



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL RECEIPT RETURN REQUESTED

November 23, 2022

Kyle Springs, CSP
Sr. Director, Safety & Health Retail
Nutrien Ag Solutions, Inc.
5003 Rocky Mountain Avenue
Loveland, CO 80538

Re: Stop Sale, Use, or Removal Order (SSURO) to Nutrien Ag Solutions, Inc.

Dear Mr. Springs:

As discussed in earlier communications between the United States Environmental Protection Agency (EPA or "the Agency") and Nutrien Ag Solutions, Inc. (Nutrien) enclosed is a Stop Sale, Use, or Removal Order ("Order" or "SSURO") concerning the misbranded chlorpyrifos products Nutrien has in their custody at their warehouse locations in Fairbury, NE and Solomon, KS. This Order requires Nutrien to immediately cease the distribution or sale of such products except for product movement to effectuate storage until final disposition is carried out in accordance with this Order or subsequent Orders. ***This Order is effective immediately upon receipt.***

Section 13(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136k(a), authorizes the Administrator of the EPA to issue an order prohibiting the sale, use, or removal of any pesticide or device by any person who owns, controls, or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or has been or is intended to be distributed in violation of any provision of FIFRA.

Based on communications received from Nutrien, it is our understanding that Nutrien has in its custody the following chlorpyrifos-containing pesticide products (henceforth referred to as the "Chlorpyrifos Products" or "these products").

1. Warhawk (EPA Reg. No. 34704-857), and
2. Match-Up Insecticide (EPA Reg. No. 34704-1086).

These products are contained in two warehouses operated by Nutrien located in Fairbury, NE and Solomon, KS. These products have labels that allow for their application on food crops. Because the tolerances expired on February 28, 2022, 86 Fed. Reg. 48315 (Aug. 30, 2021) (amending 40 C.F.R. § 180.342), the products' labels provide directions for use on foods that are no longer supported by a tolerance. With the absence of an applicable tolerance, the use of the products pursuant to their labels'

directions could result in the unlawful introduction of adulterated or misbranded foods into interstate commerce under FFDCA § 301(a), 21 U.S.C. 331(a). As described in more detail in the enclosed SSURO, because these products are now misbranded, they can no longer be lawfully distributed or sold unless authorized to do so pursuant to a cancellation order issued under FIFRA section 6, 7 U.S.C. § 136d, or a SSURO issued under FIFRA section 13, 7 U.S.C. § 136k.

Nutrien informed EPA's Office of Pesticide Programs (OPP) that the Fairbury, NE warehouse ended operations on October 17, 2022 and that the Solomon, KS warehouse will cease operations on November 21, 2022. Nutrien must move the Chlorpyrifos Products to new warehouses for storage until final disposition occurs. While OPP intends to issue the necessary final cancellation orders governing the distribution and final disposition of the Chlorpyrifos Products with expired tolerances, those orders will not be issued in the time required for Nutrien to move these products and close the warehouses. Consequently, EPA is issuing this SSURO to provide for the transfer of the misbranded Chlorpyrifos Products from certain warehouses to new locations.

Nutrien must comply with all terms and conditions in this Order. Failure to do so could result in liability under FIFRA section 12(a)(1)(E), 7 U.S.C. § 136j(a)(1)(E), for the unlawful distribution or sale of misbranded pesticides and/or liability under FIFRA section 12(a)(2)(I), 7 U.S.C. § 136j(a)(2)(I), for violating the terms of the SSURO.

The issuance of this Order shall not act as a waiver by EPA of any enforcement or other authority available to the Agency under Federal law, including the Agency's authority to seek civil penalties under section 14(a) of FIFRA, 7 U.S.C. 136l(a), for violations that may occur outside the coverage of this Order.

If you have any questions about this matter or wish EPA to consider a modification to the Order, you may contact Christine Trostler, Attorney-Advisor, at 202-564-2240 or trostler.christine@epa.gov.

