



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region I
5 Post Office Square - Suite 100
Boston, MA 02109-3912

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September 24, 2012

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region I
5 Post Office Square - Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In the Matter of Wash Safe Industries, Inc.,
Docket No.: FIFRA-01-2012-0083.

Dear Ms. Santiago:

Enclosed for filing in the referenced action, please find the original and one copy of a Complaint and Notice of Opportunity for Hearing, which seeks penalties for alleged violations of Section 12(a)(1)(A) and Section 12(a)(2)(L) of the Federal Insecticide, Fungicide, and Rodenticide Act.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Hultgren".

John Hultgren
Enforcement Counselor

cc: John Redihan, Wash Safe Industries, Inc.
Marianne Millette, EPA Office of Environmental Stewardship

Enclosures

(b) producing a pesticide subject to FIFRA at an unregistered establishment in violation of Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), and regulations promulgated pursuant to FIFRA at 40 C.F.R. Parts 150 - 189.

3. This Complaint also provides notice of Respondent's opportunity to request a hearing on the proposed penalty.

APPLICABLE STATUTES AND REGULATIONS

4. Section 12(a)(1)(A) of FIFRA states, in pertinent part, that 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. The FIFRA regulations at 40 C.F.R. Part 152 set forth procedures, requirements and criteria concerning the registration of pesticides under Section 3 of FIFRA.

5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines "pesticide" to mean, in pertinent part, "any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest"

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines "pest" to mean, in pertinent part, "any insect, rodent, nematode, fungus, weed" or "any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism . . ." declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

7. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell," to mean, in pertinent part, "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."

8. Section 12(a)(2)(L) of FIFRA states that that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

9. Section 7 of FIFRA and the FIFRA regulations at 40 C.F.R. Part 167 state, in pertinent part, that no person shall produce any pesticide subject to FIFRA in any State unless the establishment in which it is produced is registered with EPA.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” to mean, in pertinent part, “the person who manufactures, prepares, compounds, propagates, or processes any pesticide . . . ;” and defines “produce” to mean, in pertinent part, “to manufacture, prepare, compound, propagate, or process any pesticide” FIFRA regulations at 40 C.F.R. § 167.3 further specify that “produce” means, among other things, to “package, repackage, label and relabel”

11. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to mean “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

12. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” to mean “any place where a pesticide . . . is produced, or held, for distribution or sale.”

13. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), provides for the assessment of penalties for violations of FIFRA and the regulations promulgated pursuant thereto.

ALLEGATIONS

14. Respondent is a corporation established under the laws of the Commonwealth of Massachusetts, with a principal place of business at 400 Tubman Road, Brewster, Massachusetts, 02631 (the “Facility”).

15. Respondent is a “person” as defined by Section 2(s) of FIFRA and subject to FIFRA and the regulations promulgated thereunder.

16. On September 25, 2008, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, an authorized representative of EPA (“EPA Inspector”) conducted an inspection at Respondent’s former facility, located at 136 Factory Road, Harwich, Massachusetts, 02645 (the “Harwich Facility”).

17. At the September 25, 2008 inspection, the EPA Inspector collected physical and documentary samples, including but not limited to a statement from Respondent’s President, photographs, and copies of labels for the four products distributed or sold by Respondent at that time: (a) Roof Wash; (b) Deck and Shingle Wash; (c) Mold and Mildew Wash; and (d) Painter’s Wash. Based on information EPA gained from the September 25, 2008 inspection, EPA concluded that Respondent contracted for the manufacture of the product materials, delivered in varying size containers, onto which Respondent placed labels before sale or distribution from the Harwich Facility.

18. During a closing conference with Respondent’s President at the September 25, 2008 inspection, the EPA Inspector explained that FIFRA requires:

(a) any product with labels with a pesticide claim to be registered with EPA as pesticides under Section 3 of FIFRA, and

(b) any establishment that produces pesticides to be registered as a pesticide producing establishment under Section 7 of FIFRA.

19. In March 2011, the EPA Inspector inspected Respondent’s internet site, <http://wash-safe.com>, and collected copies of internet advertising of Respondent’s products, including Respondent’s claims about the properties and qualities of the products.

