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1 NANCY J. MARVEL  
 Regional Counsel  
 2  
 3 EDGAR P. CORAL  
 Assistant Regional Counsel  
 U. S. Environmental Protection Agency  
 4 Region IX  
 75 Hawthorne Street  
 5 San Francisco, CA 94105  
 (415) 972-3898  
 6

7 UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 8 REGION IX  
 9

10 In the Matter of:

) Docket No. FIFRA-09-2008-00 2 1

11 )  
12 Unelko Corporation,

) COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

13 )  
14 Respondent.  
\_\_\_\_\_

15 I. AUTHORITY AND PARTIES

16 1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal  
 17 Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of  
 18 a civil administrative penalty against Unelko Corporation ("Respondent") for: (1) the sale and/or  
 19 distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §  
 20 136j(a)(1)(A); and (2) the refusal to prepare, maintain, or submit any records required by or  
 21 under Sections 5, 7, 8, 11, or 19 in violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. §  
 22 136j(a)(2)(B)(i).

23 2. Complainant is the Associate Director for Agriculture of the Communities and  
 24 Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional  
 25 Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation  
 26 Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further  
 27 delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture  
 28

1 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,  
2 dated June 9, 2005.

3 3. Respondent is Unelko Corporation, a corporation headquartered in Scottsdale,  
4 Arizona.

## 5 II. GENERAL ALLEGATIONS

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

9 5. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), makes it unlawful for  
10 any person to refuse to prepare, maintain, or submit any records required by or under Sections 5,  
11 7, 8, 11, or 19.

12 6. Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), states that, for the purposes of enforcing  
13 the provisions of this Act, any producer, distributor, carrier, dealer or any other person who sells  
14 or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall,  
15 upon request of any officer or employee of the Environmental Protection Agency or of any state  
16 or political subdivision, duly designated by the Administrator, furnish or permit such person at  
17 all reasonable times to have access to, and to copy: (1) all records showing the delivery,  
18 movement, or holding of such pesticide or device, including the quantity, the date of shipment  
19 and the receipt, and the name of the consignor and consignee; or (2) in the event of the inability  
20 of any person to produce records containing such information, all other records and information  
21 relating to such delivery, movement, or holding of the pesticide or device.

22 7. Respondent is a corporation and therefore fits within the definition of "person" as that  
23 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). As such, Respondent is subject to  
24 FIFRA and the implementing regulations promulgated thereunder.

25 8. On or about November 13, 2007, Respondent "distributed or sold" as those terms are  
26 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), products colloquially known as  
27 Eliminate Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield Antimicrobial  
28 Surface Barrier, Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield Bath Scrub, 1

1 Step Clean & Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and Eliminate Sani-  
2 Scrub 3-in-1 Surface Care by holding and offering them for sale to persons in the United States.

3 9. Eliminate Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield  
4 Antimicrobial Surface Barrier, Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield  
5 Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and  
6 Eliminate Sani-Scrub 3-in-1 Surface Care are disinfectants that are intended to prevent, destroy,  
7 repel and/or mitigate bacteria and other microorganisms that are deleterious to man or the  
8 environment.

9 10. Bacteria and microorganisms that are deleterious to man or the environment are  
10 “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and 40 C.F.R. §  
11 152.5(d).

12 11. A “pesticide” means “any substance or mixture of substances intended for  
13 preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u) and 40 C.F.R. §  
14 152.3.

15 12. Eliminate Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield  
16 Antimicrobial Surface Barrier, Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield  
17 Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and  
18 Eliminate Sani-Scrub 3-in-1 Surface Care are “pesticides” as that term is defined in Section 2(u)  
19 of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3.

20 13. At all times relevant to this Complaint (including all the counts to follow), the  
21 pesticides Eliminate Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield  
22 Antimicrobial Surface Barrier, Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield  
23 Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and  
24 Eliminate Sani-Scrub 3-in-1 Surface Care were not registered under Section 3 of FIFRA, 7  
25 U.S.C. § 136a.

26 14. At all times relevant to this Complaint (including all the counts to follow), all records  
27 showing the delivery, movement, or holding of the pesticides Eliminate Stainless Shine 3-in-1  
28 Surface Care, Eliminate 3-in-1 Sani-Shield Antimicrobial Surface Barrier, Eliminate Sani-Shield

1 3-in-1 Surface Care, 1 Step Clean & Shield Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1  
2 Step Clean & Shield Surface Care, and Eliminate Sani-Scrub 3-in-1 Surface Care were required  
3 to be furnished or otherwise made available by Respondent to the EPA or duly designated state  
4 employees upon request pursuant to Section 8(b) of FIFRA, 7 U.S.C. § 136f(b).

5 **III. ALLEGED VIOLATIONS**

6 **COUNTS 1-7: Sale and/or distribution of an unregistered pesticide, 7 U.S.C. § 136j(a)(1)(A).**

7 15. Paragraphs 1 through 14 above are hereby incorporated in these Counts 1-7 by  
8 reference as if the same were set forth herein in full.