Sincerely,

MAX
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Max Greenblum, Acting Associate Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE**

IN THE MATTER OF:)	
)	
Nutrien Ag Solutions, Inc.)	STOP SALE, USE, OR REMOVAL ORDER
5003 Rocky Mountain Avenue)	
Loveland, CO 80538)	Docket No. FIFRA-HQ-2023-5004
)	
)	
Respondent)	
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I. AUTHORITIES

1. Section 13(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (“FIFRA”), 7 U.S.C. § 136k(a), authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order prohibiting the sale, use or removal (SSURO) of any pesticide or device by any person who owns, controls or has custody of such pesticide or device whenever there is reason to believe that the pesticide or device is in violation of any provision of FIFRA, or the pesticide or device has been or is intended to be distributed or sold in violation of any provision of FIFRA.
2. This authority has been delegated from the EPA Administrator to the Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA), who in turn delegated this authority to the Director of the Office of Civil Enforcement (OCE), who in turn delegated this authority to the Director of the Waste and Chemical Enforcement Division (WCED).¹
3. The EPA regulates pesticides under FIFRA, 7 U.S.C. §§ 136-136y, and the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. §§ 301-392.
4. Subject to exceptions that are not relevant here, section 3 of FIFRA, 7 U.S.C. § 136a, requires that all pesticides distributed or sold in the United States be registered with the EPA, and if use of a pesticide results in residues in or on food, then a tolerance (or an exemption from a tolerance) is required under sections 408(a)-(c) of the FFDCA, 21 U.S.C. §§ 346a(a)-(c).
5. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.

¹ EPA Administrator Delegation of Authority 5-12. Issuance of Stop Sale, Use or Removal Orders (1200 TN 350 5-12) (Jan 18, 2017); OECA Redelelegation 5-12 (January 2017); OCE Redelelegation 5-12 (January 2017).

6. Section 12(a)(2)(I) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person to violate any order issued under section 13 of FIFRA.
7. 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.”
8. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as “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.”
9. The regulation set forth at 40 C.F.R. § 152.3 further explains that “[d]istribute or sell’ and other grammatical variations of the term such as ‘distributed or sold’ and ‘distribution or sale,’ means the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”
10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “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 microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) of FIFRA.”
12. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), a pesticide is “misbranded” if among other things, “its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular,” 7 U.S.C. §§ 136(q)(1)(A), or if “the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of [FIFRA], are adequate to protect health and the environment.” 7 U.S.C. § 136(q)(1)(F).
13. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”
14. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter—

- a) accompanying the pesticide or device at any time; or
 - b) to which reference is made on the label or in literature accompanying the pesticide....”
15. Section 3(c)(5)(C) of FIFRA, 7 U.S.C. § 136a(c)(5)(C), provides that EPA may not register a pesticide if it determines that the pesticide would cause “unreasonable adverse effects on the environment.”
 16. Pursuant to 40 C.F.R. § 152.50(f)(1), an applicant for pesticide registration is required to submit information to aid the Administrator in determining whether the use of the pesticide will not generally cause unreasonable adverse effects on the environment.
 17. Section 2(bb) of FIFRA, 7 U.S.C. § 136(bb), defines the term “unreasonable adverse effects on the environment” to mean “(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a).....”.
 18. Section 408(b)(2)(A)(i) of the FFDCFA, 21 U.S.C. § 346a(b)(2)(A)(i), provides that EPA may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if EPA determines that the tolerance is safe.
 19. Section 408(b)(2)(A)(ii) of the FFDCFA, 21 U.S.C. § 346a(b)(2)(A)(ii), provides that the term “safe” with respect to a tolerance for a pesticide chemical residue means that the EPA has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposure for which there is reliable information.
 20. Under section 408(a)(1) of the FFDCFA, 21 U.S.C. § 346a(a)(1), “the term ‘food’, when used as a noun without modification.... mean[s] a raw agricultural commodity or processed food.”
 21. Under 40 C.F.R. § 180.1(d), “raw agricultural commodities” include, *inter alia*, “fresh fruits, whether or not they have been washed and colored or otherwise treated in their unpeeled natural form; vegetables in their raw or natural state, whether or not they have been stripped of their outer leaves, waxed, prepared into fresh green salads, etc.; grains, nuts, eggs, raw milk, meats, and similar agricultural produce. It does not include foods that have been processed, fabricated, or manufactured by cooking, freezing, dehydrating, or milling.”
 22. Under 40 C.F.R. § 180.1(n), the term “food commodity” is defined as, “(1) [a]ny raw agricultural commodity (food or feed) as defined in section 201(r) of the FFDCFA; and (2) [a]ny processed food or feed as defined in section 201(gg) of the FFDCFA.”

