

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2023-0040
Wilbur-Ellis Nutrition, LLC)	
)	EXPEDITED SETTLEMENT
)	AGREEMENT AND
Buhl, Idaho 83316)	FINAL ORDER
)	
Respondent)	
_____)	

EXPEDITED CONSENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) alleges that Wilbur-Ellis Nutrition, LLC (“Respondent”) failed to comply with Section 7(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136e(c).
2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. Part 167 requires any producer operating a pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which it is producing, which it has produced during the past year, and which it has sold or distributed during the past year. 40 C.F.R § 167.85(d) requires the producer to submit an annual report providing this information on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.
3. Respondent is a “producer” who operates an “establishment,” as those terms are defined in Sections 2(w) and (dd) of FIFRA, 7 U.S.C. §§ 136(w) and (dd), and 40 C.F.R. § 167.3. Respondent’s establishment is located at 115 13th Avenue South, Buhl, Idaho, and is registered under Establishment Number 95586-ID-1.
4. Respondent failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. § 167.85(d), in that it did not file a 2021 annual pesticide report for the establishment by March 1, 2022.
5. The parties enter into this Expedited Settlement Agreement in order to settle the civil violation(s) alleged above. Pursuant to the Consolidated Rules of Practice, and in consideration of the statutory factors set forth in FIFRA Section 14(a)(4), 7 U.S.C. Section 136l(a)(4); EPA’s *Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements*, updated May 2010; 40 C.F.R. Part 19; and the June 21, 2019 FIFRA Section 7 Expedited

Settlement Agreement Program, EPA has determined that an appropriate civil penalty to settle this action is \$1,400.

6. EPA and Respondent agree that settlement of this matter for a civil penalty of \$1,400 is in the public interest.

7. Upon signing this Expedited Settlement Agreement, Respondent shall deposit the civil penalty amount listed in Paragraph 6 by one of the following methods:

7.1. Send a cashier's or certified check or money order with a notation for FIFRA-10-2023-0040 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. FIFRA-10-2023-0040
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

7.2. Send a cashier's or certified check or money order by an overnight/common carrier (e.g., FedEx® or United Parcel Service of America, Inc.) with a notation for FIFRA-10-2023-0040 payable to the order of the "Treasury of the United States of America" to the following address:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

7.3. Make an electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

8. Concurrently with the deposit under paragraph 7, Respondent shall forward a scanned, ink signed PDF copy of the Expedited Settlement Agreement, a copy of the cashier's or certified check or money order or documentation of a wire transfer, and a certification signed by Respondent that regarding the violations alleged above, Respondent is in compliance with Section 7(c) of FIFRA via email to Martin Lovato, Enforcement Case Officer at the following email address: lovato.martin@epa.gov.

By written notice to Respondent, EPA may change the address and/or person listed above.

9. EPA is authorized to enter into this Expedited Settlement Agreement (“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).

10. In signing this Agreement, for purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged above; (b) neither admits nor denies the factual allegations contained herein; (c) consents to the assessment of this penalty; and (d) waives any right to contest the allegations above, and its right to appeal the proposed attached Final Order.

11. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation(s); (b) agrees to provide a deposit for payment of the civil penalty as set forth in Paragraph 7; (c) agrees to submit a true and accurate proof of deposit for payment of the civil penalty as set forth in Paragraph 8; and (d) agrees to release said deposit for payment to EPA upon entry of the Final Order attached hereto.

12. Upon the effective date of this Agreement and subsequent payment of the civil penalty as set forth in paragraph 7, Respondent shall be resolved of liability for Federal civil penalties for the violation(s) and facts alleged herein.

13. The penalty, including interest, paid by Respondent pursuant to the requirements of this Agreement, represents civil penalties assessed by EPA, and shall not be deductible for purposes of federal, state, or local income taxes.

14. EPA reserves all of its rights to take an enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this Agreement. Nothing in this Final Order is intended to, nor shall be construed to operate in any way to resolve, any criminal liability of Respondent, and nothing in this Final Order shall be construed to limit EPA’s authority to take any action against Respondent in response to conditions that may present an imminent and substantial endangerment.

15. Each party shall bear its own costs and attorney’s fees.

16. The Agreement authorized by EPA’s execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

17. This Agreement is binding on the parties signing below. Upon signature of the parties and approval by the Regional Judicial Officer, this Agreement and Final Order shall be filed with the Regional Hearing Clerk. In accordance with 40 C.F.R. § 22.31(b), this Agreement is effective upon filing with the Regional Hearing Clerk.

18. The undersigned representative certifies that he/she is authorized to execute this Expedited Settlement Agreement and to legally bind Wilbur-Ellis Nutrition, LLC.

IT IS SO AGREED,

Name (print): JEFFREY BURNETT

Title (print): SR. FSQP MANAGER

Signature: 
Jeffrey Burnett

Date: 03.24.23

APPROVED BY EPA:
EDWARD
KOWALSKI

Digitally signed by
EDWARD KOWALSKI
Date: 2023.03.27
21:16:20 -07'00'

Date: _____

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

FINAL ORDER

Pursuant to the authority of Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and according to the terms of the Expedited Settlement Agreement entered into by Complainant or EPA and Respondent or Wilbur-Ellis Nutrition, LLC, IT IS HEREBY ORDERED THAT:

The Expedited Settlement Agreement is hereby ratified and shall be effective upon the filing of the Expedited Settlement Agreement and this Final Order by the Regional Hearing Clerk for EPA, Region 10. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

SO ORDERED this _____ day of _____, 2023.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2023.03.28
08:41:46 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached EXPEDITED SETTLEMENT AGREEMENT AND FINAL ORDER, In the Matter of: Wilbur-Ellis Nutrition, LLC, Docket No.: FIFRA-10-2023-0040, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered electronically to:

Martin Lovato
Enforcement Case Officer
U.S. Environmental Protection Agency Region 10
lovato.martin@epa.gov

Jeffrey Burnett
Senior FSQR Manager
Wilbur-Ellis Nutrition, LLC
115 13th Avenue South
Buhl, Idaho 83316
jburnett@wilburellis.com

DATED this _____ day of _____, 2023.

**DANIEL
MAUL**

Digitally signed by
DANIEL MAUL
Date: 2023.03.28
16:36:36 -07'00'

Regional Hearing Clerk
EPA Region 10