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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:)	Docket No. FIFRA-09-2007- <u>0011</u>
)	
Veterinary Service, Inc.,)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent)	
)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Veterinary Service, Inc., for the sale and distribution of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX

further delegated the authority to bring this action under FIFRA to the Director for of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is Veterinary Service, Inc. ("Respondent").

GENERAL ALLEGATIONS

1. Respondent, a California corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. From or about September 2005 through September 2006, Respondent distributed or sold the product known as "Tomcat Ground Squirrel Bait" at its facility located at 4100 Bangs Avenue, Modesto, California (the "Facility").
3. "Tomcat Ground Squirrel Bait" is used to kill or control ground squirrels.
4. Ground squirrels are "rodents" and therefore "pests" as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
5. A "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s).
6. "Tomcat Ground Squirrel Bait" is a "pesticide" as defined in Paragraph 5 in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating "pests."
7. At all times relevant to this action, "Tomcat Ground Squirrel Bait" was registered with the California Department of Pesticide Regulation for sale only within the State of California pursuant to Section 24(c) of FIFRA, 7 U.S.C. § 136v(c).

8. At all times relevant to this action, "Tomcat Ground Squirrel Bait" was not registered for sale or distribution outside the State of California.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any unregistered pesticide.

ALLEGED VIOLATIONS

COUNTS 1-20: Sale or Distribution of an Unregistered Pesticide, 7 U.S.C. § 136j(a)(1)(A).

COUNT 1

10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
11. On or about September 9, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Eastern Sierra Feed & Farm of Gardnerville, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 2

12. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
13. On or about September 9, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Feed World of Reno, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 3

14. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
15. On or about September 12, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground

Squirrel Bait” to Benson’s Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 4

16. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
17. On or about September 28, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof “Tomcat Ground Squirrel Bait” to Olsen’s Grain Flagstaff of Chino, Arizona, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 5

18. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
19. On or about October 4, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof “Tomcat Ground Squirrel Bait” to Olsen’s Grain Flagstaff of Chino, Arizona, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 6

20. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
21. On or about October 7, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof “Tomcat Ground Squirrel Bait” to Fernley Hay and Grain of Fernley, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 7

22. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

23. On or about October 26, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to S & W Feeds of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 8

24. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
25. On or about November 11, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Eastern Sierra Feed & Farm of Gardnerville, Nevada, in violation of Section 12(a)(1)(A) of FIFRA; 7 U.S.C. § 136j(a)(1)(A).

COUNT 9

26. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
27. On or about December 2, 2005, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Benson's Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 10

28. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
29. On or about March 10, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Feed World of Reno, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 11

- 30. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
- 31. On or about March 30, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to S & W Feeds of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 12

- 32. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
- 33. On or about April 6, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to S & W Feeds of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 13

- 34. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
- 35. On or about April 7, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Feed World of Reno, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 14

- 36. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
- 37. On or about April 19, 2006, Respondent distributed, sold, offered for sale, held for sale,

offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Benson's Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 15

38. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
39. On or about May 5, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Benson's Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 16

40. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
41. On or about May 9, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Olsen's Grain Flagstaff of Chino, Arizona, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 17

42. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
43. On or about July 6, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Feed World of Reno, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 18

44. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
45. On or about July 11, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Benson's Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 19

46. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
47. On or about July 14, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Benson's Feed and Tack of Carson City, Nevada, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 20

48. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
49. On or about September 1, 2006, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Tomcat Ground Squirrel Bait" to Olsen's Grain Flagstaff of Chino, Arizona, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (December 31, 1996), 62 Fed. Reg. 13513 (March 20, 1997) and 69 Fed. Reg. 7121

(February 13, 2004)), authorizes the assessment of a civil administrative penalty of up to \$6,500 for each violation of FIFRA after March 15, 2004. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$6,500 for each violation of the Act set forth above.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right

to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

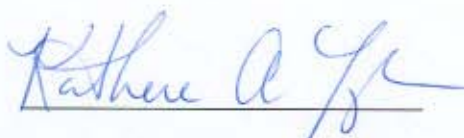
David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

His telephone number is (415) 972-3882.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Kim to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 26 day of June, 2007.



Frances Schultz

Acting Director
Communities and Ecosystems Division
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

The Regional Hearing Clerk
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

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

John R. Scheuber
President
Veterinary Service, Inc.
4100 Bangs Avenue
Modesto, CA 95356

Dated:

June 26, 2007

By:

Steven Armsey
Steven Armsey
Michael Rokitiński

U.S. Environmental Protection Agency, Region IX