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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL PROTECTION AGENCY-REGION VII
HEARINGS BOARD
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) DOCKET NO. FIFRA-07-2003-0055
HOOPS AGRI SALES COMPANY)
) MOTION FOR DEFAULT ORDER
Respondent)

Preliminary Statement

The Complainant, the United States Environmental Protection Agency ("EPA" or "Complainant"), Region VII, initiated this 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. Section 136l, on January 15, 2003. (A copy of the COMPLAINT is attached and identified as COMPLAINANT'S EXHIBIT 1). The Complaint was personally served upon Robert A. Hoops, owner of Hoops Agri Sales Company, on January 23, 2003, by Don Kemper, Pesticide Use Investigator, State of Nebraska. (A copy of the CERTIFICATE/AFFIDAVIT is attached and identified as COMPLAINANT'S EXHIBIT 2). To date Respondent has not filed an Answer to the Complaint, and the time period for which Respondent must file an Answer has passed. Respondent has not filed a Motion requesting an extension in which to file an Answer, neither has an extension been granted *sua sponte* to Respondent in which to file the 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 Eight Thousand Eight Hundred Dollars (\$8,800). This Motion is made pursuant to the authority of 40 C.F.R. § 22.17(a) which provides that a party may be found to be in default for a failure to timely file an 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 15, 2003, Complainant filed a Complaint alleging two counts violation of FIFRA §12(a)(2)(L), 7 U.S.C. Section 136j(a)(2)(L), by Respondent.

2. The Complaint was personally served upon Robert A. Hoops, owner of Hoops Agri Sales Company, on January 23, 2003, by Don Kemper, Pesticide Use Investigator, State of Nebraska.

Facts

3. Respondent is Hoops Agri Sales Company, a pesticide retailer located at West Highway 30, North Bend, Nebraska.

4. Respondent's facility, located at North Bend, Nebraska is a registered pesticide producing establishment. Respondent's establishment number for said facility is EPA Establishment 069056-NE-001.

5. In December 1998, EPA sent by mail an annual pesticide report form to Respondent at West Highway 30, Box 420, North Bend, Nebraska, with instructions that the form was to be completed and returned to EPA, Region VII, on or before March 1, 1999.

6. In December 2000, EPA sent by mail an annual pesticide report form to Respondent at West Highway 30, Box 420, North Bend, Nebraska, with instructions that the form was to be completed and returned to EPA, Region VII, on or before March 1, 2001.

Law

7. Section 7 of FIFRA, 7 U.S.C. § 136j(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amount of pesticides and, if applicable, active ingredients used in producing pesticides, which he is currently producing, which he has produced during the past year, and which he has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. Title 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year.

8. Respondent has failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136j(c), and 40 C.F.R. § 167.85(d) when it did not file annual pesticides reports by March 1, 1999, and March 2001, as required.

9. It is a violation of § 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticides producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

10. 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

11. Complainant proposed a civil penalty against Respondent of Eight Thousand Eight Hundred Dollars (\$8,800).

12. 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's 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. Additionally, Complainant obtained financial information indicating that Respondent's business revenues to be \$987,000 per year. This amount of revenue placed Respondent in category II size of business, as set forth in the FIFRA Civil Penalty Calculation Worksheet.

13. Complainant submits and incorporate the Memorandum, dated April 15, 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: April 15, 2004

CERTIFICATE OF SERVICE

I certify that on this 15th of April, 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, and copies of Complainant's Exhibits, and Attachment 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 W. Hoops
Hoops Agri Sales Company
West Highway 30
Box 420
North Bend, Nebraska 69649.

Debby White
Legal Technician



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

April 15, 2004

SUBJECT: Penalty Calculation for Hoops Agri Sales Company
North Bend, Nebraska
I.F.&R. Docket No. FIFRA-7-2003-0055

FROM: Mary Jane Wingett *M. J. Wingett*
Environmental Protection Specialist
Pesticides Branch

TO: Rupert G. Thomas
Attorney, Office of Regional Counsel

The following information supports the appropriateness of the U.S. Environmental Protection Agency, Region VII's assessment of a civil penalty in regard to the subject administrative action. The proposed penalty was calculated based on the facts of the case, on the size of Hoops Agri Sales Company's business, the effect on Hoops Agri Sales Company's ability to continue in business and the gravity of the violation, and pursuant to the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

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 said Act. The Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Parts 19 and 27, has allowed civil monetary penalties under FIFRA to be increased by ten percent (10%) for all violations which take place after January 30, 1997. In determining the amount of the civil penalty, Section 14(a)(4) of FIFRA requires the Agency to consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

The Enforcement Response Policy (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 for most violations. A civil penalty is appropriate 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

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 involve, 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.

