

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2023-0017</b>
	)	
<b>Nutrien Ag Solutions</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Kansas, Illinois,</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
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**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 Nutrien Ag Solutions, a corporation doing business in the State of Illinois.

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. For the purpose of this proceeding, Respondent consents to the assessment of the

civil penalty specified in this CAFO and to any conditions specified in this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. For the purpose of this proceeding, 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.

9. Respondent certifies that based on information and belief formed after reasonable inquiry as of the signing of this Agreement, the Facility is presently complying with FIFRA, 7 U.S.C. §§ 136-136y, and the regulations at 40 C.F.R. §§ 165.70 and 169.2, as applicable.

**Statutory and Regulatory Background**

10. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by or under sections 5, 7, 8, 11 or 19 of FIFRA.

11. 40 C.F.R. Part 165 and 169 were issued pursuant to the authority given the Administrator of EPA in sections 3, 8, 19, and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q, and 136w. *See* 71 Fed. Reg. 47329, *Pesticide Management and Disposal; Standards for Pesticide Containers and Containment* (Oct. 16, 2006).

12. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

13. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

14. An “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” 7 U.S.C. § 136(dd).

15. The term “refiller” means “a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.” 40 C.F.R. § 165.3

16. The term “repackage” means “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.” 40 C.F.R. § 165.3

17. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

18. A “pest” is 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). 7 U.S.C. § 136(t).

19. The term “pesticide product” means “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.” 40 C.F.R. § 152.3.

20. The term “producer” means “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 165.3

21. The term “produce” means “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.” 40 C.F.R. § 165.3.

22. 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 claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

23. 40 C.F.R. § 165.70(e)(10) requires refillers, who are not the registrant of the pesticide product, to maintain records in accordance with 40 C.F.R. § 165.70(j).

24. 40 C.F.R. § 165.70(j)(2) states that each time a refiller repackages a pesticide product into a refillable container and distributes and sells the product, that refiller must generate and maintain for at least three years after the date of repackaging, among other things, records showing the serial number or other identifying code of the refillable container. *See* 40 C.F.R. § 165.70(j)(2)(iii).

25. 40 C.F.R. § 169.2(d)(4) requires producers of pesticides to maintain records showing information regarding the shipment of all pesticides including the name of the originating carrier.

26. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$23,494 for each offense that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

### **General and Factual Allegations**

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

28. Respondent owns or operates, and at all times relevant to this CAFO owned and operated, a facility at 3240 Highway 16, Kansas, Illinois (the Facility).

29. Respondent’s Facility is, and at all times relevant to this CAFO was, a place where pesticides or active ingredients used in producing a pesticide are produced, or held, for distribution or sale.

30. Therefore, Respondent’s Facility is, and at all times relevant to this CAFO was, an “establishment” as that term is defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

31. Respondent’s Facility is, and at all times relevant to this CAFO was, registered with EPA and was assigned EPA Establishment Number (EPA Est. No.) 51896-IL-106.

32. On or about September 17, 2020, an inspector employed with the Illinois Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s Facility (Inspection).

33. During the Inspection, the inspector collected copies of Respondent’s repackaging records for the following products: Harness Max Herbicide (EPA Registration Number (Reg. No.) 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591).

34. Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591) are each a “pesticide” as that term is defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. At all times relevant to this CAFO, Respondent was a “refiller” of Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591), as that term is defined by 40 C.F.R. § 165.3.

36. At all times relevant to this CAFO, Respondent was a “producer” of Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591), as that term is defined by 40 C.F.R. § 165.3.

37. According to its records, on or about April 9, 2020, Respondent repackaged four separate containers with Harness Max Herbicide (EPA Reg. No. 524-636) and two separate containers with Matador (EPA Reg. No. 34704-1054).

38. According to its records, on or about May 4, 2020, Respondent repackaged one container with Liberty 280 SL Herbicide (former EPA Reg. No. 264-829).

39. According to its records, on or about June 24, 2020, Respondent repackaged two separate containers with Warrant Herbicide (EPA Reg. No. 524-591).

40. Respondent then “distributed or sold,” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the repackaged containers of Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591) referenced in Paragraphs 37 to 39, above.

41. During the Inspection, the inspector collected a distribution record for Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), and Sharpen Powered

by Kixor Herbicide (EPA Reg. No. 7969-278) identified as order number 16320160 delivered to Sweeney Bros LLC on April 9, 2020.

42. The distribution record described in Paragraph 41, above, noted that order number 16320160, distributed to Sweeney Bros LLC on April 9, 2020, was delivered via customer pickup.

43. During the Inspection, however, the plant manager of the Facility informed the inspector that the distribution record for order number 16320160 contained an error, and that the shipment was actually delivered via a Nutrien Ag Solutions truck.