20. On July 18 and 19, 2011, pursuant to Sections 8 and 9 of FIFRA the EPA Inspector conducted another inspection at the Facility.

21. During the July 18 and 19, 2011 inspection, the EPA Inspector collected physical and documentary samples, including but not limited to a statement from Respondent's President, photographs, an inventory list of unlabeled product materials in storage at the Facility at that time, and copies of labels for the products distributed or sold by Respondent at that time. Based on information EPA gained from the July 18 and 19, 2011 inspection, EPA concluded that Respondent contracted for the manufacture of the product materials, delivered in varying size containers, onto which Respondent placed labels before sale or distribution from the Facility.

22. At the July 18 and 19, 2011 inspection, the EPA Inspector also collected a summary of all product sales between November 2010 and July 17, 2011. The summary indicates that between November 2010 and July 17, 2011 Respondent sold each of the following 12 products, each bearing pesticide claims as listed in Paragraph 24, (collectively, the "Covered Products"):

1. Cedar Wash
2. Tile Roof Wash
3. Deck Wash
4. Composite Deck Wash
5. Mop and Clean Composite Deck Cleaner
6. Concrete Wash
7. Mold & Mildew Wash
8. Stucco Wash
9. Tile & Grout Cleaner
10. Marine Mold, Mildew & Algae Wash
11. Sail Wash
12. Stable and Kennel Wash

23. The distribution or sale of the Covered Products falls within the meaning of the term "to distribute or sell" as defined by Section 2(gg) of FIFRA.

24. Between November 1, 2010 and July 17, 2011, Respondent sold and distributed the Covered Products in individually-labeled containers. The label and/or labeling for the Covered

Products (including, without limitation internet advertising and brochures by Respondent),
included one or more of the following statements or claims as specified below:

- a. Cedar Wash: “Cedar Wash comes in a powdered form that when mixed with water creates millions of tiny little bubbles; these bubbles loosen all molds and funguses that may be attached to the wood surfaces.” “If the mold is treated first with the Cedar Wash then pressure washed very lightly, 500-750 psi at an angle down as rain would fall mold would not spread but would wash off and not damage or scar the cedar.”
- b. Tile Roof Wash: “Our tile roof cleaner removes dirt, grime, mold, mildew, black algae, moss and lichen by attacking the “roots” and weakening the fungus for an easy clean that last longer than traditional cleaners because of our products ability to stick to roof tile longer to clean more effectively prior to rinsing.” “Use to clean mold, mildew, black algae, fungus, moss, dirt or grime from concrete, clay or slate roof tiles.”
- c. Deck Wash: “Oxygen bubbles lift mold/mildew to the surface for easy cleaning.”
- d. Composite Deck Wash: “. . . penetrates the composite decking surfaces and uses oxygen bubbles to lift oil, grease, mold, mildew or any dirt or grime to the surface for easy cleaning.”
- e. Mop & Clean Composite Deck Cleaner: “. . . cleans mold spots that grow within the composite decking.” “Do you have a composite deck that has mold and mold spotting that you cannot get cleaned.” “Typical composite deck cleaners like . . . work well at clean surface mold and debris but are ineffective at internal mold.” “Mop & Clean is the only composite deck cleaner capable of cleaning this internal mold.” “To formulate this product, we had to use chlorine bleach . . . where it can attack the mold colony.” “If you have this problem on your composite decking, try Mop & Clean and your worries will go away with the mold.”
- f. Concrete Wash: “Use to clean mold, mildew . . . from any concrete surface.”
- g. Mold & Mildew Wash: “Mold & Mildew Wash.” “Our mold and mildew remover can out clean bleach every time . . .” Uses: “. . . any area where mold, mildew, stubborn stains or offensive odors are found.”
- h. Stucco Wash: “Remove mold, mildew . . . or any organic matter quickly and safely . . .” “Our stucco cleaner is the same formulation as our Mold & Mildew Wash except that it has additional natural adhesives added to the formula to help it stick to the vertical surfaces.”
- i. Tile & Grout Cleaner: “Tile and Grout Wash targets organic debris and 99.9% of the debris that dirty tile are from some type of organic matter that either got spilled or tracked

onto the tile surface.” “. . . to remove . . . the organic material . . .” “. . . will benefit from the organic material being broken up and dissolved from the hydrogen peroxide. . . .”

