



## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. Under Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

3.2. Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

3.3. Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), “pesticide” includes, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

3.4. Under Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), “to use any registered pesticide in a manner inconsistent with its labeling” means “to use any registered pesticide in a manner not permitted by the labeling,” subject to limited exceptions.

3.5. Under Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), “labeling” includes, *inter alia*, “all labels and all other written printed, or graphic matter [] accompanying the pesticide or device at any time.”

3.6. Under Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), “label” means “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

3.7. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.8. “Propi-Star EC,” EPA Registration Number (EPA Reg. No. 42750-211), is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.9. “Priaxor,” EPA Registration Number (EPA Reg. No. 7969-311), is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.10. The labeling for Propi-Star EC states in part:

- It is a violation of Federal law to use this product in a manner inconsistent with its labeling.
- Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the treated area during application.
- To avoid spray drift, do not apply when conditions favor drift beyond the target area.

- Do not apply in a manner that will result in exposure to humans or animals.

3.11. The labeling for Priaxor states in part:

- It is a violation of Federal law to use this product in a manner inconsistent with its labeling.
- **DO NOT** apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the treated area during application.
- **DO NOT** spray when conditions favor drift beyond the area intended for application.
- **DO NOT** apply under circumstances where possible drift to unprotected persons, to food, forage, or other plantings that might be damaged, or crops thereof rendered unfit for sale, use or consumption can occur.

3.12. Propiconazole is the active ingredient of Propi-Star EC.

3.13. Pyraclostrobin and fluxapyroxad are the two active ingredients in Priaxor.

3.14. Respondent owns and operates a business facility located at 24676 Garden Gulch Road, Culdesac, Idaho 83524.

3.15. On May 8, 9, 11, 14, and 15, 2015, Ryan P. McBoyle applied at least 30 loads of Propi-Star EC and Priaxor to a portion of Respondent's property called the Reagan Field, which is located around Lapwai, Idaho. Each load covered approximately 60 acres.

3.16. On at least May 8, 9, 11, 14, and 15, 2015, Ryan P. McBoyle was an employee of Respondent.

3.17. The Reagan Field is under a quarter mile directly east of Lapwai. The western edge of the Reagan Field is located approximately 300 feet above Lapwai.

3.18. On May 14, 2015, a federally credentialed inspector working for the Tribal Pesticide Enforcement Circuit Rider Program collected a total of three vegetation samples (“Samples”), one from each of the following locations: approximately 900, 1,000 and 1,600 feet west of the edge of the Reagan Field, around areas frequently trafficked by humans.

3.19. The Samples were initially analyzed by the Idaho Food Quality Assurance Laboratory (“IFQAL”) on May 27, 2015. After May 27, 2015, the Samples were preserved in a freezer at IFQAL.

3.20. Initial test results by the IFQAL of the Samples found traces of propiconazole and pyraclostrobin below the minimum detection limit (“MDL”) of 0.010 parts per million (ppm) in the Samples.

3.21. IFQAL’s data package created while processing the Samples showed concentrations of propiconazole at concentrations ranging from 0.00405 ppm to 0.00884 ppm in a gradient pattern increasing as the sample approached the Reagan Field.

3.22. The data package also showed concentrations of pyraclostrobin ranging from 0.00457 ppm to 0.00628 ppm in a gradient pattern increasing as the sample approached the Reagan Field.

3.23. On May 13, 2016, at the request of EPA, the IFQAL reanalyzed the Samples to establish a lower MDL.

3.24. The IFQAL was able to establish a 0.003 ppm MDL when reanalyzing the Samples.

3.25. The additional test results showed concentrations of both propiconazole and pyraclostrobin above the lower MDL of 0.003 ppm in the Samples.

3.26. The concentrations of propiconazole in the Samples ranged from 0.009 ppm to 0.014 ppm and generally increased as the sample approached the Reagan Field.

3.27. The concentrations of pyraclostrobin in the Samples ranged from 0.0075 to 0.0077 ppm.

3.28. Between May 8, 2015, and May 15, 2015, other than application by Respondent, there were no known instances of application of propiconazole nor pyraclostrobin in or around Lapwai, Idaho.

3.29. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying Propi-Star EC in a manner inconsistent with its labeling.

3.30. Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying Priaxor in a manner inconsistent with its labeling.

3.31. As described in Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), Respondent is an "other person" not included in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), who violates any provision of FIFRA.

3.32. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), and 40 C.F.R. Part 19, subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, EPA may assess a civil penalty of not more than \$1,100 for each violation.

3.33. On April 16, 2013, Respondent settled a similar violation of FIFRA with EPA through the filing of a Consent Agreement and Final Order (“CAFO”) (Docket Number FIFRA-10-2013-0069).

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$1,760 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Young.teresa@epa.gov

Chad Schulze  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Schulze.chad@gpa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.



4.8.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.8.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

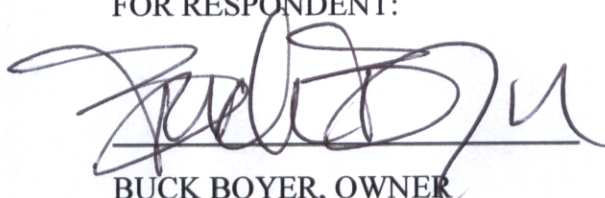
4.14. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

11/30/16

FOR RESPONDENT:

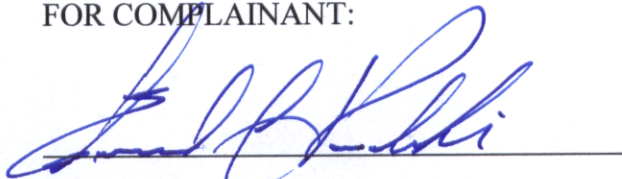


BUCK BOYER, OWNER  
Larry Boyer Land & Cattle

DATED:

12/7/2016

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2017-0032
	)	
LARRY BOYER LAND & CATTLE,	)	<b>FINAL ORDER</b>
	)	
Culdesac, Idaho,	)	
	)	
Respondent.	)	

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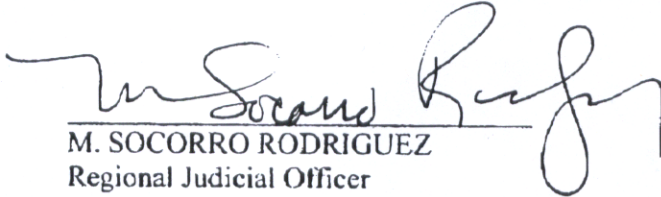
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 8<sup>th</sup> day of December, 2016.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Larry Boyer Land & Cattle, Docket No.: FIFRA-10-2017-0032**, 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 to:

Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Buck Boyer  
Larry Boyer Land & Cattle  
42676 Garden Gulch Road  
Culdesac, Idaho 83524

DATED this 9 day of Dec, 2016.

  
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TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10