

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. FIFRA-10-2024-0058
	)	
COLUMBIA GRAIN	)	
INTERNATIONAL, LLC,	)	<b>CONSENT AGREEMENT</b>
	)	
Nezperce, Idaho,	)	
	)	
Respondent.	)	

**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 Columbia Grain International, LLC. (“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**

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)(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.”

3.6. 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.”

3.7. Under Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), “certified applicator” is defined in part to mean “any individual who is certified under section 136i of this title as authorized to use or supervise the use of any pesticide which is classified for restricted use.”

3.8. Under Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), “commercial applicator” means “an applicator . . . who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided in Section 2(e)(2) of FIFRA [regarding “Private applicators”].”

3.9. The regulation at 40 C.F.R. § 171.3 defines “restricted use pesticide” as “a pesticide that is classified for restricted use under the provisions of section 3(d) of FIFRA and 40 CFR part 152, subpart I.”

3.10. The regulation at 40 C.F.R. § 171.105 defines “fumigant” as “a restricted use pesticide that bears labeling designating it as a fumigant.”

3.11. The regulation at 40 C.F.R. § 152.175 provides a list of restricted use pesticides based on uses of pesticide products containing specified active ingredients and provides that such pesticide products are limited to use by or under the direct supervision of a certified applicator.

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

3.13. At all times relevant to the allegations set forth herein, Respondent was the owner and operator of an agricultural establishment, located at 501 8<sup>th</sup> Avenue, Nezperce, ID 83543 (“Farm”).

3.14. Respondent is a certified “commercial applicator” as defined by Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3).

3.15. Weevil-Cide (EPA Registration. No. 70506-13) is a “pesticide” as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). EPA classified Weevil-Cide under Section 3 of FIFRA, 7 U.S.C. § 136a, as a “Restricted Use Pesticide” as defined by 40 C.F.R. § 152.175.

3.16. The active ingredient in Weevil-Cide is aluminum phosphide.

3.17. The label for Weevil-Cide (EPA Reg. No. 70506-13) states in part: “A fumigation management plan must be written for all fumigations prior to actual treatment.”

3.18. Section 21 of the Weevil-Cide label states in part: “The certified applicator is responsible for working with the owners and/or responsible employees of the structure and/or area to be fumigated to develop and follow a Fumigation Management Plan (FMP).” This section of the label also contains a checklist of elements that “must be addressed prior to performing all fumigations. . . . Each item must be considered.”

3.19. Section 22 of the Weevil-Cide label requires that: “An FMP MUST BE WRITTEN PRIOR to all applications. An FMP must be devised to cover application and exposure period, aeration and disposal of the fumigant so as to keep to a minimum any human exposures to phosphine and to help assure adequate control of the insect pests.”

3.20. On December 9, 2021, a credentialed FIFRA inspector with the Coeur d’Alene Pesticide Enforcement Circuit Rider Program conducted a routine pesticide use inspection at Respondent’s Farm where the grain storage establishment is located within the exterior boundaries of the Nez Perce Reservation. The inspector collected application records and

requested a full copy of the fumigant management plan, which Respondent sent to the inspector via email on December 9, 2021.

3.21. The pesticide application records collected during the December 9, 2021, inspection showed in the fumigation application record that there were twenty-three applications of Weevil-Cide in 2021.

3.22. Between May 26, 2021, and December 9, 2021, an employee of Respondent applied Weevil-Cide on twenty-three occasions without a complete fumigant management plan because it was missing numerous components included in the FMP guidelines.

3.23. The twenty-three applications of Weevil-Cide without an appropriate fumigant management plan each constitute use of a pesticide not permitted by its labeling.

3.24. Therefore, on twenty-three occasions between May 26, 2021, and December 9, 2021, Respondent violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by applying the pesticide Weevil-Cide, in a manner inconsistent with its labeling.

3.25. At all times relevant to this Consent Agreement, the employee of Respondent who conducted the application described in Paragraph 3.20, above, has been a “certified applicator” and a “commercial applicator” as those terms are defined at Sections 2(e)(1) and 2(e)(3) of FIFRA, 7 U.S.C. §§ 136(e)(1) and 136(e)(3).

3.26. 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 \$24,255 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 \$149,793 (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: [www.epa.gov/financial/makepayment](http://www.epa.gov/financial/makepayment). Payments made by check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

*Address format for standard delivery  
(no delivery confirmation requested):*

U.S. Environmental Protection Agency  
P.O. Box 979078  
St. Louis, MO 63197-9000

*Address format for signed receipt confirmation  
(FedEx, DHL, UPS, USPS certified, registered,  
etc):*

U.S. Environmental Protection Agency  
Government Lockbox 979078  
3180 Rider Trail S.  
Earth City, MO 63045

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  
R10\_RHC@epa.gov

Bethany Plewe  
U.S. Environmental Protection Agency  
Region 10  
plewe.bethany@epa.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:

a. 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.

b. 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.

c. **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. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“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, EPA herein requires, and Respondent herein agrees, that:

a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

b. 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;

c. 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 Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

d. 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 (5) 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. The undersigned representative of Respondent also certifies that, as of the date of Respondent’s signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III.

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

4.14. 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.

4.15. 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:

\_\_\_\_\_

FOR RESPONDENT:

  
\_\_\_\_\_  
JEFF VAN PEVENAGE, President/CEO  
Columbia Grain International LLC

FOR COMPLAINANT:

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



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: Columbia Grain International, LLC, Docket No.: FIFRA-10-2024-0058**, 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:

Shannon Rebersak  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 98101

[rebersak.shannon@epa.gov](mailto:rebersak.shannon@epa.gov)

Jeff Van Pevenage  
President/CEO  
Columbia Grain International LLC  
1300 Southwest 5<sup>th</sup> Avenue  
29<sup>th</sup> Floor  
Portland, Oregon 97201

[jvanpevenage@columbiagrains.com](mailto:jvanpevenage@columbiagrains.com)

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Regional Hearing Clerk  
EPA Region 10