

CERTIFICATE OF SERVICE


I certify that on the date noted below, I hand-delivered the original and one true and correct copy of the First Amended Complaint for *In the Matter of Paradigm Labs, Inc.*, Docket No. FIFRA-3-2008-0168, to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch St., Philadelphia, PA, 19103, and that I sent a true and correct copy of same via Federal Express to the parties as indicated below:

For Respondent: Terry Maier, President
Paradigm Labs, Inc.
7 Roberts Road
Pine Grove, Pennsylvania 17963

Presiding Officer: The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1099 14th St., N.W.
Suite 350
Washington, D.C. 20005

Respectfully submitted,

7/10/08
Date



James Heenehan
Sr. Assistant Regional Counsel
U.S. Environmental Protection
Agency, Region III

2008 JUN 10 PM 12:00



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900L
1099 14th Street , N.W.
Suite 350
Washington, DC 20005

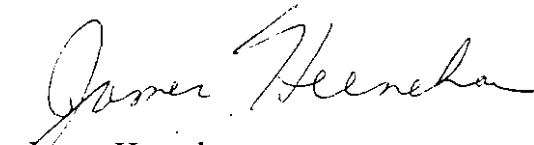
July 10, 2008

Re: *In the Matter of Paradigm Labs, Inc.*,
Docket No. FIFRA-3-2008-0168

Dear Judge Biro:

I have enclosed a true and correct copy of the First Amended Complaint for the above-referenced case as authorized by your Order Granting Leave to File Amended Complaint and Motion fo File Amended Answer dated July 3, 2008.

Sincerely,


James Heenehan
Sr. Assistant Regional Counsel
EPA Region III

cc: T. Maier (Resp.)
L. Guy (3RC00)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JUL 10 2008

FEDERAL EXPRESS

Terry Maier, President
Paradigm Labs, Inc.
7 Roberts Road
Pine Grove, PA 17963

Re: First Amended Complaint and Notice
of Opportunity for Hearing
Federal Insecticide, Fungicide and Rodenticide Act
EPA Docket No. FIFRA-03-2008-0168

Dear Mr. Maier:

Pursuant to Judge Biro's July 3, 2008 Order granting EPA leave to file an amended complaint, please find a First Amended Complaint and Notice of Opportunity for Hearing enclosed with this letter concerning alleged violations under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), by Paradigm Labs, Inc. The First Amended Complaint makes three minor changes to the original Complaint which EPA issued to Paradigm Labs on March 31, 2008, as is noted in EPA's May 12, 2008 Motion for Leave to File an Amended Complaint.

Please refer to Judge Biro's July 3, 2008 Order for directions on how to file your Answer to the First Amended Complaint.

Sincerely,

A handwritten signature in black ink, appearing to read "Abraham Ferdas".

Abraham Ferdas, Director
Waste & Chemicals Management
Division

cc: J. Uram (PDA)



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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF)	
)	
Paradigm Labs, Inc.)	
7 Roberts Road)	First Amended Administrative Complaint,
)	Compliance Order and Notice of
Pine Grove, Pennsylvania 17963)	Opportunity for Hearing
)	
Respondent)	
)	Docket No. FIFRA-03-2008-0168
Paradigm Labs, Inc.)	
7 Roberts Road)	Proceeding under Section 14(a) of the
Pine Grove, Pennsylvania 17963)	Federal Insecticide, Fungicide and
)	Rodenticide Act, 7 U.S.C. § 136l(a)
Facility)	

I. INTRODUCTION

This First Amended Complaint and Notice of Opportunity for Hearing (“Amended Complaint”) is issued by the United States Environmental Protection Agency (“EPA”) pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C. § 136l(a), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. EPA hereby notifies Paradigm Labs, Inc. (“Respondent” or “Paradigm”) that EPA has determined that Respondent has violated certain provisions of Section 12 of FIFRA, 7 U.S.C. § 136j. The Complainant is the Director, Waste and Chemicals Management Division.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Paradigm is, and was, at all times during which violations are alleged in this Amended Complaint, a Pennsylvania corporation with its principal office address located at 7 Roberts Road, Pine Grove, Pennsylvania.
2. Paradigm is, and was, at all times during which violations are alleged in this Amended Complaint, a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
3. Paradigm is and, at all times relevant to the violations alleged in this Amended Complaint, was the owner and/or operator of an establishment located at or in the vicinity of 7 Roberts Road, Pine Grove, Pennsylvania (the “Establishment”).
4. On September 21, 2006, a representative of the Pennsylvania Department of Agriculture (“PDA”), acting on behalf of the Commonwealth of Pennsylvania and duly authorized to conduct inspections under the authorities of Section 8 and Section 9 of FIFRA, 7 U.S.C. § 136f and § 136g (the “PDA Inspector”), conducted inspections at the Establishment (the “September 21, 2006 PDA Inspection”).

