

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Howard Johnson's Enterprises, Inc.
700 West Virginia Street, Ste 222
Milwaukee, Wisconsin 53204

Respondent

) Docket No.: FIFRA-07-2007-0002
)
) COMPLAINT AND NOTICE OF
) OPPORTUNITY FOR HEARING
)
)
)

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.
4. The Respondent is Howard Johnson's Enterprises, Inc., a pesticide producing establishment located at 1301 Industrial Drive, Neosho, Missouri, and is assigned EPA Establishment No. 32802-MO-001. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a Missouri corporation qualified to do business in the state of Missouri.

Section III

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:

6. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person in any state to distribute or sell to any person any pesticide which is adulterated or misbranded.

7. Title 40 C.F.R. § 152.132 permits distributor registration under another company's name, provided certain conditions are met, among them, that the label of the distributor product is the same as that of the registered pesticide except for the product name, name and address of the registrant/distributor, and the product registration number includes the distributor number. The regulation further allows that certain claims on the basic registered product may be deleted so long as no other changes are necessary.

8. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any way.

9. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states a pesticide is misbranded if its label does not bear the registration number assigned under Section 7 to each establishment in which it was produced.

10. Title 40 of the Code of Federal Regulations, Part 156.10(f) states, "The producing establishment registration number . . . of the final establishment at which the product was produced may appear in any suitable location on the label"

11. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required to appear on the label is not prominently placed thereon with conspicuousness so as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) offer to deliver.

13. On or about July 26, 2006, a representative of the Missouri Department of Agriculture (MDA) conducted an inspection at T and N, Inc., 815 Hwy T, Foristell, Missouri. The representative documented 640, 18-pound bags and 5155, 36-pound bags of Greenskeeper's Secret Crabgrass Preventer Plus, which had been packaged, labeled, and released for sale or distribution. All of the bags bore labels with the EPA Reg. No. 2217-697-066840 and displayed

multiple EPA establishment numbers with lot numbers BA326T533 and BA327U522 indicating production at an establishment in Wisconsin which is assigned the EPA Est. No. 32802-WI-1.

14. The products referenced in paragraph 13 were produced at Respondent's facility in Neosho, Missouri, which is assigned EPA Est. No. 32802-MO-001.

15. The registration number assigned to Greenskeeper's Secret Crabgrass Preventer Plus is EPA Reg. No. 32802-73-66840.

16. At the time of the July 26, 2006, inspection, photographic samples of the products labeled as Greenskeeper's Secret Crabgrass Preventer Plus, and referenced in paragraph 13, were collected.

17. The labels the bags of Greenskeeper's Secret Crabgrass Preventer Plus referenced in paragraph 13 stated in part:

“ * * * ”

559/ AP070103	32802-MO-1 (A)
EPA REG. NO. 2217-697-066840	32802-WI-1 (B)
EPA EST. NO. 066840-MO-001 (C)	

* * * ”

18. On or about July 26, 2006, the MDA representative also collected copies of invoices documenting sales by Howard Johnson's Enterprises to T and N, Inc., in Foristell, Missouri. [Invoices indicate TN, 22-03-03, .06 Dimension, which is Greenskeeper's Secret Crabgrass Preventer Plus.]

- Sales Invoice 20462, dated 12/19/05
 - 7440 bags of TN, 22-03-03, .06 Dimension, 18 pounds each
- Sales Invoice 20483, dated 12/20/05
 - 2520 bags of TN, 22-03-03, .06 Dimension, 18 pounds each
- Sales Invoices 20516 and 20533, both dated 12/22/05
 - 4800 bags of TN, 22-03-03, .06 Dimension, 18 pounds each
- Sales Invoice 20538, dated 12/23/05
 - 2400 bags of TN, 22-03-03, .06 Dimension, 36 pounds each
- Sales Invoices 20576 and 20577, dated 12/28/05
 - 240 bags of TN, 22-03-03, .06 Dimension, 18 pounds each
 - 2460 bags of TN, 22-03-03, .06 Dimension, 36 pounds each
- Sales Invoice 20604, dated 12/29/05
 - 1260 bags of TN, 22-03-03, .06 Dimension, 36 pounds each
- Sales Invoice 20846, dated 1/11/06
 - 1380 bags of TN, 22-03-03, .06 Dimension, 36 pounds each

19. At all times relevant to this Complaint, Respondent operated a registered pesticide producing establishment, assigned EPA Est. No. 32802-MO-001, in Neosho, Missouri. Respondent was the registrant, contracted producer, and distributor of the pesticide product. Greenskeeper's Secret Crabgrass Preventer Plus, referenced in paragraph 13.

Count 1

20. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

21. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoice 20462, dated 12/19/05, documenting the sale of 7440 bags of TN, 22-03-03, .06 Dimension, 18 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

22. The pesticides referenced in paragraphs 13 and 21 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

23. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

24. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 20 through 23, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 2

25. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

26. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoice 20483, dated 12/20/05, documenting the sale of 2520 bags of TN, 22-03-03, .06 Dimension, 18 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

27. The pesticides referenced in paragraphs 13 and 26 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

28. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

29. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 25 through 28, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 3

30. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

31. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoices 20516 and 20533, both dated 12/22/05, documenting the sale of 4800 bags of TN, 22-03-03, .06 Dimension, 18 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

32. The pesticides referenced in paragraphs 13 and 31 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

33. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

34. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 30 through 33, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 4

35. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

36. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoice 20538, dated 12/23/05, documenting the sale of 2400 bags of TN, 22-03-03, .06 Dimension, 36 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

