



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

March 24, 2021  
3:28 PM

Received by  
EPA Region VIII  
Hearing Clerk

DOCKET NO.: FIFRA-08-2021-0035

IN THE MATTER OF: )  
 )  
AGRIMAX ) FINAL ORDER  
 )  
 )  
 )  
 )  
RESPONDENT )

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Settlement Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Expedited Settlement Agreement, effective immediately upon filing this Expedited Settlement Agreement and Final Order.

SO ORDERED THIS 24th DAY OF March, 2021.

KATHERIN HALL  
Digitally signed by KATHERIN HALL  
Date: 2021.03.24 15:25:52 -06'00'

Katherin E. Hall  
Regional Judicial Officer



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FEB 27 2020

Received by  
EPA Region VIII  
Hearing Clerk

Ref: 8ENF-AT-P

**CERTIFIED MAIL #**  
**RETURN RECEIPT REQUESTED**

Mr. Elliot Rongen  
AgriMAX  
31710 Harvest Road  
Winner, South Dakota 57580

Re: Section 7(c) Notice of Federal Insecticide, Fungicide and Rodenticide Act Requirements;  
**Opportunity for Expedited Settlement within Thirty (30) Days** FIFRA-08-2021-0035

Dear Mr. Rongen,

The U.S. Environmental Protection Agency ("EPA"), Region 8, has conducted a review of information available concerning the pesticide-producing establishment, EPA Establishment Number 92819-SD-1 in Winner, South Dakota. The EPA's review indicates that AgriMAX failed to comply with the requirement(s) listed below concerning pesticide production reporting under section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, as amended ("FIFRA" or the "Act") and its implementing regulations at 40 C.F.R. part 167.

Applicable Requirements

Under section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a pesticide producer to violate any of the provisions of section 7 of FIFRA, 7 U.S.C. § 136e. The submittal of an inaccurate, incomplete, or late annual pesticide report constitutes a violation of FIFRA section 7(c), 7 U.S.C. § 136e(c). Unlawful acts under FIFRA may be subject to the civil and criminal penalty provisions at sections 14(a) and 14(b) of FIFRA, 7 U.S.C. §§ 136l(a) and 136l(b).

Violation

FIFRA section 7(c)(1), 7 U.S.C. § 136e(c)(1), requires all registered pesticide producers to file an annual report "of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides..." Further, regulations promulgated pursuant to FIFRA section 7 require such annual reports to be filed on or before March 1 for the preceding calendar year as referenced in 40 C.F.R. § 167.85(d).

The EPA determined that AgriMAX did not submit the annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments pursuant to section 7 of FIFRA, 7 U.S.C. § 136e, for calendar year 2018 by March 1, 2019. This violation is subject to an enforcement action pursuant to FIFRA section 14(a)(1) of 7 U.S.C. § 136l(a)(1).

Please be advised that AgriMAX has previously received a Notice of Warning for a violation of Section

7(c) of FIFRA for reporting year 2017.

Additional Information/Opportunity to Respond

The EPA encourages you to immediately review your compliance with the foregoing requirement(s). If you believe you are not subject to or have not violated the foregoing requirement, you may provide a written explanation, along with any relevant documentation, to Shaula Eakins at the EPA address shown below within thirty (30) calendar days of your receipt of this letter. If, however, you are out of compliance, the EPA is committed to the fair and quick settlement of this matter. Section 14 of FIFRA and subsequent inflation adjustments authorize the EPA to pursue civil penalties of up to \$19,936 per violation of FIFRA.<sup>1</sup> Regulations set forth at 40 C.F.R. part 22 provide for a consent agreement or administrative litigation process in order to resolve the violations and establish the appropriate penalty. The EPA has the discretion in certain circumstances to expedite that process. This letter is an offer to quickly resolve the violation(s) alleged here against Agrimax through an expedited settlement agreement.

