

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 NOV -9 P 12:37
REGIONAL HEARING
CLERK

In the Matter of:)
)
Everyday Group, LLC,)
)
Respondent.)
)
Proceeding under the Federal)
Insecticide, Fungicide and)
Rodenticide Act, as amended)

ANSWER

Docket No. FIFRA-02-2012-011

ANSWER

Comes now Respondent, Everyday Group, LLC, by and through its counsel, Cowan, Liebowitz & Latman, P.C., and in Answer to the Administrative Complaint states as follows:

Jurisdiction

1. Respondent admits that Paragraph 1 of the Complaint purports that this administrative proceeding is commenced pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §136l(a)(1), to assess a civil penalty against Respondent for having allegedly committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. §136j(a)(1) , but denies all other allegations not expressly admitted herein.
2. Respondent admits that Paragraph 2 of the Complaint purports that this tribunal is vested with jurisdiction over this proceeding pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1), and 40cfr §22.1(a)(1), but denies all other allegations not expressly admitted herein.
3. Respondent admits that Paragraph 3 of the Complaint purports that the Complainant in this proceeding is the Director fo the Division of Enforcement and Compliance Assistance of EPA, Region 2, but denies all other allegations not expressly admitted herein.

Statutory and Regulatory Definitions

4. Respondent admits that Paragraph 4 accurately paraphrases Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), but denies all other allegations not expressly admitted herein.
5. Respondent admits that Paragraph 5 accurately paraphrases 40 C.F.R. §152.3, but denies all other allegations not expressly admitted herein.

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6. Respondent admits that Paragraph 6 accurately paraphrases Section 2(u) of FIFRA, 7 U.S.C. §136(u), Section 2(t) of FIFRA, 7 U.S.C. §136(t), and 40 C.F.R. §152.5, but denies all other allegations not expressly admitted herein.
7. Respondent admits that Paragraph accurately paraphrases Section 2(t) of FIFRA, 7 U.S.C. §136(t), and 40 C.F.R. §152.5, but denies all other allegations not expressly admitted herein.
8. Respondent admits that Paragraph 8 accurately paraphrases 40 C.F.R. §152.15, and Section 3 of FIFRA, 7 U.S.C. §136a, but denies all other allegations not expressly admitted herein.

Unlawful and Prohibited Acts

9. Respondent admits that Paragraph 9 accurately paraphrases Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), but denies all other allegations not expressly admitted herein.
10. Respondent admits that Paragraph 10 accurately paraphrases 40 C.F.R. §152.15, but denies all other allegations not expressly admitted herein.
11. The allegations contained in Paragraph 11 of the Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
12. The allegations contained in Paragraph 12 of the Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
13. The allegations contained in Paragraph 13 of the Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
14. The allegations contained in Paragraph 14 of the Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.

Authority to Assess Penalty

15. Respondent admits that Paragraph 15 accurately paraphrases Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1), but denies all other allegations not expressly admitted herein.
16. Respondent admits that Paragraph 16 of the Complaint purports that the Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding on behalf of the Administrator of the EPA, but denies all other allegations not expressly admitted herein.

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17. Respondent admits that Paragraph 17 of the Complaint purports that under the authority of the Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. §2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. §3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1), to:
- a. \$6,500 for any violation occurring after March 15, 2004 but before January 12, 2009; and
 - b. \$7,500 for any violation occurring after January 12, 2009,
- but denies all other allegations not expressly admitted herein.
18. Respondent admits that Paragraph 18 of the Complaint accurately paraphrases Section 14(a)(3) of FIFRA, 7 U.S.C. §136l(a)(3), but denies all other allegations not expressly admitted herein.
19. The allegations contained in Paragraph 19 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.

Respondent's Identity and Operations

20. Respondent admits the truth of the allegations made in Paragraph 20 of the Complaint.
21. Respondent admits the truth of the allegations made in Paragraph 21 of the Complaint.
22. Respondent admits the truth of the allegations made in Paragraph 22 of the Complaint.
23. Respondent admits the truth of the allegation made in Paragraph 23 of the complaint in that it is engaged in the commercial importation of a number of products and substances that are intended for sale to, *inter alia*, household consumers, and as such products include health, beauty and personal hygiene products, but denies all other allegations not expressly admitted herein and demands and demands strict proof thereof.
24. Respondent admits the truth of the allegation made in Paragraph 24 of the complaint in that it commercially distributes or sells to retail establishments in the New York City are products and substances that are intended for sale to, *inter alia*, household consumers, and as such products include health, beauty and personal hygiene products, but denies all other allegations not expressly admitted herein and demands and demands strict proof thereof.
25. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 25 of the Complaint and as such denies same and demands strict proof thereof.
26. Respondent admits the truth of the allegation made in Paragraph 26 of the complaint in that an employee of the EPA conducted and inspection of Respondent's facility on July

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19, 2011, but denies all other allegations not expressly admitted herein and demands and demands strict proof thereof.

