

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. FIFRA-08-2008-0025

2008 AUG 12 AM 9:20

In the Matter of:)

ChemStation of Denver)
4800 Lima Street)
Denver, CO 80239)

Respondent)

**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. section 136/(a). The rules for this proceeding are 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 (*Rules of Practice*)," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by selling a pesticide the composition of which differs from the composition represented in the pesticide registration and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of FIFRA. 7 U.S.C. section 136/(a).

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge ("ALJ") to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within thirty (30) days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the *Rules of Practice* for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN THIRTY (30) DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty of \$1,019,200 proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the *Rules of Practice* for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Dana J. Stotsky, Esq., at 1-800-227-8917; extension 6905, or 303-312-6905, or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the THIRTY (30) day period for filing an answer and requesting a hearing.***

DEFINITIONS

- I. ***Pesticide*** is defined by 40 C.F.R. § 152.3(s) as "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant...."
- II. ***Adulterated*** is defined by FIFRA as "The term 'adulterated' applies to any pesticide if—
 - (1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;
 - (2) any substance has been substituted wholly or in part for the pesticide; or
 - (3) any valuable constituent of the pesticide has been wholly or in part abstracted."

- III. ***Producer and produce*** are defined by FIFRA as “The term ‘produce’ means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels shall not of itself result in such individuals being included in the definition of ‘producer’ for the purposes of this subchapter.” 7 U.S.C. section 136(w).
- IV. ***Requirement of Registration*** is defined by FIFRA as “(a) Requirement of registration Except as provided by this subchapter, no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter. To the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered under this subchapter and that is not the subject of an experimental use permit under section 136c of this title or an emergency exemption under section 136p of this title.” 7 U.S.C. section 136a(a).
- V. ***Establishment*** is defined by FIFRA as “The term ‘establishment’ means any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” 7 U.S.C. section 136(dd).
- VI. ***To distribute or sell*** is defined by FIFRA as “The term ‘to distribute or sell’ means 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. The term does not include the holding or application of registered pesticides or use dilutions thereof by any applicator who provides a service of controlling pests without delivering any unapplied pesticide to any person so served.” 7 U.S.C. section 136(gg).
- VII. ***Labeling*** is defined by FIFRA as “(1) Label. The term ‘label’ means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. (2) Labeling. The term ‘labeling’ means all labels and all other written, printed, or graphic matter—
(A) accompanying the pesticide or device at any time; or
(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health and Human Services, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.” 7 U.S.C. section 136(p).

VIII. *Section 136j. Unlawful acts.*

(a) IN GENERAL —

(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute or sell to any person—

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3....

GENERAL ALLEGATIONS

At all times pertinent to this complaint, the following general allegations apply:

8. EPA has jurisdiction of this matter under section 14(a)(1) of FIFRA, 7 U.S.C. section 136l(a)(1).

9. Respondent, Chemstation of Denver, located at 4800 Lima Street, Denver, Colorado 80239, is a "person" within the meaning of Section 2(s) of FIFRA, 7 U.S.C. Section 136(s), and is therefore subject to regulation.

10. On or about May 18, 2007 ("first inspection") and again on August 1, 2007 ("second inspection,") Ms. Amy Hambrick, an authorized EPA inspector, ("the Inspector,") conducted two inspections of Respondent's facility, with the consent of Respondent, to determine compliance with FIFRA and its implementing regulations.

11. During the first inspection, the Inspector observed Respondent was selling the pesticide "3030," EPA Registration Number 65072-20001.

12. The pesticide "3030" is used for sanitizing food contact surfaces, farm premises (such as barns, pens, stalls, shoots, and troughs), pulp and paper mill water processes, agricultural uses (such as post-harvest protection- leaf cutting and bee cells), food egg sanitization, porous food contact surfaces, non-porous non-food contact surfaces, porous non-food contact surfaces, laundry sanitizer, aquacultural uses (fish ponds, fish pond equipment, Maine lobster ponds, conditioning live oysters, and control of scavengers in fish hatchery ponds).