Facility Information

Hoops Agri Sales Company, North Bend, Nebraska (Respondent) was a pesticide producer at the time of the violations and issuance of the Administrative Civil Complaint. According to Dun & Bradstreet, Inc., Respondent's annual sales at that time were \$900,000. Respondent has never disputed the size of business category. Respondent requested and has been assigned an EPA Establishment Number (069056-NE-001) since April 25, 1995. Respondent's EPA Establishment Number was terminated on December 23, 2002, for failure to file annual Pesticide Reports for Pesticide-Producing Establishments.

Summary of Alleged Violations

Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which he is currently producing, which he has produced during the past year, and which he has sold or distributed during the past year. The information required by this paragraph shall be kept current and submitted to the Administrator annually as required by such regulations as the Administrator may prescribe. The regulation found at 40 C.F.R. § 167.85(d) requires such pesticides report to be filed annually on or before March 1, even if the producer has produced no pesticidal products for that reporting year. Respondent failed to file its 1998 annual pesticides production report by March 1, 1999, and failed to file its 2000 pesticides production report by March 1, 2001.

Penalty Calculations

Gravity Level: The gravity of the violation and the size of the business are considered in the FIFRA Civil Penalty Matrices shown in Table 1. Each cell of the matrix represents the Agency's assessment of the appropriate civil penalty, within the statutory maximum, for each gravity level of a violation and for each size of business category.

Size of Business: In order to provide equitable penalties, the civil penalties generally decrease as the size of the business decreases, and vice versa. Size of business is determined from a company's gross revenues from all sources during the prior calendar year. If the revenue data for the previous year appears to be unrepresentative of the general performance of the business, an average of the gross revenues for the three previous years may be used. Further, the size of business and gross revenue figures are based on the entire corporation rather than a specific subsidiary or division of the company which is involved with the violation.

Determination of Dollar Amount Associated with Gravity Level and Size of Business:

The gravity of reporting violations are already considered in the dollar amounts presented in the FIFRA civil penalty matrices. Further, reporting violations do not lend themselves to utilizing the gravity adjustments. Therefore, according to the Enforcement Response Policy, first-time civil penalties should be assessed at the matrix value, while subsequent penalties should be increased by an increment of 30% (up to the statutory maximum).

Ability to Continue in Business/Ability to Pay: 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.

Respondent's violation was not identified as the result of Respondent seeking compliance assistance. Respondent has not made an inability to pay claim and has annual sales of \$900,000.

Summary of Proposed Penalties

Statutory Violation - Section 12(a)(2)(L) - It shall be unlawful for any person who is a producer to violate any of the provisions of section 7.

Level of Violation - Level 2

Violator Category - Section 14(a)(1) - Respondent is a producer of pesticides.

Size of Business- Category 2 (\$300,000 - \$1,000,000)

Base Penalty - \$4,400 (based on above criteria, the Civil Penalty Matrix and the Civil Monetary Inflation Adjustment Rule)

Gravity Adjustments

No gravity adjustments are appropriate.

The base penalty for both Counts is \$4,400 for a total of \$8,800. Since no gravity adjustments are appropriate, Respondent was assessed a proposed penalty of \$4,400 for both administrative Complaints.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

) Docket No. FIFRA-07-2003-0055

Hoops Agri Sales Company
West Highway 30
Box 420
North Bend, Nebraska 69649

Respondent

) 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. § 136f.
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 Hoops Agri Sales Company, a pesticide producing establishment, located at West Highway 30, North Bend, Nebraska. 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 person doing business in the state of Nebraska.

Violations

General Allegations

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

Count 1

6. Respondent's facility at North Bend, Nebraska is a registered pesticide producing establishment, having been so registered with the EPA pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, since April 25, 1995. Respondent's establishment number for said facility is EPA Est 069056-NE-001.

7. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating a registered pesticide-producing establishment to inform EPA of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides, which the establishment is currently producing, which it has produced during the past year, and which it has sold or distributed during the past year. The regulations found at 40 C.F.R. § 167.85(d) require the pesticides production report to be filed annually on or before March 1, even if the producer has produced no pesticide products for that reporting year.

8. In December 1998, EPA mailed an annual pesticide report form to Respondent with instructions that the form was to be completed and filed with EPA Region 7 on or before March 1, 1999.

9. Respondent failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and with regulations found at 40 C.F.R. § 167.85(d), in that it did not file its 1998 pesticide production report by March 1, 1999, as required.

10. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticide producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

11. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 6 through 10, it is proposed that a civil penalty of \$4,400 be assessed against Respondent.

