

RECEIVED

04 MAR 18 PM 2:59

HEARINGS CLERK
EPA--REGION 10

1
2
3
4
5
6
7
8 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
9 BEFORE THE ADMINISTRATOR

10
11 In the Matter of:

DOCKET NO. FIFRA-10-2004-0056

12 Steve Tuttle, Tuttle Tool Engineering,
13 and Tuttle Apiary Laboratories;

COMPLAINT

14 Respondents.

15 **I. JURISDICTION**

16 1. This administrative action for the assessment of a civil penalty is instituted pursuant to
17 Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C.
18 § 1361(a). This proceeding is also subject to the Consolidated Rules of Practice Governing the
19 Administrative Assessment of Penalties and Revocation or Suspension of Permits (Rules) , 40
20 C.F.R. Part 22 .

21 2. Complainant is Region 10 of the United States Environmental Protection Agency (EPA).
22 Complainant has been delegated the authority to institute this action.

23 3. Respondents are Steve Tuttle, Tuttle Tool Engineering, and Tuttle Apiary Laboratories.

24 **II. FACTS**

25 4. Steve Tuttle is an individual who is the owner and/or operator of Tuttle Tool Engineering
26 and Tuttle Apiary Laboratories. Tuttle Tool Engineering and Tuttle Apiary Laboratories are
27 organizations with their principle place of business located at 3030 Lewis River Road in Woodland,
28 Washington.

1 5. Some time prior to February 17, 1995, Respondents submitted an application to EPA for the
2 registration of a pesticide named "*Mite Solution*". However, later that same year, prior to obtaining
3 an EPA-approved registration of this product, Respondents discontinued their attempt to register
4 *Mite Solution* as a pesticide.

5 6. In literature produced by Respondents in 1995, *Mite Solution* was described as a miticide,
6 pesticide, and fungicide. At that time, *Mite Solution* was also offered by Respondents to kill mites
7 and destroy mite infestation in bee hives. Further, the literature included a symbol which consisted
8 of a drawing of a mite within a circle with a slash mark through the mite. *Mite Solution* was
9 advertised for sale by Respondents in "*Bee Culture*" magazine.

10 7. On September 20 and October 12, 1995, EPA provided Respondents with written warning
11 letters pertaining to *Mite Solution*. In these letters, Respondents were notified that they could not
12 lawfully make or imply any pesticidal claims regarding *Mite Solution*, including mentioning use of
13 this product as a miticide or fungicide, unless and until the product was registered as a pesticide with
14 EPA.

15 8. On March 22, 1996, Complainant initiated an administrative penalty proceeding against
16 Respondents pursuant to Section 14 of FIFRA, 7 U.S.C. § 136. The proceeding was designated by
17 docket number 10-96-0012-FIFRA. Respondents were found liable for two violations of Section
18 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). These violations pertained to offering for sale and
19 selling *Mite Solution*, an unregistered pesticide. It was also determined that the written symbol of a
20 slash mark through a mite was a pesticidal claim. In a judgment rendered on September 30, 1997,
21 Respondents were assessed a civil penalty in the amount of \$ 3,780.

22 9. In an issue of "*Bee Culture*" magazine dated November 2003, Respondents advertised two
23 products, and jointly referred to these products as *Mite Solution*. The individual names of these
24 products were "*Herbal Jelly*" and "*Concentrated Mite Solution*". The advertisement for these
25 products contained the following statements:

26 Why use poison in your beehives??? ... Use *Mite Solution* ...

27 *Herbal Jelly* applied through front entrance is all you need ...
28 1 Packet treats 10 hive bodies for 1 year ...

1 Concentrated Mite Solution capsules come ready to mix ...
2 1 cup treats 25 hive bodies ...

3 10. In January of 2004, Chad Schulze of EPA contacted Respondents and asked to purchase one
4 package each of "*Herbal Jelly*" and "*Concentrated Mite Solution*". In response to this request,
5 Respondents sold and distributed a box labeled *Mite Solution* to Mr. Schulze. The return address
6 portion on the outside of this box contained a symbol which consisted of a drawing of a mite within
7 a circle with a slash mark through the mite. The internal contents of the box included one packet of
8 the product labeled "*Herbal Bee Calmer Gel*", and one packet of the product labeled "*Mite Solution*
9 *Concentrate*". These products were produced by Respondents at their place of business located at
10 3030 Lewis River Road in Woodland, Washington. Along with these products, Respondents also
11 provided a double-sided leaflet which contained the following statements:

12 **Mite Solution ... safely treats your hives year around ...**

13 the name change was necessary because the EPA violates the intent of
14 their own law, requiring anything to be registered that kills pests.

