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U.S. EPA REGION 5
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2025-0012
)	
ProVision Partners Cooperative)	
d/b/a Allied Cooperative)	Proceeding to Assess a Civil Penalty
Adams, Wisconsin,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (“EPA”), Region 5.

3. Respondent is ProVision Partners Cooperative doing business as Allied Cooperative, a cooperative corporation doing business in the State of Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (“CAFO”). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO. 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.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136–136y.

Statutory and Regulatory Background

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

11. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that 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, are adequate to protect health and the environment.

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any other requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(vii).

13. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under Section 8 of FIFRA, 7 U.S.C. § 136f.

14. 40 C.F.R. § 169.2(a) states, in pertinent part, that all producers of pesticides shall maintain records showing the product name, EPA Registration Number, amounts per batch and batch identification of all pesticides produced.

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

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.”

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among others, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

19. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who

violates any provision of FIFRA may be assessed a civil penalty by the EPA of up to \$24,885 for each offense where penalties are assessed on or after January 8, 2025.

Factual Allegations and Alleged Violations

20. Respondent is a corporation and therefore is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

21. Respondent is a wholesaler, dealer, retailer, or other distributor.

22. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 251 Railroad Street, Adams, Wisconsin 53910 (the “Facility”).

23. On April 13, 2023, an inspector employed by the Wisconsin Department of Agriculture, Trade, and Consumer Protection and authorized to conduct inspections under FIFRA (the “Inspector”) conducted an inspection at the Facility (the “Inspection”).

Prowl H2O, EPA Reg. No. 241-418

24. On approximately March 26, 2003, the EPA registered the pesticide product Prowl H2O.

25. The EPA assigned Prowl H2O EPA Registration Number (“Reg. No.”) 241-418.

26. On or about March 27, 2020, the EPA accepted a revised label for Prowl H2O, EPA Reg. No. 241-418.

27. The March 27, 2020 accepted label required quantities of Prowl H2O, EPA Reg. No. 241-418, shipped after 12 months from March 27, 2020 to bear the new revised label.

28. The March 27, 2020 accepted label contained the following required cautionary statements:

- a. “Environmental Hazards [...] Nontarget Organism Advisory Statement: This product is toxic to plants and may adversely impact the forage and habitat of

nontarget organisms, including pollinators, in areas adjacent to the treated site.

Protect the forage and habitat of nontarget organisms by following label directions intended to minimize spray drift.”

- b. “Personal Protective Equipment (PPE) Applicators and other handlers must wear: [...] Chemical-resistant gloves including barrier laminate, butyl rubber \geq 14 mils, nitrile rubber \geq 14 mils, neoprene rubber \geq 14 mils, natural rubber \geq 14 mils, polyethylene, polyvinyl chloride \geq 14 mils, or viton \geq 14 mils”.

29. The March 27, 2020 accepted label contained the following required directions for use:

- c. “DO NOT apply Prowl H2O after crop emergence (postemergence) in sprayable liquid fertilizers.”
- d. “Aerial Application Uniformly apply in 5 or more gallons of water per acre.
- Spray Drift Management for Aerial Applications
- DO NOT release spray at a height greater than 10 ft above the crop canopy, unless a greater application height is necessary for pilot safety.
 - Applicators are required to use a medium or coarser droplet size (ASABE S572.1).
 - DO NOT apply when wind speeds exceed 15 mph at the application site. If the wind speed is greater than 10 mph, the boom length must not exceed 65% of the wingspan for fixed wing aircraft or 75% of the rotor diameter for helicopters. Otherwise, the boom length must not exceed 75% of the wingspan for fixed wing aircraft or 90% of the rotor diameter for helicopters.

- Applicators must use 1/2 swath displacement upwind at the downwind edge of the field.
 - Nozzles must be oriented so the spray is directed toward the back of the aircraft.
 - DO NOT apply during temperature inversions.”
- e. “Spray Drift Management for Ground Applications:
- Applicators must only apply with the nozzle height recommended by the manufacturer, but no more than 3 feet above the ground or crop canopy.
 - Applicators are required to use a medium or coarser droplet size (ASABE S572.1).
 - DO NOT apply when wind speeds exceed 15 miles per hour at the application site.
 - DO NOT apply during temperature inversions.”
- f. “Brassica Head and Stem Vegetables [...] DO NOT apply before direct-seeded Brassica head and stem vegetables. [...] Crop-specific Precautions:
- Avoid root contact with Prowl H2O-treated soil when placing transplants into furrow or hole, or crop injury may occur.”
- g. “DO NOT use on water-seeded rice except as specified in other BASF labeling.”
- h. “Wheat and Triticale Prowl H2O may be applied by ground, air, chemigation, or on dry bulk fertilizer (only delayed preemergence and postemergence applications).”

30. A weed is a “pest” as that term is defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

31. Prowl H2O, EPA Reg. No. 241-418, is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating weeds.

32. Prowl H2O, EPA Reg. No. 241-418, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

33. During the Inspection, the Inspector collected, among other things, shipping records, a bin label, and an affidavit for the pesticide product Prowl H2O, EPA Reg. No. 241-418.

