, if specific herein, as required by 40 C.F.R. § 22.18(b)(2), 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.

28. 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.

29. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

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

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

Penalty Payment

32. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of eight thousand, seven hundred and eighty-two dollars (\$8,782) as set forth below.

33. 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>.

Effect of Settlement and Reservation of Rights

34. 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.

35. 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.

36. Respondent certifies by the signing of this Consent Agreement that based on information and belief formed after reasonable inquiry as at the date of this Agreement the South Sioux City location is in compliance with the requirements of Section 12(a)(2)(G) of FIFRA and the accompanying regulations..

37. 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.

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

39. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

40. 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.

41. 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 filing 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.

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

43. 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.



Signature

4/6/2023

Date

Dewey Petersen

Printed Name

Division Manager

Title

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

Date

Katherine Kacsur
Office of Regional Counsel

Date

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
(For EPA use only.)

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of Nutrien Ag Solutions, Inc., EPA Docket No. FIFRA-07-2023-0075, was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Katherine Kacsur
Office of Regional Counsel
kacsur.katherine@epa.gov

Mark Lesher
Enforcement and Compliance Assurance Division
lesher.mark@epa.gov

Copy via Email to Respondent:

Sandi Shannon Schultz
Sr. Legal Counsel, Retail
Nutrien Ag Solutions, Inc.
sandi.shannonschultz@nutrien.com

Dated this _____ day of _____, _____.

Signed