j. Marine Mold, Mildew & Algae Wash: “Marine Mold, Mildew & Algae Wash.”
“Removes bird feces, mold and mildew, algae.” “If mold is an issue on the vinyl . . . , just wipe them down with the boat wash.”

k. Sail Wash: “Removes mold, mildew. . . .”

l. Stable & Kennel Wash: “Hydrogen peroxide is the active ingredient that attacks the germs and fungi. . . .” “It breaks down organic matter.”

25. Based on Respondent’s claims made in or as part of its sale or distribution of each of the Covered Products, each was intended to be sold or distributed to prevent, destroy, repel or mitigate a pest, and each was, therefore, a pesticide as defined by Section 2(u) of FIFRA and not otherwise exempt from regulation under FIFRA.

26. As the EPA Inspector did during the September 25, 2008 inspection, the EPA Inspector explained to Respondent’s President during a closing conference to the July 18 and 19, 2011 inspection that FIFRA requires:

(a) any product with labels with a pesticide claim to be registered with EPA as pesticides under Section 3 of FIFRA, and

(b) any establishment that produces pesticides to be registered as a pesticide producing establishment under Section 7 of FIFRA.

27. Based on Respondent’s activities at the Facility, Respondent is a “producer” and “produced” pesticides as those terms are defined under Section 2(w) of FIFRA, and the Facility is an “establishment” as that term is defined by Section 2(dd) of FIFRA.

28. Accordingly, the requirements of Sections 3, 7, 12(a)(1)(A) and 12(a)(2)(L) of FIFRA apply to Respondent’s Covered Products.

29. On information and belief, at all times relevant to the FIFRA violations alleged in this Complaint, Respondent had not obtained registration of the Covered Products as pesticides as required by Section 3 of FIFRA.

30. On information and belief, at all times relevant to the FIFRA violations alleged in this Complaint, Respondent had not obtained registration of the Facility as an establishment that produces pesticides as required by Section 7 of FIFRA.

31. On April 19, 2012, EPA issued a Stop Sale, Use, or Removal Order to Respondent, pursuant to Section 13 of FIFRA, 7 U.S.C. 136k, alleging FIFRA violations regarding the distribution or sale of the Covered Products and pertaining to all quantities and sizes of the Covered Products, wherever located, within the ownership, control, or custody of Respondent.

COUNT I:
Unregistered Pesticide: Cedar Wash

32. Paragraphs 1 – 31 are realleged and incorporated herein by reference as if fully set forth herein.

33. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Cedar Wash product without having first registered the Cedar Wash product as a pesticide, as required under Section 3 of FIFRA, 7 U.S.C. § 136a.

34. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Cedar Wash product at least three hundred and eight (308) times.

35. Accordingly, on at least 308 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and regulations promulgated pursuant to

FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 USC § 136l(a)(1).

COUNT II:

Unregistered Pesticide: Tile Roof Wash

36. Paragraphs 1 – 35 are realleged and incorporated herein by reference as if fully set forth herein.

37. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Tile Roof Wash product without having first registered the Tile Roof Wash product as a pesticide, as required under Section 3 of FIFRA.

38. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Tile Roof Wash product at least thirty-seven (37) times.

39. Accordingly, on at least 37 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT III:

Unregistered Pesticide: Deck Wash

40. Paragraphs 1 – 39 are realleged and incorporated herein by reference as if fully set forth herein.

41. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Deck Wash product without

having first registered the Deck Wash product as a pesticide, as required under Section 3 of FIFRA.

42. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Deck Wash product at least two hundred and fifty-five (255) times.

43. Accordingly, on at least 255 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA, and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT IV:
Unregistered Pesticide: Composite Deck Wash

44. Paragraphs 1 – 43 are realleged and incorporated herein by reference as if fully set forth herein.

45. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Composite Deck Wash product without having first registered the Composite Deck Wash product as a pesticide, as required under Section 3 of FIFRA.

46. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Composite Deck Wash product at least sixty-three (63) times.

47. Accordingly, on at least 63 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT V:
Unregistered Pesticide: Mop & Clean Composite Deck Cleaner

48. Paragraphs 1 – 47 are realleged and incorporated herein by reference as if fully set forth herein.

49. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Mop and Clean Composite Deck Cleaner product without having first registered the Mop and Clean Composite Deck Cleaner product as a pesticide, as required under Section 3 of FIFRA.

50. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Mop and Clean Composite Deck Cleaner product at least one hundred and sixty-five (165) times.

51. Accordingly, on at least 165 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA, and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT VI:
Unregistered Pesticide: Concrete Wash

52. Paragraphs 1 – 51 are realleged and incorporated herein by reference as if fully set forth herein.

53. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Concrete Wash product without having first registered the Concrete Wash product as a pesticide, as required under Section 3 of FIFRA.

54. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Concrete Wash product at least one hundred thirty-nine (139) times.

55. Accordingly, on at least 139 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA, and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT VII:
Unregistered Pesticide: Mold & Mildew Wash

56. Paragraphs 1 – 55 are realleged and incorporated herein by reference as if fully set forth herein.

57. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Mold & Mildew Wash product without having first registered the Mold & Mildew Wash product as a pesticide, as required under Section 3 of FIFRA.

58. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Mold & Mildew Wash product at least one hundred and thirty-five (135) times.

59. Accordingly, on at least 135 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT VIII:
Unregistered Pesticide: Stucco Wash

60. Paragraphs 1 – 59 are realleged and incorporated herein by reference as if fully set forth herein.

61. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Stucco Wash product without having first registered the Stucco Wash product as a pesticide, as required under Section 3 of FIFRA.

62. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Stucco Wash product at least twenty-one (21) times.

63. Accordingly, on at least 21 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT IX:
Unregistered Pesticide: Tile & Grout Cleaner

64. Paragraphs 1 – 63 are realleged and incorporated herein by reference as if fully set forth herein.

65. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Tile & Grout Cleaner product without having first registered the Tile & Grout Cleaner product as a pesticide, as required under Section 3 of FIFRA.

66. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Tile & Grout Cleaner product at least twenty-five (25) times.

67. Accordingly, on at least 25 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT X:
Unregistered Pesticide: Marine Mold, Mildew & Algae Wash

68. Paragraphs 1 – 67 are realleged and incorporated herein by reference as if fully set forth herein.

69. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Marine Mold, Mildew & Algae Wash product without having first registered the Marine Mold, Mildew & Algae Wash product as a pesticide, as required under Section 3 of FIFRA.

70. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Marine Mold, Mildew & Algae Wash product at least thirty (30) times.

71. Accordingly, on at least 30 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT XI:
Unregistered Pesticide: Sail Wash

72. Paragraphs 1 – 71 are realleged and incorporated herein by reference as if fully set forth herein.

73. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Sail Wash product without having first registered the Sail Wash product as a pesticide, as required under Section 3 of FIFRA.

74. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Sail Wash product at least twenty-five (25) times.

75. Accordingly, on at least 25 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT XII:
Unregistered Pesticide: Stable & Kennel Wash

76. Paragraphs 1 – 75 are realleged and incorporated herein by reference as if fully set forth herein.

77. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent distributed or sold the Stable & Kennel Wash product without having first registered the Stable & Kennel Wash product as a pesticide, as required under Section 3 of FIFRA.

78. Based on the July 18 and 19, 2011 inspection, a review of records provided by Respondent, and further investigation, EPA determined that Respondent sold or distributed the Stable & Kennel Wash product at least six (6) times.

79. Accordingly, on at least 6 separate occasions, Respondent violated Section 12(a)(1)(A) of FIFRA and regulations promulgated pursuant to FIFRA, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT XIII:
Unregistered Establishment

80. Paragraphs 1 – 79 are realleged and incorporated herein by reference as if fully set forth herein.

81. During or as a result of the July 18 and 19, 2011 inspection of the Facility, the EPA Inspector documented that Respondent produced the Covered Products without having first registered the Facility as an establishment that produces pesticides with the EPA, as required under Section 7 of FIFRA, 7 U.S.C. § 136e.

