

**FILED**

**December 11, 2025**

**1:51 P.M. PST**

**U.S. EPA REGION 10  
HEARING CLERK**

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2026-0034
	)	
WILBUR-ELLIS COMPANY D/B/A	)	<b>CONSENT AGREEMENT</b>
WOODBURN FERTILIZER,	)	
	)	
Woodburn, Oregon	)	
	)	
Respondent.	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Wilbur-Ellis Company, doing business as Woodburn Fertilizer (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

## **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 Enforcement and Compliance Assurance Division, 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**

### **Statutory and Regulatory Background**

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

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

3.3. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating

any pest [and] any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant . . . .”

3.4. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to distribute or sell” as “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.”

3.5. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.6. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” This section also defines “labeling” as “all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device.”

3.7. Under 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 [3(d) of FIFRA], is adequate to protect health and the environment.”

### **Distribution and Sale of Misbranded Pesticide**

3.8. Respondent is a corporation and, therefore, meets the definition of “person” in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.9. Respondent owns and operates the pesticide production establishment at 868 North Front Street, Woodburn, Oregon (“Facility”).

3.10. Respondent is the registrant for the registered pesticide Moss Terminator (EPA Reg. No. 2935-547). At all times relevant to this Consent Agreement, Moss Terminator met the definition of “pesticide” in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.11. EPA first approved the label for Moss Terminator on January 27, 2009. EPA has approved subsequent labeling changes several times, most recently on February 12, 2014 and May 19, 2020.

3.12. At all times relevant to this Consent Agreement the approved label for Moss Terminator including the following directions for use pursuant to 40 C.F.R. § 156.10(i)(1) and (2):

- a. Application rates for fertilization and moss control  
(40 C.F.R. § 156.10(i)(2)(v); (vii));
- b. Application instructions for new lawns, established lawns, and cool season grasses (40 C.F.R. § 156.10(i)(2)(v)-(vii); and
- c. Storage and disposal instructions (40 C.F.R. § 156.10(i)(2)(ix)).

3.13. Between at least January 1, 2022, and April 30, 2023, Respondent distributed or sold 50-pound bags of Moss Terminator from the Facility to persons in the United States on at least 141 occasions.

3.14. The labels on all of the 50-pound bags distributed or sold by Respondent between January 1, 2022, and April 30, 2023, as alleged in Paragraph 3.13 were missing the directions for use listed in Paragraph 3.12.

3.15. Therefore, in accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), Respondent violated FIFRA on at least 141 occasions between January 1, 2022, and January 1, 2023.

#### **Enforcement Authority**

3.16. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$24,885 for each offense.

#### **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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$847,326 (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 wire transfer, ACH, or online payment. Payment instructions are available at:

[www.epa.gov/financial/makepayment](http://www.epa.gov/financial/makepayment) and [www.epa.gov/financial/additional-instructions-](http://www.epa.gov/financial/additional-instructions-)

[making-payments-epa](#). Respondent must note Respondent's name and the docket number of this action on the form of payment.

4.6. Concurrently with any payment or within 24 hours of any payment, Respondent must serve photocopies of the check, or proof of other payment method, to the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
Via electronic mail to:  
[R10\\_RHC@epa.gov](mailto:R10_RHC@epa.gov)

Nick Hurwit  
U.S. Environmental Protection Agency, Region 10  
Via electronic mail to:  
[Hurwit.nicholas@epa.gov](mailto:Hurwit.nicholas@epa.gov)

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

Proof of payment means, as applicable, a copy of the check or confirmation of other payment method, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4.7. If Respondent fails to timely pay any portion of the Assessed Penalty, the entire unpaid balance of the Assessed Penalty and all 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:

a. Interest. To protect the interests of the United States, any unpaid portion of the Assessed Penalty shall bear interest at the rate set at the Internal Revenue Service (“IRS”) “large corporate” underpayment rate applicable on the effective date of the Final Order and non-variable throughout the period of nonpayment, 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.

b. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), Respondent will be assessed a charge to cover EPA’s costs of processing and handling overdue debts.

c. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be assessed monthly on all debts, including any portion of the Assessed Penalty, interest, penalties, and other charges that remain delinquent more than 90. Nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

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

4.10. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the IRS annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will

be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at [www.irs.gov/pub/irs-pdf/fw9.pdf](http://www.irs.gov/pub/irs-pdf/fw9.pdf). Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN.
- b. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Division at [Henderson.Jessica@epa.gov](mailto:Henderson.Jessica@epa.gov), within 30 days after the effective date of the Final Order. EPA recommends encrypting IRS Form W-9 email correspondence.
- c. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA's Cincinnati Finance Division with Respondent's TIN, via email, within five days of Respondent's receipt of a TIN issued by the IRS.

4.11. 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.

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

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

4.14. 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.

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

4.16. 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.

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

DATED:

Dec. 10, 2025

FOR RESPONDENT:

*Beth Locken*

BETH LOCKEN, Senior EHSS/DOT Director  
Wilbur-Ellis Company

FOR COMPLAINANT:

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

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2026-0034
	)	
WILBUR-ELLIS COMPANY D/B/A	)	<b>FINAL ORDER</b>
WOODBURN FERTILIZER,	)	
	)	
Woodburn, Oregon,	)	
	)	
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.

IT IS SO ORDERED.

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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: Wilbur-Ellis Company d/b/a Woodburn Fertilizer, Docket No.: FIFRA-10-2026-0034**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Brett S. Dugan  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101  
[Dugan.brett@epa.gov](mailto:Dugan.brett@epa.gov)

Alan J. Sachs, Principal  
Attorney for Wilbur-Ellis Company  
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1900 N Street, NW, Suite 100  
Washington, D.C. 20036  
[ASachs@bdlaw.com](mailto:ASachs@bdlaw.com)

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Regional Hearing Clerk  
EPA Region 10






# FIFRA\_Woodburn-Fertilizer\_CAFO

Final Audit Report

2025-12-10

Created:	2025-12-10
By:	Tim Nestler (tnestler@wilburellis.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA62tsXxyao3jFZ6wzykPm4TnoftR7vXMI

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-  Document created by Tim Nestler (tnestler@wilburellis.com)  
2025-12-10 - 8:37:19 PM GMT- IP address: 73.162.79.144
-  Document emailed to Beth Locken (beth.locken@wilburellis.com) for signature  
2025-12-10 - 8:37:57 PM GMT
-  Email viewed by Beth Locken (beth.locken@wilburellis.com)  
2025-12-10 - 8:46:05 PM GMT- IP address: 174.74.158.228
-  Document e-signed by Beth Locken (beth.locken@wilburellis.com)  
Signature Date: 2025-12-10 - 8:57:13 PM GMT - Time Source: server- IP address: 174.74.158.228
-  Agreement completed.  
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