13. The approved registration for "3030," EPA Registration Number 65072-20001, specifies use of a 12.5% sodium hypochlorite solution for the production of "3030" and specifies one vendor for use in the production of "3030," specifically, Van Waters and Rogers, Inc.

14. On or about August 1, 2007, Respondent provided to the Inspector six Bills of Lading for a 10% sodium hypochlorite solution received by Respondent over a two year period.

15. On or about September 1, 2007, Respondent provided to the Inspector 196 sales invoices, purporting to be all sales of the pesticide "3030" made by Respondent during 2006 and 2007.

16. During the second inspection, Mr. Babb, General Manager or Mr. Chester, Operations Manager of Respondent, or both, stated to the Inspector that Respondent's production process for producing "3030" involves receiving EPA Reg. No. 813-16 10% sodium hypochlorite from DPC Industries, Inc. in Hudson, Colorado, which once received by Respondent is then repackaged into '3030' with no additional dyes, perfumes, or additional active or inert ingredients. During the second inspection, Mr. Babb or Mr. Chester, or both, stated to the Inspector that Respondent used 10% sodium hypochlorite for '3030' because it was "more readily available" and "more stable" than 12.5% sodium hypochlorite and that Respondent's company headquarters was aware that 10% sodium hypochlorite was being used in the production of '3030' at Respondent's facility in Denver, Colorado.

Counts 1-196

(Multiple Sales of a Pesticide the Composition of Which Differs from the Composition Represented in the Pesticide Registration: "3030")

17. During 2005 - 2007, the Respondent sold the pesticide "3030," EPA Registration Number 65072-20001.

18. The pesticide "3030," EPA Registration Number 65072-20001, contains specifications in its EPA-approved registration that its production shall be composed of a formulation made from a 12.5% sodium hypochlorite solution; also that such 12.5% sodium hypochlorite solution shall be solely supplied to Respondent by Van Waters and Rogers, Inc.; and that the pesticide "3030" shall be composed of a formulation without the addition of any additives to the pesticide product.

19. During the two inspections and subsequent file review, the Inspector observed that Respondent, on one hundred ninety-six (196) occasions during 2005 to 2007 (and as set out in Paragraphs 20-215 below) sold the pesticide "3030" that was adulterated, since it was formulated with a 10.0% sodium hypochlorite solution and from a unauthorized supplier, which is production of a pesticide the composition of which differs from the composition as described in the statement required in connection with its registration. These one hundred ninety-six (196) sales are identified as follows.

Paragraph Number	Count Number	Delivery Ticket/Sales Invoice	Date Printed
20	Count 1	6241	7/27/2007
21	Count 2	6239	7/27/2007 ¹
22	Count 3	6217	7/23/2007 ²
23	Count 4	6188	7/13/2007 ³
24	Count 5	6150	6/29/2007
25	Count 6	6124	6/22/2007 ⁴
26	Count 7	6105	6/14/2007 ⁵
27	Count 8	6100	6/13/2007
28	Count 9	6088	6/8/2007 ⁶
29	Count 10	6064	5/31/2007 ⁷
30	Count 11	6053	5/25/2007 ⁸
31	Count 12	6051	5/25/2007 ⁹
32	Count 13	6038	5/25/2007 ¹⁰
33	Count 14	6022	5/16/2007 ¹¹
34	Count 15	5999	5/8/2007 ¹²
35	Count 16	5987	5/1/2007 ¹³
36	Count 17	5967	4/25/2007 ¹⁴
37	Count 18	5935	4/13/2007
38	Count 19	5934	4/13/2007 ¹⁵
39	Count 20	5907	3/30/2007 ¹⁶
40	Count 21	5896	3/26/2007 ¹⁷
41	Count 22	5865	3/16/2007 ¹⁸
42	Count 23	5860	3/14/2007
43	Count 24	5831	3/2/2007 ¹⁹

¹ Contains "Natural" additive

² Contains "Natural" additive

³ Contains "Natural" additive

⁴ Contains "Natural" additive

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⁶ Contains "Natural" additive

