

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5th STREET

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

The Daedalus Group, Inc.
19925 West 161st Street #A
Olathe, Kansas 66062-2788

Respondent

) Docket No. FIFRA-07-2004-0087
)
) 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 The Daedalus Group, Inc., a pesticide producer and distributor located at 19925 West 161st Street #A, Olathe, Kansas 66062-2788. The Respondent is and was, at all times referred to in this Complaint, a business incorporated under the laws of the State of Kansas.

Section III

Violations

General Allegations

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

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

7. 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) deliver or offer to deliver.

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

9. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if its labeling does not contain directions for use which are necessary and, if complied with, are adequate to protect health and the environment.

10. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and, if complied with, is adequate to protect health and the environment.

11. 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 of FIFRA to the establishment in which it was produced.

12. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), states a pesticide is misbranded if there is not affixed to the container a label bearing the net weight or measure of content and the registration number assigned to the pesticide.

13. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it shall be unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

14. Section 7 of FIFRA, 7 U.S.C. § 136e, states that no person shall produce any pesticide subject to FIFRA unless the establishment in which it is produced is registered with the Administrator.

15. The term "produce" is defined at 40 C.F.R. § 167.3 as meaning "...to manufacture, prepare, propagate, compound, or process any pesticide...any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device."

16. Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(1)(2)(B)(iii), states that it shall be unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by FIFRA.

17. Section 8 of FIFRA, 7 U.S.C. § 136f, requires producers to develop and maintain certain records pertaining to the production and distribution of pesticides, and, upon request of any officer of the Environmental Protection Agency or of any duly designated state or political subdivision, to furnish or permit such person access to and to copy all records showing the delivery, movement, or holding of such pesticide, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee.

18. On or about April 16, 2000, and June 16, 2000, Respondent distributed or sold TM-9727 ALGICIDE (CWT-100M ALGICIDE) MICROBIOCIDE to the General Services Administration, Lincoln, Nebraska.

19. On or about June 19, 2000, representatives of the Nebraska Department of Agriculture and the Environmental Protection Agency conducted an inspection at the General Services Administration, Lincoln, Nebraska, to document shipment of pesticides by The Daedalus Group, Inc., and to determine the pesticides' compliance with respect to FIFRA.

20. On or about July 6, 2000, and October 2, 2001, a representative of the Kansas Department of Agriculture conducted an inspection of Respondent's place of business to further document the firm's compliance with FIFRA.

Count 1

21. The facts stated in paragraphs 6, 7, 18, and 19, are realleged and incorporated as if fully stated herein.

22. The label of the pesticide referred to in paragraph 18 stated, in part:

" ***
THE
DAEDALUS
GROUP, INC.

TM-
9727
(CWT-100M ALGICIDE)
MICROBIOCIDE

ACTIVE INGREDIENT:

AlkylDimethylBenzyl	
Ammonium Chloride.....	9.2%
BisTributyltin Oxide.....	3.4%
AlkylDBAC.....	4.5%
AlkylDEAC.....	1.5%
INERT INGREDIENTS.....	81.4%

* * *

CAUTION

* * *

EPA REG."

whereas the product was not the registered pesticide CWT-100M ALGICIDE; was not separately registered with EPA by Respondent; and was not distributor registered to The Daedalus Group, Inc., pursuant to 40 C.F.R. § 152.132.

23. The pesticide CWT-100M ALGICIDE is a pesticide registered to BioLab, Decatur, Georgia, under EPA Registration No. 5185-399 under the formulation described in paragraph 22.

24. Respondent repackaged the pesticide CWT-100M ALGICIDE, without authorization from the registrant BioLab.

25. The repackaged pesticide TM-9727 (CWT-100M ALGICIDE) MICROBIOCIDE described in paragraphs 22 and 24 was not encompassed within the terms of the product registration under EPA Registration No. 5185-399, and therefore required separate product registration under Section 3 of FIFRA.

26. Respondent was not registered with EPA as a distributor for CWT-100M ALGICIDE and cannot market the product under its own product and company name.

27. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to, and approved by, the Agency before the product as modified may be distributed or sold.

28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), by distribution or sale of an unregistered pesticide.

29. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 21 through 28, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 2

30. The facts stated in paragraphs 7 through 12, and 18 through 20, are realleged and incorporated as if fully stated herein.

31. The pesticide described in paragraph 18 was misbranded in that the label failed to bear an EPA product registration number.
32. The pesticide described in paragraph 18 was misbranded in that the label failed to bear the number assigned to the establishment in which it was produced.
33. The pesticide described in paragraph 18 was misbranded in that the label failed to bear required precautions such as the signal word DANGER and the precautionary statement "DANGER: Highly corrosive. Causes skin and eye damage. May be fatal if swallowed.. Do not get in eyes, on skin or on clothing. Wear goggles or safety glasses and rubber gloves when handling this product. Irritating to nose and throat. Avoid breathing vapors. Remove and wash contaminated clothing before reuse. For skin or eye contact, or if vapors are inhaled, immediately follow statements of practical treatment." These precautionary statements were required to be on the label of CWT-100M ALGICIDE as part of the terms of the product's registration under EPA Registration No. 5185-399.
34. The pesticide described in paragraph 18 was misbranded in that the label failed to bear the first aid precautionary statements.
35. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling a misbranded pesticide.
36. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 31 through 35, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 3

37. The facts stated in paragraphs 13, 14, 15, 19, and 20, are realleged and incorporated as if fully stated herein.
38. Respondent produced the pesticide described in paragraph 18 at its establishment at 19925 West 161st Street #A, Olathe, Kansas.
39. Respondent's establishment at 19925 #A West 161st Street, Olathe, Kansas, is not registered with EPA as a pesticide-producing establishment under Section 7 of FIFRA.
40. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), in that it failed to comply with the provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.
41. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 38 through 40, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 4

42. The facts stated in paragraphs 16, 17, and 20 are realleged and incorporated as if fully stated herein.
43. During the October 2, 2001, inspection referenced in paragraph 20, Respondent was unable to provide access to records concerning the distribution or sale of pesticides, since they were maintained at Respondent's residence.
44. On October 2, 2001, Respondent agreed, in writing, to provide the inspector copies of sales invoices "as soon as possible."
45. On December 12, 2001, Complainant mailed by certified mail a request that Respondent provide copies of invoice records related to the sale of CWT-100M ALGICIDE.
46. Respondent was notified by the United States Postal Service of the certified mail on December 14, December 20, and December 29, 2001.
47. The certified mail was returned to Complainant on January 4, 2002, as "Unclaimed."
48. On or about February 27, 2002, a representative of the Nebraska Department of Agriculture hand-delivered a copy of the certified letter which was mailed to Respondent on December 12, 2001, the contents of which required Respondent to provide the requested records within 15 days of receipt.
49. Respondent failed to provide the requested records within 15 days of receipt of the hand-delivered certified letter.
50. Respondent's failure to provide access to records pertaining to the distribution and sale of pesticides is a violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii).

Section IV

Total Proposed Penalty

51. 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 of up to Five Thousand Five Hundred Dollars (\$5,500) for each violation. The EPA proposes to assess a total civil penalty of \$16,500 against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

52. 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)).

53. 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.

54. 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.

55. 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.

56. 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.

57. Payment of the total penalty - \$16,500 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank
EPA - Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

58. 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

59. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136(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.

60. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practices 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).

61. 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.

62. 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


63. 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:

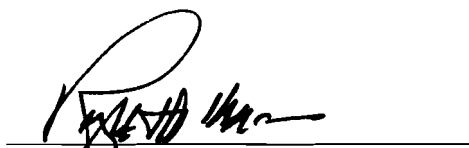
Rupert G. Thomas
Assistant Regional Counsel
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7282

64. 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.

65. 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

1/20/04
Date


Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division


Rupert G. Thomas
Assistant Regional Counsel
Office of Regional Counsel

Enclosures:

1. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22
2. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
3. FIFRA Civil Penalty Calculation Worksheet
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:

Robert S. Conn
Registered Agent
The Daedalus Group, Inc.
12005 Linden
Overland Park, KS 66209

1-26-2004
Date

Vitula Lungren
Vitula Lungren

* 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...