

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Blue Valley Laboratories, Inc.  
814 East 16<sup>th</sup> Street  
Kansas City, Missouri 64108

Respondent

) Docket No. FIFRA-07-2005-0370  
)  
) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING  
)  
)  
)  
)

COMPLAINT

Section I

Jurisdiction

1. 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.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Blue Valley Laboratories, Inc., a pesticide producer and distributor, located at 814 East 16<sup>th</sup> Street, Kansas City, Missouri 64108. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

### Section III

#### Violations

##### General Allegations

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

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, propagates, compounds or processes any pesticide or device or active ingredient (including packaging, repackaging, labeling, and relabeling).

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

13. MICROBIOCIDE 710, EPA Registration Number 46397-04, was a registered pesticide until 1989. On October 10, 1989, the registration of the MICROBIOCIDE 710 pesticide was canceled due to non-payment of maintenance fees. No records were found to indicate that any attempt was made to reregister the product. The product was originally registered for the control of algae, bacteria, and fungi in recirculating commercial and industrial water cooling towers.

14. MICROBIOCIDE 720, EPA Registration Number 46397-11, was a registered pesticide until 1989. On October 10, 1989, the registration of the MICROBIOCIDE 720 pesticide was canceled due to non-payment of maintenance fees. No records were found to indicate that any attempt was made to reregister the product. The product was originally registered for the control of algae and bacteria in recirculating commercial and industrial water cooling towers.

15. MICROBIOCIDE 723, EPA Registration Number 46397-10, was a registered pesticide until 1989. On October 10, 1989, the registration of the MICROBIOCIDE 723 pesticide product was canceled due to non-payment of maintenance fees. No attempt was made to reregister the product. The product was originally listed to control algae and bacteria in recirculating commercial and industrial water cooling towers.

16. On or about September 25, 2003, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's facility in Kansas City, Missouri, to determine the status of Respondent's compliance with FIFRA and documented sales and/or distribution of canceled pesticides.

17. On or about May 18, 2005, a representative of the MDA conducted an inspection at Respondent's facility in Kansas City, Missouri, to determine the status of Respondent's compliance with FIFRA and compliance with a Federal Stop Sale, Use, or Removal Order (SSURO) issued on April 29, 2005, regarding canceled pesticide products:

KILET	Canceled EPA Registration No. 46397-01
MICROBIOCIDE 702	Canceled EPA Registration No. 46397-02
MICROBIOCIDE 703	Canceled EPA Registration No. 46397-03
MICROBIOCIDE 710	Canceled EPA Registration No. 46397-04
MICROBIOCIDE 711	Canceled EPA Registration No. 46397-05
MICROBIOCIDE 713	Canceled EPA Registration No. 46397-06
MICROBIOCIDE 716	Canceled EPA Registration No. 46397-07
MICROBIOCIDE 717	Canceled EPA Registration No. 46397-08
MICROBIOCIDE 721	Canceled EPA Registration No. 46397-09
MICROBIOCIDE 723	Canceled EPA Registration No. 46397-10
MICROBIOCIDE 720	Canceled EPA Registration No. 46397-11

All EPA registrations for the above mentioned pesticide products were canceled by EPA's Office of Pesticide Programs, Registration Division, on October 10, 1989, for non-payment of registration maintenance fees.

Count 1

18. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

19. On or about July 9, 2002, Respondent sold or distributed one (1) 55-gallon drum of MICROBIOCIDE 720 to the Aviation Department, City of Kansas City, Missouri, KCI Airport, 125 Paris Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2207-2-11.

20. The label of the MICROBIOCIDE 720 product states: "Blue Valley Laboratories Microbiocide 720 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 720 as a pesticide.

21. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

22. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 18 through 21, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 2

23. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

24. On or about July 30, 2002, Respondent sold or distributed one (1) 55-gallon drum of MICROBIOCIDE 720 to the Aviation Department, City of Kansas City, Missouri, KCI Airport, 125 Paris Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2207-2-38.

25. The label of the MICROBIOCIDE 720 product states: "Blue Valley Laboratories Microbiocide 720 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 720 as a pesticide.

26. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

27. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 23 through 26, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 3

28. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

29. On or about July 30, 2002, Respondent sold or distributed one (1) 55-gallon drum of MICROBIOCIDE 710 to the Aviation Department, City of Kansas City, Missouri, KCI Airport, 125 Paris Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2207-2-38.

30. The label of the MICROBIOCIDE 710 product states: "Blue Valley Laboratories Microbiocide 710 is used to control algae, bacteria, and fungi in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 710 as a pesticide.

31. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 28 through 31, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 4

33. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

34. On or about March 10, 2003, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to the Bryant Building, 1202 Grand, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2303-3-10.

35. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

36. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

37. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 33 through 36, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 5

38. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

39. On or about March 11, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to Jack Henry Clothing, Attn: George Arvanitakis, 612 W. 47<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2303-3-12.

40. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

41. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

42. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 38 through 41, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 6

43. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

44. On or about June 16, 2003, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to Jack Henry Clothing, Attn: George Arvanitakis, 612 W. 47<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2306-3-16.

45. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

46. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

47. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 43 through 46, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 7

48. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

49. On or about June 27, 2003, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to Executive Hills, Inc., East Office Park, Building C: Contact: Mr. Mark Smelcer, 903 East 104<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2306-2-28.

50. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

51. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

52. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 48 through 51, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 8

53. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

54. On or about August 8, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to Jack Henry Clothing, Attn: George Arvanitakis, 612 W. 47<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2308-3-04.

55. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

56. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

57. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 53 through 56, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 9

58. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

59. On or about September 8, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to Jack Henry Clothing, Attn: George Arvanitakis, 612 W. 47<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2309-3-05.

60. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

61. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

62. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 58 through 61, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 10

63. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

64. On or about November 6, 2002, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to Mr. Longarm, 400 Walnut Street, Greenwood, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2211-3-03.

65. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

66. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

67. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 63 through 66, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 11

68. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

69. On or about March 26, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to Executive Hills, South Park – Sprint PCS, Contact: Mr. Scott Bennett, 4900 College Boulevard – Sprint PSC, Overland Park, Kansas, as documented by a copy of Respondent’s Invoice/Bill of Lading ID# 2303-2-20.

70. The label of the MICROBIOCIDE 723 product states: “Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers.” This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

71. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

72. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 68 through 71, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 12

73. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

74. On or about April 1, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to the City of Kansas City, Missouri, Parks and Recreation Dept./Storeroom, 4600 E. 63<sup>rd</sup> Street, Kansas City, Missouri, 64130 as documented by a copy of Respondent’s Invoice/Bill of Lading ID# 2304-2-02.

75. The label of the MICROBIOCIDE 723 product states: “Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers.” This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

76. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

77. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 73 through 76, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 13

78. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

79. On or about April 3, 2003, Respondent sold or distributed four (4) five-gallon pails of MICROBIOCIDE 723 to the North Kansas City School District, Maintenance Dept. Shops, 2000 N.E. 46<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2304-3-02.

80. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

81. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

82. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 78 through 81, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 14

83. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

84. On or about April 24, 2003, Respondent sold or distributed one (1) five-gallon pail of MICROBIOCIDE 723 to Executive Hills, Inc.: East Office Park, Building C: Contact: Mr. Mark Smelcer, 903 East 104<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2304-2-30.

85. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

86. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

87. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 83 through 86, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 15

88. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

89. On or about June 3, 2003, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to Contact: Mr. Jim Zade, Phone: (816) 525-4441, 104 SE Sixteenth Street, Lee's Summit, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2306-3-02.

90. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

91. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

92. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 88 through 91, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 16

93. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

94. On or about June 4, 2003, Respondent sold or distributed six (6) five-gallon pails of MICROBIOCIDE 723 to the North Kansas City School District, Maintenance Department Shops, 2000 N.E. 46<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2306-3-07.

95. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

96. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

97. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 93 through 96, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 17

98. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

99. On or about June 11, 2003, Respondent sold or distributed three (3) five-gallon pails of MICROBIOCIDE 723 to Mr. Longarm, 400 Walnut Street, Greenwood, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2306-3-10.

100. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

101. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

102. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 98 through 101, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 18

103. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

104. On or about August 25, 2003, Respondent sold or distributed two (2) five-gallon pails of MICROBIOCIDE 723 to the Bryant Building, 1202 Grand, Kansas City, Missouri 64105, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2308-3-13.

105. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

106. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

107. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 103 through 106, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Count 19

108. The facts stated in paragraphs 6 through 17 are realleged and incorporated as if fully stated herein.

109. On or about April 3, 2003, Respondent sold or distributed four (4) five-gallon pails of MICROBIOCIDE 723 to the North Kansas City School District, Maintenance Department Shops, 2000 N.E. 46<sup>th</sup> Street, Kansas City, Missouri, as documented by a copy of Respondent's Invoice/Bill of Lading ID# 2304-3-02.

110. The label of the MICROBIOCIDE 723 product states: "Blue Valley Laboratories Microbiocide 723 is used to control algae and bacteria in recirculating commercial and industrial water cooling towers." This statement is a pesticidal claim and thus identifies MICROBIOCIDE 723 as a pesticide.

111. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of a pesticide whose registration has been canceled.

112. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 108 through 111, it is proposed that a civil penalty of \$3,080 be assessed against Respondent.

#### Section IV

##### Total Proposed Penalty

113. 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 of up to Five Thousand Five Hundred Dollars (\$5,500) for each violation occurring prior to March 15, 2004. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). The EPA proposes to assess a total civil penalty of \$58,520 against Respondent for the above-described violations.

##### Appropriateness of Proposed Penalty

114. 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, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

115. For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were in excess of \$300,001 for 2005. This information placed Respondent in Category II size of business, as set forth in the FIFRA Civil Penalty Calculation Worksheet attached hereto and incorporated herein by reference (See Enclosure). If EPA's estimate of Respondent's total business revenues is incorrect, Respondent may submit reliable financial documentation indicating another category is appropriate.

116. 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.

117. 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.

118. 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.

119. Payment of the total penalty - \$58,520 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank  
EPA – Region 7  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

120. 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 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and a copy to:

Rupert G. Thomas  
Assistant Regional Counsel  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

## NOTICE OF OPPORTUNITY FOR HEARING

### Section V

#### Answer and Request for Hearing

121. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136(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:

Regional Hearing Clerk  
EPA - Region 7  
901 North 5<sup>th</sup> 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.

122. 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 (copy enclosed).

123. 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.

124. 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

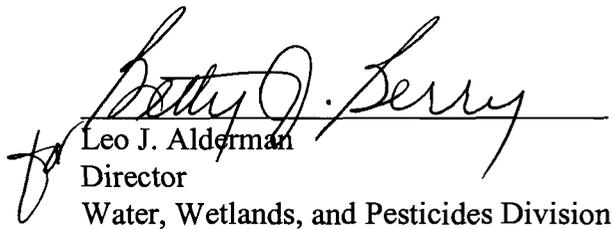
125. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's 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:

Rupert G. Thomas  
Assistant Regional Counsel  
EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone: (913) 551-7282

126. 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.

127. 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.

09/14/05  
Date

  
Leo J. Alderman  
Director  
Water, Wetlands, and Pesticides Division

  
Rupert G. Thomas  
Assistant Regional Counsel  
Office of Regional Counsel

**Enclosures:**

- 1. FIFRA Civil Penalty Calculation Worksheet**
- 2. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22**
- 3. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act**
- 4. SBREFA Fact Sheet**
- 5. Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings**

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 5<sup>th</sup> 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, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

Don A. Peterson  
Registered Agent for Blue Valley Laboratories, Inc.  
1201 Walnut  
Suite 2200  
Kansas City, Missouri 64106

9/15/05  
Date

Lisa Stufflebeam  
Lisa Stufflebeam

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET**  
**ENFORCEMENT RESPONSE POLICY for FIFRA - Reference**

RESPONDENT: Blue Valley Laboratories, Inc.  
 ADDRESS: 814 East 16<sup>th</sup> Street  
 Kansas City, Missouri 64108

Prepared By: Mark K. Leshner  
 Date: 08/16/05

	Count 1	Count 2	Count 3	Count 4
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	II	II	II	II
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$4,400	\$4,400	\$4,400	\$4,400
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	5	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	30%	30%	30%
7h. Dollar Adjustment	- 1,320	- 1,320	- 1,320	- 1,320
8. Final Penalty** (item 7h from item 6)	\$3,080	\$3,080	\$3,080	\$3,080
Combined Total Penalty (total of all columns for line 8, above)				

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

\*\*The final penalty in each column of line 8 cannot exceed the statutory maximum.