COUNT I

(Sale or Distribution of an Unregistered Pesticide: Microbloc MMR)

5. The allegations of Paragraphs 1 through 4 are incorporated herein by reference.
6. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 provide, in pertinent part, that no person in any State may distribute or sell to any person any pesticide that is not registered as set forth in Section 3 of FIFRA, 7 U.S.C. § 136a, with exceptions not here relevant.

7. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended, with exceptions not relevant to this matter.
8. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, the term “pesticide” includes “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant”, with exceptions not relevant to this case.
9. 40 C.F.R. § 152.3 defines “pesticide product”, in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.
10. The regulations implementing FIFRA give further guidance on what constitutes a pesticidal purpose, stating that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if, among other things, the person who distributes or sells the substance “claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide,” 40 C.F.R. § 152.15(a)(1). In addition, a substance is considered to be a pesticide requiring registration if the person who distributes or sells the substance “has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.” 40 C.F.R. § 152.15(c).
11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus,

bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3, provide, in pertinent part, that the term “to 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 to any person in any State.
13. On or about June 26, 2006 and again on or about August 26, 2006, Paradigm sold and/or distributed a product known as “Microbloc MMR (Mold & Mildew Remover)” (hereinafter “Microbloc MMR”) at its Establishment to one or more persons.
14. On or about September 21, 2006, Paradigm offered for sale or distribution from its Establishment Microbloc MMR to one or more persons.
15. At all times relevant to this Amended Complaint, the labeling for Paradigm’s product Microbloc MMR contained the statement that it is a “mold & mildew remover”.
16. At all times relevant to this Amended Complaint, the Microbloc MMR label listed “Enzymes” as an active ingredient.
17. At all times relevant to this Amended Complaint, the Microbloc MMR label listed Propylene Glycol as an active ingredient.
18. During the September 21, 2006 PDA Inspection of Respondent’s Establishment, the PDA Inspector obtained from Respondent Product Information Sheets for each of the pesticidal products cited in this Amended Complaint. Paradigm’s Product Information Sheet for

Microbloc MMR refers to such product as being part of the “Microbloc Family of Products.”

19. A three-page Paradigm “Products” brochure identifies a product line it calls “Durable Protectants.” The “Products” brochure continues: “Microbloc Corporation has its roots in chemical protection products. From lumber and textiles to hard surfaces and porous ones, we have the Antimicrobials, Fluoropolymers and Flame Retardants to add value and performance to your products.”
20. The Paradigm “Products” brochure describes “Microbloc Antimicrobials” as “[d]urable and non-leaching products that prevent the growth of microorganisms such as mold, mildew, fungus, algae, bacteria, viruses, protozoa on both porous and non-porous surfaces.”
21. The Microbloc Family of Products referenced on the Paradigm Microbloc MMR Product Information Sheet is part of the “Microbloc Antimicrobial” product line.
22. The statements referenced above in Paragraphs 15 - 21 singly and/or collectively constitute pesticidal claims.
23. At all times relevant to the applicable violations alleged in this Amended Complaint, Paradigm’s product Microbloc MMR has been a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.
24. Each of the sales or distributions or offers for sale or distribution of Microbloc MMR on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted a “distribution or sale” of a “pesticide” and “pesticide product” to a

“person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.

25. Paradigm’s product Microbloc MMR is not, and, at all times relevant to the applicable violations alleged in this Amended Complaint, was not registered with EPA as a pesticide.
26. The sales or distributions or offers for sale or distribution of Microbloc MMR on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted distributions or sales of an unregistered pesticide and pesticide product to a person, in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15, and constituted separate unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT II

(Sale or Distribution of a Misbranded Pesticide: Microbloc MMR)

27. The allegations of Paragraphs 1 through 26 are incorporated herein by reference.
28. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it an unlawful act for any person to distribute or sell to any person a pesticide which is “adulterated” or “misbranded.”
29. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), a pesticide is “misbranded” if, *inter alia*, its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular, or is contained in a package or other container or wrapping which does not conform to standards

established by EPA, or it is an imitation of, or is offered for sale under the name of another pesticide, or if the label does not contain the assigned EPA establishment number, or 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 requirement imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

30. Pursuant to 40 C.F.R. § 156.10(a)(1), pesticide products must bear labels containing the information specified by FIFRA and its implementing regulations. The contents of the label must show clearly and prominently, *inter alia*, the name, brand, or trademark under which the product is sold; the net contents expressed in terms of conventional American units of fluid ounces, pints, quarts, and gallons for liquids and, for solids and semi-solids, in terms of avoirdupois pounds and ounces; the product registration number; the pesticide producing establishment registration number; the ingredient statement (with the active ingredients identified by name and designated as “active ingredients” with their total percentage by weight identified and inert ingredients designated collectively as “inert ingredients” with their total percentage by weight identified); a hazard and precautionary statement as prescribed in Subparts D and E of 40 C.F.R. Part 156; and directions for use of the pesticide.
31. Pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136(e), and 40 C.F.R. § 156.10(f), no establishment may produce a pesticide without first being assigned an EPA Establishment registration number.

32. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” 40 C.F.R. § 167.3 defines “produce” to mean “to manufacture, prepare, compound, or process any pesticide..., any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”
33. On July 16, 2004, EPA assigned EPA Establishment Number 81643-PA-001 for the Paradigm Establishment.
34. All Microbloc MMR pesticidal products relevant to the applicable violations alleged in this Amended Complaint were “produced” at the Paradigm Establishment as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.
35. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR label did not contain an EPA Establishment number.
36. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR label listed inert ingredients by weight as “>95%”.
37. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR label listed its active ingredient, “Enzymes,” as 1% by weight.
38. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR label listed its active ingredient, “Alkyl Linear Surfactants,” as 1% by weight.
39. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR label listed its active ingredient, “Propylene Glycol,” as 2% by weight.

40. Pursuant to 40 C.F.R. § 156.10(g)(4), “[t]he sum of percentages of the active and the inert ingredients [on the pesticide product label] must be 100%. Percentages shall not be expressed by a range of values such as 22-25%.”
41. At all times relevant to the applicable violations alleged in this Amended Complaint, the sum of percentages of the active and the inert ingredients by weight on the Microbloc MMR label did not equal 100%.
42. At all times relevant to the applicable violations alleged in this Amended Complaint, the percentage of inert ingredients by weight on the Microbloc MMR label was expressed by a range of values.
43. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MMR product was “misbranded” as that term is defined at Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).
44. The sales or distributions or offers for sale or distribution of Microbloc MMR on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted distributions or sales of a misbranded pesticide and pesticide product to a person and constituted separate unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT III

(Sale or Distribution of an Unregistered Pesticide: Microbloc DSP)

45. The allegations of Paragraphs 1 through 44 are incorporated herein by reference.

46. On or about June 26, 2006 and again on or about August 26, 2006, Paradigm sold and/or distributed a product known as “Microbloc DSP (Durable Surface Protectant)” (hereinafter “Microbloc DSP”) at its Establishment to one or more persons.
47. On or about September 21, 2006, Paradigm offered for sale or distribution from its Establishment Microbloc DSP to one or more persons.
48. At all times relevant to the applicable violations alleged in this Amended Complaint, the labeling for Paradigm’s product Microbloc DSP contained the statement that, “[i]t inhibits staining and odors that are typically associated with mold & mildew.”
49. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc DSP label listed “Water-Stable, Quat-Functional Reactive Siloxane” as an active ingredient.
50. The Paradigm Product Information Sheet for Microbloc DSP states that, “Microbloc DSP has been documented to begin microbial inhibition at .05% by weight or active ingredient. However, increased concentration of between .1% and 1% (by weight of active ingredient), have [sic] shown exceptionally higher inhibition rates.”
51. The Paradigm Product Information Sheet for Microbloc DSP refers to this product as being part of the “Microbloc Family of Products.”
52. The Microbloc Family of Products referenced on the Paradigm Microbloc DSP Product Information Sheet is part of the “Microbloc Antimicrobial” product line.
53. A Paradigm web page (www.paradigmlabs.us/Antimicrobials.asp) listed as “Products – Antimicrobials” as of the date of the September 21, 2006 PDA Inspection listed

Microbloc DSP as an antimicrobial product, referring to it as “Industrial strength. Helps prevent the stains and odors usually associated with mold and mildew.”

54. The statements referenced above in Paragraphs 48-53 singly and/or collectively constitute pesticidal claims.
55. At all times relevant to the applicable violations alleged in this Amended Complaint, Paradigm’s product Microbloc DSP has been a pesticide, as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.
56. Each of the sales or distributions or offers for sale or distribution of Microbloc DSP on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted a “distribution or sale” of a “pesticide” and “pesticide product” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.
57. Paradigm’s product Microbloc DSP is not, and, at all times relevant to the applicable alleged violations allegations in this Amended Complaint, was not registered with EPA as a pesticide.
58. The sales or distributions or offers for sale or distribution of Microbloc DSP on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted distributions or sales of an unregistered pesticide and pesticide product to a person in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 and constituted separate unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT IV
(Sale or Distribution of a Misbranded Pesticide: Microbloc DSP)

59. The allegations of Paragraphs 1 through 58 are incorporated herein by reference.
60. All Microbloc DSP pesticidal products relevant to the applicable violations alleged in this Amended Complaint were “produced” at the Paradigm Establishment as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.
61. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc DSP label did not contain an EPA establishment number.
62. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc DSP label listed its active ingredient, “Water-Stable, Quat-Functional Reactive Siloxane,” by weight as “<5%”.
63. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc DSP label listed inert ingredients by weight as “>95%”.
64. At all times relevant to the applicable violations alleged in this Amended Complaint, the sum of percentages of the active and the inert ingredients by weight on the Microbloc DSP label did not equal 100%.
65. At all times relevant to the applicable violations alleged in this Amended Complaint, the percentage of the active ingredient by weight on the Microbloc DSP label was expressed by a range of values.
66. At all times relevant to the applicable violations alleged in this Amended Complaint, the percentage of inert ingredients by weight on the Microbloc DSP label was expressed by a range of values.