⁷ Contains "Natural" additive

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⁹ Contains "Natural" additive

¹⁰ Contains "052307" additive

¹¹ Contains "Natural" additive

¹² Contains "Natural" additive

¹³ Contains "Natural" additive

¹⁴ Contains "Natural" additive

¹⁵ Contains "Natural" additive

¹⁶ Contains "Natural" additive

¹⁷ Contains "Natural" additive

¹⁸ Contains "Natural" additive

¹⁹ Contains "Natural" additive

44	Count 25	5817	2/23/2007 ²⁰
45	Count 26	5787	2/15/2007 ²¹
46	Count 27	5783	2/14/2007 ²²
47	Count 28	5775	2/13/2007 ²³
48	Count 29	5766	2/8/2007 ²⁴
49	Count 30	5761	2/7/2007
50	Count 31	5730	1/26/2007
51	Count 32	5696	1/16/2007 ²⁵
52	Count 33	5672	1/8/2007 ²⁶
53	Count 34	5664	1/3/2007 ²⁷
54	Count 35	5639	12/27/2006
55	Count 36	5630	12/22/2006 ²⁸
56	Count 37	5607	12/13/2006 ²⁹
57	Count 38	5604	12/12/2006 ³⁰
58	Count 39	5590	12/6/2006 ³¹
59	Count 40	5548	11/21/2006
60	Count 41	5549	11/21/2006 ³²
61	Count 42	5544	11/21/2006 ³³
62	Count 43	5518	11/9/2006 ³⁴
63	Count 44	5488	10/30/2006 ³⁵
64	Count 45	5465	10/23/2006 ³⁶
65	Count 46	5466	10/23/2006 ³⁷
66	Count 47	5453	10/13/2006 ³⁸
67	Count 48	5451	10/13/2006 ³⁹
68	Count 49	5441	10/10/2006 ⁴⁰

²⁰ Contains "Natural" additive

²¹ Contains "Natural" additive

²² Contains "Natural" additive

²³ Contains "Natural" additive

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³⁹ Contains "Natural" additive

⁴⁰ Contains "Natural" additive

69	Count 50	5434	10/9/2006 ⁴¹
70	Count 51	5408	9/28/2006 ⁴²
71	Count 52	5391	9/22/2006
72	Count 53	5387	9/21/2006 ⁴³
73	Count 54	5385	9/21/2006 ⁴⁴
74	Count 55	5354	9/7/2006 ⁴⁵
75	Count 56	5343	9/5/2006
76	Count 57	5332	8/30/2006 ⁴⁶
77	Count 58	5312	8/25/2006 ⁴⁷
78	Count 59	5308	8/23/2006 ⁴⁸
79	Count 60	5284	8/16/2006
80	Count 61	5290	8/15/2006 ⁴⁹
81	Count 62	5283	8/14/2006
82	Count 63	5276	8/11/2006 ⁵⁰
83	Count 64	5255	8/7/2006 ⁵¹
84	Count 65	5243	8/2/2006 ⁵²
85	Count 66	5239	7/31/2006 ⁵³
86	Count 67	5224	7/25/2006 ⁵⁴
87	Count 68	5214	7/21/2006
88	Count 69	5215	7/21/2006
89	Count 70	5201	7/18/2006 ⁵⁵
90	Count 71	5194	7/14/2006 ⁵⁶
91	Count 72	5188	7/13/2006 ⁵⁷
92	Count 73	5187	7/12/2006 ⁵⁸
93	Count 74	5182	7/10/2006
94	Count 75	5181	7/10/2006
95	Count 76	5171	7/6/2006 ⁵⁹

⁴¹ Contains "Natural" additive

⁴² Contains "Natural" additive

⁴³ Contains "Natural" additive

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⁴⁵ Contains "Natural" additive

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⁵⁶ Contains "Natural" additive