9 16. On or about November 13, 2007, Respondent “distributed or sold,” as those terms are  
10 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticides Eliminate Stainless Shine  
11 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield Antimicrobial Surface Barrier, Eliminate Sani-  
12 Shield 3-in-1 Surface Care, 1 Step Clean & Shield Bath Scrub, 1 Step Clean & Shield Bathroom  
13 Care, 1 Step Clean & Shield Surface Care, and Eliminate Sani-Scrub 3-in-1 Surface Care by  
14 holding and offering them for sale.

15 17. By distributing or selling the unregistered pesticides Eliminate Stainless Shine 3-in-1  
16 Surface Care, Eliminate 3-in-1 Sani-Shield Antimicrobial Surface Barrier, Eliminate Sani-Shield  
17 3-in-1 Surface Care, 1 Step Clean & Shield Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1  
18 Step Clean & Shield Surface Care, and Eliminate Sani-Scrub 3-in-1 Surface Care on or about  
19 November 13, 2007, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §  
20 136j(a)(1)(A).

21 **COUNT 8: Refusal to prepare, maintain, or submit any records required by or under Sections 5,**  
22 **7, 8, 11, or 19, 7 U.S.C. § 136j(a)(2)(B)(i).**

23 18. Paragraphs 1 through 14 above are hereby incorporated in this Count 8 by reference  
24 as if the same were set forth herein in full.

25 19. On or about November 16, 2007, Deborah Hamilton, an inspector for the Arizona  
26 Department of Agriculture duly designated by the EPA to conduct FIFRA inspections, requested  
27 shipment records of Respondent in connection with the unregistered pesticides Eliminate  
28 Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield Antimicrobial Surface Barrier,

1 Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield Bath Scrub, 1 Step Clean &  
2 Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and Eliminate Sani-Scrub 3-in-1  
3 Surface Care.

4 20. On or about November 20, 2007, Respondent refused to provide such records as  
5 required pursuant to Section 8 in violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. §  
6 136j(a)(2)(B)(i)).

7 21. By failing to provide records required pursuant to Section 8 of FIFRA on or about  
8 November 20, 2007, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. §  
9 136j(a)(2)(B)(I).

10 22. COUNT 9: Refusal to prepare, maintain, or submit any records required by or under  
11 Sections 5, 7, 8, 11, or 19, 7 U.S.C. § 136j(a)(2)(B)(i).

12 23. Paragraphs 1 through 14 above are hereby incorporated in this Count 9 by reference  
13 as if the same were set forth herein in full.

14 24. On or about June 26, 2008, Julie Jordan, an EPA Environmental Protection  
15 Specialist, requested of Respondent shipment records in connection with the unregistered  
16 pesticides Eliminate Stainless Shine 3-in-1 Surface Care, Eliminate 3-in-1 Sani-Shield  
17 Antimicrobial Surface Barrier, Eliminate Sani-Shield 3-in-1 Surface Care, 1 Step Clean & Shield  
18 Bath Scrub, 1 Step Clean & Shield Bathroom Care, 1 Step Clean & Shield Surface Care, and  
19 Eliminate Sani-Scrub 3-in-1 Surface Care.

20 25. On or about July 15, 2008, Respondent refused to provide such records as required  
21 pursuant to Section 8 in violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. §  
22 136j(a)(2)(B)(i)).

23 26. By failing to provide records required pursuant to Section 8 of FIFRA on or about  
24 July 15, 2008, Respondent violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

#### 25 IV. PROPOSED CIVIL PENALTY

26 Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty  
27 Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the assessment of a civil administrative  
28 penalty of up to \$6,500 for each violation of FIFRA occurring on or after March 15, 2004. For

1 purposes of determining the amount of the civil penalty to be assessed, FIFRA Section 14(a)(4)  
2 requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to  
3 continue in business and the gravity of the violations alleged. Based on the violations alleged in  
4 this Complaint, and after consideration of the statutory factors enumerated above, EPA proposes  
5 to assess the following civil penalty pursuant to FIFRA Section 14(a) and the FIFRA  
6 Enforcement Response Policy dated July 2, 1990 (a copy of which is enclosed with this  
7 Complaint), which provides a rational, consistent and equitable calculation methodology for  
8 applying the statutory penalty factors enumerated above:

Counts 1-7 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))	\$40,950
Counts 8-9 (Refusal to submit records required by or under Section 8, violating Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i))	\$13,000
<b>TOTAL</b>	<b>\$53,950</b>

14 V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15 You have the right to request a formal hearing to contest any material fact set forth in this  
16 Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will  
17 be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and  
18 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties  
19 and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part  
20 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

21 **You must file a written Answer within thirty (30) days of receiving this Complaint to**  
22 **avoid being found in default, which constitutes an admission of all facts alleged in the**  
23 **Complaint and a waiver of the right to a hearing, and to avoid having the above penalty**  
24 **assessed without further proceedings.** If you choose to file an Answer, you are required by the  
25 Consolidated Rules of Practice to clearly and directly admit, deny, or explain each of the factual  
26 allegations contained in this Complaint to which you have any knowledge. If you have no  
27 knowledge of a particular fact and so state, the allegation is considered denied. Failure to deny  
28 any of the allegations in this Complaint will constitute an admission of the undenied allegation.

