

U. S. ENVIRONMENTAL PROTECTION AGENCY 2012 SEP -4 AM 8:30
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

In the Matter of)
AgXplore International, LLC) Docket No. FIFRA-07-2012-0029
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and AgXplore International, LLC, have agreed to a settlement of this action before 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, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is AgXplore International, LLC, a pesticide distributor with a facility located at 7033 State Highway D, Parma, Missouri 63870.

Section III

Statutory and Regulatory Background

5. 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.

6. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "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 the term “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. 40 C.F.R. § 168.22(a) states: “FIFRA sections 12(a)(1)(A) and (B) make it unlawful for any person to ‘offer for sale’ any pesticide if it in unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. The EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.”

11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest and as any substance or mixture of substances intended for use as a plant regulator, defoliant or dessicant.

12. The term “pest” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), “as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life...,” and further defined in 40 C.F.R. §152.5.

13. The term “plant regulator” is defined, in pertinent part, at Section 2(v) of FIFRA, 7 U.S.C. § 136(v), as “any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof....”

14. 40 C.F.R. § 152.15(a) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes

or sells the substance (1) claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; or (2) that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

15. 40 C.F.R. § 152.15(b) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the substance contains one or more active ingredients and has no significant commercial value as distributed or sold other than use for a pesticidal purpose (by itself or in combination with any other substance).

16. 40 C.F.R. § 152.15(c) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

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

18. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act 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.

Section IV

General Factual Allegations

19. Respondent is, and at all times referred to herein was, a "person" within the meaning of FIFRA.

20. At all times relevant, Respondent owned or operated a place of business located at 7033 State Highway D, Parma, Missouri 63870.

21. On or about September 27, 2005, representatives of the EPA and the Missouri Department of Agriculture authorized to conduct inspections under FIFRA met with Respondent's manager, Mr. Barry Aycock, at Respondent's place of business.

22. On or about April 8, 2008, EPA issued Respondent a Notice of Warning, informing Respondent that it was in violation of FIFRA for, *inter alia*, producing or distributing an unregistered pesticide product, NutriPak 8-10-2.

23. On or about April 29, 2010, representatives of the EPA authorized to conduct inspections under FIFRA met with Respondent's manager, Mr. Barry Aycock, at Respondent's place of business.

24. During that meeting, Mr. Aycock provided the EPA inspectors documents, including an inventory list and labels for the products NutriPak 8-10-2, BorPak, SulPak, ValuPak, Xplode, and CalPak.

25. Following the April 29, 2010, inspection of Respondent's facility, Mr. Aycock mailed to the EPA copies of invoices and shipping documents for the products listed in the previous paragraph for the time period May 2009 through May 2010.

26. On or about June 17, 2011, AgFertilizers, Inc., of Ennis, Montana, provided to the EPA copies of invoices for products that it had purchased from Respondent.

Xplode

27. The label for the product Xplode that was collected by the inspectors on or about April 29, 2010, states, in part:

- (i) "THIS PRODUCT CONTAINS 20,000 SCOVALL [sic] HEAT UNITS (With this product, you are applying heat units, not volume)"
- (ii) "Contains: Garlic & Capsaicin"
- (iii) "This product has a profound irritant action."

28. On June 16, 2011, Respondent's internet site at <http://www.agxplore.com/products/xplode.html> advertised Xplode with the following claims:

- (i) "Xplode is a natural formulation containing nutrients and other ingredients that act as deterrents which eliminates [sic] insect activity"
- (ii) "The main active ingredients of Xplode consist of garlic and capsaicin."
- (iii) "Xplode is [...] a natural repellent"
- (iv) "When tank mixed or applied alone, Xplode decreases the detrimental effects of soft-bodied insects"
- (v) "The affected types of pests are as follows: Stink Bugs, Soybean Thrips, Alfalfa Leaf Beetle, Potato Leafhopper, Corn Flea Beetle, Fall Armyworm, Cow Pea Curculio, European Corn Borer, Bean Leaf Beetle, Corn Ear Worm, True Armyworm, Corn Leaf Aphid, Grasshoppers, Spider Mites"
- (vi) "Xplode has also proved to repel larger pests such as deer and other wildlife that can damage crops"