⁵⁷ Contains "Natural" additive

⁵⁸ Contains "Natural" additive

⁵⁹ Contains "Natural" additive

96	Count 77	5165	7/5/2006
97	Count 78	5154	6/28/2006 ⁶⁰
98	Count 79	5139	6/23/2006 ⁶¹
99	Count 80	5129	6/20/2006 ⁶²
100	Count 81	5123	6/20/2006 ⁶³
101	Count 82	5118	6/15/2006
102	Count 83	5120	6/15/2006 ⁶⁴
103	Count 84	5113	6/15/2006
104	Count 85	5112	6/14/2006 ⁶⁵
105	Count 86	5099	6/12/2006 ⁶⁶
106	Count 87	5090	6/7/2006 ⁶⁷
107	Count 88	5078	6/6/2006 ⁶⁸
108	Count 89	5083	6/5/2006 ⁶⁹
109	Count 90	5075	5/31/2006
110	Count 91	5064	5/25/2006 ⁷⁰
111	Count 92	5063	5/25/2006 ⁷¹
112	Count 93	5065	5/25/2006 ⁷²
113	Count 94	5053	5/23/2006 ⁷³
114	Count 95	5050	5/22/2006 ⁷⁴
115	Count 96	5049	5/22/2006 ⁷⁵
116	Count 97	5043	5/19/2006
117	Count 98	5031	5/16/2006 ⁷⁶
118	Count 99	5034	5/16/2006 ⁷⁷
119	Count 100	5011	5/10/2006 ⁷⁸
120	Count 101	5005	5/8/2006 ⁷⁹
121	Count 102	4988	5/1/2006 ⁸⁰

⁶⁰ Contains "Natural" additive

⁶¹ Contains "Natural" additive

⁶² Contains "Natural" additive

⁶³ Contains "Natural" additive

⁶⁴ Contains "Natural" additive

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⁷⁸ Contains "Natural" additive

⁷⁹ Contains "Natural" additive

122	Count 103	4979	4/26/2006
123	Count 104	4980	4/28/2006 ⁸¹
124	Count 105	4962	4/21/2006 ⁸²
125	Count 106	4956	4/19/2006
126	Count 107	4955	4/19/2006 ⁸³
127	Count 108	4940	4/17/2006 ⁸⁴
128	Count 109	4938	4/12/2006 ⁸⁵
129	Count 110	4930	4/10/2006
130	Count 111	4919	4/5/2006 ⁸⁶
131	Count 112	4929	4/10/2006 ⁸⁷
132	Count 113	4916	4/5/2006 ⁸⁸
133	Count 114	4909	4/4/2006
134	Count 115	4904	3/31/2006 ⁸⁹
135	Count 116	4890	3/27/2006 ⁹⁰
136	Count 117	4879	3/24/2006 ⁹¹
137	Count 118	4877	3/24/2006
138	Count 119	4871	3/23/2006 ⁹²
139	Count 120	4856	3/17/2006
140	Count 121	4854	3/16/2006 ⁹³
141	Count 122	4833	3/13/2006 ⁹⁴
142	Count 123	4831	3/10/2006 ⁹⁵
143	Count 124	4822	3/7/2006 ⁹⁶
144	Count 125	4819	3/6/2006 ⁹⁷
145	Count 126	4811	2/28/2006 ⁹⁸
146	Count 127	4801	2/24/2006
147	Count 128	4802	2/24/2006 ⁹⁹

⁸⁰ Contains "Natural" additive

⁸¹ Contains "Natural" additive

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⁸⁴ Contains "Natural" additive

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⁹⁵ Contains "Natural" additive