27. Respondent is without knowledge or information as to the truth of the allegations made in Paragraph 27 of the Complaint and therefore demise same and demands strict proof thereof.

COUNT 1: DETTOL LAUNDRY SANITIZER

28. Respondent repeats and realleges its responses to the allegations set forth in Paragraphs 1 to 27 of the Complaint, as if fully set forth herein.
29. Respondent admits as to the truth of the allegations made in Paragraph 29 of the Complaint that it has previously imported a product commercially identified as "Dettol Laundry Sanitiser," but denies all other allegations not expressly admitted herein and demands and demands strict proof thereof.
30. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 30 of the Complaint and as such denies same and demands strict proof thereof.
31. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 31 of the Complaint and as such denies same and demands strict proof thereof.
32. Respondent denies the truth of the allegations made in Paragraph 32 of the Complaint and demands strict proof thereof.
33. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 33 of the Complaint and as such denies same and demands strict proof thereof.
34. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 34 of the Complaint and as such denies same and demands strict proof thereof.
35. The allegations contained in Paragraph 35 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
36. The allegations contained in Paragraph 36 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
37. Respondent admits the truth of the allegations made in Paragraph 37 of the Complaint.
38. The allegations contained in Paragraph 38 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
39. The allegations contained in Paragraph 39 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.

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COUNT 2: FUJI LAVENDER MOTH TABLETS

40. Respondent repeats and realleges its responses to the allegations set forth in Paragraphs 1 to 39 of the Complaint, as if fully set forth herein.
41. Respondent admits that it has previously imported a product commercially identified as "Fuji Lavender Moth Tablets," but denies all other allegations not expressly admitted herein and demands and demands strict proof thereof.
42. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 42 of the Complaint and as such denies same and demands strict proof thereof.
43. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 43 of the Complaint and as such denies same and demands strict proof thereof.
44. Respondent denies the truth of the allegations made in Paragraph 44 of the Complaint and demands strict proof thereof.
45. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 45 of the Complaint and as such denies same and demands strict proof thereof.
46. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 46 of the Complaint and as such denies same and demands strict proof thereof.
47. The allegations contained in Paragraph 47 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
48. The allegations contained in Paragraph 48 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
49. Respondent admits the truth of the allegations made in Paragraph 49 of the Complaint.
50. The allegations contained in Paragraph 50 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
51. The allegations contained in Paragraph 51 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.

COUNT 3: DETTOL DISINFECTANT MULTI-ACTION CLEANER

52. Respondent repeats and realleges its responses to the allegations set forth in Paragraphs 1 to 51 of the Complaint, as if fully set forth herein.

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53. Respondent admits that it has previously imported a product commercially identified as "Dettol Disinfectant Multi-Action Cleaner," but denies all other allegations not expressly admitted herein and demands strict proof thereof.
54. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 54 of the Complaint and as such denies same and demands strict proof thereof.
55. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 55 of the Complaint and as such denies same and demands strict proof thereof.
56. Respondent denies the truth of the allegations made in Paragraph 56 of the Complaint and demands strict proof thereof and demands strict proof thereof.
57. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 57 of the Complaint and as such denies same and demands strict proof thereof.
58. Respondent denies knowledge or information as to the truth of the allegations made in Paragraph 58 of the Complaint and as such denies same and demands strict proof thereof.
59. The allegations contained in Paragraph 59 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
60. The allegations contained in Paragraph 60 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
61. Respondent denies the truth of the allegations made in Paragraph 61 of the Complaint and demands strict proof thereof.
62. The allegations contained in Paragraph 62 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.
63. The allegations contained in Paragraph 63 of the EPA's Complaint are legal conclusions to which no response is required and therefore Respondent denies these allegations and demands strict proof thereof.

PROPOSED CIVIL PENALTY

1. Respondent objects to the proposed civil penalty amount proposed by Complainant with respect to Count 1 ("Illegal Distribution or Sale of DLS") in the amount of \$60,000, as well as Complainant's stated basis for same, as such proposed civil penalty amount is either not allowed by law and/or grossly excessive in view of the facts and applicable law.
2. Respondent objects to the proposed civil penalty amount proposed by Complainant with respect to Count 2 ("Illegal Distribution or Sale of FLMT") in the amount of \$82,500, as

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well as Complainant's stated basis for same, as it is either not allowed by law and/or grossly excessive in view of the facts and applicable law.

