

FILED

June 23, 2025

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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

**Buchheit Agri, Inc.,
Perryville, Missouri**

Respondent.

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Docket No. FIFRA-07-2025-0073

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Buchheit Agri, 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 and in accordance with the Consolidated Rules of Practice.

Parties

2. Complainant, by delegation from the Administrator of 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 Buchheit Agri, Inc., is a corporation in good standing under the laws of the state of Missouri.

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)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be "unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

6." Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136e(a), states no person shall produce" any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator.

7." 40 C.F.R. § 167.20(a)(1) further states that any establishment where a pesticidal" product is produced must be registered with the Agency.

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 2(w) of FIFRA, 7 U.S.C. § 136(w) defines "producer" to mean any" person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines "producer" to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device.

13." Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines "produce" to mean to" manufacture, prepare, compound, propagate, or process any pesticide or device or active

ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

14. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

15. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has registered any pesticide pursuant to FIFRA.

16. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.

17. Pursuant to 40 C.F.R. § 165.70(b), a registrant may allow a person to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all the following conditions in 40 C.F.R. 165.70(b) are satisfied:

- a. The repackaging results in no change to the pesticide formulation.
- b. One of the following conditions regarding a registered refilling establishment is satisfied:
 - (i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.
 - (ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.
- c. The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.
- d. The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.
- e. The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.

18. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a registration or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA.

19. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

20. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

21. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D) states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced.

22. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E) states that a pesticide is misbranded if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

23. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F) states that a pesticide is misbranded 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 136a(d) of this title, are adequate to protect health and the environment.

24. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C) state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content.

25. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1), officers or employees of EPA are authorized to enter at reasonable times (A) any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices, or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 136q of this title.

26. 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 December 27, 2023.

General Factual Allegations

27. Respondent is and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

28. Respondent is a pesticide producer, dealer, and distributor.
29. Respondent has approximately 100 employees.
30. On October 21, 2024, the Missouri Department of Agriculture conducted an inspection at the Buchheit Agri, Inc. facility located at 33 PCR 540 in Perryville, Missouri (“Facility”) to determine compliance with FIFRA and its implementing regulations.
31. During the inspection, the inspector documented a product referred to as NUTRA Pak Cattle Mineral (Fly Control), was being distributed, sold, offered for sale, held for distribution, and/or held for sale at its Facility.
32. At the time of the inspection, the facility was not registered with EPA to produce pesticides.
33. At the time of the inspection, NUTRA Pak Cattle Mineral (Fly Control) contained Diflubenzuron Cattle Supplement.
34. At the time of the inspection, Diflubenzuron Cattle Supplement was owned by Central Garden & Pet Company, under EPA Registration Number 89459-2.
35. At the time of the inspection, Respondent did not have a written contract with Central Garden & Pet Company to repackage, distribute, or sell the pesticide identified in Paragraph 32.
36. At the time of the inspection, Diflubenzuron Cattle Supplement had an accepted and enforceable label, dated May 1, 2019.
37. At the time of the inspection, the Diflubenzuron Cattle Supplement label was not on the NUTRA Pak Cattle Mineral (Fly Control) product.
38. At the time of the inspection, each label for the NUTRA Pak Cattle Mineral (Fly Control) was not labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.
39. By repacking the Diflubenzuron Cattle Supplement, Respondent “produced” NUTRA Pak Cattle Mineral (Fly Control) at the Facility as that term is defined in 40 C.F.R. §165.3.
40. By repackaging NUTRA Pak Cattle Mineral (Fly Control) into a new container, Respondent is also a “producer” of these pesticides as that term is defined in 40 C.F.R. §165.3.
41. At the time of the inspection, Respondent had not obtained a registration for the pesticide identified in Paragraph 31.

Allegations of Violations

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

Counts 1 – Production of a Pesticide at an Unregistered Facility

43. The facts stated in Paragraphs 18 through 41 above are herein incorporated.

44. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §136e(a), it is unlawful for a person to produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with the Administrator.

45. 40 C.F.R. § 167.20(a)(1) further states that any establishment where a pesticidal product is produced must be registered with the Agency.

46. During the October 21, 2024, inspection, EPA inspectors observed the production of the product containing pesticides identified in Paragraph 31 above at the Facility.