67. The sales or distributions or offers for sale or distribution of Microbloc DSP on at least three occasions, on or about June 26, 2006, August 26, 2006 and September 21, 2006, constituted distributions or sales of a misbranded pesticide and pesticide product to a person and constituted separate unlawful acts under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT V

(Sale or Distribution of an Unregistered Pesticide: Microbloc MSE)

68. The allegations of Paragraphs 1 through 67 are incorporated herein by reference.
69. On or about June 26, 2006 Paradigm sold and/or distributed a product known as “Microbloc MSE (Mold Stain Encapsulant)” (hereinafter “Microbloc MSE”) at its Establishment to one or more persons.
70. At all times relevant to the applicable violations alleged in this Amended Complaint, the labeling for Paradigm’s product Microbloc MSE contained the statement that, “Microbloc MSE is a durable, water resistant encapsulant for use on various substrates to both hide stains and discoloration caused by mold & mildew and inhibits bleed through of these stains.”
71. The Paradigm Product Information Sheet for Microbloc MSE states that Microbloc MSE will “continuously fight the staining, discoloration, deterioration and odors that are frequently caused by such microbes as bacteria, mold and mildew on the coating surface.”

72. The Paradigm Product Information Sheet for Microbloc MSE states that Microbloc MSE “[e]ffectively inhibits the growth of mold, mildew, fungus, bacteria and algae on the dried coating surface.”
73. The Paradigm Product Information Sheet for Microbloc MSE refers to this product as being part of the “Microbloc Family of Products.”
74. The Microbloc Family of Products referenced on the Paradigm Microbloc MSE Product Information Sheet is part of the “Microbloc Antimicrobial” product line.
75. The statements referenced above in Paragraphs 70-74 singly and/or collectively constitute pesticidal claims.
76. At all times relevant to the applicable violations alleged in this Amended Complaint, Paradigm’s product Microbloc MSE has been a “pesticide,” as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.
77. The sale or offer for sale of Microbloc MSE on or about June 26, 2006, constituted a “distribution or sale” of a “pesticide” and “pesticide product” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.
78. Paradigm’s product Microbloc MSE is not, and, at all times relevant to the applicable violations alleged in this Amended Complaint, was not, registered with EPA as a pesticide.
79. The sale or offer for sale of Microbloc MSE on or about June 26, 2006, constituted a distribution or sale of an unregistered pesticide and pesticide product to a person in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136(a), and 40 C.F.R. § 152.15 and constitutes an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C.

§ 136j(a)(1)(A), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNT VI
(Sale or Distribution of a Misbranded Pesticide: Microbloc MSE)

80. The allegations of Paragraphs 1 through 79 are incorporated herein by reference.
81. All Microbloc MSE pesticidal products relevant to the applicable violations alleged in this Amended Complaint were “produced” at the Paradigm Establishment as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.
82. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MSE label did not contain an EPA establishment number.
83. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MSE label listed its active ingredient, “Zinc Oxide”, by weight as “<5%”.
84. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MSE label listed its active ingredient, Dipropylene Glycol Dibenzoate, by weight as “<3%”.
85. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MSE label listed its active ingredient, Titanium Dioxide, by weight as “<20%”.
86. At all times relevant to the applicable violations alleged in this Amended Complaint, the Microbloc MSE label listed its inert ingredients by weight as “>65%”.

87. At all times relevant to the applicable violations alleged in this Amended Complaint, the sum of percentages of the active and the inert ingredients by weight on the Microbloc MSE label did not equal 100%.
88. At all times relevant to the applicable violations alleged in this Amended Complaint, the percentages of the active ingredients by weight on the Microbloc MSE label were expressed by a range of values.
89. At all times relevant to the applicable violations alleged in this Amended Complaint, the percentage of inert ingredients by weight on the Microbloc MSE label was expressed by a range of values.
90. The sale or distribution or offer for sale or distribution of Microbloc MSE on or about June 26, 2006, constituted a distribution or sale of a misbranded pesticide and pesticide product to a person and constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed against Paradigm pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

III. PROPOSED CIVIL PENALTY

On the basis of the violations by Respondent of FIFRA as alleged above, Complainant has determined that Respondent is liable for civil penalties under Section 14(a)(1) of FIFRA , 7 U.S.C. § 136l(a)(1). Accordingly, as explained below, Complainant proposes the assessment of a civil penalty in the amount of **\$53,145.00**. This proposed assessment does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (“DCIA”), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (“Penalty Inflation Rule”), violations of FIFRA which occur subsequent to January 30, 1997 and prior to March 15, 2004, are subject to a statutory maximum penalty of \$5,500 per violation. Pursuant to an update to the Civil Monetary Penalty Inflation Rule, violations of FIFRA which occur on or after March 15, 2004 are subject to a new statutory maximum penalty of \$6,500. Complainant has also taken into account the particular facts and circumstances of this case with specific reference to EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated July 2, 1990 (“*FIFRA ERP*”), as supplemented by the *Gravity Based Penalty Matrix for FIFRA Violations Which Occur After January 30, 1997*, effective January 30, 1997, and the Thomas V. Skinner memo, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)*, dated September 21, 2004, copies of which are attached hereto (Attachments A and B). These policies provide a rational, consistent and equitable methodology for applying to particular cases the statutory penalty factors set forth above.

