

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY 04 MAR 31 PM 2: 56

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
 ) DOCKET NO. FIFRA-07-2004-0087  
THE DAEDALUS GROUP, INC., )  
 ) MOTION FOR DEFAULT ORDER  
RESPONDENT )

Preliminary Statement

The Complainant, the United States Environmental Protection Agency (“EPA” or “Complainant”), Region VII, initiated an administrative proceeding/Complaint for the assessment of a civil penalty, pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j, on January 23, 2004. The Complaint was initiated against Respondent, The Daedalus Group, Inc. (“Daedalus” or “Respondent”). Respondent is a business incorporated under the laws of the State of Kansas. Robert S. Conn, is the registered agent for Respondent, with an address at 12005 Linden, Overland Park, Kansas 66209.

The Complaint was personally served upon Robert Conn, by Dave Pellett, Pesticide Use Investigator, State of Kansas, on February 19, 2004. (a copy of the CERTIFICATE/AFFIDAVIT is attached and identified as COMPLAINANT’S EXHIBIT 1). To date Respondent has not filed an Answer to the Complaint, and the time period in which Respondent must file an Answer has passed. Respondent has not filed or requested an extension in which to file an Answer, neither has an extension been granted sua sponte to Respondent in which to file an Answer.

### Motion

Complainant, by its undersigned attorney, prays the Regional Judicial Officer issue an Order finding Respondent in Default for failing to file its Answer, thereby failing to comply with the Consolidated Rules of Practice at 40 C.F.R. § 22.15. Complainant also prays that the Regional Judicial Officer ordered the Respondent to pay a civil penalty of Sixteen Thousand Five Hundred Dollars (\$16,500.00). This Motion is made pursuant to the authority of 40 C.F.R. §. 22.17. Title 40 C.F.R. §. 22.17(a) provides that a party may be found to be in default for a failure to file a timely Answer to the Complaint. Title 40 C.F.R. §. 22.17, also provides that failure by Respondent constitutes an admission of all facts alleged in the Complaint and waiver of Respondent's right to a hearing on such factual allegations.

### Background

1. On January 23, 2004, Complainant issued to the Respondent a Complaint alleging violation of FIFRA, §§ 12(a)(1)(A), 12(a)(1)(E), 12(a)(2)(L), 12(a)(2)(B)(iii).
2. The Complaint was personally served upon the Respondent on February 19, 2004, by Dave Pellett, Pesticide Use Investigator, State of Kansas.
3. Respondent has not filed an Answer to the Complaint.

### Facts

4. Respondent is The Daedalus Group, Inc., a pesticide producer and distributor located at 19925 West 161<sup>st</sup> Street-#A, Olathe, Kansas 66062-2788. Respondent is and was at the time of the alleged violations, a corporation incorporated under the laws of the State of Kansas.

5. On or about April 16, 2000, and June 16, 2002, Respondent distributed or sold TM-9727 ALGICIDE (CWT-100M ALGICIDE) MICROBIOCIDAL to the General Services Administration (GSA), Lincoln, Nebraska.

6. On or about June 19, 2000, representatives of the Nebraska Department of Agriculture and the United States Environmental Protection Agency conducted an inspection at the GSA, Lincoln, Nebraska, to document shipment of pesticides by the Daedalus Group, Inc., and to determine the pesticides compliance with respect to FIFRA.

7. On or about July 6, 2000, and October 2, 2001, a representative of the Kansas Department of Agriculture conducted an inspection of Respondent's place of business to further document The Deadalus Group, Inc., compliance with FIFRA.

8. The facts stated in Counts 1, 2, 3, and 4 of the Complaint are incorporated herein. A copy of the Complaint is attached and is identified as COMPLAINANT'S EXHIBIT 2.

#### Law

9. 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.

10. 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.

11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.

12. Section 12(q)(1)(F) of FIFRA, 7.U.S.C. § 136j(q)(1)(F), states a pesticide is misbranded if its labeling does not contain directions for use which are necessary and, if complied with, are adequate to protect health and the environment.

13. Section 12(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G) states that a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and, if complied with, is adequate to protect health and the environment.

14. Section 12(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the registration number assigned under Section of FIFRA to the establishment in which it was produced.

15. Section 12(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), states a pesticide is misbranded if there is not affixed to the container a label bearing the net weight or measure of the content and the registration number assigned to the pesticide.

16. 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 of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

17. Section 7 of FIFRA, 7 U.S.C. § 136e, states that no person shall produce any pesticide subject to FIFRA unless the establishment in which it is produced is registered with the Administrator.