3. Respondent objects to the proposed civil penalty amount proposed by Complainant with respect to Count 3 ("Illegal Distribution or Sale of DDMAC") in the amount of \$97,500, as well as Complainant's stated basis for same, as it is either not allowed by law and/or grossly excessive in view of the facts and applicable law.
4. Respondent objects to the proposed total civil penalty amount proposed by Complainant with respect to Count 1, Count 2 and Count 3 in the amount of \$240,000, as it is either not allowed by law and/or grossly excessive in view of the facts and applicable law.

AFFIRMATIVE AND OTHER DEFENSES

1. Further answering and by way of Affirmative Defense, Respondent states that the Complaint fails to state a claim upon which relief can be granted.
2. Further answering and by way of Affirmative Defense, Respondent states that its conduct was not in violation of any of the purportedly applicable FIFRA statutes or regulations set forth in the EPA's Complaint.
3. Further answering and by way of Affirmative Defense, Respondent states that the products at issue in Count(s) 1, 2 and 3 are not regulated by any of the purportedly applicable FIFRA statutes or regulations set forth in the Complaint.
4. Further answering and by way of Affirmative Defense, Respondent states that during the EPA's August 4, 2012 visit to Respondent's facility, the EPA official expressly advised respondent that the importation and sale the "Dettol Laundry Sanitiser" was not in violation of any of the purportedly applicable FIFRA statutes or regulations set forth in the EPA's Complaint.
5. Further answering and by way of Affirmative Defense, Respondent is not liable for any of the alleged acts or omissions alleged and set forth in the Complaint given that those alleged violations were caused by the intervening acts and/or omissions of third parties not subject to control by Respondent.
6. Further answering and by way of Affirmative Defense, Respondent states that the proposed civil penalties set forth in the Complaint grossly exceed that which might be justified under the law in light of the applicable facts and law.
7. Respondent reserves its right to raise additional defenses at any hearing in this matter, which may arise or become known to Respondent in discovery or otherwise during its preparation and review of this matter.

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**RESPONDENT'S REQUEST FOR FORMAL HEARING AND INFORMAL
SETTLEMENT CONFERENCE**

1. Respondent formally requests a hearing to contest the material fact set forth in the Complaint and or to contest the appropriateness of the penalty proposed therein, and for any other purpose permitted by law under Section 14(a) of FIFRA, 7 U.S.C. 5 1361(a).
2. Respondent also requests an informal settlement conference with the EPA to explore the possibility of settlement in this matter. Respondent's request for an informal settlement conference is made without admitting any allegations not otherwise expressly admitted herein or admitting any liability whatsoever for any of the purported violations set forth in the Complaint.

FACTS PLACED IN ISSUE BY RESPONDENT

Respondent Everyday Group, LLC expects that at a formal hearing in this matter the following categories of facts will be placed in issue:

1. Whether Everyday Group, LLC is governed by the provisions of FIFRA set forth in the Complaint.
2. Whether the alleged conduct of Respondent Everyday Group, LLC as set forth in the Complaint is violative of any of the provisions of FIFRA set forth therein.
3. Whether any other person or entity not a party to these proceedings is, or should be liable for any of the purported violations of FIFRA and the proposed civil penalties set forth in the Complaint.
4. Whether Respondent Everyday Group, LLC ' alleged acts and/or omissions violated any applicable Federal law as set forth in the Complaint.
5. Respondent Everyday Group, LLC reserves its right to raise any additional issues of fact at the hearing on this matter that are related to any of the issues set forth herein or in the Complaint, or that may arise during the course of discovery or otherwise in its preparation for the hearing in this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the EPA's Complaint herein, Respondent Everyday Group, LLC, prays for judgment or relief

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against Complainant as follows:

1. That the claims against Respondent, Everyday Group, LLC be dismissed in their entirety with prejudice and that Complainant take nothing;
2. That it be awarded its reasonable attorneys fees and costs incurred in defending this matter and
3. Such other and further relief as the Administrator deems just and proper.

Dated: November 8, 2012
New York, New York

COWAN LIEBOWITZ & LATMAN, P.C.

By: 

Clarence J. Erickson (cje@cll.com)

Meichelle R. MacGregor (mrm@cll.com)

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1133 Avenue of the Americas

New York, New York 10036

(212) 790-9200

*Attorneys For Respondent, Everyday Group,
LLC*

CERTIFICATE OF SERVICE

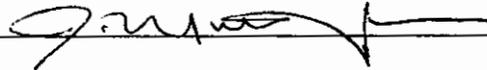
I certify that the foregoing MOTION FOR EXTENSION OF TIME, dated November 9, 2012, was sent this day in the following manner to the addresses listed below:

Original and copy served personally to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy served personally:

Attorney for Complainant:
Lee A. Speilmann, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

x  _____

Name and Address:

J. MARTIN NOBLE
96 LUGER ST, #2L
BROOKLYN, NY 11231

Dated: 11-9-12