15 **Herbal Jelly ...** is placed into the front entrance of the hive ... It's the
16 fumes that do the job ...

17 **Oil Concentrate**, is the same herbal extracts as in the jell, but you mix
18 them with a light cooking oil ... and placed into the hive where the fumes
19 will get to the whole hive.

20 **Fumes are the same, and are designed to treat the whole hive ..**

21 **Mite Solution as Herbal Jelly ...** Apply every month, or oftener ...
22 Drones come from many miles away and can carry with them diseases,
23 & mites ... A **natural** medication that is **safe** ...

24 **Mite Solution in Oil Concentrate ...** Mix the packet of herbal extracts
25 to a Cooking Oil ... apply every month or oftener ... The purpose is to
26 make treatment of the bees in large apiaries easier ...

27 Mite Solution was developed ... as a solution to a vast majority of bee
28 hive diseases ...

Each ingredient extract was first determined to help the hive, that is
herbal extract is known as a strong antiseptic, one a strong and effective
antibiotic, another functions as a fungicide, an herbal enema, and several
are known to be miticides ...

We then tested Mite Solution from May of 1993 to Sept. 1995 using
comprehensive 'A-B' test in conjunction with the requirements set forth
in 40 CFR under the direction of the US EPA.

1 To complete EPA registration it would cost several million dollars
2 which would have to be passed on to the beekeeper, so we took another
3 route. We changed the name to Bee Calmer and could no longer
4 advertise it as a miticide, antiseptic, antibiotic, or fungicide.

5 An EPA Judge informed me that what we call it was never the use, just
6 the lack of registration, and calling it a miticide. So while we know
7 what it does, we can't advertize it as such.

8 ... the **Jelly is used without diluting** ...

9 **If your hive already has mites in it you should apply once a week**
10 **until they are gone, then once a month after the mite population is**
11 **under control.** Two or three weeks in a row should see more than a
12 ninety percent reduction in mites ... In many areas it is unrealistic to
13 think that you will reduce the mite population to absolute zero, as new
14 mites come in on Drones, and drifting bees. That's one reason I like
15 treating the entrance of a hive.

16 **The active ingredients in both the jelly and the oil concentrate are**
17 **the same ...**

18 Note: I have seen hives with Nosema ingest the jelly, and within a day
19 or two the hive is cured ... We have been told that Mite Solution has
20 protected hives from the hive beatle [sic] in some South Eastern States ...

21 11. As of March 5, 2004, Respondents were projecting yearly sales of up to \$ 200,000. Further,
22 Respondents have 500 accounts, and sell their products to other businesses on a worldwide basis.
23 Respondents also regularly employ 3 individuals, although the number of employees may fluctuate.
24 In addition to the production and sale of *Herbal Bee Calmer Gel* and *Mite Solution Concentrate*,
25 Respondents' financial earnings also come from the manufacture and sale of communications
26 equipment, and from the building and repair of boats.

27 12. In June of 2003, Respondents declined to provide financial information to Dunn &
28 Bradstreet, Inc. (D&B), pertaining to the net worth of Respondents. The most recent financial
information made available by Respondents to D&B is from September of 1986. At that time,
Respondents had a net worth of \$ 647,944.

29 **III. STATUTE AND REGULATIONS**

30 13. According to Section 2(s) of FIFRA, 7 U.S.C. § 136(s), "*person*" means any individual,
31 partnership, association, corporation, or any organized group of persons whether incorporated or not.

1 14. According to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), "*to distribute or sell*" means
2 distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for
3 shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

4 15. According to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), "*pesticide*" means any substance or
5 mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

6 16. According to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), "*pest*" means any insect, as well as
7 any other form of animal life determined to be a "pest" in accordance with Section 25(c)(1) of
8 FIFRA, 7 U.S.C. § 136w(c)(1).