1 The Answer shall also state the circumstances and arguments, if any, which are alleged to  
2 constitute the grounds of defense, and shall specifically request an administrative hearing, if  
3 desired. If you deny any material fact or raise any affirmative defense, you will be considered to  
4 have requested a hearing. The Answer must be filed with:

5 Regional Hearing Clerk (ORC-1)  
6 U.S. Environmental Protection Agency, Region IX  
7 75 Hawthorne Street  
8 San Francisco, CA 94105

9 In addition, please send a copy of the Answer and all other documents that you file in this action  
10 to:

11 Edgar P. Coral  
12 Office of Regional Counsel (ORC-2)  
13 U.S. Environmental Protection Agency, Region IX  
14 75 Hawthorne Street  
15 San Francisco, CA 94105

16 You are further informed that the Consolidated Rules of Practice prohibit any *ex parte*  
17 (unilateral) discussion of the merits of any action with the Regional Administrator, Regional  
18 Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the  
19 decision of the case, after the Complaint is issued.

#### 20 VI. INFORMAL SETTLEMENT CONFERENCE

21 EPA encourages all parties against whom a civil penalty is proposed to pursue the  
22 possibility of settlement through informal conferences. Therefore, whether or not you request a  
23 hearing, you may confer informally with EPA through Mr. Coral, the EPA attorney assigned to  
24 this case, regarding the facts of this case, the amount of the proposed penalty, and the possibility  
25 of settlement. **An informal settlement conference does not, however, affect your obligation  
26 to file an Answer to this Complaint.**

#### 27 VII. ALTERNATIVE DISPUTE RESOLUTION

28 The parties also may engage in any process within the scope of the Alternative Dispute  
Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts.  
Dispute resolution using alternative means of dispute resolution does not divest the Presiding  
Officer of jurisdiction nor does it automatically stay the proceeding.

1 VIII. QUICK RESOLUTION

2 Instead of requesting an informal settlement conference or filing an Answer requesting a  
3 hearing, you may choose to resolve the proceeding by paying the specific penalty proposed in the  
4 Complaint and filing a copy of the check or other instrument of payment with the Regional  
5 Hearing Clerk within thirty (30) days after receiving the Complaint. If you wish to resolve the  
6 proceeding in this manner instead of filing an answer but need additional time to pay the penalty,  
7 you may file a written statement stating that you agree to pay the proposed penalty in accordance  
8 with 40 C.F.R § 22.18(a)(1) with the Regional Hearing Clerk within 30 days after receiving the  
9 Complaint. The written statement need not contain any response to, or admission of, the  
10 allegations in the Complaint. Within sixty (60) days after receiving the Complaint, the full  
11 amount of the proposed penalty must be paid. Failure to make such payment within this sixty-  
12 day period may subject you to default. Upon receipt of payment in full, the Regional Judicial  
13 Officer will issue a Final Order. Payment by a respondent shall constitute a waiver of the  
14 respondent's rights to contest the allegations and to appeal the Final Order. In addition, full  
15 payment of the proposed penalty shall only resolve Respondent's liability for Federal civil  
16 penalties for violations and facts alleged in the Complaint and does not affect the right of EPA or  
17 the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions  
18 for any violations of law.

19 IX. CONSENT AGREEMENT AND FINAL ORDER

20 EPA has the authority, where appropriate, to modify the amount of the proposed penalty  
21 to reflect any settlement reached with you in an informal conference or through alternative  
22 dispute resolution. The terms of such an agreement would be embodied in a Consent Agreement  
23 and Final Order. A Consent Agreement signed by both parties would be binding as to all terms  
24 and conditions specified therein when the Regional Judicial Officer signs the Final Order.  
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26  
27  
28

1 Dated at San Francisco, California on this \_\_\_ day of September, 2008.

2 

3 \_\_\_\_\_  
4 KATHERINE A. TAYLOR  
5 Associate Director for Agriculture  
6 Communities and Ecosystems Division  
7 U.S. Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, California 94105

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1 CERTIFICATE OF SERVICE

2 I certify that the original and one copy of the foregoing Complaint and Notice of  
3 Opportunity for Hearing (Docket No. FIFRA-09-2008-00 2 1) was hand delivered to:

4 Regional Hearing Clerk  
5 U.S. Environmental Protection Agency, Region IX  
6 75 Hawthorne Street  
7 San Francisco, California 94105

8 and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R.  
9 Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail,  
10 certified mail, return receipt requested, addressed to the following:

11 Steven Ohlhasuen  
12 President  
13 Unelko Corporation  
14 14641 N. 74<sup>th</sup> Street  
15 Scottsdale, AZ 85260-2485

16 Dated: SEP 24 2008

17 By:

18   
19 \_\_\_\_\_  
20 U.S. Environmental Protection Agency, Region IX