For purposes of determining the amount of the civil penalty to be assessed against Respondent, EPA has taken into account the factors set forth in Section 14(a)(4) of FIFRA, 7

U.S.C. § 136l(a)(4): the size of Respondent's business, the effect of the penalty on Respondent's ability to continue in business, and the gravity of Respondent's violations.

EPA has calculated the proposed civil penalty in this case based upon the aforementioned factors and in light of the information available to EPA at the time of the issuance of this Amended Complaint. To the extent that facts or circumstances, including, but not limited to, additional information concerning Respondent's ability to pay the proposed penalty or continue in business after payment of the proposed penalty, which were unknown to Complainant at the time of issuance of the Amended Complaint, become known to EPA after issuance of the Amended Complaint, such facts and circumstances may also be considered as a basis for adjusting the civil penalty proposed in this Amended Complaint. Based upon the information available to Complainant at the time of the issuance of this Amended Complaint, assessment of the aforesaid proposed civil penalty will not adversely effect Respondent's ability to continue in business. With respect to Respondent's ability to pay the proposed penalty, it is Respondent's burden to produce financial information to support and establish any claim by Respondent of an inability to pay the proposed penalty.

Violations

Pursuant to Section 14(a)(1) and (4) of FIFRA, 42 U.S.C. § 136l(a)(1) and (4), Complainant proposes the assessment of a civil penalty of up to \$6,500 against Respondent for each of the violations alleged in this Amended Complaint. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number of and severity of violations is provided below.

Size of Business

Paradigm's gross annual sales are in excess of \$1,000,000 and therefore, under the Size of Business categories set forth in Table 2 of the FIFRA ERP, Paradigm is considered a Category I Size of Business.

COUNT I

Distribution and/or Sale of an Unregistered Pesticide (Microbloc MMR)

On at least three instances, Paradigm distributed and/or sold Microbloc MMR, an unregistered pesticide. These sales or distributions are on or about June 26, 2006, August 26, 2006 and September 21, 2006.

Registration of pesticides is a fundamental requirement of the FIFRA framework for regulating pesticides. Chemical pesticides are subject to strict regulation under FIFRA because these chemicals are designed to be toxic to at least some organisms. In addition, pesticides are regulated by EPA from the standpoint of consumer protection. Chemical pesticides have been subject to some degree of federal control since the Insecticide Act of 1910, 36 Stat. 331 (1910). When enacted, the law was principally concerned with protecting consumers, usually farmers, from ineffective products and deceptive labeling. FIFRA, in most circumstances, requires would-be distributors to demonstrate the efficacy of their products as well as the products' safety before the products can be registered. Respondent's failure to comply with the pesticide registration requirements of FIFRA prevented EPA from conducting the efficacy, toxicity, safety and label review procedures provided in FIFRA and its implementing regulations.

Under the FIFRA ERP, sale or distribution of an unregistered pesticide is deemed to be a Level 2 violation (FTTS Code1AA) which, for a Category I Size of Business, results in the

maximum **\$6,500 penalty** under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

After the initial gravity level is calculated under the FIFRA ERP Penalty Matrix, the FIFRA ERP provides for further modifications to the gravity level by various Gravity Adjustment Criteria set forth in Table 3 of the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the Material Safety Data Sheets ("MSDS") by the Occupational Safety and Health Administration ("OSHA"), this pesticide would be considered a Toxicity Category II pesticide because the signal word "warning" is required to be displayed on the product label and therefore this factor is a **Gravity of Harm Adjustment Value of 1.**
- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**

- (5) Paradigm's culpability: Paradigm's culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the initial FIFRA ERP Penalty Matrix \$6,500 penalty. A 30% reduction of \$6,500 is \$4,550 per sale/distribution. There are three sales or distributions in Count I resulting in a total penalty for Count I of: **\$13,650**

COUNT II

Distribution and/or Sale of a Misbranded Pesticide (Microbloc MMR)

On at least three occasions, Paradigm distributed and/or sold Microbloc MMR, a misbranded pesticide. These sales or distributions are on or about June 26, 2006, August 26, 2006 and September 21, 2006.

The pesticide labeling in this instance was misbranded for at least two reasons. First, the pesticidal product was misbranded because the inert ingredients were not listed on the label as a specific percentage by weight, nor did the active and inert ingredients add up to 100% on the label. Without a precise description of the percentage by weight of the product ingredients, EPA, other regulatory agencies and consumers may be misled as to the chemicals that make up the pesticidal product resulting in a improper understanding of the performance and hazards associated with the pesticide.

