

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

06 NOV 13 AM 11:10  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF ) Docket No. FIFRA-07-2007-0002  
)  
Howard Johnson's Enterprises, Inc., )  
)  
Respondent. )  
)

**ANSWER**

Respondent Howard Johnson's Enterprises, Inc. ("HJE"), by its attorneys, Foley & Lardner LLP, answers U.S. EPA's Complaint and Notice of Opportunity for Hearing as follows.

1. The allegations in paragraphs 1 through 3 state legal conclusions to which no answer is required.
2. HJE admits the allegation in paragraph 4 to the extent that HJE is a pesticide producing establishment located at 1301 Industrial Drive, Neosho, Missouri and assigned EPA Establishment NO. 32802-MO-001. HJE is a Missouri corporation and it is qualified to do business in the state of Missouri. The remainder of paragraph 4 states a legal conclusion to which no answer is required.
3. With respect to the allegations in paragraphs 6 through 12, the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") (7 U.S.C. § 136 et. seq.) and implementing regulations (40 C.F.R. parts 152-180) are legal requirements that speak for themselves, and HJE denies the allegations to the extent inconsistent therewith.

4. HJE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

5. HJE admits the allegations in paragraph 14 to the extent that HJE produced 18 pound bags and 36 pound bags of Greenskeeper's Secret Crabgrass Preventer Plus ("Greenskeeper's) at its facility in Neosho, Missouri and that facility is assigned EPA Est. No. 32802-MO-001. HJE admits that certain shipments of Greenskeeper's to T and N, Inc. were labeled with EPA Registration No. 2217-697-066840 and EPA Establishment Numbers BA326T533 and BA327U522.

6. HJE admits the allegation in paragraph 15.

7. HJE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 16-18.

8. The allegations in paragraph 19 state legal conclusions to which no answer is required.

9. With respect to Count 1 and the allegations in paragraphs 21-24, HJE admits that Sales Invoice 20462 documents the shipment of 7,440 eighteen-pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 21-24 state legal conclusions to which no answer is required.

10. With respect to Count 2 and the allegations in paragraphs 26-29, HJE admits that Sales Invoice 20483 documents the shipment of 2,520 eighteen-pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 26-29 state legal conclusions to which no answer is required.

11. With respect to Count 3 and the allegations in paragraphs 31-34, HJE admits that Sales Invoices 20516 and 20533 document the shipment of 4,800 eighteen-pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 31-34 state legal conclusions to which no answer is required.

12. With respect to Count 4 and the allegations in paragraphs 36-39, HJE admits that Sales Invoice 20538 documents the shipment of 2,400 thirty-six-pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 36-39 state legal conclusions to which no answer is required.

13. With respect to Count 5 and the allegations in paragraphs 41-44, HJE admits that Sales Invoices 20576 and 20577 document the shipment of 240 eighteen-pound bags and 2,460 thirty-six pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 41-44 state legal conclusions to which no answer is required.

14. With respect to Count 6 and the allegations in paragraphs 46-49, HJE admits that Sales Invoice 20604 documents the shipment of 1,260 thirty-six-pound bags of Greenskeeper's to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 46-49 state legal conclusions to which no answer is required.

15. With respect to Count 7 and the allegations in paragraphs 51-54, HJE admits that Sales Invoice 20846 documents the shipment of 1,380 thirty-six-pound bags of Greenskeeper's

to T and N, Inc. HJE admits that the bags bore labels stating EPA Registration No. 2217-697-66850 and Establishment No. 32802-WI-1(B). The remainder of the allegations in paragraphs 51-54 state legal conclusions to which no answer is required.

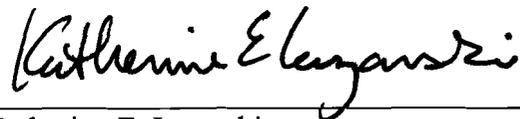
16. The statements in paragraphs 55 and 57-69 do not require an answer.

17. Paragraph 56 addresses the appropriateness of the proposed penalty under the June 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act. It is HJE's position that U.S. EPA incorrectly applied this policy, for example, in counting the number of separate violations for which a penalty should be assessed and in evaluating the extent of environmental harm from the alleged violations. HJE has requested an informal settlement conference with U.S. EPA and anticipates further discussion of these issues at that time.

HJE requests a hearing in this matter. HJE expects to resolve this matter through the informal settlement conference and requests that the hearing not be scheduled until after the informal settlement conference.

Dated: November 10, 2006

Respectfully submitted,



---

Katherine E. Lazarski  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306  
414.271.2400  
414.297.5657 direct  
414.297.4900 facsimile