37. The pesticides referenced in paragraphs 13 and 36 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

38. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

39. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 35 through 38, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 5

40. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

41. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoices 20576 and 20577, both dated 12/28/05, documenting the sale of 240 bags of TN, 22-03-03, .06 Dimension, 18 pounds each, and 2460 bags of TN, 22-03-03, .06 Dimension, 36 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

42. The pesticides referenced in paragraphs 13 and 41 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

43. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

44. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 40 through 43, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 6

45. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

46. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoice 20604, dated 12/29/05, documenting the sale of 1260 bags of TN, 22-03-03, .06 Dimension, 36 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

47. The pesticides referenced in paragraphs 13 and 46 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

48. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

49. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 45 through 48, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Count 7

50. The facts stated in paragraphs 5 through 19 are realleged and incorporated as if fully stated herein.

51. At the time of the inspection referenced in paragraph 13, the MDA representative collected a copy of Sales Invoice 20846, dated 1/11/06, documenting the sale of 1380 bags of TN, 22-03-03, .06 Dimension, 36 pounds each, by Respondent to T and N, Inc., in Foristell, Missouri.

52. The pesticides referenced in paragraphs 13 and 51 were misbranded in that the labels bore the EPA Reg. No. 2217-697-66850 whereas the registration number assigned to this product is EPA Reg. No. 32802-73-66850. The labels were further misbranded in that they bore the EPA Est. No. 32802-WI-1 (B) and associated lot numbers to indicate production at the Wisconsin establishment whereas the EPA Est. No. assigned to the producing establishment is 32802-MO-1.

53. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing a misbranded pesticide.

54. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 50 through 53, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

Section IV

Total Proposed Penalty

55. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). The EPA proposes to assess a total civil penalty of Forty-five Thousand Five Hundred Dollars (\$45,500) against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

56. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in

business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

57. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$1,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

58. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

59. The proposed penalty constitutes a demand *only if* Respondent fails to raise *bona fide* issues of ability to pay, or other *bona fide* affirmative defenses relevant to the determination of any final penalty.

60. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought *to the attention* of Complainant at the earliest opportunity in this proceeding.

61. Payment of the total penalty - \$45,500 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank
EPA - Region 7
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

62. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

Rupert G. Thomas
Assistant Regional Counsel
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

63. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

64. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (copy enclosed).

65. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

66. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VI

Settlement Conference

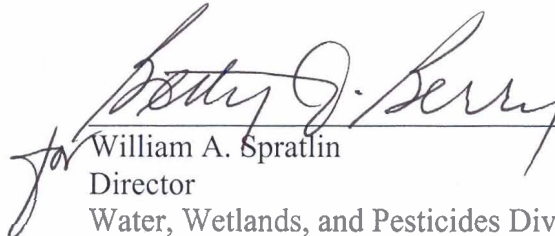
67. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:


Rupert G. Thomas
Assistant Regional Counsel
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7282

68. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

69. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

10/12/06
Date


William A. Spratlin
Director
Water, Wetlands, and Pesticides Division


Rupert G. Thomas
Assistant Regional Counsel
Office of Regional Counsel

Enclosures:

1. FIFRA Civil Penalty Calculation Worksheet
2. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22
3. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
4. SBREFA Fact Sheet
5. Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

C T Corporation System
Registered Agent for Howard Johnson's
Enterprises, Inc.
120 South Central Avenue
Clayton, MO 63105

10/13/00
Date

Julia A. Cacho
Julia A. Cacho

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: Howard Johnson's Enterprises, Inc.
 ADDRESS: 700 West Virginia Street, Suite 222
 Milwaukee, Wisconsin 53204

Prepared By: Christena Windmeyer
 Date: October 2, 2006

	Count 1	Count 2	Count 3	Count 4
Appendix A				
1. Statutory Violation	12(a)(1)(E)	12(a)(1)(E)	12(a)(1)(E)	12(a)(1)(E)
2. FTTS Code	1EA, 1ED	1EA, 1ED	1EA, 1ED	1EA, 1ED
3. Violation Level	2 4	2 4	2 4	2 4
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6500	\$6500	\$6500	\$6500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	3	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	9	9	9	9
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment				
7h. Dollar Adjustment				
8. Final Penalty** (item 7h from item 6)	\$6500	\$6500	\$6500	\$6500
Combined Total Penalty (total of all columns for line 8, above)	\$45,500			

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

FIFRA CIVIL PENALTY CALCULATION WORKSHEET
ENFORCEMENT RESPONSE POLICY for FIFRA - Reference

RESPONDENT: Howard Johnson's Enterprises, Inc.
 ADDRESS: 700 West Virginia Street, Suite 222
 Milwaukee, Wisconsin 53204

Prepared By: Christena Windmeyer
 Date: October 2, 2006

	Count 5	Count 6	Count 7	
Appendix A				
1. Statutory Violation	12(a)(1)(E)	12(a)(1)(E)	12(a)(1)(E)	
2. FTTS Code	1EA, 1ED	1EA, 1ED	1EA, 1ED	
3. Violation Level	2 4	2 4	2 4	
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	
5. Size of Business Category	I	I	I	
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6500	\$6500	\$6500	
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1	1	
7b. Human Harm	1	1	1	
7c. Environmental Harm	3	3	3	
7d. Compliance History	2	2	2	
7e. Culpability	2	2	2	
7f. Total Gravity Adjustment Value (add items 7a - 7e)	9	9	9	
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment				
7h. Dollar Adjustment				
8. Final Penalty** (item 7h from item 6)	\$6500	\$6500	\$6500	
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.