Second, the pesticidal product was misbranded because the label did not contain the EPA-approved Establishment Number assigned to the Facility at which the product was produced.

The label's lack of an Establishment Number deprives EPA, poison control centers, and consumers from effectively identifying the product and where it was produced. Without accurate identifiers, consumers are unable to effectively report adverse incidents concerning the product, and EPA and/or other authorities cannot effectively track or take appropriate corrective action to avoid future incidents.

Under the FIFRA ERP, sale or distribution of a pesticide whose label has a statement, design or graphic misrepresentation that is false or misleading is deemed to be a Level 2 violation (FTTS Code 1EA) which, for a Category I Size of Business, results in the maximum \$6,500 penalty under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

Under the FIFRA ERP, the failure to have the EPA Establishment Number on the pesticide label is deemed to be a Level 4 violation (FTTS Code 1ED) which, for a Category I Size of Business, would result in a penalty of \$3,869 under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP. Because this is a lesser amount than the \$6,500 penalty calculated for a FTTS Code 1EA penalty as set forth above, Complainant will seek a penalty for this misbranding count based on the higher of the two base penalty calculations.

In determining a proposed penalty, Complainant will, as part of assessing the gravity of the violation, take a number of factors into consideration, as specified in the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the MSDS Sheets by OSHA, this pesticide would be considered a

Toxicity Category II pesticide because the signal word “warning” is required to be displayed on the product and therefore this factor is a **Gravity of Harm**

Adjustment Value of 1.

- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**
- (5) Paradigm’s culpability: Paradigm’s culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the initial FIFRA ERP Penalty Matrix \$6,500 penalty. A 30% reduction of \$6,500 is \$4,550 per sale/distribution. There are three sales or distributions in Count II resulting in a total penalty for Count II of: **\$13,650**

COUNT III

Distribution and/or Sale of an Unregistered Pesticide (Microbloc DSP)

On at least three instances, Paradigm distributed and/or sold Microbloc DSP, an unregistered pesticide, in 2006. These sales or distributions are on or about June 26, 2006, August 26, 2006 and September 21, 2006.

Under the FIFRA ERP, sale or distribution of an unregistered pesticide is deemed to be a Level 2 violation (FTTS Code 1AA) which, for a Category I Size of Business, results in the maximum **\$6,500 penalty** under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

After the initial gravity level is calculated under the FIFRA ERP Penalty Matrix, the FIFRA ERP provides for further modifications to the gravity level by various Gravity Adjustment Criteria set forth in Table 3 of the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the MSDS Sheets by OSHA, this pesticide would be considered a Toxicity Category II pesticide because the signal word "warning" is required to be displayed on the product and therefore this factor is a **Gravity of Harm Adjustment Value of 1.**
- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**

- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**
- (5) Paradigm's culpability: Paradigm's culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the initial \$6,500 penalty calculated under the FIFRA ERP's Penalty Matrix resulting in a penalty of \$4,550 per sale/distribution. There are three sales or distributions in Count III resulting in a total penalty for Count III of: **\$13,650**

COUNT IV

Distribution and/or Sale of a Misbranded Pesticide (Microbloc DSP)

On at least three occasions in 2006, Paradigm distributed and/or sold Microbloc DSP, a misbranded pesticide. These sales or distributions are on or about June 26, 2006, August 26, 2006 and September 21, 2006.

The pesticide labeling in this instance was misbranded for at least two reasons. First, the pesticidal product was misbranded because the active and inert ingredients were not listed on the label as a specific percentage by weight. Without a precise description of the percentage by weight of the product ingredients, EPA, other regulatory agencies and consumers may be misled as to the chemicals that make up the pesticidal product resulting in a improper understanding of the performance and hazards associated with the pesticide.

Second, the pesticidal product was misbranded because the label did not contain the EPA-approved Establishment Number assigned to the Facility. The label's lack of an Establishment Number deprives EPA, poison control centers, and consumers from effectively identifying the product and where it was produced. Without accurate identifiers, consumers are unable to effectively report adverse incidents concerning the product, and EPA and/or other authorities cannot effectively track or take appropriate corrective action to avoid future incidents.

Under the FIFRA ERP, sale or distribution of a pesticide whose label has a statement design or graphic misrepresentation that is false or misleading is deemed to be a Level 2 violation (FTTS Code 1EA) which, for a Category I Size of Business, results in the maximum \$6,500 penalty under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

Under the FIFRA ERP, the failure to have the EPA Establishment Number on the pesticide label is deemed to be a Level 4 violation (FTTS Code 1ED) which, for a Category I Size of Business, would result in a penalty of \$3,869 under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP. Because this is a lesser amount than the \$6,500 penalty calculated for a FTTS Code 1EA penalty as set forth above, Complainant will seek a penalty for this misbranding count based on the higher of the two base penalty calculations.