23. Section 201(q)(1)(A) of the FFDCA, 21 U.S.C. § 321(q)(1)(A) defines a “pesticide chemical” to mean, *inter alia*, “any substance that is a pesticide within the meaning of [FIFRA] including all active and inert ingredients of such pesticide.”
24. Section 201(q)(2) of the FFDCA, 21 U.S.C. § 321(q)(2), defines the term “pesticide chemical residue” to mean “a residue in or on raw agricultural commodity or processed food of -- (A) a pesticide chemical; or (B) any other added substance that is present on or in the commodity or food primarily as a result of the metabolism or other degradation of a pesticide chemical.”
25. Under the authority of section 408(b)(1) of the FFDCA, 21 U.S.C. §346a(b)(1), EPA promulgated regulations for establishing, modifying, or revoking tolerances for pesticide chemical residues in or on food at 40 C.F.R. Part 180.
26. Section 408(d)(2)(A) of the FFDCA, 21 U.S.C. § 346a(d)(2)(A), and EPA’s regulations at 40 C.F.R. § 180.7 require petitions to establish a tolerance for a pesticide chemical residue in or on foods to be supported by such data and information to include, *inter alia*, the following:
- a) Full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on the food, including a description of the analytical methods used. (See §180.34 for further information about residue tests);
 - b) A practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food, or for exemptions, a statement why such a method is not needed;
 - c) Proposed tolerances for the pesticide chemical residue if tolerances are proposed;
 - d) Practicable methods for removing any amount of the residue that would exceed any proposed tolerance;
 - e) Such other data and information as the Administrator may require by regulation to support the petition; and
 - f) Reasonable grounds in support of the petition.
27. Section 408(a)(1) of the FFDCA, 21 U.S.C. § 346a(a)(1), provides unless a tolerance of a pesticide chemical residue in or on food is in effect and the quantity of the residue is within the limits of the tolerance, or an exemption from the requirement of a tolerance is in effect for the pesticide chemical residue, any pesticide chemical residue in or on food is deemed unsafe for purposes of section 402(a)(2)(B) of the FFDCA, 21 U.S.C. § 342(a)(2)(B).

28. Section 402(a)(2)(B) of the FFDCA, 21 U.S.C. § 342(a)(2)(B), provides, in part, that “[a] food shall be deemed to be adulterated-.... if it bears or contains a pesticide chemical residue that is unsafe within the meaning of section 346a(a) of this title.....”.
29. Section 301(a) of the FFDCA, 21 U.S.C. § 331(a), prohibits the introduction or delivery for introduction into interstate commerce any food that is adulterated.
30. Section 303(f)(2)(A) of the FFDCA, 21 U.S.C. § 333(f)(2)(A), provides for civil penalties for any person who introduces (or delivers for introduction) into interstate commerce food that is adulterated. Section 304 of the FFDCA, 21 U.S.C. § 334, further provides that adulterated food can be seized by the Food and Drug Administration.
31. Section 6(a)(1) of FIFRA, 7 U.S.C. § 136d(a)(1), provides that “[t]he Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is suspended or canceled under this section, or section 3 or 4, to such extent, under such conditions, and for such uses as the Administrator determines that such sale or use is not inconsistent with the purposes of this Act.
32. Section 13(a) of FIFRA, 7 U.S.C. § 136k(a), provides that after receipt of a SSURO, “no person shall sell, use, or remove a pesticide or device except in accordance with the provisions of that order.”

