

FILED

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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)
)
Skyland Grain, L.L.C.,) **Docket No. FIFRA-07-2026-0173**
Ulysses, Kansas)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Skyland Grain, L.L.C. (“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 Skyland Grain, L.L.C., a limited liability corporation organized and in good standing under the laws of the state of Kansas.

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)(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.

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(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.

10. 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.

11. 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.

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 \$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

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

14. At all times relevant to this action, Respondent was a bulk repackager of registered pesticides and, therefore, a “producer” within the meaning of FIFRA.

15. On or about March 25, 2025, the Kansas Department of Agriculture (“KDA”) conducted an inspection of Respondent’s facility located at 1580 West 10th Street, Hugoton, Kansas 67951 (hereinafter, the “Inspection”).

Allegations of Violations

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

Count 1

17. The facts stated in Paragraphs 1 through 16 above are herein incorporated.

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

19. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states, in pertinent part, 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 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.

20. Based on information collected during the Inspection, EPA determined that Respondent was holding for sale and distribution a mini-bulk container of Resicore XL pesticide product, EPA Reg. No. 62719-756, which bore a label that had been torn such that required label information could no longer be read.

21. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide product that was misbranded as its label had been torn and could no longer be read.

Count 2

22. The facts stated in Paragraphs 1 through 16 above are herein incorporated.

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

24. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states, in pertinent part, 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 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.

25. Pursuant to 40 C.F.R. § 165.70(c), it is a violation to repackage a pesticide product for distribution or sale without meeting all of the conditions in paragraph (b) of this section.

26. Pursuant to 40 C.F.R. § 165.70(b)(5), a repackaged pesticide product must be 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.

27. Based on information collected during the Inspection, EPA determined that Respondent was holding for sale and distribution a mini-bulk container of Fulltime NXT pesticide product, EPA Reg. No. 62719-668, which bore a label that was not the version currently approved by EPA.

28. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and 40 C.F.R. § 165.70(c) by selling or distributing a pesticide product that was misbranded as it did not bear the labeling currently approved by EPA.

Count 3

29. The facts stated in Paragraphs 1 through 16 above are herein incorporated.

30. Pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), it shall be unlawful for any person to not maintain records required under 7 U.S.C. sections 136c, 136e, 136f, 136i, or 136q.

31. Pursuant to 40 C.F.R. § 169.2(a), promulgated under the authority of Section 8(a) of FIFRA, 7 U.S.C. § 136f, all producers of pesticides must maintain records showing the product name, EPA Registration Number, amounts per batch, and batch identification information of all pesticides it produced.

32. Based on information collected during the Inspection, EPA determined that Respondent had not met applicable requirements with regard to its production records.

33. Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and 40 C.F.R. § 169.2(a) by failing to properly maintain required records.

Count 4

34. The facts stated in Paragraphs 1 through 16 above are herein incorporated.

35. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it shall be unlawful for a producer to violate any provision of 7 U.S.C. § 136e.

36. Pursuant to Section 7(c)(1), 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85(d) producers are required to submit annual production reports to EPA.

37. Based on information collected after the Inspection, EPA determined that Respondent had not met applicable requirements with regard to production reporting for the year 2024.

38. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and 40 C.F.R. § 167.85(d) by failing to meet applicable requirements with regard to annual production reports.

CONSENT AGREEMENT

39. 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.

40. 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.

41. 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.

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

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

44. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following e-mail address: *marc.kliwer@skylandgrain.com*.

Penalty Payment

45. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of thirteen thousand three hundred eighty-four dollars (\$13,384), as set forth below.

46. 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>.

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

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Sam Bennett, Attorney
bennett.sam@epa.gov.

48. 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

49. 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.

50. 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.

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

52. 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.

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

54. 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

55. 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.

56. 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.

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

58. 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
SKYLAND GRAIN, L.L.C.

Date: 4-29-26

By: 

JEFF Knox
Print Name

General Manager
Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

Alyse Stoy
Acting Director Enforcement and Compliance
Assurance Division

Sam Bennett
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
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:

Sam Bennett
Office of Regional Counsel
bennett.sam@epa.gov

Brenton Jennings
Enforcement and Compliance Assurance Division
jennings.brenton@epa.gov

Carrie Venerable
Office of Regional Counsel
venerable.carrie@epa.gov

Copy via Email to Respondent:

Marc Kliewer
Skyland Grain, L.L.C.
marc.kliewer@skylandgrain.com

Dated this _____ day of _____, _____.

Signed