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET**  
**ENFORCEMENT RESPONSE POLICY for FIFRA - Reference**

RESPONDENT: Blue Valley Laboratories, Inc.  
 ADDRESS: 814 East 16<sup>th</sup> Street  
 Kansas City, Missouri 64108

Prepared By: Mark K. Leshner  
 Date: 08/16/05

	Count 5	Count 6	Count 7	Count 8
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	II	II	II	II
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$4,400	\$4,400	\$4,400	\$4,400
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	5	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	30%	30%	30%
7h. Dollar Adjustment	- 1,320	- 1,320	- 1,320	- 1,320
8. Final Penalty** (item 7h from item 6)	\$3,080	\$3,080	\$3,080	\$3,080
Combined Total Penalty (total of all columns for line 8, above)				

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

\*\*The final penalty in each column of line 8 cannot exceed the statutory maximum.

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET**  
**ENFORCEMENT RESPONSE POLICY for FIFRA - Reference**

RESPONDENT: Blue Valley Laboratories, Inc.  
 ADDRESS: 814 East 16<sup>th</sup> Street  
 Kansas City, Missouri 64108

Prepared By: Mark K. Leshner  
 Date: 08/16/05

	Count 9	Count 10	Count 11	Count 12
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	II	II	II	II
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$4,400	\$4,400	\$4,400	\$4,400
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	5	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	30%	30%	30%
7h. Dollar Adjustment	- 1,320	- 1,320	- 1,320	- 1,320
8. Final Penalty** (item 7h from item 6)	\$3,080	\$3,080	\$3,080	\$3,080
Combined Total Penalty (total of all columns for line 8, above)				

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

\*\*The final penalty in each column of line 8 cannot exceed the statutory maximum.

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET**  
**ENFORCEMENT RESPONSE POLICY for FIFRA - Reference**

RESPONDENT: Blue Valley Laboratories, Inc.  
 ADDRESS: 814 East 16<sup>th</sup> Street  
 Kansas City, Missouri 64108

Prepared By: Mark K. Leshner  
 Date: 08/16/05

	Count 13	Count 14	Count 15	Count 16
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)
2. FTTS Code	1AA	1AA	1AA	1AA
3. Violation Level	2	2	2	2
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	II	II	II	II
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$4,400	\$4,400	\$4,400	\$4,400
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	5	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	30%	30%	30%
7h. Dollar Adjustment	- 1,320	- 1,320	- 1,320	- 1,320
8. Final Penalty** (item 7h from item 6)	\$3,080	\$3,080	\$3,080	\$3,080
Combined Total Penalty (total of all columns for line 8, above)				

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

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RESPONDENT: Blue Valley Laboratories, Inc.  
 ADDRESS: 814 East 16<sup>th</sup> Street  
 Kansas City, Missouri 64108

Prepared By: Mark K. Leshner  
 Date: 08/16/05

	Count 17	Count 18	Count 19	
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	
2. FTTS Code	1AA	1AA	1AA	
3. Violation Level	2	2	2	
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	
5. Size of Business Category	II	II	II	
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$4,400	\$4,400	\$4,400	
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	1	1	
7b. Human Harm	1	1	1	
7c. Environmental Harm	1	1	1	
7d. Compliance History	0	0	0	
7e. Culpability	2	2	2	
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	5	5	
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	30%	30%	
7h. Dollar Adjustment	- 1,320	- 1,320	- 1,320	
8. Final Penalty** (item 7h from item 6)	\$3,080	\$3,080	\$3,080	
Combined Total Penalty (total of all columns for line 8, above)	\$58,520			

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

\*\*The final penalty in each column of line 8 cannot exceed the statutory maximum.