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U.S. EPA REGION 7
HEARING CLERK

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

In the Matter of)
)
NE IA Aviation, LLC) Docket No. FIFRA-07-2025-0234
d/b/a Nebraska-Iowa Helicopter)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and NE IA Aviation, LLC d/b/a Nebraska-Iowa Helicopter (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 and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant, by delegation from the Administrator of the EPA and the Regional Administrator of EPA Region 7 is the Director of the Enforcement and Compliance Assurance Division of EPA Region 7.

3. The Respondent is a limited liability company in good standing under the laws of the state of Nebraska.

Statutory and Regulatory Background

4. 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.*

5. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person in any state to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 136a(d) of this title and any regulations thereunder, except that it shall not be unlawful to sell, under regulations issued by the Administrator, a restricted use pesticide to a person who is not a certified applicator for application by a certified applicator.

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

7. 40 C.F.R. § 171.307, states 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. An Indian Tribe may certify applicators of restricted use pesticides in Indian country only pursuant to a certification plan approved by the Agency that meets the requirements of paragraph (a) or (b) of this section. The Agency may implement a Federal certification plan, pursuant to paragraph (c) of this section and § 171.311, for an area of Indian country not covered by an approved plan.

8. 40 C.F.R. § 171.311(b), states in any State or area of Indian country where the EPA administers a certification plan, any person who uses or supervises the use of any restricted use pesticide must meet one of the following criteria:

- a. A commercial applicator must be certified in each category and subcategory, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.
- b. A private applicator must be certified in each category and subcategory, if any, as described in the EPA-administered plan, for which the applicator is applying or supervising the application of restricted use pesticides.
- c. A noncertified applicator may only use a restricted use pesticide under the direct supervision of an applicator certified under the EPA-administered plan, in accordance with the requirements in § 171.201, and only for uses in categories authorized by that certified applicator's certification.

9. Section 2(e) of FIFRA, 7 U.S.C. § 136(e), defines "certified applicator" to mean (1) any individual who is certified under section 136i of this title as authorized to use or supervise the use of any pesticide which is classified for restricted use. Any applicator who holds or applies registered pesticides or uses dilutions of registered pesticides consistent with subsection (ee), only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this subchapter.

10. 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).

11. 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.

12. 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.

13. 40 C.F.R. § 170.305 defines “Personal protective equipment” as devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

14. 40 C.F.R. § 170.305 defines “Use, as in “to use a pesticide” to mean any of the following:

- a. Pre-application activities, including, but not limited to:
 - (i) Arranging for the application of the pesticide.
 - (ii) Mixing and loading the pesticide.
 - (iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.
- b. Application of the pesticide.
- c. Post-application activities intended to reduce the risks of illness and injury resulting from handlers’ and workers’ occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.
- d. Other pesticide-related activities, including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

15. 40 C.F.R. § 170.317(a), states that it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.” When this part is referenced on a label,

users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in §§ 170.601, 170.603 and 170.607.

16. 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 \$24,885, for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 8, 2025.

General Factual Allegations

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

18. Respondent specializes in providing aerial application services including pesticide, fertilizers, and other farm chemical applications.

19. Respondent has approximately two permanent owners/operators; however, the number of pilots, applicators, and handlers vary.

20. On July 28 to 30, 2025, the EPA conducted agricultural use inspections (hereinafter referred to as “inspections”) on the Winnebago Tribe of Nebraska’s Reservation.

21. During the inspections, the inspectors observed aerial application in progress from both an aircraft and a helicopter.

22. The aerial applications were performed by the Respondent’s pilots in two separate areas on Winnebago Tribe of Nebraska’s Reservation.

23. The products applied from the aircraft were Tigris Azoxyprop Fungicide, EPA Reg. No. 92647-1 and Sniper Insecticide/Miticide, an restricted use pesticide, EPA Reg. No. 34704-858.

24. At the time of the inspections, the aircraft applicator, Trevor Benham, was a Nebraska Commercial Certified Applicator #NEB118754.

25. At the time of the inspections, Mr. Benham was not a certified applicator in Indian Country.

26. The products applied from the helicopter were Veltyma Fungicide, EPA Reg. No. 7969-409, Sultrus, a restricted use pesticide , EPA Reg. No. 5905-599, and Coron 25-0-0 fertilizer.

27. At the time of the inspections, the helicopter applicator, Alexander Burns, was a Nebraska Commercial Certified Applicator # NEB123876.

28. At the time of the inspections, Mr. Burns was not a certified applicator in Indian Country.

29. The labels of Veltyma Fungicide and Sultrus Insecticide require certain Personal Protection Equipment (hereinafter referred to as "PPE") including specific gloves.

Allegations of Violations

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

Counts 1 and 2

31. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

32. Pursuant to Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F) and 40 C.F.R. § 171.307 it is unlawful to use any registered pesticide in a manner inconsistent with its labeling.

33. At the time of the inspections, the inspectors observed aerial application in progress from an aircraft and a helicopter.

34. At the time of the inspections, the aircraft and helicopter pilots were not certified to apply restricted use pesticides in Indian Country.

35. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by having uncertified pilots apply restricted use pesticides in Indian Country.

Counts 3 and 4

36. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

37. Pursuant to Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) and 40 C.F.R. § 171.307 it is unlawful to apply a restricted use pesticide by a person who is not a certified applicator in Indian Country.

38. At the time of the inspections, Respondent's employees were applying Veltyma Fungicide and Sultrus Insecticide.

39. The Veltyma Fungicide and Sultrus Insecticide labels require certain PPE.

40. At the time of the inspection, the inspectors observed the applicators not wearing gloves, as required by each of the pesticide's labels.

41. The failure of the employees to wear specific PPE violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying the pesticides in a manner inconsistent with its labeling.

CONSENT AGREEMENT

42. For the purpose of this proceeding, 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.

43. By signing this consent 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 the final order accompanying the consent agreement.

44. 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.

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

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

47. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: neiahelicopter@gmail.com. Respondent understands that this document will be posted to EPA's public legal docket.

Penalty Payment

48. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Seventeen Thousand Four Hundred and Twenty-One Dollars (\$17,421), as set forth below.

49. 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 made using any payment method provided at <http://www.epa.gov/financial/makepayment>. For instructions for wire transfers and additional information, see <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

50. A copy of the confirmation of payment shall simultaneously be sent to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Anna Landis, Attorney
landis.anna@epa.gov.

51. 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

52. 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.

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

54. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

55. 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.

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

57. 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

58. By signing this Consent Agreement, the undersigned representative of Respondent certifies that they are fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party they represent to this Consent Agreement.

59. 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.

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

61. 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

NE IA Aviation, LLC
d/b/a Nebraska-Iowa Helicopter

Date: 12-15-2025

By: Klarise Brummond

Print Name Klarise Brummond

Title Office manager

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

David Cozad
Director
Enforcement and Compliance Assurance Division

Anna Landis
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

Date

Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify 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:

Anna Landis
Office of Regional Counsel
landis.anna@epa.gov

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

Carrie Venerable | N.E.W. Solutions
Office of Regional Counsel
venerable.carrie@epa.gov

Copy via Email to Respondent:

Klarise Brummond
1426 Hwy #75
Tekamah, NE 68061
neiahelicopter@gmail.com

Dated this _____ day of _____, _____.

Signed