The terms of this offer to resolve the above-described violations in an expedited settlement agreement are as follows. Within thirty (30) days of your receipt of this letter, you must:

**Complete and return to the EPA the enclosed Agreement (“Agreement”) as directed below.** Please note that in signing the Agreement, you are certifying under penalty of law that you: (a) have corrected the violation(s); and (b) have agreed to pay the civil penalty of \$500.00 set out in the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal under 40 C.F.R. part 22 concerning your violation(s).

A fully-executed Agreement and Final Order will be sent to you via certified mail once it has been ratified and filed with the EPA Regional Hearing Clerk. As provided in the Agreement, the civil penalty will be due within thirty (30) calendar days of the date that the Final Order is filed with the Regional Hearing Clerk. **Please do not send a payment for penalty until you receive the fully-executed Final Order, which will include the docket number that is required in order to submit payment.**

**You should send your signed Agreement, by certified U.S. Mail, return receipt requested, to:**

Shaula Eakins [8ORC-LER]  
US EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

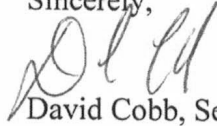
If the terms set forth above are not met within thirty (30) days of your receipt of this letter or the end of any extended period granted by the EPA in writing, then this settlement offer will be automatically withdrawn, without prejudice to the EPA’s ability to file an enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

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<sup>1</sup> 84 Fed. Reg. 2056, 2059 (February 6, 2019) and 84 Fed. Reg. 5955 (February 25, 2019).

If you have any questions or wish to discuss the general circumstances of your case, then please contact Christine Tokarz, the Enforcement Case Officer assigned to your case at (303) 312-6147, or at tokarz.christine@epa.gov. For legal questions please contact Shaula Eakins at (303) 312-6317 or eakins.shaula@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'D Cobb', written over the printed name.

David Cobb, Section Chief  
Toxics and Pesticides Enforcement Section  
Enforcement and Compliance Assurance Division

Enclosure:  
Expedited Settlement Agreement

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF: )	Docket No. <u>FIFRA-08-2021-0035</u>	
Elliot Rongen )	<b>EXPEDITED SETTLEMENT</b>	
AgriMAX )	<b>AGREEMENT</b>	
31710 Harvest Road )		March 24, 2021
Winner, South Dakota 57580 )		3:28 PM
Est. No. 92819-SD-1 )		Received by
Respondent )		EPA Region VIII
) )		Hearing Clerk

EXPEDITED SETTLEMENT AGREEMENT

1. The U.S. Environmental Protection Agency (“EPA”) alleges that AgriMAX (“Respondent”) failed to comply with section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c), for its facility, EPA Establishment Number 92819-SD-1 located at Winner, South Dakota.

2. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform the EPA of the types and amounts of pesticides (and, if applicable, active ingredients used in producing pesticides), which it is producing; which it has produced during the past year; and which it has sold or distributed during the past year. In addition, 7 U.S.C. § 136e(c) provides that the required information shall be kept current and submitted to the Administrator annually, as required by regulations prescribed by the Administrator.

3. 40 C.F.R. § 167.85(a) and (b) adds the following requirements for reporting: devices produced at registered pesticide-producing establishments; the name and address of the establishment; and an estimate of the amount of pesticide product to be produced during the current year.

4. 40 C.F.R. § 167.85(c), requires the producer to obtain, complete and submit annually a pesticide reporting form supplied by the EPA. The applicable form, “EPA Form 3540-16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments”, requires: identification of the

establishment; identification of the company; authorized signature and signature date; and specific pesticide production information. In addition, the “Instructions for Completing EPA Form 3540-16 Pesticide Report for Pesticide-Producing and Device-Producing Establishments Reporting Year January 1, 2018 through December 31, 2018” provides additional detail regarding information required on the Form.

5. 40 C.F.R. § 167.85(d) requires the pesticide-production reports to be filed annually on or before March 1, even if the producer has not produced any pesticidal products for that reporting year.

