

Charles A. Patrizia
Lucy B. Jennings
PAUL HASTINGS LLP
875 15th Street NW
Washington, DC 20005
Telephone: (202) 551-1700
Facsimile: (202) 551-1705
charlespatrizia@paulhastings.com

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Attorneys for Respondent
Nestlé Purina PetCare Company
Golden Products Litter Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION V

In the matter of:

Nestlé Purina PetCare Company
Golden Products Litter Division
St. Louis, Missouri 63102

Respondent.

U.S. EPA DOCKET NO.
FIFRA-05-2012-0002

RESPONDENT NESTLÉ PURINA
PETCARE COMPANY'S ANSWER TO
CIVIL COMPLAINT

Respondent Nestlé Purina PetCare Company Golden Products Litter Division ("Nestlé Purina" or "Respondent"), in answer to U.S. Environmental Protection Agency's ("EPA's") Civil Complaint (the "Complaint"), states as follows:

ANSWER TO AUTHORITY

1. Paragraph 1 consists of introductory material and conclusions of law and does not require a response. To the extent a response is required, Respondent

admits that EPA purports to seek a penalty and otherwise denies the allegation.

2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and denies the same and puts EPA to strict proof thereof.
3. Respondent admits that its proper name is Nestlé Purina PetCare Company, and that it has an office in St. Louis, Missouri and otherwise denies the allegations.

ANSWER TO STATUTORY AND REGULATORY BACKGROUND

4. Paragraph 4 is a statement of law to which no response is required, but is not complete and Respondent refers to the text of FIFRA, as amended.
5. Paragraph 5 is a statement of law to which no response is required, but is not complete and Respondent refers to the text of FIFRA, as amended.
6. Paragraph 6 is a statement of law to which no response is required, but is not complete and Respondent refers to the text of FIFRA, as amended.
7. Paragraph 7 is a statement of law to which no response is required, but is not complete and Respondent refers to the text of FIFRA, as amended.
8. Paragraph 8 is a reference to a federal regulation to which no response is required, but is not complete; and Respondent refers to the entire text of the regulation.
9. Paragraph 9 consists of statement of law to which no response is required, but is not complete and Respondent refers to the text of FIFRA, as amended.
10. Paragraph 10 is a conclusion of law and does not require a response.

ANSWER TO GENERAL ALLEGATIONS

11. Respondent admits the allegations in Paragraph 11.
12. Respondent admits that it has offices and other operations at 801 Chouteane Ave., St. Louis, Missouri.
13. Respondent denies the allegations in Paragraph 13.
14. Respondent denies the allegations in Paragraph 14.
15. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies the same.
16. Respondent denies the allegations of Paragraph 16, except that Respondent admits that in 2007 it manufactured and distributed a cat litter product under the brand name "Tidy Cats Scoop for Multiple Cats (UPC Number 70230 02582)."
17. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence in Paragraph 17, and therefore denies the same. Respondent admits the allegations of the second sentence of Paragraph 17.
18. Respondent admits that the cat litter product brand named "Tidy Cats Scoop for Multiple Cats (UPC Number 70230 02582)" bore a printed label and refers to the label for its contents. Respondent denies all other allegations, including any legal conclusion in Paragraph 18.
19. Respondent denies the allegations of Paragraph 19.
20. Respondent denies the allegations of Paragraph 20.
21. Respondent denies the allegations in Paragraph 21.

22. Respondent denies the allegations in Paragraph 22.
23. Respondent denies the allegation in Paragraph 23 that the product branded as “Tidy Cats Scoop for Multiple Cats (UPC Number 70230 02582)” is a pesticide. Respondent otherwise admits that the product branded as “Tidy Cats Scoop for Multiple Cats (UPC Number 70230 02582)” was not registered as a pesticide.
24. Respondent admits that it sold a product branded as “Tidy Cats Scoop for Multiple Cats (UPC Number 70230 02582),” which was not a pesticide. Respondent otherwise denies the allegations of Paragraph 24.
25. Respondent denies the allegations of Paragraph 25.

ANSWER TO PROPOSED CIVIL PENALTY

26. Paragraph 26 contains introductory materials but no allegations, and therefore no response is required. To the extent response is required, Respondent is without sufficient information and therefore denies the allegation.

Respondent denies all allegations not specifically admitted herein.

AFFIRMATIVE DEFENSES

Respondent also pleads the following separate and affirmative defenses to the counts in the Complaint, as follows:

FIRST AFFIRMATIVE DEFENSE

27. The counts of EPA’s Complaint, separately and jointly, fail to allege facts sufficient to state any cause of action against Respondent.

SECOND AFFIRMATIVE DEFENSE

28. EPA’s claims are barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

29. EPA's claims are barred because the complainant lacks delegated authority.

FOURTH AFFIRMATIVE DEFENSE

30. EPA has failed to properly apply EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") dated July 2, 1990.

FIFTH AFFIRMATIVE DEFENSE

31. EPA has failed to properly apply EPA's Pesticide Registration (PR) Notice 2000-1 dated March 6, 2000.

SIXTH AFFIRMATIVE DEFENSE

32. EPA has waived the right, if any, to relief in its favor by reason of EPA's actions and course of conduct.

SEVENTH AFFIRMATIVE DEFENSE

33. The proposed penalty is inappropriate to the extent it represents an abuse of discretion by EPA.

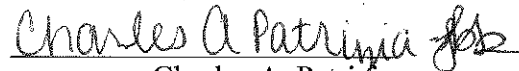
EIGHTH AFFIRMATIVE DEFENSE

34. Certain separate and additional affirmative defenses to the entire Complaint, or to the counts contained therein, may be available to Respondent. However, these separate and additional affirmative defenses may require discovery before they can be properly alleged. Respondent will move to amend its answer, if necessary, to allege such separate and additional affirmative defenses after they have been ascertained by Respondent.

REQUEST FOR A HEARING

35. Respondent hereby requests a hearing upon the issues raised by the Complaint and this Answer, including but not limited to the appropriateness of the pesticidal classification, the appropriateness of the proposed penalty, and material facts alleged in the Complaint.

Dated: March 7, 2012



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PAUL HASTINGS LLP
875 15th Street NW
Washington, DC 20005
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Attorneys for Respondent
Nestlé Purina PetCare Company
Golden Products Litter Division

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Answer were filed on March 7, 2012 with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that true correct copies were sent via overnight mail to:

Margaret M. Guerriero, Director/D-87
Land and Chemicals Division
U.S. Environmental Protection Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Jose C. de Leon, Counsel for Complainant/C-14J
Office of Regional Counsel
U.S. Environmental Protection Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Office of Regional Counsel
U.S. Environmental Protection Agency, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Eric Volck, Cincinnati Finance/MWD
US Environmental Protection Agency, MS-NWD
26 West ML King Drive
Cincinnati, Ohio 45268-0001

Date: March 7, 2012

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Lucy B. Jennings
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Washington, D.C.
20005

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