

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION VII
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) **Docket No. FIFRA-07-2011-0007**
)
Cooperative Association No. 130) **COMPLAINT AND NOTICE OF**
) **OPPORTUNITY FOR HEARING**
Rhineland, MO)
)
Respondent)

COMPLAINT

Section I

Jurisdiction

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.
2. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Cooperative Association No. 130, a pesticide retailer, located at 206 Bluff Street, Rhineland, Missouri. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 1(s) of FIFRA, 7 U.S.C. § 136(s), and a person doing business in the state of Missouri.

Section III

Violations

General Factual Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Respondent's facility, located at Rhineland, Missouri, is a registered pesticide producing establishment, having been so registered with the EPA, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136(e), since 1990. Respondent's establishment number for said facility is EPA Establishment 63849-MO-001.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136(e), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which he is currently producing, which he has produced during the past year, and which he has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulations found at 40 C.F.R. § 167.85(d) require such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136(e)(c) and with regulations found at 40 C.F.R. § 167.85(d) in that it did not file its 2010 pesticide report by March 1, 2011, as required.

9. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j (a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

10. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 6 through 9, it is proposed that a civil penalty of \$3,300 be assessed against Respondent.

Section IV

Relief Sought

11. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring on or after March 15, 2004, through January 12, 2009, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). For any such violation occurring after January 12, 2009, the maximum statutory penalty per violation is Seven Thousand Five Hundred Dollars (\$7,500). EPA proposes to assess a total civil penalty of Three Thousand Three Hundred Dollars (\$3,300.00) against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

12. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, December, 2009, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)). For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were between \$1,000,000 and \$10,000,000. Respondent was placed in Category II size of business pursuant to the Enforcement Response Policy for FIFRA Section 7(c), May, 2010, attached hereto and incorporated herein by reference (See Enclosure).

13. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

14. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

15. The proposed penalty constitutes a demand *only if* Respondent fails to raise *bona fide* issues of ability to pay, or other *bona fide* affirmative defenses relevant to the determination of any final penalty.

16. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought *to the attention* of Complainant at the earliest opportunity in this proceeding.

17. Payment of the total penalty - \$3,300 - may be made by certified or cashier's check

payable to the "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

18. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

Kent Johnson
Assistant Regional Counsel
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

19. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, at:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that

Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

20. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22.

21. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

22. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VI

Settlement Conference

23. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

Kent Johnson
Assistant Regional Counsel
EPA Region VII
901 North 5th Street

Kansas City, Kansas 66101
Telephone: (913) 551-7284

24. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

25. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

9-16-11
Date


Karen Flournoy
Acting Director
Water, Wetlands and Pesticides Division


Kent Johnson
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 64 Fed. Reg. 40138; a copy of the May, 2010, Enforcement Response Policy for FIFRA Section 7(c), and a copy of the FIFRA Civil Penalty Calculation worksheet to the following:

Mr. Gary Heldt
Cooperative Association No. 130
P.O. Box 459
Rhineland, MO 65069

9/21/11

Date

Kimberly Heldt

Signature