34. According to facility representatives, the bin label for Prowl H2O, EPA Reg. No. 241-418, that Respondent provided to the Inspector during the Inspection was a true and accurate representation of the product and the associated labels that Respondent released for shipment on or about May 26, 2022 and June 24, 2022.

35. The bin label for Prowl H2O, EPA Reg. No. 241-418, that Respondent provided to the Inspector during the Inspection did not match the required label language on the March 27, 2020 accepted label because the bin label did not include the required language, as provided in Paragraphs 28 and 29, above.

36. On or about May 26, 2022, Respondent distributed or sold Prowl H2O, EPA Reg. No. 241-418, to Delwin Farms of Westfield, Wisconsin.

37. Delwin Farms of Westfield, Wisconsin is a person, as that term is defined by FIFRA Section 2(s), 7 U.S.C. § 136(s).

38. On or about June 24, 2022, Respondent distributed or sold Prowl H2O, EPA Reg. No. 241-418, to Mortenson Brothers Farms of Plainfield, Wisconsin.

39. Mortenson Brothers Farms of Plainfield, Wisconsin in a person, as that term is defined by FIFRA Section 2(s), 7 U.S.C. § 136(s).

Records of Pesticide Production

40. On approximately November 20, 2006, the EPA registered the pesticide product Charger Max ATZ Lite.

41. The EPA assigned Charger Max ATZ Lite EPA Reg. No. 1381-208.

42. A weed is a “pest” as that term is defined by Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

43. Charger Max ATZ Lite, EPA Reg. No. 1381-208, is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating weeds.

44. Charger Max ATZ Lite, EPA Reg. No. 1381-208, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

45. During the Inspection, Respondent also provided to the Inspector production records for Prowl H2O, EPA Reg. No. 241-418, and Charger ATZ Max Lite, EPA Reg. No. 1381-208.

46. The production records provided by Respondent to the Inspector did not include the EPA Registration Number for each pesticide product produced by Respondent.

Counts 1 and 2

47. Paragraphs 10 through 39, above, are incorporated by reference, as though set forth herein.

48. On or about May 26, 2022, Respondent distributed or sold Prowl H2O, EPA Reg. No. 241-418, to Delwin Farms of Westfield, Wisconsin.

49. The Prowl H2O, EPA Reg. No. 241-418, that Respondent distributed or sold, as described in Paragraph 48, above, was misbranded as that term is defined at Section 2(q)(1)(G)

and (F) of FIFRA, 7 U.S.C. § 136(q)(1)(G) and (F), at the time of Respondent's distribution or sale because the label on the container did not include the required cautionary statements and directions for use.

50. On or about June 24, 2022, Respondent distributed or sold Prowl H2O, EPA Reg. No. 241-418, to Mortenson Brothers Farms of Plainfield, Wisconsin.

51. The Prowl H2O, EPA Reg. No. 241-481, that Respondent distributed or sold, as described in Paragraph 50, above, was misbranded as that term is defined at Section 2(q)(1)(G) and (F) of FIFRA, 7 U.S.C. § 136(q)(1)(G) and (F), at the time of Respondent's distribution or sale because the label on the container did not include the required cautionary statements and directions for use.

52. Respondent's distributions or sales of misbranded containers of Prowl H2O, EPA Reg. No. 241-418, on two separate occasions constitute two unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Counts 3 and 4

53. Paragraphs 10 through 46, above, are incorporated by reference as though fully set forth herein.

54. During the Inspection, Respondent provided the Inspector with production records for Prowl H2O, EPA Reg. No. 241-418, and Charger ATZ Max Lite, EPA Reg. No. 1381-208, produced at the Facility.

55. The production records described in Paragraph 54, above, did not include the EPA Registration Number as required by 40 C.F.R. § 169.2(a).

56. Respondent's failure to include the EPA Registration Numbers in its production records for two pesticides constitutes two unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Civil Penalty

57. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$30,058. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

58. Respondent agrees to pay a civil penalty in the amount of \$30,058 ("Assessed Penalty") within thirty (30) days after the effective date of this CAFO.

59. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

60. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, **FIFRA-05-2025-0012**,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov
and
R5lecab@epa.gov

Samuel Horowitz (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
horowitz.samuel@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, 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.

61. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the effective date of this CAFO. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest

will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS Standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.

- b. Handling Charges. Respondent will be assessed monthly a charge to cover the EPA's costs of processing and handling overdue debts.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

62. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or

disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount outstanding pursuant to 7 U.S.C. § 136l(a)(5).

63. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

64. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

General Provisions

65. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: horowitz.samuel@epa.gov (for Complainant), and PJC@curranlawoffice.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

66. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

67. This CAFO does not affect the rights of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

68. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

69. This CAFO is a "final order" for purposes of the EPA's FIFRA Enforcement Response Policy.

70. The terms of this CAFO bind Respondent, its successors and assigns.

71. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

72. Each party agrees to bear its own costs and attorneys fees, in this action.

73. This CAFO constitutes the entire agreement between the parties.

Provision Partners Cooperative d/b/a Allied Cooperative, Respondent

Rob Larson

Date

Rob Larson
General Manager/CEO
Provision Partners Cooperative d/b/a Allied Cooperative

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
ProVision Partners Cooperative d/b/a Allied Cooperative
Docket No. FIFRA-05-2025-0012**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5