

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101
BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF) Docket No. FIFRA-07-2009-0003
)
Hunte Kennel Systems)
and Animal Care, Inc.) COMPLAINT AND NOTICE OF
117 N. Royhill Blvd.) OPPORTUNITY FOR HEARING
Goodman, Missouri 64843)
)
Respondent)
)

COMPLAINT

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.

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 Hunte Kennel Systems and Animal Care, Inc. (HKS), a pesticide dealer, located at 117 Royhill Blvd., Goodman, Missouri. The Respondent is 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.

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 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.
8. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular.
9. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if the pesticide's label does not bear the registration number assigned by EPA.
10. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), states "(n)o person shall produce any pesticide subject to this Act or active ingredient used in producing a pesticide subject to this Act in any state unless the establishment in which it is produced is registered with the Administrator."
11. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person in any state who is a producer to violate any of the provisions of Section 7.
12. Section 2(w) of FIFRA, 7 U.S.C. § 136w, states that the term "produce" means "...to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide."
13. Wellmark International, is the registrant of EPA Registration Number (EPA Reg. No.) 2724-262, Zoecon RF-43 Emulsifiable Liquid. The product was sold under the alternate brand name, Prolate/Lintox-HD Insecticidal Spray and Backrubber for Livestock. The most current label submitted by Wellmark International for EPA Reg. No. 2724-262 was accepted by EPA on April 16, 2002, and indicates that it is to be used on livestock as an insecticidal spray and backrubber.
14. Wellmark International is the former registrant of EPA Reg. No. 2724-169, Vet-Kem Kemolate Emulsifiable Liquid. The product was sold under the alternate brand name, PARAMITE. Sales of PARAMITE were authorized by EPA until January 15, 2005.
15. EPA's records show the Respondent had not received authorization from Wellmark International to supplementally distribute their products, Prolate/Lintox-HD or PARAMITE.
16. On October 3, 2006, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at Respondent's facility located at 1323 South Ash, Buffalo, Missouri. On October 17 and 23, 2006, an MDA representative conducted an inspection at the Respondent's

facility located at 121 North Royhill Blvd, Goodman, Missouri. Both inspections were conducted to determine Respondent's compliance with FIFRA.

17. During the inspections referenced in paragraph 16, the MDA representative collected purchase orders which identified the following sales of Prolate/Lintox-HD to Respondent by Direct Pet Superstore: two one-gallon containers on purchase order 5103174-1, dated September 25, 2006, and two one-gallon containers on purchase order 4947849-1, dated June 28, 2006. The MDA representative collected a signed statement from an HKS store manager stating that the Prolate/Lintox-HD was used by both the Buffalo and Goodman, Missouri, facilities.

Violations

Count 1 – Buffalo, Missouri

(offered for sale a misbranded and unregistered pesticide)

18. The facts stated in paragraphs 5 through 17 are herein incorporated.

19. Documents from the inspection described in paragraph 16, including photographs and a signed statement by the facility's store manager, revealed that Respondent repackaged the registered pesticide, Prolate/Lintox-HD, into four four-ounce containers and labeled the product PARAMITE. These products were then offered for sale or distribution at Respondent's facility located at 1323 South Ash, Buffalo, Missouri.

20. The repackaged products described in paragraph 19 were "misbranded" pursuant to Section 2 of FIFRA because they did not bear the EPA-approved label and registration number submitted by Wellmark International.

21. The repackaged products described in paragraph 19 were not "registered" pursuant to Section 7 of FIFRA because they were not encompassed within the terms of the product registration approved by EPA and required separate registration.

23. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale or distribution a misbranded and unregistered pesticide.

24. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 18 through 23 it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 2 – Goodman, Missouri

(offered for sale a misbranded and unregistered pesticide)

25. Documents from the inspection described in paragraph 16, including photographs and a signed statement by the facility's store manager, revealed that Respondent repackaged the registered

pesticide, Prolate/Lintox-HD, into nine four-ounce containers and labeled the product PARAMITE. These products were then offered for sale or distribution at Respondent's facility located at 121 N. Royhill Road, Goodman, Missouri.

26. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by offering for sale or distribution an unregistered and misbranded pesticide

27. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 25 and 26, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 3

(sales of misbranded and unregistered product from both locations)

28. Sales records collected at the inspection referenced in paragraph 16 showed that Respondent sold misbranded and unregistered products on at least fourteen occasions from both HKS facilities during June 2006.

29. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

30. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 28 and 29, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 4

(sales of misbranded and unregistered product from both locations)

31. Sales records collected at the inspection referenced in paragraph 16 showed that Respondent sold misbranded and unregistered products on at least ten occasions from both HKS facilities during July 2006.

32. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

33. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 31 and 32, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 5

(sales of misbranded and unregistered product from both locations)

34. Sales records collected at the inspection referenced in paragraph 16 showed that Respondent sold misbranded and unregistered products on at least twenty six occasions from both HKS facilities during August 2006.

35. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

36. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 34 and 35, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 6

(sales of misbranded and unregistered product from both locations)

37. Sales records collected at the inspection referenced in paragraph 16 showed that Respondent sold misbranded and unregistered products on at least eleven occasions from both HKS facilities during September 2006.

38. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

39. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 37 and 38, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 7

(sales of misbranded and unregistered product from both locations)

40. Sales records collected at the inspection referenced in paragraph 16 showed that Respondent sold misbranded and unregistered products on at least three occasions from both HKS facilities during October 2006.

41. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling an unregistered and misbranded pesticide.

42. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 40 and 41, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 8 – Buffalo, Missouri

(pesticide produced in unregistered establishment)

43. By repackaging the products as described in paragraph 19, Respondent “produced” a pesticide pursuant to Section 2 of FIFRA. Respondent is not registered with EPA as a pesticide-producing establishment.

44. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) by producing a pesticide in an unregistered establishment.

45. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 43 and 44, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 9 – Goodman, Missouri

(pesticide produced in unregistered establishment)

46. By repackaging the products as described in paragraph 25, Respondent “produced” a pesticide pursuant to Section 2 of FIFRA. Respondent is not registered with EPA as a pesticide-producing establishment.

47. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) by producing a pesticide in an unregistered establishment.

48. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 46 and 47, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Total Proposed Penalty

49. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). The EPA proposes to assess a total civil penalty of Fifty Eight Thousand Five Hundred Dollars (\$58,500) against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

50. 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)).

51. For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were in excess of \$1 million per year. This information placed Respondent in Category I 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.

52. 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.

53. 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.

54. 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.

55. Payment of the total penalty - \$58,500 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

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

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

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

and a copy to:

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

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

57. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(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 VII
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

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

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

58. 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 21 (copy enclosed).

59. 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 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.

60. 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.

Settlement Conference

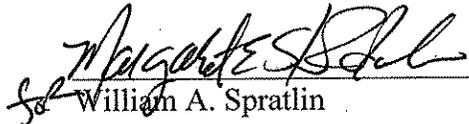
61. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's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

Chris Muehlberger
Assistant Regional Counsel
EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7623

62. 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.

63. 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.

MARCH 18, 2009
Date


William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Chris Muehlberger
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 or Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 21
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 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 21; 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 Registrant's Duty to Disclose Environmental Legal Proceedings, to the following:

John R. Lightner, Registered Agent
Hunte Kennel Systems and Animal Care, Inc.
1949 E. Sunshine
Springfield, MO 65804

3-20-09

Date

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