



REGION 8

DENVER, CO 80202

FILED

Sep 11, 2026

10:51 am

U.S. EPA REGION 8
HEARING CLERK

IN THE MATTER OF:

Vive Crop Protection Inc.
Respondent.

Docket No. FIFRA-08-2026-0101

**EXPEDITED SETTLEMENT
AGREEMENT**

1. The U.S. Environmental Protection Agency (EPA), through its authorized representative (Complainant), alleges that Vive Crop Protection Inc. (Respondent), located at 418 N 2nd Street, Bismarck, North Dakota 58501, sold or distributed unregistered pesticides in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 12(a)(1)(A), 7 U.S.C.§136j(a)(1)(A).
2. FIFRA section 12(a)(1)(A), 7 U.S.C.§136j(a)(1)(A), states that it is unlawful for any person to distribute or sell any pesticide that is not registered with the U.S. Environmental Protection Agency.
3. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
4. FIFRA section 2(t), 7 U.S.C. § 136(t) defines “pest” as “(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-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”
5. Under FIFRA section 2(u), 7 U.S.C. § 136(u), a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, i.e., use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant.
6. FIFRA section 2(p), 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers” and defines “labeling” in part, as “all labels and all other written, printed, or graphic matter – (A) accompanying the pesticide or device at any time;

CUI//PRIVILEGE

or (B) to which reference is made on the label or in literature accompanying the pesticide....”

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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....” See, also, 40 C.F.R. § 152.3.
8. At all times relevant to this expedited settlement agreement (Agreement), Respondent was a “person” as that term is defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
9. On June 8, 2026, Respondent imported a shipment with entry number 300-27370379 (Shipment 1) through the port of Pembina, North Dakota.
10. On June 18, 2026, Respondent imported a shipment with entry number 300-27363804 (Shipment 2) through the port of Pembina, North Dakota.
11. At all times relevant to this Agreement, Respondent was a registrant, wholesaler, dealer, retailer, or other distributor.
12. Shipment 1 contained 1 tote of Phobos FC360 with a total weight of 1,290 pounds for the shipment.
13. Shipment 2 contained 4 totes and 27 cases of Phobos FC360 with a total weight of 6,570 pounds for the shipment.
14. The label of Phobos FC360 included the following language:
 - “FUNGIDICE”
 - “FONGIDIDE”
 - “Phobos FC 360 is a broad-spectrum systemic fungicide for the control or suppression of listed Ascomycetes, Basidiomycetes and Deuteromycetes diseases on barley, bushberries, Brassica carinata, borage, canola, chickpeas, crambe, low growing berries - except strawberries, corn, cucurbits, flax (linseed), lentils, oats, Oriental mustard, peanut, rapeseed, safflower, soybean, sugar beet, sunflower, wheat and certain other small grains.”
15. These claims demonstrate a pesticidal intent pursuant to the definitions above.
16. Phobos FC360 is thus a pesticide subject to FIFRA regulation.
17. Phobos FC360 is not registered pursuant to section 3 of FIFRA, 7 U.S.C. § 136a. Therefore, Phobos FC360 is an unregistered pesticide.
18. The importation of Phobos FC360 constitutes a sale or distribution under FIFRA.

CUI//PRIVILEGE

19. Because Respondent distributed an unregistered pesticide in Shipments 1 and 2, Respondent violated FIFRA section 12(a)(1)(A), 7 U.S.C. §136j(a)(1)(A).
20. The EPA is authorized to enter into this Agreement and the final order ratifying this 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) and § 22.18(b).
21. Based on the allegations above, and using the penalty matrix in the Expedited Settlement Agreement Pilot Program Under the Federal Insecticide, Fungicide, and Rodenticide Act (available at <https://www.epa.gov/system/files/documents/2025-01/fifraesapilotprogram01172025.pdf>), Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.
22. The EPA and Respondent (collectively referred to as the “Parties”) agree to settle this matter for a civil penalty of \$4,400 (Assessed Penalty).
23. Within 30 days after the effective date of this Agreement (see paragraph 35, below), Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
24. When making a payment, Respondent shall:
 - a. Identify it with Respondent’s name and the docket number that appears on the final order ratifying this Agreement;
 - b. Indicate it is payable to “Environmental Protection Agency;”
 - c. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129
R8_Hearing_Clerk@epa.gov

Christine Tokarz
U.S. Environmental Protection Agency, Region 8
EPA Montana Operations Office
Federal Building
10 West 15th Street, Suite 3200

CUI//PRIVILEGE

Helena, MT 59626
tokarz.christine@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

25. In accordance with 40 C.F.R. § 22.18(c), compliance with the final order ratifying this Agreement resolves Respondent’s liability only for federal civil penalties for the violations specifically alleged above.
26. No portion of the civil payment or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction of federal, state, or local income tax purposes.
27. By signing this Agreement and submitting payment for the above penalty amount, Respondent:
 - (a) admits that the EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein;
 - (b) neither admits nor denies the factual allegations contained herein;
 - (c) consents to the assessment of the penalty set forth herein;
 - (d) acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent’s compliance history in any subsequent enforcement action; and
 - (e) waives any right to contest the allegations in the Agreement and to appeal any final order ratifying this Agreement.
28. By signing this Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of a final order ratifying this Agreement.
29. If Respondent does not timely pay the Assessed Penalty, the EPA is authorized to recover any unpaid amount of the Assessed Penalty, plus interest (at the IRS standard underpayment rate), enforcement expenses such as attorneys’ fees and costs of collection proceedings, and a 20% quarterly non-payment penalty. For more

CUI//PRIVILEGE

information, see 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11. The validity, amount, and appropriateness of the civil penalties are not reviewable in a collection action.

30. Except as qualified by paragraph 29, above, the Parties shall bear their own costs and fees, if any.
31. The Parties agree that settlement of this matter is in the public interest.
32. The EPA reserves all rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA or any other federal statute or regulation.
33. The Parties consent to service of this Agreement and the final order by email at the following valid email addresses eakins.shaula@epa.gov (for Complainant) and wlovell@vivecrop.com (for Respondent).
34. If the Respondent chooses not to enter into this Agreement and fully comply with its terms, the EPA may pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$ 24,255 per violation pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l. See section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. part 19; and the Civil Monetary Penalty Inflation Adjustment Rule at 90 Fed. Reg. 1375, 1377 (January 5, 2025).
35. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective on the date a final order ratifying this Agreement is filed with the Regional Hearing Clerk for EPA Region 8.

CUI//PRIVILEGE

Consent Agreement In the Matter of Vive Crop Protection Inc.

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

REGION 8

Date: _____

By: _____

David Cobb, Supervisor
Toxics and Pesticides Enforcement Section
Enforcement and Compliance Assurance
Division
Complainant

Respondent

Vive Crop Protection Inc.

By:  _____

Date: 21 August 2026

Printed Name: M. Douglas Baumann