9 17. According to 40 C.F.R. § 152.5(b), for purposes of FIFRA, "*pest*" means any invertebrate
10 animal, including but not limited to, any insect or other arthropod.

11 18. According to 40 C.F.R. §§ 152.15(a) and (c), a substance is intended for a pesticidal
12 purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the
13 substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in
14 combination with any other substance) can or should be used as a pesticide or the person who
15 distributes or sells the substance has actual or constructive knowledge that the substance will be
16 used, or is intended to be used for a pesticidal purpose.

17 19. According to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any
18 person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C.
19 § 136a.

20 20. According to 40 C.F.R. § 152.3(r), "*package or packaging*" means the immediate container
21 or wrapping, including any attached closure(s), in which the pesticide is contained for distribution,
22 sale, consumption, use, or storage. The term does not include shipping or bulk containers used for
23 transporting or delivering the pesticide unless it is the only such package.

24 21. According to 40 C.F.R. Part 152, every pesticide product must bear a label which, among
25 other requirements, clearly and prominently shows: (a) the net weight or measure of contents; (b) an
26 ingredient statement which specifies the name and percentage by weight of each active ingredient,
27 and the total percentage by weight of all inert ingredients; (c) hazard and precautionary statements
28

1 for humans, including children, and for animals and the environment; and (d) directions for use
2 which include worker protection statements.

3 22. According to Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), "*label*" means the written,
4 printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers

5 23. According to Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), "*labeling*" means all labels
6 and all other written, printed, or graphic matter accompanying the pesticide at any time, or to which
7 reference is made on the label or in literature accompanying the pesticide.

8 24. According to Section 2(q)(1)(E), of FIFRA, 7 U.S.C. § 136(q)(1) (E), a pesticide is
9 "*misbranded*" if any word, statement, or other information required by or under the authority of
10 FIFRA to appear on the label or labeling is not prominently placed thereon with such
11 conspicuousness and in such terms as to render it likely to be read and understood by the ordinary
12 individual under customary conditions of purchase and use.

13 25. According to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is
14 "*misbranded*" if the labeling accompanying it does not contain directions for use which are
15 necessary for effecting the purpose for which the product is intended and if complied with, together
16 with any requirements imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to
17 protect health and the environment.

18 26. According to Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), a pesticide is
19 "*misbranded*" if the label does not bear an ingredient statement on that part of the immediate
20 container (and on the outside container or wrapper of the retail package, if there be one, through
21 which the ingredient statement on the immediate container cannot be clearly read) which is presented
22 or displayed under customary conditions of purchase.

23 27. According to 40 C.F.R. § 156.10(a), every pesticide product must bear a label containing
24 the information specified by FIFRA and the regulations at 40 C.F.R. Part 156.

25 28. According to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
26 person to distribute or sell any pesticide which is misbranded.

27 29. According to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), "*producer*" means the person
28 who manufactures, prepares, compounds, propagates, or processes any pesticide.

1 30. According to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), “produce” means to manufacture,
2 prepare, compound, propagate, or process any pesticide.

3 31. According to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), “establishment” means any
4 place where a pesticide is produced, or held, for distribution or sale.

5 32. According to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person may produce any
6 pesticide subject to FIFRA unless the establishment in which the pesticide is produced is registered
7 with EPA.

8 33. According to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any
9 person who is a producer to violate any provision of Section 7 of FIFRA, 7 U.S.C. § 136e.

10 34. According to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any wholesaler, retailer, or
11 other distributor who violates any provision of FIFRA may be assessed a civil penalty.

12 **IV. CONCLUSIONS**

13 35. Respondents sell and distribute two products which are intended to reduce the population of
14 mites that may otherwise impact bee hives. Respondents refer to one of these products by various
15 names that include, but are not necessarily limited to, “Herbal Jelly”, “Jelly”, and “Herbal Bee
16 Calmer Gel”. Respondents refer to the other of these products by various names that include, but are
17 not necessarily limited to, “Mite Solution Concentrate”, “Bee Calmer Concentrate”, “Concentrated
18 Mite Solution”, and “Oil Concentrate”. These two products are also jointly referred to by
19 Respondents as “Mite Solution”. Respondents produce these products at their place of business
20 located at 3030 Lewis River Road in Woodland, Washington.