In determining a proposed penalty, Complainant will, as part of assessing the gravity of the violation, take a number of factors into consideration, as specified in the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the MSDS Sheets by OSHA, this pesticide would be considered a Toxicity Category II pesticide because the signal word “warning” is required to be displayed on the product and therefore this factor is a **Gravity of Harm Adjustment Value of 1.**
- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**
- (5) Paradigm’s culpability: Paradigm’s culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the initial FIFRA ERP Penalty Matrix \$6,500 penalty. A 30% reduction of \$6,500 is \$4,550 per sale/distribution. There are three sales or distributions in Count IV resulting in a total penalty for Count IV of: **\$13,650**

COUNT V

Distribution and/or Sale of an Unregistered Pesticide (Microbloc MSE)

On at least one instance, Paradigm distributed and/or sold Microbloc MSE, an unregistered pesticide in 2006. This sale or distribution was on or about June 26, 2006.

Under the FIFRA ERP, sale or distribution of an unregistered pesticide is deemed to be a Level 2 violation (FTTS Code1AA) which, for a Category I Size of Business, results in the maximum **\$6,500 penalty** under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

After the initial gravity level is calculated under the FIFRA ERP Penalty Matrix, the FIFRA ERP provides for further modifications to the gravity level by various Gravity Adjustment Criteria set forth in Table 3 of the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the MSDS Sheets by OSHA, this pesticide would be considered a Toxicity Category II pesticide because the signal word "warning" is required to be displayed on the product and therefore this factor is a **Gravity of Harm Adjustment Value of 1.**
- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**

- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**
- (5) Paradigm's culpability: Paradigm's culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the proposed \$6,500 penalty which is \$4,550 per sale/distribution. There is one sale or distribution in Count V resulting in a total penalty for Count V of: **\$4,550**

COUNT VI

Distribution and/or Sale of a Misbranded Pesticide (Microbloc MSE)

On at least one instance, Paradigm distributed and/or sold Microbloc MSE, an unregistered pesticide in 2006. This sale or distribution was on or about June 26, 2006.

The pesticide labeling in this instance was misbranded for at least two reasons. First, the pesticidal product was misbranded because the active and inert ingredients were not listed on the label as a specific percentage by weight. Without a precise description of the percentage by weight of the product ingredients, EPA, other regulatory agencies and consumers may be misled as to the chemicals that make up the pesticidal product resulting in a improper understanding of the performance and hazards associated with the pesticide.

Second, the pesticidal product was misbranded because the label did not contain the EPA-approved Establishment Number assigned to the Facility. The label's lack of an Establishment

Number deprives EPA, poison control centers, and consumers from effectively identifying the product and where it was produced. Without accurate identifiers, consumers are unable to effectively report adverse incidents concerning the product, and EPA and/or other authorities cannot effectively track or take appropriate corrective action to avoid future incidents.

Under the FIFRA ERP, sale or distribution of a pesticide whose label has a statement design or graphic misrepresentation that is false or misleading is deemed to be a Level 2 violation (FTTS Code 1EA) which, for a Category I Size of Business, results in the maximum \$6,500 penalty under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP.

Under the FIFRA ERP, the failure to have the EPA Establishment Number on the pesticide label is deemed to be a Level 4 violation (FTTS Code 1ED) which, for a Category I Size of Business, would result in a penalty of \$3,869 under the FIFRA ERP's Penalty Matrix for FIFRA Section 14(a)(1) violators as set forth in Table 1 of the FIFRA ERP. Because this is a lesser amount than the \$6,500 penalty calculated for a FTTS Code 1EA penalty as set forth above, Complainant will seek a penalty for this misbranding count based on the higher of the two base penalty calculations.

In determining a proposed penalty, Complainant will, as part of assessing the gravity of the violation, take a number of factors into consideration, as specified in the FIFRA ERP, including, but not limited to:

- (1) The toxicity level of the pesticide: Based on the warnings required for the chemical in the MSDS Sheets by OSHA, this pesticide would be considered a Toxicity Category II pesticide because the signal word "warning" is required to be

displayed on the product and therefore this factor is a **Gravity of Harm Adjustment Value of 1.**

- (2) The significant potential harm to human health: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (3) The significant potential harm to the environment: The threat to human health caused by this violation is deemed minor and, therefore, this factor is a **Gravity of Harm Adjustment Value of 1.**
- (4) The past FIFRA enforcement actions against Paradigm: There have been no prior FIFRA enforcement actions against Paradigm and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 0.**
- (5) Paradigm's culpability: Paradigm's culpability for this violation is deemed to be negligent and, therefore, this factor is a **Gravity of Misconduct Adjustment Value of 2.**

The total Gravity Value for this count is 5 which, according to the FIFRA ERP, allows for a 30% reduction in the initial FIFRA ERP Penalty Matrix \$6,500 penalty. A 30% reduction of \$6,500 is \$4,550 per sale/distribution. There is one sale or distribution in Count VI resulting in a total penalty for Count VI of: **\$4,550**