47. The Respondent admitted that the product is NUTRA Pak Cattle Mineral (Fly Control), was in fact, produced at the Facility.

48. Respondent did not obtain establishment registration, as required by 40 C.F.R. § 167.2(a).

49. Respondent's production of NUTRA Pak Cattle Mineral (Fly Control) without obtaining an establishment registration constitutes the production of a pesticide in an unregistered establishment, which is a violation of 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 2 – Sale of Unregistered and/or Illegally Packaged Pesticide

50. The facts stated in Paragraphs 18 through 41 above are herein incorporated.

51. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.

52. Pursuant to 40 C.F.R. § 165.70(b), a registrant may allow a person to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all conditions in 40 C.F.R. § 165.70(b) are satisfied.

53. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a registration or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA.

54. During the October 21, 2024, inspection, EPA inspectors observed NUTRA Pak Cattle Mineral (Fly Control), offered for sale by Respondent at their Facility.

55. For the NUTRA Pak Cattle Mineral (Fly Control), Respondent did not obtain registration, as required by 40 C.F.R. §§ 165.70(b) and (c).

56. For the NUTRA Pak Cattle Mineral (Fly Control), Respondent did not enter into a written contract with the registrant to repackage the product and to use the registrant's label, as required by 40 C.F.R. §§ 165.70(b)(3) and (c).

57. For the NUTRA Pak Cattle Mineral (Fly Control), the pesticide product was not labelled with the product's label, as required by 40 C.F.R. §§ 165.70(b)(5) and 165.70(c).

58. Respondent's distribution and sale of repackaged Diflubenzuron Cattle Supplement without obtaining a registration nor meeting all of the conditions in 40 C.F.R. § 165.70(b) constitutes separate distributions of an unregistered pesticide, each of which is a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 3 - Misbranding

59. The facts stated in Paragraphs 18 through 41 above are herein incorporated.

60. Pursuant to Section 12(a)(1)(E) of FIFRA, U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

61. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

62. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if its label does not bear the registration number assigned under section 136(q)(1)(E) of this title to each establishment in which it was produced.

63. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

64. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded 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 136a(d) of this title, are adequate to protect health and the environment.

65. Pursuant to Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content.

66. During the October 21, 2024, inspection, the EPA inspector observed the pesticide identified in Paragraph 31 above, offered for sale by the Respondent.

67. At the time of the inspection, the pesticide identified in Paragraph 31 above was misbranded for multiple reasons, including but not limited to, the following: The NUTRA PAK label was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal.

68. Due to the labeling issues identified above, the repackaged pesticides listed above were each misbranded pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

69. Respondent's distribution or sale of the misbranded pesticides are separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

CONSENT AGREEMENT

70. 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.

71. 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.

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

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

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

75. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *katlyn.niederecker@buchheits.com*.

Penalty Payment

76. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of Twelve Thousand Six Hundred and Ten Dollars (\$12,610).

77. 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 979078
St. Louis, Missouri 63197-9000

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

78. 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

Anna Landis, Attorney
landis.anna@epa.gov

79. 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

80. 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.

81. 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.

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

83. 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.

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

85. 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

86. 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.

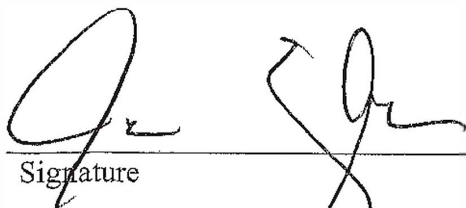
87. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the

Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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

89. 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
Buchheit Agri, Inc.


Signature


Date


Printed Name


Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

JODI BRUNO Digitally signed by JODI BRUNO
Date: 2025.06.17 15:27:05 -05'00'

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

ANNA LANDIS Digitally signed by ANNA LANDIS
Date: 2025.06.20 08:00:34 -05'00'

Anna Landis
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

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 Leshner
Enforcement and Compliance Assurance Division
lesher.mark@epa.gov

Carrie Venerable
ORC | National Experienced Workforce Solutions
venerable.carrie@epa.gov

Copy via Email to Respondent:

Katlyn O'Neill
Nutritionist
Buchheit Agri, Inc.
33 PCR 540
Perryville, Missouri 63775
katlyn.niederecker@buchheits.com

Dated this _____ day of _____, _____.

Signed