29. Xplode is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

30. Xplode is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Forage Guard™

31. On or about June 16, 2011, Respondent's internet site at <http://nutri-plotadvantage.com.html> advertised the product Forage Guard™ with the following claims:

- (i) "ForageGuard is a concentrated natural liquid wildlife repellent derived from garlic and capsaicin"
- (ii) "When diluted and applied to foliage this spray solution will aid and eliminate browsing by deer and other game"
- (iii) "This product contains a very strong odor that repels wild game."
- (iv) "The spray solution [...] will cause vegetation to become un-palatable for a short period of time"
- (v) "This product contains a skin irritant"
- (vi) "Keep the critter's [sic] out of your forage, with Forage guard"
- (vii) "A natural liquid wildlife repellent"

32. Forage Guard™ is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

33. Forage Guard™ is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

NutriPak Prima 8-10-2

34. On or about June 16, 2011, Respondent's internet site at <http://www.agxplore.com> advertised the product NutriPak Prima 8-10-2 with the following claims:

- (i) “NutriPak is a proprietary blend of fertilizer and seaweed extracts from kelp (*Ascophyllum Nodosum*). These ingredients promote the natural growth and fruiting processes in plants in addition to stimulating root growth and development”
- (ii) “NutriPak stimulates plant growth and fruiting”
- (iii) “Stimulate [sic] Root Growth and Development”
- (iv) “Increased Root Mass”
- (v) “NutriPak Prima is state-of-the-art chemistry comprised of humic acid, natural plant growth stimulants, and 30 trace micronutrients”
- (vi) “NutriPak Prima increases root, stem, leaf and fruit growth”
- (vii) “Benefits of Natural Growth Stimulants – Increases seedling growth; Promotes stem elongation; Reduces seed dormancy; Induces fruit set; Advances flowering; Increases leaf area index”
- (viii) “Stimulates Microorganism Activity – Microorganisms protect plants from pathogenic soil organisms by antagonizing disease-causing pathogens”

35. The product information pamphlet and brochure for the product NutriPak 8-10-2 that was collected by the inspectors on or about September 27, 2005 state, in part:

- (i) NutriPak’s composition includes: “Plant Growth Regulators – Cytokinins as Kinetin (Seaweed) extracted from *Ascophyllum nodosum*; Cytokinins as Zeatin; Cytokinins as (2IP); Gibberellic Acid (GA3); Auxins – 3 compositions: Indoleacetic Acid (IAA); Indolebutyric Acid (IBA); Abscisic Acid (.ABA)”

- (ii) "Improves root growth/Rapid root development"
- (iii) "Promotes fruit retention"
- (iv) "Increases fruit size"
- (v) "Provides earlier maturity"
- (vi) "Encourages transition of plant from vegetative to reproductive state"
- (vii) "Natural fungistatic activity"
- (viii) NutriPak Composition: "Adenines ... Fruiting hormones; I.A.A. ... Determines plant cell number; I.B.A. ... Root stimulating hormones; Cytokinins ... Growth hormone/fruiting hormone/cell elongation; G.A.3. ... Growth regulating hormone/Root stimulant"

36. NutriPak Prima 8-10-2 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

37. NutriPak Prima 8-10-2 is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

NutriPak 4-1-3

38. On or about August 29, 2011, Respondent's internet site at <http://www.agxlore.com> advertised the product NutriPak 4-1-3 with the following claims:

- (i) "NutriPak is a proprietary blend of fertilizer and seaplant extracts from kelp (*Ascophyllum Nodosum*)"
- (ii) "These ingredients promote the natural growth and fruiting processes in plants in addition to stimulating root growth and development"

- (iii) "A stronger, healthier root system allows plants to increase water and nutrient uptake"