PROPOSED GRAVITY-BASED PENALTY CALCULATION: \$63,700
ABILITY TO PAY ADJUSTMENT.....(-\$10,555)

Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA shall consider, *inter alia*, the effect of the penalty on Respondent’s ability to continue in business. The FIFRA ERP provides several methods EPA can use to calculate the economic impact of the proposed penalty on Respondent’s ability to continue in business (“Ability to Pay”) with corresponding penalty reductions if appropriate under such circumstances. Based on information submitted by Respondent, EPA believes that Respondent may have an inability to pay the entire proposed penalty. Therefore, EPA has reduced the proposed penalty for these violations by \$10,555. This adjustment results in a Revised Total Penalty of \$53,145 for the violations alleged in this Amended Complaint.

REVISED TOTAL PENALTY.....\$53,145

IV. QUICK RESOLUTION

In accordance with the Consolidated Rules of Practice at 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Amended Complaint or in Complainant’s prehearing exchange. If Respondent pays the specific penalty proposed in this Amended Complaint within 30 days after receiving the Amended Complaint, then, pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Amended Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional

Hearing Clerk within 30 days after receiving this Amended Complaint stating that Respondent agrees to pay the proposed penalty in accordance with the Consolidated Rules of Practice § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Amended Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and a copy shall be provided to James Heenehan (3RC30), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Within 60 days after receiving the Amended Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Amended Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

Upon receipt of payment in full, in accordance with the Consolidated Rules of Practice at 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations in the Amended Complaint and to appeal the Final Order. Payment of the civil penalty amount required above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (Docket No. FIFRA-03-2008-0168);
- b. All checks shall be made payable to **“United States Treasury”**;
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000;

- d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087;

- e. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency

- f. ACH payment (also known as REX or remittance payments) can be made to the following address:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074

Contact - Jesse White
301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency

Account 310006
CTX format

- g. On Line Payments are an option available through the Department of Treasury. The payment option can be accessed by going to www.pay.gov. Enter sfo 1.1 in the search field. Open the form and complete the required fields.
- h. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

James Heenehan
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

V. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this Amended Complaint or the appropriateness of any penalty. **If Respondent wishes to request a hearing, Respondent must file a written Answer to the Amended**

Complaint with the Regional Hearing Clerk, Mail Code 3RC00, U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, *within twenty (20) days of receipt of this Amended Complaint.* Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Amended Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, its Answer should so state. Respondent's Answer should contain: (1) the circumstances or arguments which are alleged to constitute the grounds of any defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) a statement as to whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within twenty (20) days of receipt of this Amended Complaint, such failure shall constitute an admission of all facts alleged in the Amended Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order seeking the imposition of penalties without further proceedings.

Any hearing requested by Respondent will be conducted in accordance with the provisions of the Consolidated Rules of Practice. A copy of these rules is enclosed with this Amended Complaint (Attachment C).

A copy of Respondent's Answer and all other documents that Respondent files in this action should be sent to the attorney assigned to represent EPA in this matter, as follows:

James Heenehan
Senior Assistant Regional Counsel

Mail Code 3RC30
U.S. EPA - Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

VI. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of the Amended Complaint if such settlement is consistent with the provisions and objectives of FIFRA. Whether or not a hearing is requested, Respondent may request a settlement conference with the Complainant to discuss the allegations of the Amended Complaint and the amount of the civil penalty to be proposed. A request for a settlement conference does not relieve Respondent of its responsibility to file a timely Answer.

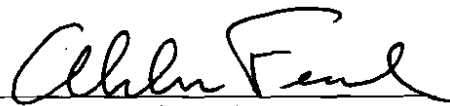
In the event settlement is reached with Respondent, the terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement by Respondent shall constitute a waiver of Respondent's right to contest the allegations of the Amended Complaint and its right to appeal the proposed Final Order accompanying the Consent Agreement.

If you wish to arrange a settlement conference, please contact James Heenehan, Senior Assistant Regional Counsel, at (215) 814-2640. Please note that a request for a settlement conference does not relieve Respondent of its responsibility to file an Answer within twenty (20) days following its receipt of this Amended Complaint.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices and officers, and their staffs, are designated as the trial staff to represent the Agency as a party in this case: U.S. EPA, Region III, Office of Regional Counsel; U.S. EPA, Region III, Waste & Chemicals Management Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance of this Amended Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff or any representative of the Respondent on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Amended Complaint.

Date: 7/10/08


Abraham Ferdas, Director
Waste and Chemicals Management
Division

Attachments (incorporated by reference from original Complaint)

- A. EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated July 2, 1990 ("*FIFRA ERP*"), as supplemented by the *Gravity Based Penalty Matrix for FIFRA Violations Which Occur After January 30, 1997*, effective January 30, 1997;
- B. Thomas V. Skinner memo, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)*, dated September 21, 2004.
- C. Consolidated Rules of Practice, 40 C.F.R. Part 22.