6. The EPA reviewed its records and determined that Respondent did not submit the annual Pesticide Report for Pesticide-Producing and Device-Producing Establishments pursuant to 40 C.F.R. § 167.85(d) and section 7(c)(1) of FIFRA, 7 U.S.C. § 136(e), for calendar year 2018, by March 1, 2019.

7. Respondent’s failure to comply with section 7(c) of FIFRA and 40 C.F.R. § 167.85 constitutes a violation of section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

8. The EPA and Respondent agree to settle this matter for a civil penalty \$500.00 (five hundred dollars and zero cents). The parties agree that settlement of this matter is in the public interest.

9. The EPA is authorized to enter into this Agreement (“Agreement”), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l and 40 C.F.R. § 22.13(b) and § 22.18(b).

10. By signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirements in Paragraphs 2 through 5 above; (b) admits that the EPA has jurisdiction over Respondent and Respondent’s conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of the penalty set forth herein; and (e) waives any right to contest the allegations contained herein and its right to appeal the Agreement.

11. Within 30 days of the effective date of this Agreement, Respondent shall pay a civil penalty

of \$500.00 (five hundred dollars and zero cents) for the FIFRA violations identified in this Agreement by sending a cashier's or certified check, payable to "Treasurer, United States of America" via either:

- U.S. mail to:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

- Or overnight/common carrier (i.e., FedEx, DHL, UPS) to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza SL-MO-C2-GL  
St. Louis, MO 63101

Alternatively, the penalty payment to "Treasurer, United States of America" may be made via:

- Electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

The check or electronic funds transfer instrument must state the case title ("In the Matter of: AgriMAX"), and docket number of this Agreement.

12. When it pays the penalty, Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number (along with a photocopy of the check or a statement of affirmation or receipt of an electronic funds transfer) to:

Shaula Eakins  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202

13. Full payment of the penalty set forth in this Agreement shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged herein.

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

purposes.

15. If Respondent does not timely pay the civil penalty, the EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalties are not reviewable in a collection action.

16. The EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this Agreement.

17. Respondent certifies that it has corrected the alleged violation(s), and is complying with section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and is implementing regulations set forth at 30 C.F.R. § 167.85.

18. Upon signing and returning this Agreement to the EPA, Respondent waives any and all remedies, claims for relief and other available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Agreement, including the opportunity for a hearing or appeal pursuant to FIFRA and 40 C.F.R. Part 22 and any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

19. Each party shall bear its own costs and fees, if any.

20. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. § 22.31(b), is effective upon filing of the Final Order.

21. The parties consent to service of this Expedited Settlement Agreement and Final Order by e-mail at the following e-mail addresses: [eakins.shaula@epa.gov](mailto:eakins.shaula@epa.gov) (for Complainant), and [elliott@agrimaxllc.com](mailto:elliott@agrimaxllc.com) (for Respondent).

IT IS SO AGREED,



FOR RESPONDENT:

Name (print): Elliot Rongen

Title (print): owner

Signature: Elliot Rongen

Date: 3/16/21

FOR COMPLAINANT:

Name [of Agency delegated official] (print): DAVID

Title (print): COBB

Signature: \_\_\_\_\_

Digitally signed  
by DAVID COBB

Date: 2021.03.17

10:17:42 -06'00'

Date: \_\_\_\_\_

## CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED SETTLEMENT AGREEMENT** and the **FINAL ORDER** in the matter of **AGRIMAX; DOCKET NO.: FIFRA-08-2021-0035** was filed with the Regional Hearing Clerk on March 24, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney, and sent via certified receipt email on March 24, 2021, to:

Respondent

Elliot Rongen  
AgriMAX  
31710 Harvest Road  
Winner, South Dakota 57580  
elliot@agrimaxllc.com

EPA Financial Center

Jessica Chalifoux  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
Chalifoux.Jessica@epa.gov

March 24, 2021

MELISSA  
HANIEWICZ

Digitally signed by  
MELISSA HANIEWICZ  
Date: 2021.03.25  
13:22:44 -06'00'

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Melissa Haniewicz  
Regional Hearing Clerk