21 36. Respondents have distributed written statements along with the products referenced in
22 Paragraph 35. Certain of these written statements are reflected in Paragraph 10, and include direct
23 and indirect pesticidal claims. Respondents knowingly claim that these products: (a) will eliminate
24 all or some mites from bee hives; (b) kill pests; (c) are comprised of ingredients that function as a
25 fungicide and/or as miticides; and (c) protect bee hives from the hive beetle.

26 37. Along with distribution of the products referenced in Paragraph 35, Respondents have also
27 provided a written symbol consisting of a drawing of a mite with a slash mark through it. This
28

1 symbol is intended to represent that the accompanying products will act as miticides or pesticides by
2 eliminating some or all mites.

3 38. The written statements made by Respondents that are reflected in Paragraph 10 demonstrate
4 that Respondents are aware that the products referenced in Paragraph 35 are pesticides that are
5 required to be registered as such by EPA. Respondents have created advertisements for these
6 products which, in part, are intended to create a deception regarding the actual pesticidal effect of
7 using these products. Regardless of the advertising, the primary purpose of these products is
8 pesticidal in nature in that they are to be used to prevent mites from impacting bee hives,

9 39. Respondents are each a "*person*" within the meaning accorded by FIFRA.

10 40. Mites, nosema apis, and hive beetles are each a "*pest*" within the meaning accorded by
11 FIFRA.

12 41. The products referenced in Paragraph 35 are each a "*pesticide*" within the meaning
13 accorded by FIFRA.

14 42. The products referenced in Paragraph 35 are intended by Respondents to be used "*for*
15 *preventing, destroying, repelling, or mitigating*" mites within the meaning accorded by FIFRA.

16 43. The statements quoted in Paragraph 10 include direct and/or indirect claims that the
17 products referenced in Paragraph 35 are "*intended for a pesticidal purpose*" within the meaning of
18 40 C.F.R. §§ 152.15(a) and (c).

19 44. The products referenced in Paragraph 35 are pesticides which Respondents have undertaken
20 "*to distribute or sell*" within the meaning accorded by FIFRA.

21 45. The products referenced in Paragraph 35 are required to be registered as pesticides as
22 prescribed by Section 3 of FIFRA, 7 U.S.C. § 136a.

23 46. The products referenced in Paragraph 35 have not been registered as pesticides by
24 Respondents as prescribed by Section 3 of FIFRA, 7 U.S.C. § 136a.

25 47. It is unlawful according to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for
26 Respondents to have taken action to distribute or sell unregistered pesticides.

27 48. The pesticides produced by Respondents are contained in a "*package or packaging*", and
28 bear a "*label or labeling*" within the meaning accorded by FIFRA and 40 C.F.R. Part 152.

1 49. The “*package*”, “*packaging*”, “*label*”, and “*labeling*” for the pesticides produced by
2 Respondents do not conform to the requirements of FIFRA and 40 C.F.R. Part 156.

3 50. The products referenced in Paragraph 35 are “*misbranded*” in that they do not contain a
4 package, packaging, label, and/or labeling that conforms to the requirements of FIFRA and 40 C.F.R.
5 Part 156.

6 51. It is unlawful according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for
7 Respondents to have taken action to distribute or sell pesticides which are misbranded.

8 52. Respondents are each a “*producer*” of pesticides, and each “*produce*” pesticides, within the
9 meaning accorded by FIFRA.

10 53. The place of business of Respondents is an “*establishment*” where pesticides are produced,
11 or held, for distribution or sale within the meaning accorded by FIFRA.

12 54. The “*establishment*” of Respondents is required to be registered with EPA as prescribed by
13 Section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

14 55. It is unlawful according to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for
15 Respondents to have taken action to produce pesticides at an unregistered establishment.

16 56. Respondents are each a “*wholesaler*”, “*retailer*”, “*or other distributor*” who may be
17 subject to the assessment of a civil penalty as prescribed by Section 14(a)(1) of FIFRA, 7 U.S.C.
18 §136l(a)(1).