18. The term “produce” is defined at 40 C.F.R. § 167.3 as meaning “...to manufacture, prepare, propagate, compound, or process any pesticide...any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.”

19. Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), states that it shall be unlawful for any person to refuse to allow any entry, inspection, copying of records, or the sampling authorized by FIFRA.

20. Section 8 of FIFRA, 7 U.S.C. § 136f, requires producers to develop and maintain certain records pertaining to the production and distribution of pesticides, and, upon request of any officer of the Environmental Protection Agency or any duly authorized State or political subdivision, to furnish or permit such person access to and to copy all records showing the delivery, movement, or holding of such pesticide, including the quantity, the date of the shipment and receipt, and the name of the consignee.

21. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to, and, approved by, the Agency before the product as modified may be distributed or sold.

22. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of an unregistered pesticide.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.

24. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it failed to comply with the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

25. Respondent's failure to provide access to records pertaining to the distribution and sale of pesticides is a violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. 136j(a)(2)(B)(iii).

26. Section 14 of FIFRA, 7 U.S.C. 136L, authorizes the issuance of the Complaint for the assessment of a civil penalty of up to Five Thousand Dollars (\$5,000) for each violation. The Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, provides for civil monetary penalties under FIFRA to be increased by ten percent (10%) for all violations that occur after January 30, 1997.

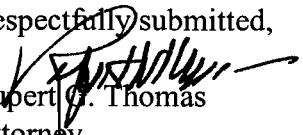
Penalty

27. Complainant proposed a civil penalty against Respondent of Sixteen Thousand Five Hundred Dollars (\$16,500).

28. Complainant asserted that the proposed penalty above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136L. Complainant considered the size of the business of Respondent, the effect of the proposed penalty on the Respondent ability to continue in business and the gravity of the alleged violation. Complainant also, in calculation of the proposed penalty has taken into account the particular facts and circumstances of the alleged violation, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA. When Complainant was unable to obtain specific information as to Respondent's gross revenues, Respondent was, for purposes of penalty calculation, considered to be a category 1 size of business whose total business revenues were more than \$ 1 million.

29. Complainant submits and incorporate the Memorandum, dated March 17, 2004, from Mary Jane Wingett to Rupert G. Thomas, explaining how the civil penalty was calculated, and the factors that went into the calculation of the penalty. Said Memorandum is identified as ATTACHMENT.

Respectfully submitted,

  
Rupert G. Thomas  
Attorney

Office of Regional Counsel  
U.S. EPA, Region VII

Date: 03/31/04

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of March 2004, I hand delivered the original and one true and correct copy of this Motion for Default Order, and an original and one true copy of a proposed Default Order to the Regional Hearing Clerk, and hand delivered one true and correct copy of each of the documents to the Regional Judicial Officer. I further certify that I sent by first class mail, one true and correct copy of each of the documents to:

Robert S. Conn  
Registered Agent  
The Daedalus Group, Inc.  
12005 Linden  
Overland Park, Kansas 66209

  
Legal Technician

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF: )  
 )  
THE DAEDALUS GROUP, INC. ) DOCKET NO. FIFRA-07-2004-0087  
 )  
RESPONDENT )

ORDER

By Motion dated March 31, 2004, Complainant United States Environmental Protection Agency, moved that a Default Order be granted in its favor and against Respondent The Daedalus Group, Inc. Complainant Motion states that Respondent failed to timely file an Answer to the Complaint filed against Respondent and properly served upon it.

This Motion is hereby, GRANTED, as set forth below:

Good cause exist for the granting of this Motion. Respondent failed to file an Answer, and the time for filing an Answer has expired. Respondent did not file a Motion for an Extension in which to file an Answer, and an extension was not granted sua sponte..

Title 40 C.F.R. § 22.17(a), provides that a party may be found to be in default for a failure to file a timely Answer to the Complaint. The Regulation also states that a failure by Respondent to file an Answer to the Complaint constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.