39. The AgXplore International, LLC product guide that was collected by the inspectors on or about September 27, 2005 states in reference to NutriPak 4-1-3:

- (i) "NutriPak contains several bacterial strains, hormones, and enzymes in their natural environment"
- (ii) "The hormones constituencies are (Auxins) Indole-Acetic Acid, Indole-Butyric Acid, (Gibberellins) Gibberelic Acid-3, Gibberelic Acid-7, (Cytokinin) Zeatin and Adenine"
- (iii) "Improves root growth/Rapid root development"
- (iv) "Promotes fruit retention"
- (v) "Increases fruit size"
- (vi) "Provides earlier maturity"

40. NutriPak 4-1-3 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

41. NutriPak 4-1-3 is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

BORPAK

42. On or about June 16, 2011, Respondent's internet site at <http://www.agxplyre.com> advertised the product BORPAK with the following claims:

- (i) "BORPAK is a chelated boron package containing essential vitamins and enzymes"
- (ii) "Increases cell wall strength and growth"

- (iii) "Increases fruit retention"
- (iv) "Utilized for fruit and seed development"

43. The AgXplore International, LLC product guide that was collected by the inspectors on or about September 27, 2005, states in reference to BORPAK:

- (i) "BORPAK contains vitamins, enzymes, amino acids, and gibberelic acid"
- (ii) "These vitamins, enzymes, and amino acids include Gibberelic Acid"
- (iii) "Better Germination; Substantial root development; Larger fruit size"

44. BORPAK is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

45. BORPAK is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

VALUPAK

46. The label for the product VALUPAK that was collected by the inspectors on or about April 29, 2010, states, in part:

- (i) "VALUPAK is a pure seaweed concentrate containing organic plant growth stimulants and should be used in conjunction with normal fertilizer programs"

47. On or about June 16, 2011, Respondent's internet site at <http://www.agxplore.com> advertised the product VALUPAK with the following claims:

- (i) "VALUPAK stimulates plants to produce higher yields, particularly in crops like apples, tomatoes, melons, cotton, soybeans and other crops where fruit set is important"

- (ii) "VALUPAK should be used during the peak fruiting stage of the crop and should be used in conjunction with normal fertilizer programs"

48. VALUPAK is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

49. VALUPAK is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

SulPak 17

50. On or about June 16, 2011, Respondent's internet site at <http://www.agxplyre.com> advertised the product SulPak 17 with the following claim:

- (i) "Works as a natural fungicide"

51. SulPak 17 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

52. SulPak 17 is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

CALPAK

53. The label for the product CALPAK that was collected by the inspectors on or about April 29, 2010 states, in part:

- (i) "CALPAK is designed to be sprayed on plant foliage to reduce localized ethylene production within the plant"
- (ii) "It will also guard against calcium production in cell walls"
- (iii) "If used at regular intervals, CALPAK will increase fruit, boll, pod, or bud set and reduce internal damage to storage tissue"

54. CALPAK is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

55. CALPAK is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

OnGuard/Pare Royale

56. On or about December 23, 2011, Respondent's internet site at <http://www.agxplyre.com> advertised the product OnGuard/Pare Royale (OnGuard) with the following claims:

- (i) "OnGuard should be used as an integrated plant disease prevention management and suppression program"
- (ii) "OnGuard is a natural disease preventative used to supplement any Integrated Pest Management (IPM) program"
- (iii) "OnGuard enhances a plant's ability to combat disease"
- (iv) "OnGuard should be applied before a disease appears"
- (v) "User should anticipate the arrival of a fungus and apply OnGuard prior to infection"
- (vi) "OnGuard promotes disease prevention & recovery"
- (vii) "OnGuard improves plant health"

57. OnGuard is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

58. OnGuard is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Nutri-Plot Fertilizer and Attractant

59. On or about August 29, 2011, Respondent's internet site at <http://nutri-plotadvantage.com.html> advertised the product Nutri-Plot Fertilizer and Attractant with the following claims:

- (i) "This concentrated blend contains several compounds not found in normal granular fertilizer that will increase growth, nutrition and the attractiveness of your food plots"
- (ii) "Increase leaf size"
- (iii) "Increase root development"
- (iv) "Increase stem and stalk strength"
- (v) "can increase the amount of forage in your plots by stimulating root development, leaf size, stem and stalk strength"
- (vi) "a plant stimulator"

60. On or about August 29, 2011, Respondent's internet webpage located at: <https://www.facebook.com/pages/Nutri-Plot-Wildlife-Products/156113678657>, advertised the product Nutri-Plot Fertilizer and Attractant with the following claims:

- (i) "contains ... plant growth activators"
- (ii) "Providing growth benefits regular fertilizer can't"
- (iii) "contains ... bio-stimulants, plant growth activators, and micro-nutrients"
- (iv) "treated plants will have increased leaf output, larger leaves, stronger stalks and more developed root systems"

(v) "It is the most universal fertilizer blend you will ever encounter for food plot management"

61. Nutri-Plot Fertilizer and Attractant is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

62. Nutri-Plot Fertilizer and Attractant is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

MicroMaize

63. On or about September 28, 2011, Respondent's internet site at <http://nutri-plotadvantage.com.html> advertised the product MicroMaize.

64. MicroMaize is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

65. MicroMaize is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

CornScience

66. On or about December 23, 2011, Respondent's internet site at <http://www.agxlore.com> advertised the product CornScience with the following claims:

(i) "plant food supplement" to be used "in conjunction with a normal fertilizer program"

67. CornScience is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

68. CornScience is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

SoyScience

69. On or about December 23, 2011, Respondent's internet site at <http://www.agxplore.com> advertised the product SoyScience with the following claims:

- (i) "plant food supplement" to be used "in conjunction with a normal fertilizer program"
- (ii) "blend of micro and macro nutrients and sea plant extracts which promote natural growth and fruiting"

70. SoyScience is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

71. SoyScience is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

MicroScience

72. On or about December 23, 2011, Respondent's internet site at <http://www.agxplore.com> advertised the product MicroScience.

73. MicroScience is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

74. MicroScience is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Violations

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

Counts 1-9 – Xplode

76. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

77. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide Xplode.

78. On or about March 25, 2012, Respondent's internet site at <http://www.agxplore.com> offered for sale the unregistered pesticide Xplode.

79. In seven separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide Xplode: May 14, 2009; June 1, 2009; June 15, 2009; April 14, 2010; April 16, 2010; April 21, 2010; and May 5, 2010.

80. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Xplode is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 10 – Forage Guard™

81. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

82. On or about March 25, 2012, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the unregistered pesticide Forage Guard™.

83. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Forage Guard™ is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 11 through 88 – NutriPak Prima 8-10-2

84. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if

fully stated herein.

85. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide NutriPak Prima 8-10-2.

86. On or about March 25, 2012, Respondent's internet site at <http://www.agxplyre.com> offered for sale the unregistered pesticide NutriPak Prima 8-10-2.

87. In 76 separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide NutriPak Prima 8-10-2: April 16, 2010; June 15, 2009; April 12, 2010; May 12, 2009; July 22, 2009; July 8, 2009; January 1, 2010; April 23, 2010; May 7, 2009; April 8, 2010; August 4, 2009; July 9, 2009; July 13, 2009; June 4, 2009; August 5, 2009; February 15, 2010; April 14, 2010; May 6, 2010; May 10, 2010; August 4, 2009; August 5, 2009; June 23, 2009; April 12, 2010; April 27, 2010; May 8, 2009; June 6, 2009; July 8, 2009; July 6, 2009; March 4, 2010; June 30, 2009; June 10, 2009; May 8, 2009; May 28, 2009; August 3, 2009; March 29, 2010; May 28, 2009; June 17, 2009; April 14, 2010; March 31, 2010; June 25, 2009; July 2, 2009; July 22, 2009; July 23, 2009; August 6, 2009; August 12, 2009; August 14, 2009; August 18, 2009; May 21, 2009; May 13, 2009; June 27, 2009; July 6, 2009; April 5, 2010; June 4, 2009; September 16, 2009; February 16, 2010; April 24, 2009; September 21, 2009; February 5, 2010; May 26, 2009; June 3, 2009; June 4, 2009; June 29, 2009; February 1, 2010; March 29, 2010; April 28, 2010; May 5, 2010; May 6, 2010; May 17, 2010; May 21, 2010; May 24, 2010; September 14, 2010; September 8, 2010; June 28, 2010; June 25, 2010; and June 17, 2010.

88. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide NutriPak Prima 8-10-2 is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 89 through 91 – NutriPak 4-1-3

89. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

90. On or about July 13, 2011, Respondent's internet site at <http://www.agxplore.com> offered for sale the unregistered pesticide NutriPak 4-1-3.

91. On or about June 15, 2009, Respondent distributed or sold a quantity of the unregistered pesticide NutriPak 4-1-3.

92. On or about February 1, 2010, Respondent distributed or sold a quantity of the unregistered pesticide NutriPak 4-1-3.

93. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide NutriPak 4-1-3 is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 92 through 131 - BORPAK

94. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

95. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide BORPAK.

96. On or about March 25, 2012, Respondent's internet site at <http://www.agxplore.com> offered for sale the unregistered pesticide BORPAK.

97. In 38 separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide BORPAK: June 15, 2009; June 29, 2009; July 28, 2009; June 16, 2009; July 7, 2009; February 15, 2010; June 28, 2009; August 14, 2009; May 10, 2010; July 1, 2009; June 22, 2009; June 8, 2009; June 2, 2009; July 21, 2009;

August 6, 2009; August 10, 2009; July 24, 2009; July 25, 2009; July 9, 2009; July 7, 2009; April 27, 2010; May 8, 2009; July 6, 2009; July 8, 2009; July 15, 2009; July 17, 2009; July 21, 2009; July 2, 2009; July 29, 2009; August 6, 2009; August 12, 2009; August 14, 2009; August 18, 2009; March 10, 2010; February 16, 2010; January 28, 2010; June 3, 2009; and June 29, 2009

98. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide BORPAK is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 132 through 142 – VALUPAK

99. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

100. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide VALUPAK.

101. On or about March 25, 2012, Respondent's internet site at <http://www.agxplyre.com> offered for sale the unregistered pesticide VALUPAK.

102. In 9 separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide VALUPAK: June 16, 2009; July 28, 2009; July 1, 2009; April 12, 2010; June 26, 2009; October 19, 2009; July 17, 2009; July 28, 2009; and September 14, 2010;

103. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide VALUPAK is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 143 through 171 – SulPak 17

104. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if

fully stated herein.

105. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide SulPak 17.

106. On or about March 25, 2012, Respondent's internet site at <http://www.agxplyre.com> offered for sale the unregistered pesticide SulPak 17.

107. In 27 separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide SulPak 17: June 15, 2009; April 12, 2010; January 1, 2010; August 4, 2009; July 9, 2009; February 18, 2010; June 23, 2009; July 6, 2009; June 24, 2009; June 26, 2009; May 8, 2009; June 6, 2009; July 8, 2009; June 2, 2009; July 2, 2009; April 28, 2010; June 10, 2009; February 1, 2010; April 28, 2010; May 6, 2010; May 7, 2010; May 17, 2010; May 21, 2010; September 14, 2010; June 28, 2010; June 25, 2010; and June 17, 2010.

108. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide SulPak 17 is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 172 through 176 – CALPAK

109. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

110. On or about April 29, 2010, Respondent held in inventory for sale or distribution a quantity of the unregistered pesticide CALPAK.