19 **V. VIOLATIONS**

20 57. **Violation # 1:** In January of 2004, Respondents sold or distributed a pesticide named “*Mite*
21 *Solution Concentrate*”. This product was a pesticide that had not been registered in accordance
22 with Section 3 of FIFRA, 7 U.S.C. § 136a. The action to distribute or sell an unregistered pesticide
23 is a violation by Respondents of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

24 58. **Violation # 2:** In January of 2004, Respondents sold or distributed a pesticide named “*Mite*
25 *Solution Concentrate*”. This product was a misbranded pesticide in that the label affixed to the
26 packet was not an EPA approved label containing directions for use, an ingredient statement, or other
27 statements and information required by Section 2(q) of FIFRA, 7 U.S.C. §136(q), and 40 C.F.R. Part
28

1 156. The action to distribute or sell a misbranded pesticide is a violation by Respondents of Section
2 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3 59. **Violation # 3:** In January of 2004, Respondents sold or distributed a pesticide named
4 "*Herbal Bee Calmer Gel*". This product was a pesticide that had not been registered in accordance
5 with Section 3 of FIFRA, 7 U.S.C. § 136a. The action to distribute or sell an unregistered pesticide
6 is a violation by Respondents of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

7 60. **Violation # 4:** In January of 2004, Respondents sold or distributed a pesticide named
8 "*Herbal Bee Calmer Gel*". This product was a misbranded pesticide in that the label affixed to the
9 packet was not an EPA approved label containing directions for use, an ingredient statement, or other
10 statements and information required by Section 2(q) of FIFRA, 7 U.S.C. §136(q), and 40 C.F.R. Part

11 156. The action to distribute or sell a misbranded pesticide is a violation by Respondents of Section
12 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

13 61. **Violation # 5:** Respondents are producers who produced pesticides, including "*Mite*
14 *Solution Concentrate*" and "*Herbal Bee Calmer Gel*", at an establishment located at 3030 Lewis
15 River Road in Woodland, Washington. The establishment where these pesticides were produced is
16 not registered with EPA pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e. The production of
17 pesticides at an establishment that is not registered with EPA is a violation by Respondents of
18 Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

19 VI. PROPOSED CIVIL PENALTY

20 62. According to Section 14(a)(1) of FIFRA, 7 U.S.C. §136l(a)(1), and the Civil Monetary
21 Inflation Adjustment Rule, 40 C.F.R. Part 19, Respondents are subject to a maximum civil penalty of
22 \$5,500 per violation. Based on the violations cited herein, and after consideration of the factors set
23 forth in Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), including: (a) appropriateness of the
24 proposed penalty to the size of Respondents' business; (b) effect on Respondents' ability to continue
25 operating; and (c) gravity of the violations, Complainant proposes the assessment of a civil penalty in
26 the amount of fourteen thousand eight hundred and fifty dollars (\$ 14,850).

27 63. The proposed penalty amount has been calculated in accordance with the "*Enforcement*
28 *Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*", dated July 2,

1 1990 (Policy). A copy of the Policy is enclosed with this Complaint. With respect to the two
2 statutory factors pertaining to the size of Respondents' business and the gravity of the violations, an
3 application of the Policy results in a penalty delineation as follows:

<u>Statutory Citation</u>	<u>Violation</u>	<u>Gravity Level</u>	<u>Penalty Amount</u>
5 7 U.S.C. § 136j(a)(1)(A)	#1 - sell/distribute unregistered pesticide	2	\$ 2,970
6 7 U.S.C. § 136j(a)(1)(E)	#2 - sell/distribute misbranded pesticide	2	\$ 2,970
7 7 U.S.C. § 136j(a)(1)(A)	#3 - sell/distribute unregistered pesticide	2	\$ 2,970
8 7 U.S.C. § 136j(a)(1)(E)	#4 - sell/distribute misbranded pesticide	2	\$ 2,970
9 7 U.S.C. § 136j(A)(2)(L)	#5 - produce pesticide at unregistered establishment	2	\$ 2,970
10 TOTAL PROPOSED PENALTY			\$ 14,850

11 64. With respect to the third statutory factor pertaining to the effect of the penalty on
12 Respondents' ability to continue operating, Respondents have provided a limited amount of readily
13 accessible information from which to assess this factor. Based on the financial information sought
14 and obtained by Complainant, it does not appear that payment of the proposed penalty would effect
15 Respondents' ability to continue operating.