Title 40 C.F.R. § 22.17(c), authorized the Presiding Officer to issue a Default Order against the defaulting party. Respondent is found to be in default for its failure to file an Answer to the Complaint, and accordingly is found to have committed violations of FIFRA §§ 12(a)(1)(A), 12(A)(1)(E), 12(a)(2)(L), 12(a)(2)(B)(iii), as charged in the Complaint, and stated in the Complainant's Motion for Default Order. Respondent is hereby ordered to pay a civil penalty of Sixteen Thousand Five Hundred Dollars (\$16,500). Payment of the penalty shall become due and payable by Respondent 30 days after the Default Order becomes final. 40 C.F.R. § 22.17(d). Payment shall be made by forwarding a cashier's or certified check, payable to "Treasurer, United States of America." The check should be sent to:

Mellon Bank  
Regional Hearing Clerk  
EPA-Region VII  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

Failure to pay the civil penalty imposed by this Default Order may subject the Respondent to the assessment of interest and penalty charges on the debt pursuant to 31 U.S.C. § 3717(e)(2).

\_\_\_\_\_  
Robert L. Patrick  
Regional Judicial Officer

Dated: \_\_\_\_\_

CERTIFICATION

I, Dave Pellett, <sup>of</sup> Pesticide Use Investigator, State of Kansas, hereby certify that on this 19<sup>th</sup> day of February, 2004, I served upon The Daedalus Group, Inc. by personally delivering the following documents to Robert S. Conn, Registered Agent for The Daedalus Group, Inc. under cover letter dated January 26, 2004:

1. Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-7-2003-0270
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, 64 Fed. Reg. 40138
3. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
4. FIFRA Civil Penalty Calculation Worksheet
5. SBREFA Fact Sheet
6. Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental  
Legal Proceedings

*Dave Pellett*

Dave Pellett *DP*

AFFIDAVIT

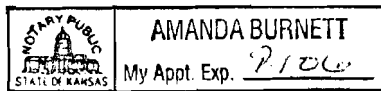
State of Kansas            )  
  )SS  
County of Johnson        )

On this 19 day of February, 2004, Dave Pellett appears before me, a Notary Public, and swear to the truth and veracity of the contents of the above Certification. In testament of this fact, said Dave Pellett, affixed his signature to this affidavit in my presence.

*Amanda Burnett*

Name

My Commission Expires:



Kansas Department of Agriculture  
Pesticide & Fertilizer Program

Notary Public

**Dave Pellett**  
Investigator

Program Office:  
109 SW 9th Street-3rd Floor  
Topeka, KS 66612  
Ph: (785) 296-3786  
Fax: (785) 296-0673

Field Office:  
Lawrence, KS  
Ph: (785) 843-8256  
E-mail: dpellett@midusa.net

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

04 JAN 23 PM 12:43

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF

The Daedalus Group, Inc.  
19925 West 161st Street #A  
Olathe, Kansas 66062-2788

Respondent

) Docket No. FIFRA-07-2004-0087

)

) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING

)

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)

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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 The Daedalus Group, Inc., a pesticide producer and distributor located at 19925 West 161st Street #A, Olathe, Kansas 66062-2788. The Respondent is and was, at all times referred to in this Complaint, a business incorporated under the laws of the State of Kansas.

### Section III

#### Violations

##### General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:
6. 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.
7. 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.
8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.
9. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if its labeling does not contain directions for use which are necessary and, if complied with, are adequate to protect health and the environment.
10. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and, if complied with, is adequate to protect health and the environment.
11. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.
12. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not affixed to the container a label bearing the net weight or measure of content and the registration number assigned to the pesticide.
13. 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 of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
14. Section 7 of FIFRA, 7 U.S.C. § 136e, states that no person shall produce any pesticide subject to FIFRA unless the establishment in which it is produced is registered with the Administrator.

15. The term "produce" is defined at 40 C.F.R. § 167.3 as meaning "...to manufacture, prepare, propagate, compound, or process any pesticide...any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device."

16. Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(1)(2)(B)(iii), states that it shall be unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by FIFRA.

17. Section 8 of FIFRA, 7 U.S.C. § 136f, requires producers to develop and maintain certain records pertaining to the production and distribution of pesticides, and, upon request of any officer of the Environmental Protection Agency or of any duly designated state or political subdivision, to furnish or permit such person access to and to copy all records showing the delivery, movement, or holding of such pesticide, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee.

18. On or about April 16, 2000, and June 16, 2000, Respondent distributed or sold TM-9727 ALGICIDE (CWT-100M ALGICIDE) MICROBIOCIDE to the General Services Administration, Lincoln, Nebraska.

19. On or about June 19, 2000, representatives of the Nebraska Department of Agriculture and the Environmental Protection Agency conducted an inspection at the General Services Administration, Lincoln, Nebraska, to document shipment of pesticides by The Daedalus Group, Inc., and to determine the pesticides' compliance with respect to FIFRA.

