

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

06 AUG 28 AM 9:31

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF

United Western Coop, Inc.  
111 N. Main  
Mondamin, Iowa 51557

Respondent

) Docket No. FIFRA-07-2006-0240

)

) COMPLAINT AND NOTICE OF

) OPPORTUNITY FOR HEARING

)

)

)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.
4. The Respondent is United Western Coop, Inc., a pesticide dealer, located at 111 N. Main, Mondamin, Iowa. 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 an Iowa, corporation qualified to do business in the state of Iowa.

### 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. Pursuant to FIFRA Section 2(w), 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3, the term “produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of the Act, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.
9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide which is adulterated or misbranded.
10. 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 way.
11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
12. CALLISTO™ HERBICIDE is a pesticide registered under EPA Registration No. 100-1131, to Syngenta Crop Protection, Greensboro, North Carolina.
13. AGRISOLUTIONS™ ATRAZINE 4L HERBICIDE is a Restricted Use Pesticide registered under EPA Registration No. 1381-158, to Agrilience, LLC, St. Paul, Minnesota.
14. The label of AGRISOLUTIONS™ ATRAZINE 4L HERBICIDE states in pertinent part: “RESTRICTED USE PESTICIDE . . . For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator’s certification.”

15. On or about November 29, 2005, and November 30, 2005, and December 2, 2005, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted inspections at Respondent's place of business and with several customers and collected copies of invoices, statements and photographs documenting the sales of the pesticides mentioned in paragraphs 12, 13, and 14.

#### Count 1

16. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

17. On or about June 13, 2005, Respondent repackaged and sold 0.22 gallons of Syngenta Crop Protection CALLISTO™ HERBICIDE, EPA Reg. No. 100-1131, in a one-gallon container to John Assmann of Earling, Iowa, as documented by Invoice 0001321.

18. Respondent repackaged the pesticide referenced in paragraph 17 without authorization from the registrant, Syngenta Crop Protection.

19. The repackaged pesticide described in paragraph 17 was not encompassed within the terms of the product registration under EPA Reg. No. 100-1131, and required separate product registration with EPA under provisions of Section 3 of FIFRA.

20. 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.

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

22. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 16 through 21, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

#### Count 2

23. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

24. On or about June 13, 2005, Respondent repackaged and sold one gallon of Agrilance, LLC AGRISOLUTIONS™ ATRAZINE 4L HERBICIDE, EPA Reg. No. 1381-158, in a 2.5 gallon container to John Assmann of Earling, Iowa, as documented by Invoice 0001321.

25. Respondent repackaged the pesticide referenced in paragraph 24 without authorization from the registrant, Agrilance, LLC.

26. The repackaged pesticide described in paragraph 24 was not encompassed within the terms of the product registration under EPA Reg. No. 1381-158, and required separate product registration with EPA under provisions of Section 3 of FIFRA.

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 distributing or selling an unregistered pesticide.

29. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 23 through 28, it is proposed that a civil penalty of \$5,200 be assessed against Respondent.

### Count 3

30. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

31. On or about June 16, 2005, Respondent repackaged and sold 0.23 gallons of Syngenta Crop Protection CALLISTO™ HERBICIDE, EPA Reg. No. 100-1131, in a one-gallon container to Lynn L. Miller of Woodbine, Iowa, as documented by Invoice 0001335.

32. Respondent repackaged the pesticide referenced in paragraph 31 without authorization from the registrant, Syngenta Crop Protection.

33. The repackaged pesticide described in paragraph 31 was not encompassed within the terms of the product registration under EPA Reg. No. 100-1131, and required separate product registration with EPA under provisions of Section 3 of FIFRA.

34. 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.

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

36. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 30 through 35, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

### Count 4

37. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

38. During the inspections mentioned in paragraph 15, the representative of IDALS documented the June 13, 2005, repackaging and sale or distribution of 0.22 gallons of Syngenta Crop Protection CALLISTO™ HERBICIDE, EPA Reg. No. 100-1131, in a one-gallon container to John Assmann of Earling, Iowa, as documented by Invoice 0001321. The referenced pesticide product was misbranded in that its label did not list the correct EPA Reg. No., the correct EPA Establishment No., and the correct net contents statement.

39. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded in that the label affixed to the container did not contain the correct EPA Reg. No., the correct EPA Est. No. assigned to it under Section 7, and the correct net contents statement.

40. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 37 through 39, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

#### Count 5

41. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

42. During the inspections mentioned in paragraph 15, the representative of IDALS documented the June 13, 2005, repackaging and sale or distribution of one-gallon of Agrilance, LLC AGRISOLUTIONS™ ATRAZINE 4L HERBICIDE, EPA Reg. No. 1381-158, in a 2.5 gallon container to John Assmann of Earling, Iowa, as documented by Invoice 0001321. The referenced pesticide product was misbranded in that it was labeled with a different product label. The 2.5 gallon container was labeled with a label for an Albaugh, Inc. product known as AGRI STAR™ ATRAZINE 4F, EPA Reg. No. 42750-45. This product label listed the EPA Est. No. as 42750-MO-1, an Albaugh, Inc. establishment in Missouri. The label on the actual product sold or distributed did not list the correct product name, the correct EPA Reg. No., the correct EPA Establishment No., and the correct net contents statement.

43. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded in that the label affixed to the container did not contain the correct name of the product sold, the EPA Reg. No., the correct EPA Est. No. assigned to it under Section 7, and the correct net contents statement.

44. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 41 through 43, it is proposed that a civil penalty of \$5,200 be assessed against Respondent.

#### Count 6

45. The facts stated in paragraphs 6 through 15 are realleged and incorporated as if fully stated herein.

46. During the inspections mentioned in paragraph 15, the representative of IDALS documented the June 16, 2005, repackaging and sale or distribution of 0.23 gallons of Syngenta Crop Protection CALLISTO™ HERBICIDE, EPA Reg. No. 100-1131, in a one-gallon container to Lynn L. Miller of Woodbine, Iowa, as documented by Invoice 0001335. The referenced pesticide product was misbranded in that its label did not list the correct EPA Reg. No., the correct EPA Est. No., and the correct net contents statement.

47. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide that was misbranded in that the label affixed to the container did not contain the correct EPA Reg. No., the correct EPA Est. No. assigned to it under Section 7, and the correct net contents statement.

48. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 45 through 47, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

#### Section IV

##### 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 \$28,600 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. 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 - \$28,600 may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

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

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 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

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

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 22 (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 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.

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.

## Section VI

### 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

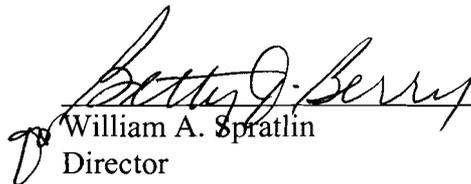
adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

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

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.

08/25/06  
Date

  
William A. Spratlin  
Director  
Water, Wetlands and Pesticides Division

  
Rupert G. Thomas  
Assistant Regional Counsel  
Office of Regional Counsel

Enclosures:

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

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

Trent Sprecker  
Registered Agent for United  
Western Coop, Inc.  
222 E. Lincoln Highway  
Missouri Valley, IA 51555

8/28/06  
Date

Julia A. Cacho  
Julia A. Cacho

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

RESPONDENT: United Western Coop, Inc.  
ADDRESS: 111 N. Main  
Mondamin, Iowa 51557

Prepared By: Mark K. Leshner  
Date: August 2, 2006

	Count 1	Count 2	Count 3	Count 4
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)
2. FTTS Code	1AA	1AA	1AA	1EA 1EE
3. Violation Level	2	2	2	2 3
<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	\$6,500	\$6,500	\$6,500	\$6,500
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	1	2	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	5	6	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	30%	20%	30%	30%
7h. Dollar Adjustment	-\$1,950	-\$1,300	-\$1,950	-\$1,950
8. Final Penalty** (item 7h from item 6)	\$4,550	\$5,200	\$4,550	\$4,550
Combined Total Penalty (total of all columns for line 8, above)				

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

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

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

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

RESPONDENT: United Western Coop, Inc.  
 ADDRESS: 111 N. Main  
 Mondamin, Iowa 51557

Prepared By: Mark K. Leshner  
 Date: August 2, 2006

	Count 5	Count 6		
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(E)	Sec. 12(a)(1)(E)		
2. FTTS Code	1EA 1EE	1EA 1EE		
3. Violation Level	2 3	2 3		
<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)		
5. Size of Business Category	I	I		
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$6,500	\$6,500		
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	2	1		
7b. Human Harm	1	1		
7c. Environmental Harm	1	1		
7d. Compliance History	0	0		
7e. Culpability	2	2		
7f. Total Gravity Adjustment Value (add items 7a - 7e)	6	5		
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	20%	30%		
7h. Dollar Adjustment	-\$1,300	-\$1,950		
8. Final Penalty** (item 7h from item 6)	\$5,200	\$4,550		
Combined Total Penalty (total of all columns for line 8, above)	\$28,600			

\* 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.