II. BACKGROUND

33. The regulation set forth at 40 C.F.R. §180.342 listed chlorpyrifos tolerances for certain food commodities.
34. On September 12, 2007, Natural Resources Defense Council (NRDC) and Pesticide Action Network North America (PANNA) submitted a petition to EPA under FFDCA section 408, 21 U.S.C. § 346a, requesting that EPA revoke all chlorpyrifos tolerances and cancel all chlorpyrifos registrations.
35. On April 5, 2017, EPA issued an order denying the 2007 petition from NRDC and PANNA. 82 Fed. Reg. 16581 (April 5, 2017). In or about June 2017, several interested parties filed their objections to the denial of the 2007 petition.
36. On July 24, 2019, EPA issued an order denying the objections to the April 5, 2017, order. 84 Fed. Reg. 35555 (July 24, 2019).
37. Environmental advocacy groups and several States challenged EPA’s denial orders in the U.S. Court of Appeals for the Ninth Circuit. On April 29, 2021, the Ninth Circuit Court of Appeals ordered EPA to issue a final rule that would either revoke all chlorpyrifos tolerances, or modify the tolerances and issue a finding that the modified tolerances are safe. *League of United Latin Am. Citizens v. Regan*, 996 F.3d 673 (9th Cir. 2021).

38. On August 30, 2021, EPA published the final rule revoking all chlorpyrifos tolerances contained in 40 C.F.R. 180.342. The final rule set February 28, 2022, as the expiration date for all chlorpyrifos tolerances. 86 Fed. Reg. 48315 (August 30, 2021) (amending 40 C.F.R. § 180.342).
39. On February 28, 2022, EPA published its denial of all objections, hearing requests, and requests to stay the final rule. Because EPA denied all requests to stay the final rule, all chlorpyrifos tolerances formally expired on February 28, 2022. 87 Fed. Reg. 11222 (February 28, 2022).
40. EPA intends to issue several other cancellation orders at some date in the future, each of which will address some of the chlorpyrifos products that are still registered with food uses.
41. Nutrien Ag Solutions, Inc. is a Delaware corporation with its principal place of business in Loveland, Colorado. Respondent is a “person” as defined in section 2(s) of FIFRA, 7 U.S.C. § 136(s).
42. This Order refers to Nutrien Ag Solutions, Inc. and all its divisions, offices, and branches, collectively, as “Respondent.”
43. Respondent is the registrant for the following two chlorpyrifos products currently registered with the EPA:
 - a) Warhawk (EPA Reg. No. 34704-857); and
 - b) Match-Up Insecticide (EPA Reg. No. 34704-1086).
44. Warhawk (EPA Reg. No. 34704-857) was first registered by the Respondent on May 18, 2004. The product is approved for use on the following food crops: alfalfa, citrus fruits, corn, cranberries, mint, onions, peanuts, soybeans, strawberries, sugar beets, sunflowers, sweet potatoes, tree fruits, tree nuts, and vegetables (Brassica/cole crops).
45. Match-Up Insecticide (EPA REG No. 34704-1086) was first registered by the Respondent on January 27, 2014. The product is approved for use on the following food crops: corn, legume vegetables, peanuts, and soybeans.
46. In the two (2) warehouses identified in Appendix A, Respondent has in its control, custody, or possession varying quantities of the two (2) products described in Paragraphs 43 through 45. Henceforth, these products are collectively referred to in this Order as “Respondent’s Chlorpyrifos Products” or “Products”.

III. BASIS FOR THE ORDER

47. EPA has reason to believe that the labels for the Respondent’s Chlorpyrifos Products are misbranded as defined in section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), since as described in Paragraphs 38 - 45 above, the labels provide directions for use on foods not

supported by a tolerance. Therefore, the labels bear statements that are false or misleading.

48. EPA also has reason to believe that labels for Respondent's Chlorpyrifos Products are misbranded as defined in section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), since in the absence of an applicable tolerance, the use of these pesticides pursuant to these labels on food commodities could result in the unlawful introduction of adulterated or misbranded foods into interstate commerce under FFDCA § 301(a), 21 U.S.C. § 331(a). Therefore, the label does not contain directions for use that are necessary for effecting the purpose for which the products are intended, and if complied with, are inadequate to protect human health and the environment.
49. EPA has reason to believe that Respondent intends to distribute misbranded pesticide products when it transfers the Respondent's Chlorpyrifos Products to new warehouses.
50. Unless authorized to do so pursuant to a cancellation or suspension order issued under FIFRA section 6, 7 U.S.C. § 136d, or a SSURO issued under FIFRA section 13, 7 U.S.C. § 136k, it is unlawful for any person in any State to distribute or sell any pesticide which is misbranded.