20. On or about July 6, 2000, and October 2, 2001, a representative of the Kansas Department of Agriculture conducted an inspection of Respondent's place of business to further document the firm's compliance with FIFRA.

Count 1

21. The facts stated in paragraphs 6, 7, 18, and 19, are realleged and incorporated as if fully stated herein.

22. The label of the pesticide referred to in paragraph 18 stated, in part:

" \*\*\*  
THE  
DAEDALUS  
GROUP, INC.  
\*\*\*  
TM-  
9727  
(CWT-100M ALGICIDE)  
MICROBIOCIDE  
\*\*\*

ACTIVE INGREDIENT:

AlkylDimethylBenzyl	
Ammonium Chloride.....	9.2%
BisTributyltin Oxide.....	3.4%
AlkylDBAC.....	4.5%
AlkylDEAC.....	1.5%
INERT INGREDIENTS.....	81.4%

\*\*\*

CAUTION

\*\*\*

EPA REG."

whereas the product was not the registered pesticide CWT-100M ALGICIDE; was not separately registered with EPA by Respondent; and was not distributor registered to The Daedalus Group, Inc., pursuant to 40 C.F.R. § 152.132.

23. The pesticide CWT-100M ALGICIDE is a pesticide registered to BioLab, Decatur, Georgia, under EPA Registration No. 5185-399 under the formulation described in paragraph 22.

24. Respondent repackaged the pesticide CWT-100M ALGICIDE, without authorization from the registrant BioLab.

25. The repackaged pesticide TM-9727 (CWT-100M ALGICIDE) MICROBIOCIDE described in paragraphs 22 and 24 was not encompassed within the terms of the product registration under EPA Registration No. 5185-399, and therefore required separate product registration under Section 3 of FIFRA.

26. Respondent was not registered with EPA as a distributor for CWT-100M ALGICIDE and cannot market the product under its own product and company name.

27. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to, and approved by, the Agency before the product as modified may be distributed or sold.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distribution or sale of an unregistered pesticide.

29. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 21 through 28, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 2

30. The facts stated in paragraphs 7 through 12, and 18 through 20, are realleged and incorporated as if fully stated herein.

31. The pesticide described in paragraph 18 was misbranded in that the label failed to bear an EPA product registration number.
32. The pesticide described in paragraph 18 was misbranded in that the label failed to bear the number assigned to the establishment in which it was produced.
33. The pesticide described in paragraph 18 was misbranded in that the label failed to bear required precautions such as the signal word DANGER and the precautionary statement "DANGER: Highly corrosive. Causes skin and eye damage. May be fatal if swallowed.. Do not get in eyes, on skin or on clothing. Wear goggles or safety glasses and rubber gloves when handling this product. Irritating to nose and throat. Avoid breathing vapors. Remove and wash contaminated clothing before reuse. For skin or eye contact, or if vapors are inhaled, immediately follow statements of practical treatment." These precautionary statements were required to be on the label of CWT-100M ALGICIDE as part of the terms of the product's registration under EPA Registration No. 5185-399.
34. The pesticide described in paragraph 18 was misbranded in that the label failed to bear the first aid precautionary statements.
35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.
36. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 31 through 35, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

### Count 3

37. The facts stated in paragraphs 13, 14, 15, 19, and 20, are realleged and incorporated as if fully stated herein.
38. Respondent produced the pesticide described in paragraph 18 at its establishment at 19925 West 161st Street #A, Olathe, Kansas.
39. Respondent's establishment at 19925 #A West 161st Street, Olathe, Kansas, is not registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA.
40. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it failed to comply with the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
41. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 38 through 40, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

#### Count 4

42. The facts stated in paragraphs 16, 17, and 20 are realleged and incorporated as if fully stated herein.
43. During the October 2, 2001, inspection referenced in paragraph 20, Respondent was unable to provide access to records concerning the distribution or sale of pesticides, since they were maintained at Respondent's residence.
44. On October 2, 2001, Respondent agreed, in writing, to provide the inspector copies of sales invoices "as soon as possible."
45. On December 12, 2001, Complainant mailed by certified mail a request that Respondent provide copies of invoice records related to the sale of CWT-100M ALGICIDE.
46. Respondent was notified by the United States Postal Service of the certified mail on December 14, December 20, and December 29, 2001.
47. The certified mail was returned to Complainant on January 4, 2002, as "Unclaimed."
48. On or about February 27, 2002, a representative of the Nebraska Department of Agriculture hand-delivered a copy of the certified letter which was mailed to Respondent on December 12, 2001, the contents of which required Respondent to provide the requested records within 15 days of receipt.
49. Respondent failed to provide the requested records within 15 days of receipt of the hand-delivered certified letter.
50. Respondent's failure to provide access to records pertaining to the distribution and sale of pesticides is a violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii).