111. On or about March 25, 2012, Respondent's internet site at <http://www.agxplyre.com> offered for sale the unregistered pesticide CALPAK.

112. In three separate transactions, on or about the following dates, Respondent

distributed or sold a quantity of the unregistered pesticide CALPAK: June 15, 2009; and June 4, 2009.

113. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide CALPAK is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 177 – OnGuard/Pare Royale

114. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

115. On or about March 25, 2012, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the unregistered pesticide OnGuard.

116. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide OnGuard is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 178 through 179 – Nutri-Plot Fertilizer and Attractant

117. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

118. On or about March 25, 2012, Respondent's internet sites at <http://www.nutri-plotadvantage.com/> and <http://www.shopnutri-plot.com/shop/> offered for sale the unregistered pesticide Nutri-Plot Fertilizer and Attractant.

119. On or about October 19, 2009, Respondent distributed or sold a quantity of the unregistered pesticide Nutri-Plot Fertilizer and Attractant.

120. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Nutri-Plot Fertilizer and Attractant is a violation

of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 180 – MicroMaize

121. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

122. On or about March 25, 2012, Respondent distributed or sold, held for distribution or sale, or offered for sale or distribution the unregistered pesticide MicroMaize.

123. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide MicroMaize is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 181 through 187 – CornScience

124. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

125. On or about March 25, 2012, Respondent's internet site at <http://www.agxplyre.com> offered for sale the unregistered pesticide CornScience.

126. In six separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide CornScience: May 8, 2009; May 28, 2009; June 4, 2009; June 15, 2009; February 16, 2010; and April 12, 2010.

127. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide CornScience is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 188 through 201 – SoyScience

128. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if

fully stated herein.

129. On or about March 25, 2012, Respondent's internet site at <http://www.agxplore.com> offered for sale the unregistered pesticide SoyScience.

130. In thirteen separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide SoyScience: May 8, 2009; May 28, 2009; June 3, 2009; June 4, 2009; June 15, 2009; July 21, 2009; August 5, 2009; August 12, 2009; September 16, 2009, April 12, 2010; April 27, 2010; and April 28, 2010.

131. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide SoyScience is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Counts 202 through 207 – MicroScience

132. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

133. On or about March 25, 2012, Respondent's internet site at <http://www.agxplore.com> offered for sale the unregistered pesticide MicroScience.

134. In five separate transactions, on or about the following dates, Respondent distributed or sold a quantity of the unregistered pesticide MicroScience: February 1, 2010; March 11, 2010; April 5, 2010; April 28, 2010; and June 28, 2010.

135. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide MicroScience is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 208 – Green Flash

136. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if

fully stated herein.

137. On or about March 14, 2012, Respondent's internet site at <http://www.agxplore.com> advertised and offered for sale the product Green Flash with the following claim: "Fertilizer with humic acid and biostimulants."

138. Green Flash is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

139. Green Flash is not a registered pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

140. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Green Flash is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 209 - HumaPak

141. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

142. On or about March 14, 2012, Respondent's internet site at <http://www.agxplore.com> advertised and offered for sale the product HumaPak with the following claims: "Biologically stimulates plant and root growth" and "Also contains Non-Plant Food Ingredients: 2% Soluble Seaweed Extracts (Derived from: *Ascophyllum nodosum**)".

143. HumaPak is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

144. HumaPak is not a registered pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

145. Respondent's distribution or sale, holding for distribution or sale, or offering for

sale or distribution of the unregistered pesticide HumaPak is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 210 - MicroStarter

146. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

147. On or about March 14, 2012, Respondent's internet site at <http://www.agxplyre.com> advertised and offered for sale the product MicroStarter with the following claim: contains "Seaweed Concentrate".

148. MicroStarter is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

149. MicroStarter is not a registered pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

150. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide MicroStarter is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 211 - CalForce

151. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

152. On or about March 14, 2012, Respondent's internet site at <http://www.agxplyre.com> advertised and offered for sale the product CalForce with the following claims: "foliar fertilizer packaged with biostimulants" and "increases yield by stimulating fruiting activity".