IV. **ORDER**

51. Respondent is ordered to immediately cease any distribution, sale, use, or removal of all Respondent's Chlorpyrifos Products under its ownership, control, or custody, wherever such products are located except in accordance with provisions of this Order.
52. The Products shall not be sold, offered for sale, held for sale, shipped, delivered for shipment, received; or, having been so received, delivered, offered for delivery, moved, or removed, for any reason, other than in accordance with the provisions of this Order and any provisions of any written modifications to this Order.
53. In its Product Movement Plan, Respondent has proposed to transfer the Products to new warehouse locations for storage prior to final disposition. The Plan's details are appended in Appendix A. Respondent has stated that it intends to use company resources (employees and trucks) to move the Products to these new locations.
54. This Order authorizes Respondent's movement of these Products as provided in its Product Movement Plan and the following provisions are established as part of this Order:
 - a) No Products shall be distributed except for the sole purpose of transferring these Products to new warehouse locations as provided in the Product Movement Plan.
 - b) Respondent shall, for each set of warehouse transfers, establish and maintain a chain of custody documenting the products and quantities transferred, who had initial

control and custody of the products and when and to whom control and custody were transferred at each step of the transfer processes.

- c) Respondent shall within thirty (30) days of completing product transfers, submit the completed chain of custody documentation to the EPA.
- d) Upon Product's arrival at destination warehouse, Product must be appropriately segregated and labeled stating that it is not for distribution or sale until Respondent receives written approval from EPA to take any further action regarding the Products.
- e) Additional movement for any purpose is prohibited unless authorized by a modification to this Order or subsequent Orders.

55. All reporting to the EPA provided by this Order and the Product Movement Plan shall be submitted to Christine Trostler at trostler.christine@epa.gov.

V. OTHER MATTERS

56. Respondent may assert a business confidentiality covering all or part of the above information requested, in the manner described by 40 C.F.R. § 2.203(b). Respondent should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by the EPA, the information may be made available to the public by the EPA without further notice.
57. This Order shall be effective immediately upon receipt by an agent, owner, or operator of Respondent.
58. It is unlawful for any person to violate any order issued under section 13 of FIFRA, 7 U.S.C. § 136j(a)(2)(I).
59. Any agent, owner, or operator of Respondent violating the terms or provisions of this order may be subject to civil or criminal penalties as prescribed by Section 14 of FIFRA, 7 U.S.C. 136l.
60. The issuance of this Order shall not constitute a waiver by EPA of any enforcement or other authority available to EPA under federal law.
61. This Order shall remain in effect unless and until terminated or modified in writing by the EPA.
62. This Order and all its provisions shall remain in effect unless and until OPP issues the final cancellation order cancelling all registered food uses associated with the revoked chlorpyrifos tolerances.

63. If any provision or provisions of this Order is/are subsequently held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and they shall remain in full force and effect.
64. Respondent may seek federal judicial review of this Order pursuant to Section 16 of FIFRA, 7 U.S.C. § 136n.
65. For any additional information about this Order, please contact Christine Trostler, Attorney-Advisor, by telephone at 202-564-2240 or by email at trostler.christine@epa.gov.

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Max Greenblum, Acting Associate Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

APPENDIX A

Fairbury, NE

(Regular operations ended on October 17, 2022)

Current Address: 71910 Hwy 15 Fairbury, NE 68352	Destination Address: 1720 16 th Street Kearney, NE 68845		
Product Name	EPA Reg. No.	Batch/Lot #	Quantity on Hand
Warhawk	34704-857	Batch# 02225697D51	7 gallons
Match-Up Insecticide	34704-1086	Batch# 02-296501-J-57	168 gallons

Solomon, KS

(Regular operations scheduled to end on November 21, 2022)

Current Address: 1458 Camp Road Solomon, KS 67480	Destination Address: 644 22 nd Avenue Galva, KS 67443		
Product Name	EPA Reg. No.	Batch/Lot #	Quantity on Hand
Warhawk	34704-857	Lot# D061HC6001	7.5 gallons