#### Section IV

##### Total Proposed Penalty

51. 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. The EPA proposes to assess a total civil penalty of \$16,500 against Respondent for the above-described violations.

##### Appropriateness of Proposed Penalty

52. 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)).

53. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$1,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

54. 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.

55. 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.

56. 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.

57. Payment of the total penalty - \$16,500 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank  
EPA - Region VII  
Regional Hearing Clerk  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

58. 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

59. 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.

60. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practices 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).

61. 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.

62. 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

63. 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

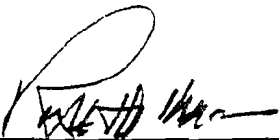
64. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

65. 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.

1/20/04  
Date

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

  
Rupert G. Thomas  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosures:

1. 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
2. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
3. FIFRA Civil Penalty Calculation Worksheet
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:

Robert S. Conn  
Registered Agent  
The Daedalus Group, Inc.  
12005 Linden  
Overland Park, KS 66209

1-26-2004  
Date

Vitula Lungren  
Vitula Lungren

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

RESPONDENT: The Daedalus Group, Inc.  
 ADDRESS 19925 West 161<sup>st</sup> Street #A  
 Olathe, Kansas 66062-2788

Prepared By: Judith Sturgess  
 Date: 6/04/02  
 Case File 070600 3250-01

	Count 1	Count 2	Count 3	Count 4
<b>Appendix A</b>				
1. Statutory Violation	§ 12(a)(1)(A)	§ 12(a)(1)(E)	§ 12(a)(2)(L)	§ 12(a)(2)(B)(iii)
2. FTTS Code				
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	1	1	1	1
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$5,500	\$5,500	\$5,500	\$5,500
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	3	3	3	3
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	10	10	10	10
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	0	0	0	0
7h. Dollar Adjustment	0	0	0	0
8. Final Penalty** (item 7h from item 6)	\$5,500	\$5,500	\$5,500	0
Combined Total Penalty (total of all columns for line 8. above)	\$16,500			

\* 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.



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

MAR 17 2004

MEMORANDUM

SUBJECT: Calculation of Civil Penalties - The Daedalus Group, Inc.  
Docket No. FIFRA-07-2003-0270

FROM: Mary Jane Wingett *M. Wingett*  
Enforcement Team Leader

TO: Rupert G. Thomas  
Assistant Regional Counsel  
Office of Regional Counsel

INTRODUCTION

The following information supports the appropriateness of the U.S. Environmental Protection Agency, Region VII's assessment of civil penalties in regard to the subject administrative action.

STATUTORY CONSIDERATIONS

Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for the assessment of a civil penalty of not more than \$5,000 for each violation against any registrant who violates any provisions of FIFRA. Under the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, penalties of up to \$5,500 per day for each violation of FIFRA may be assessed for violations that occur after January 30, 1997.

Section 14(a)(4) of FIFRA requires the Agency to consider (1) the appropriateness of any penalty to the size of the business of the person charged, (2) the effect on the person's ability to continue in business, and (3) the gravity of the violation.

Under the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, penalties of up to \$5,500 per day for each violation of FIFRA may be assessed for violations that occur after January 30, 1997.

## **DEVELOPMENT OF THE PROPOSED PENALTY**

### **FIFRA Enforcement Response Policy (ERP)**

The penalties proposed in this Complaint were developed in accordance with the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990.

The ERP is designed to provide fair and equitable treatment of the regulated community by ensuring that similar enforcement responses and comparable penalty assessments will be made for comparable violations. Furthermore, the policy aims to serve as a deterrent from future violations of FIFRA. The ERP states that a civil penalty is the preferred enforcement remedy where the violation (1) presents an actual or potential risk of harm to humans or the environment; (2) was apparently committed as a result of ordinary negligence (as opposed to criminal negligence), inadvertence, or mistake; and the violation involves a violation under the Act by any registrant, commercial applicator, "for hire" applicator, wholesaler dealer, retailer, or other distributor (no prior warning is required by FIFRA for violations in this category).