16 65. In accordance with the dictates of the Policy, when arriving at the proposed penalty amount,
17 Complainant also considered the culpability of Respondents. The history described in Paragraphs 5
18 through 8 above, along with the claims made by Respondents which are reflected in Paragraph 10
19 above, establish that Respondents have been aware for almost ten years that their products are
20 unregistered pesticides. Despite having this knowledge, Respondents continue to manufacture, sell
21 and distribute these products. In order to help deter such knowing violations of FIFRA, Respondents
22 should be subject to the highest level of culpability under the Policy.

23 **VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

24 66. According to the Rules, Respondents have the right to request a formal hearing to contest
25 any material fact set forth in this Complaint or the appropriateness of the proposed penalty. In order
26 to avoid being found in default, which constitutes an admission of all material facts alleged in the
27 Complaint, a waiver of the right to a hearing, and the potential assessment of the proposed civil
28

1 penalty, Respondents must file, with the Regional Hearing Clerk, a written Answer within thirty (30)
2 days after service of this Complaint. The Answer must clearly and directly admit, deny, or explain
3 each of the factual allegations contained in this Complaint with regard to which Respondents have
4 any knowledge. Where Respondents have no knowledge of a particular fact and so states, the
5 allegation is deemed denied. Failure to deny any material factual allegation constitutes an admission
6 of the allegation. The Answer must also state: (a) the circumstances or arguments which are alleged
7 to constitute the grounds of defense; (b) the facts which Respondents intend to place at issue; and, (c)
8 whether a hearing is requested. A hearing is deemed requested if Respondents contest any material
9 fact upon which the Complaint is based, raises any affirmative defense, contends the amount of the
10 penalty proposed in the Complaint is inappropriate, or claims that Respondents are entitled to
11 judgment as a matter of law. The Answer must be sent to:

12 Regional Hearing Clerk
13 U.S. Environmental Protection Agency, Region 10
14 1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

15 67. A copy of the Answer and all other documents which Respondents shall file in this action
16 must be furnished to Richard Mednick, Associate Regional Counsel, the attorney assigned to
17 represent EPA in this action, at:

18 Attn: Richard Mednick
19 Office of Regional Counsel
20 U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

21 **VIII. INFORMAL SETTLEMENT CONFERENCE**

22 68. Whether or not a hearing is requested, Respondents may confer informally with Mr.
23 Mednick to arrange for a settlement conference to discuss the facts of this case, the amount of the
24 proposed penalty, and the possibility of settlement. An informal settlement conference does not,
25 however, relieve Respondents of the obligation to file a written Answer to the Complaint.

26 69. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to
27 reflect any settlement reached with Respondents in an informal conference. The terms and
28 conditions of such an agreement would be embodied in a Consent Agreement and Final Order. A

1 Consent Agreement entered into by EPA and Respondents would be binding as to all the terms and
2 conditions specified therein upon signature by both parties and upon signature of a Final Order by
3 the EPA Regional Administrator.

4 70. Respondents are advised that after the Complaint is issued, the Rules prohibit any ex
5 parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator,
6 Environmental Appeals Board Judges, Administrative Law Judge, or any person likely to advise
7 these officials in deciding this case.

8 **IX. PAYMENT OF PENALTY**

9 71. Instead of requesting an informal settlement conference or filing an Answer requesting a
10 hearing, Respondents may choose to pay the proposed penalty. In order to do this, Respondents must
11 first establish contact with Mr. Mednick to arrange for the preparation of a Consent Agreement and
12 Final Order.

13
14 ISSUED AT SEATTLE this 15th day of March, 2004.

15
16
17 

18 Richard B. Parkin, Acting Associate Director
19 Ecosystems and Communities Office
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Docket No. FIFRA-10-2004-0056 was hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, on this 18th day of March, 2004 to:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Certified Mail, Return Receipt Requested to:

Steven Tuttle, Owner
Tuttle Tool Engineering and
Tuttle Apiary Laboratories
3030 Lewis River Road
Woodland, WA 98674

DATED this 18th day of March 2004.



U.S. Environmental Protection Agency
Region 10