#### Alleged Violations

**Counts One through Nine:** Failure to Maintain Records of the Serial Number or other Identifying Code in violation of 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(iii)

44. Complainant reincorporates and alleges Paragraphs 10 through 43 of this CAFO, above, as through fully set forth herein.

45. Between April 9 and June 24, 2020, Respondent repackaged Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591), into refillable containers for sale or distribution on at least nine different occasions.

46. Respondent then “distributed or sold” the repackaged containers of Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) and Warrant Herbicide (EPA Reg. No. 524-591).

47. At all times relevant to this CAFO, Respondent was not the registrant of Harness Max Herbicide (EPA Reg. No. 524-636), Matador (EPA Reg. No. 34704-1054), Liberty 280 SL Herbicide (former EPA Reg. No. 264-829) or Warrant Herbicide (EPA Reg. No. 524-591).

48. 40 C.F.R. § 165.70(e)(10) requires refillers, who are not the registrant of the pesticide product, to maintain records in accordance with 40 C.F.R. § 165.70(j).

49. 40 C.F.R. § 165.70(j)(2)(iii) requires refillers to generate and maintain for at least three years after the date of repackaging the serial number or other identifying code of the refillable container each time it repackages a pesticide product into a refillable container and distributes and sells the product.

50. Respondent failed to maintain a record of the serial number or other identifying code of the refillable container each time it repackaged and distributed or sold the pesticide products referenced in Paragraphs 37 to 40, above, in violation of 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(iii).

51. Respondent's failure to maintain records of the serial number or other identifying code of the refillable container each time it distributed or sold pesticide products as described in Paragraphs 37 to 40, in violation of 40 C.F.R. §§ 165.70(e)(10) and 165.70(j)(2)(iii), constitutes nine unlawful acts pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

**Count Ten:** Failure to Maintain an Accurate Distribution Record in violation of 40 C.F.R. § 169.2(a)(4)

52. Complainant reincorporates and alleges Paragraphs 10 through 43 of this CAFO, above, as through fully set forth herein.

53. During the inspection, Respondent provided the inspector with distribution records for order number 16320160 delivered to Sweeney Bros LLC on April 9, 2020.

54. The distribution records referenced in Paragraphs 41 through 43 and 53, above, were inaccurate with respect to the name of the originating carrier.

55. 40 C.F.R. § 169.2(d)(4) requires producers of pesticides to maintain records



showing information regarding the shipment of all pesticides including the name of the originating carrier.

56. Respondent's failure to maintain accurate distribution records as described in Paragraphs 41 through 43 and 53, above, is a violation of 40 C.F.R. § 169.2(a)(4).

57. Respondent's failure to maintain accurate distribution records as described in Paragraphs 41 through 43 and 53, above, in violation of 40 C.F.R. § 169.2(a)(4), constitutes one unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

\* \* \* \*

58. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the Administrator to assess a civil penalty for violations of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), up to \$23,494 for each offence that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023. *See* 40 C.F.R. § 19.4.

#### **Civil Penalty**

59. 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 \$60,560. 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 and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Pesticide Container / Containment Regulations (Appendix H).

60. Within 30 days after the effective date of this CAFO, Respondent must pay a \$60,560 civil penalty for the FIFRA violations by either

(a) sending a cashier's or certified check, payable to "Treasurer, United States of

America,” to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979078  
St. Louis, Missouri 63197-9000

The check must note Respondent’s name and the docket number of this CAFO;

(b) electronic funds transfer, payable to “Treasurer, United States of America,”

and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
“D 68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO; or

(c) ACH electronic funds transfer, payable to “Treasurer, United States of

America,” and sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state Respondent’s name and the docket number of this CAFO.

61. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

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

Angela Bouche (ECP-17J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
[bouche.angela@epa.gov](mailto:bouche.angela@epa.gov)  
and  
[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

Andrew Futerman (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
[futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov)

62. This civil penalty is not deductible for federal tax purposes.

63. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

64. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

65. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [futerman.andrew@epa.gov](mailto:futerman.andrew@epa.gov) (for Complainant), and both [sandi.shannonschultz@nutrien.com](mailto:sandi.shannonschultz@nutrien.com) and [schamberlain@thompsoncoburn.com](mailto:schamberlain@thompsoncoburn.com) (for Respondent).

Respondent understands that the CAFO will become publicly available upon filing.

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

67. This CAFO does not affect the rights of 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 EPA's FIFRA Enforcement Response Policy.

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

71. Each person signing this agreement 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 attorney's fees, in this action.

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

**Nutrien Ag Solutions, Respondent**

8/14/2023  
Date

Kevin Foreman  
Kevin Foreman  
Division Manager (Eastern Illinois)  
Nutrien Ag Solutions

**United States Environmental Protection Agency, Complainant**

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Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**In the Matter of:  
Nutrien Ag Solutions  
Docket No. FIFRA-05-2023-0017**

**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.

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