The ERP states that the determination of the penalty amount is made according to a five-stage process in consideration of the FIFRA Section 14(a)(4) criteria. These steps are:

1. determination of the gravity or "level" of the violation using Appendix A of the ERP;
2. determination of the size of business category for the violator, found in Table 2 of the ERP;
3. use of the FIFRA civil penalty matrices found in Table 1 of the ERP to determine the dollar amount associated with the gravity level of violation and the size of business category of the violator;
4. further gravity adjustments of the base penalty in consideration of the specific characteristics of the pesticide involved, the actual or potential harm to human health and/or the environment, the compliance history of the violator, and the culpability of the violator, using the "Gravity Adjustment Criteria" found in Appendix B; and
5. consideration of the effect that payment of the total civil penalty will have on the violator's ability to continue in business.

### **Step 1 - Gravity or level of violation - Appendix A of the ERP**

For each violation of FIFRA, Appendix A describes the violation, identifies the statutory citation, and assesses a level of gravity in a range from one to four.



**The Complaint alleges in Count 1 that Respondent distributed or sold an unregistered pesticide. Appendix A assigns a level of gravity of "2" to this violation.**

**The Complaint alleges in Count 2 that Respondent distributed or sold a misbranded pesticide that failed to bear required labeling. Appendix A assigns a level of gravity of "2" to this violation.**

**The Complaint alleges in Count 3 that Respondent produced a pesticide in an establishment that was not registered with EPA pursuant to Section 7 of FIFRA. Appendix A assigns a level of gravity of "2" to this violation.**

**The Complaint alleges in Count 4 that Respondent failed to provide access to records pertaining to the distribution and sale of pesticides, as required by Section 8 of FIFRA. Appendix A assigns a level of gravity of "2" to this violation. Complainant did not propose a penalty for this violation.**

### Step 2 - Size of business

A firm's size of business is determined from a company's gross revenues from all sources during the prior calendar year or, if that data is not representative of the general performance of the business, an average of the gross revenues for the three previous years may be used. The size of business and gross revenue figures are based on the entire corporation and not just the specific subsidiary or division of the company which violated FIFRA.

Table 2 of Appendix C, entitled "Size of Business Categories" establishes three size of business categories: Category 1 - gross sales over \$1,000,000; Category 2 - gross sales from \$300,001 to \$1,000,000; and Category 3, gross sales from \$0 to \$300,000.

**When Complainant was unable to obtain specific information as to Respondent's gross revenues, Respondent was, for purposes of penalty calculation, considered to be a Category I size of business whose total business revenues were more than \$1 million.**

### Step 3 - Civil Penalty Matrices - Appendix C of the ERP

The next step in the penalty development is reference to penalty matrices of Appendix C of the ERP.

Table 1 shows gravity levels 1 through 4 on the left side, and size of business categories 1 through 3 across the top. Selecting the Level of Gravity identified in Step 1, and Respondent's size of business category identified in Step 2, the appropriate penalty is identified.

**Considering that violations described in Counts 1 through 3 are all a level 2 gravity, and considering the Respondent is a Category I size of business, the ERP calls for a base civil penalty of \$5,500 for each charge.**

**Gravity values for distribution or sale of unregistered pesticides, misbranding, production in an unregistered establishment, and failure to make required records available, as described in the administrative complaint at issue, are reflected below.**

<b>Gravity</b>	<b>Value</b>	<b>Circumstances</b>
<b>Pesticide toxicity</b>	<b>2</b>	<b>Toxicity category I</b>
<b>Harm - Human Health</b>	<b>3</b>	<b>Harm to human health is unknown.</b>
<b>Harm - Environment</b>	<b>3</b>	<b>Harm to environment unknown</b>
<b>Compliance History</b>	<b>0</b>	<b>No known violative history</b>
<b>Culpability</b>	<b>2</b>	<b>Culpability unknown</b>

**This amounts to a total of 10 gravity value points. The ERP directs that if total gravity points are between 8 and 12, we are to assess the matrix value, or \$5,500 for each count.**

**Step 5 - Ability to Continue in Business**

Section 14(a)(4) of FIFRA requires the Agency to consider the effect of the penalty on Respondent's ability to continue in business when determining the amount of the civil penalty. EPA will generally not collect a total civil penalty which exceeds a violator's ability to pay the proposed penalty.

**Complainant was unable to obtain specific information on Respondent's financial condition, or whether such a penalty would have an adverse effect on Respondent's ability to continue in business.**

*SUMMARY OF PROPOSED PENALTY*

**With a base penalty of \$5,500 for Counts 1-3 , and a total gravity adjustment value of 10, with no further adjustments, the Complaint was issued with a proposed penalty of \$5,500 for each Count 1-3, and a total proposed penalty of \$16,500.**