82. Accordingly, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and regulations promulgated pursuant to FIFRA, which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

PROPOSED CIVIL PENALTY

83. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and regulations promulgated pursuant thereto. Pursuant the Debt Collection Improvement Act of 1996 (“DCIA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder and codified at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after January 12, 2009. *See* 73 Fed. Reg. 75340 (December 11, 2008).

84. Based on the forgoing findings of violations of FIFRA, EPA seeks to assess a civil penalty of up to \$7,500 per violation for each of violations alleged in Counts I to XIII above. The assessment of a penalty for each of the violations of Section 12(a)(1)(A) of FIFRA is warranted because Respondent sold or distributed the Covered Products without having first registered them as pesticides as required under Section 3 of FIFRA. The FIFRA Section 3 registration requirement lies at the core of FIFRA’s regulatory scheme and serves a fundamental purpose of ensuring that no pesticide is distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The registration requirement under Section 3 of FIFRA is also important because it helps to ensure that pesticide end users and

members of the public have accurate, up-to-date, and compliant information about any pesticides in the marketplace.

85. The assessment of a penalty for the violation of Section 12(a)(2)(L) of FIFRA is also warranted because Respondent produced the Covered Products at a facility that was not registered as an establishment that produces pesticides as required under Section 7 of FIFRA. The FIFRA requirement to register establishments at which pesticides are produced is important because it helps maintain the integrity of the federal pesticide program implemented by EPA. A primary purpose of that program is to ensure that no pesticide or device is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. Properly registering pesticide-producing establishments will help EPA carry out compliance, risk assessment, and risk reduction functions under FIFRA that are important for protecting human health and the environment. Without proper registration of establishments, EPA has no way of determining where pesticides are being produced.

86. In determining the amount of the penalty to be assessed under Section 14(a) of FIFRA, EPA will take into account the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which include the appropriateness of the penalty to the size of the business of the person charged, the effect of the penalty on the person's ability to continue in business, and the gravity of the violation. EPA will also take into account the "FIFRA Enforcement Response Policy" issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, dated December 2009, a copy of which is enclosed with this Complaint.

87. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the FIFRA violations and explaining how the proposed penalty was calculated, as required by Part 22.

88. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with FIFRA and its implementing regulations.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

89. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with 5 U.S.C. § 554 and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To avoid being found in default and having a penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer should (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). The denial of any material fact or raising any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region I
5 Post Office Square - Suite 100 (ORA18-1)
Boston, MA 02109-3912

90. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to John Hultgren, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter, at:

John Hultgren
Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency – Region I
5 Post Office Square - Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel: (617) 918-1761.

91. The hearing that will be held upon Respondent's request will be conducted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 et seq.) and Part 22.

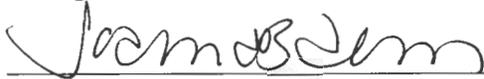
92. If Respondent fails to file a written Answer within thirty (30) days of the service of this Complaint, pursuant to 40 C.F.R § 22.17(a), Respondent may be found in default which constitutes an admission of all the facts alleged in this Complaint, a waiver of the right to a hearing, and assessment of the above-cited penalties without further proceedings

INFORMAL SETTLEMENT CONFERENCE

93. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or the proposed penalties, and/or the possibility of settlement. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order, signed by Complainant and Respondent, would be binding as to all terms and conditions specified therein. Any requests for an informal conference, and any other questions that Respondent may have regarding this Complaint, should be directed to EPA legal counsel, John Hultgren, using the contact information provided herein.

94. A request for an informal settlement conference does not extend any deadline in this proceeding, including the thirty (30) day period for the submission of a written Answer to this Complaint.

95. If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, Respondent should contact John Hultgren at (617) 918-1761.



Date: 9/21/12

Joanna B. Jerison
Legal Enforcement Manager
Office of Environmental Stewardship
U.S. EPA, Region 1