Count 2

12. The facts stated in paragraphs 6 and 7 are realleged and incorporated as if fully stated herein.

13. In December 2000, EPA mailed an annual pesticide report form to Respondent with instructions that the form was to be completed and filed with EPA Region 7 on or before March 1, 2001.

14. Respondent failed to comply with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and with regulations found at 40 C.F.R. § 167.85(d), in that it did not file its 2000 pesticide production report by March 1, 2001, as required.

15. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any person who is a pesticide producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

16. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 12 through 15, it is proposed that a civil penalty of \$4,400 be assessed against Respondent

Section IV

Total Proposed Penalty

17. 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 \$5,500 for each violation. The EPA proposes to assess a total civil penalty of \$8,800 against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

18. 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)).

19. For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were \$900,000 per year. 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.

20. 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.

21. 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.

22. 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.

23. Payment of the total penalty - \$8,800 - 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

24. 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 5th Street
Kansas City, Kansas 66101

and a copy to:

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

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

25. 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 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.

26. 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," 64 Fed. Reg. 40138 (July 23, 1999) (copy enclosed).

27. 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.

28. 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

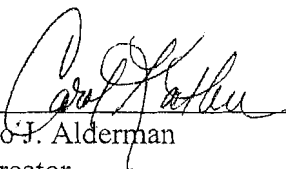
29. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning (1) whether or not the alleged violation occurred, or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's 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 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7282

30. 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.

31. 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.

1/15/03
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, 64 Fed. Reg. 40138
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

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, 64 Fed. Reg. 40138; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; and a copy of the FIFRA Civil Penalty Calculation Worksheet to Don Kemper, Pesticide Use Investigator, Pesticide Program, Nebraska Department of Agriculture, P.O. Box 94756, Lincoln, Nebraska 68509 for personal service upon Robert N. Hoops, owner, Hoops Agri Sales Company, West Highway 30, North Bend, Nebraska.

January 15, 2003
Date

Vitula Lungren
Vitula Lungren

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

RESPONDENT: Hoops Agri Sales Company
 ADDRESS: West Highway 30
 Box 420
 North Bend, Nebraska 68640

Date Prepared: January 7, 2003

Appendix C - Table 2 - Size of Business Category			
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	
5. Size of Business Category	II	II	
Appendix C - Table 1 - FIFRA Civil Penalty Matrix			
6. BASE PENALTY	\$4,400	\$4,400	
Appendix B - Gravity Adjustments			
7a. Pesticide Toxicity			
7b. Human Harm			
7c. Environmental Harm			
7d. Compliance History			
7e. Culpability			
7f. Total Gravity Adjustment Value (add items 7a - 7e)			
Appendix C - Table 3 - Adjustments			
7g. Percent Adjustment	0	0	
7h. Dollar Adjustment	0	0	
8. Final Penalty** (item 7h from item 6)	\$4,400	\$4,400	
Combined Total Penalty (total of all columns for line 8, above)	\$8,800		

* 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.

CERTIFICATION

I, Don Kemper, Pesticide Use Investigator, State of Nebraska, hereby certify that on this _____ day of _____ 2003, I served upon Robert A. Hoops, by personally delivering the following documents to said Robert A. Hoops:

1. Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-7-2003- 0055
2. 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, 64 Fed. Reg. 40138
3. A copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, and
4. A copy of the FIFRA Civil Penalty Calculation Worksheet.

Name

AFFIDAVIT

State of Nebraska)
)SS
County of Lancaster)

On this _____ day of _____, 2003, _____
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 _____, affixed
his signature to this affidavit in my presence.

Name

My Commission Expires:

Notary Public

CERTIFICATION

I, Don Kemper, Pesticide Use Investigator, State of Nebraska, hereby certify that on this 22 day of January 2003, I served upon Robert A. Hoops, by personally delivering the following documents to said Robert A. Hoops:

1. Complaint and Notice of Opportunity for Hearing, Docket No. FIFRA-7-2003- 0055
2. 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, 64 Fed. Reg. 40138
3. A copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, and
4. A copy of the FIFRA Civil Penalty Calculation Worksheet.

Donald W. Kemper
Name

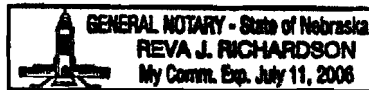
AFFIDAVIT

State of Nebraska)
)SS
County of Lancaster)

On this 23 day of January, 2003, Donald Kemper 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 Donald Kemper, affixed his signature to this affidavit in my presence.

Reva J. Richardson
Name

My Commission Expires:



Reva J. Richardson
Notary Public