153. CalForce is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u),

40 C.F.R. §§ 152.3 and 152.15(a).

154. CalForce is not a registered pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

155. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide CalForce is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 212 - Strike

156. The facts stated in paragraphs 19 through 74 are realleged and incorporated as if fully stated herein.

157. On or about March 14, 2012, Respondent's internet site at <http://www.agxplyre.com> advertised and offered for sale the product Strike with the following claims: "improves quality and color of the ... fruit", "Also contains Non-Plant Food Ingredients: 1% Soluble Seaweed Extracts (Derived from: *Ascophyllum nodosum**)", and "Bio-stimulants derived from seaweed extracts".

158. Strike is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

159. Strike is not a registered pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

160. Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Strike is a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Section V

Consent Agreement

161. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

162. Respondent neither admits nor denies the factual allegations set forth above.

163. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

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

165. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

166. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

167. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

168. The effect of settlement described in Paragraph 169 below is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in Paragraph 167 above.

169. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

170. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

171. In the event that Respondent dissolves, winds up, or closes its business affairs, Respondent shall notify the EPA within one hundred eighty (180) days of its decision to dissolve, wind up, or close its business affairs in accordance with Missouri Revised Statutes section 251.478. Notification shall be sent to Chris Dudding at the address listed in Paragraph 3 of the Final Order, below.

172. Late Payment Provisions. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order 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 accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136l, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty, in the amount of Two Hundred Thirty Seven Thousand Five Hundred and Seventy-Three Dollars (\$237,573.00) plus interest for three years in the amount of Three Thousand Two Hundred Seventy-Six and Twenty-one Cents

(\$3,276.12). The civil penalty will be paid in twelve (12) quarterly payments of Twenty Thousand Seventy Dollars and Seventy-six Cents (\$20,070.76) each. The first payment must be received at the address below on or before 30 days after the effective date of the Final Order.

Each of the eleven succeeding payments shall be due on or before the following dates:

October 31, 2012
January 31, 2013
April 30, 2013
July 31, 2013
October 31, 2013
January 31, 2014
April 30, 2014
July 31, 2014
October 31, 2014
January 31, 2015
April 30, 2015

Payment by check 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 979077
St. Louis, Missouri 63197-9000

2. As an alternative to payment by check, wire transfers should be directed to the Federal Reserve Bank of New York and should identify Respondent by name and docket number:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

3. A copy of the check or other information confirming payment shall

simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

5. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

6. This CAFO shall be effective upon the filing of the Final Order 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.

RESPONDENT
AGXPLORE INTERNATIONAL, LLC

Date: 8-24-12

By:

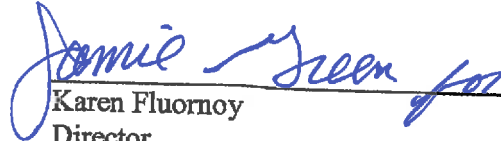
Barry Aycock

Barry Aycock
Print Name

OWNER
Title

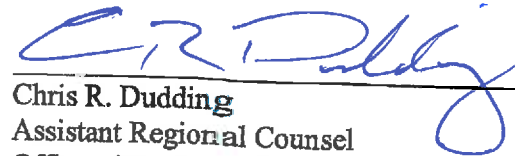
COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/30/12




Karen Fluornoy
Director
Water, Wetlands and Pesticides Division

Date: 8/30/12



Chris R. Dudding
Assistant Regional Counsel
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: August 31, 2012 
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF AgXplore International, LLC, Respondent
Docket No. FIFRA-07-2012-0029

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Chris R. Dudding
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail to:

Barry Aycock, Owner
AgXplore International, LLC
7033 State Highway D
Parma, Missouri 63870

Dated: 9/4/12


Kathy Robinson
Hearing Clerk, Region 7