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148	Count 129	4795	2/23/2006 ¹⁰⁰
149	Count 130	4767	2/14/2006 ¹⁰¹
150	Count 131	4764	2/13/2006 ¹⁰²
151	Count 132	4758	2/8/2006 ¹⁰³
152	Count 133	4745	2/6/2006 ¹⁰⁴
153	Count 134	4743	2/3/2006 ¹⁰⁵
154	Count 135	4740	2/1/2006 ¹⁰⁶
155	Count 136	4738	1/31/2006
156	Count 137	4717	1/23/2006 ¹⁰⁷
157	Count 138	4710	1/23/2006 ¹⁰⁸
158	Count 139	4695	1/18/2006 ¹⁰⁹
159	Count 140	4685	1/16/2006 ¹¹⁰
160	Count 141	4658	1/6/2006
161	Count 142	4666	1/4/2006 ¹¹¹
162	Count 143	4667	1/6/2006 ¹¹²
163	Count 144	4669	1/6/2006 ¹¹³
164	Count 145	4645	1/4/2006 ¹¹⁴
165	Count 146	4633	12/30/2005 ¹¹⁵
166	Count 147	4620	12/27/2005 ¹¹⁶
167	Count 148	4618	12/22/2005 ¹¹⁷
168	Count 149	4617	12/22/2005
169	Count 150	4616	12/21/2005 ¹¹⁸
170	Count 151	4603	12/19/2005 ¹¹⁹
171	Count 152	4587	12/13/2005 ¹²⁰
172	Count 153	4583	12/12/2005 ¹²¹

¹⁰⁰ Contains "Natural" additive

¹⁰¹ Contains "Natural" additive

¹⁰² Contains "Natural" additive

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¹¹⁶ Contains "Natural" additive

¹¹⁷ Contains "Natural" additive

¹¹⁸ Contains "Natural" additive

¹¹⁹ Contains "Natural" additive

¹²⁰ Contains "Natural" additive

173	Count 154	4571	12/5/2005 ¹²²
174	Count 155	4576	12/7/2005 ¹²³
175	Count 156	4564	12/5/2005
176	Count 157	4548	11/29/2005 ¹²⁴
177	Count 158	4547	11/29/2005 ¹²⁵
178	Count 159	4521	11/14/2005 ¹²⁶
179	Count 160	4528	11/16/2005 ¹²⁷
180	Count 161	4518	11/14/2005 ¹²⁸
181	Count 162	4517	11/14/2005 ¹²⁹
182	Count 163	4519	11/14/2005 ¹³⁰
183	Count 164	4516	11/14/2005 ¹³¹
184	Count 165	4503	11/7/2005 ¹³²
185	Count 166	4510	11/9/2005
186	Count 167	4495	11/2/2005 ¹³³
187	Count 168	4479	11/2/2005 ¹³⁴
188	Count 169	4467	10/27/2005 ¹³⁵
189	Count 170	4440	10/20/2005 ¹³⁶
190	Count 171	4441	10/19/2005 ¹³⁷
191	Count 172	4439	10/18/2005 ¹³⁸
192	Count 173	4421	10/11/2005 ¹³⁹
193	Count 174	4427	10/17/2005
194	Count 175	4403	10/4/2005 ¹⁴⁰
195	Count 176	4383	9/29/2005 ¹⁴¹
196	Count 177	4354	9/23/2005 ¹⁴²

- ¹²¹ Contains "Natural" additive
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¹³⁰ Contains "Natural" additive
¹³¹ Contains "Natural" additive
¹³² Contains "Natural Sanitizer" additive
¹³³ Contains "Natural" additive
¹³⁴ Contains "Natural" additive
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¹³⁶ Contains "Natural" additive
¹³⁷ Contains "Natural" additive
¹³⁸ Contains "Natural" additive
¹³⁹ Contains "Natural" additive
¹⁴⁰ Contains "Natural" additive
¹⁴¹ Contains "Natural" additive
¹⁴² Contains "Natural" additive

197	Count 178	4351	9/23/2005 ¹⁴³
198	Count 179	4347	9/23/2005 ¹⁴⁴
199	Count 180	4342	9/20/2005 ¹⁴⁵
200	Count 181	4321	9/13/2005 ¹⁴⁶
201	Count 182	4305	9/8/2005 ¹⁴⁷
202	Count 183	4296	9/1/2005 ¹⁴⁸
203	Count 184	4284	8/31/2005 ¹⁴⁹
204	Count 185	4277	8/26/2005
205	Count 186	4257	8/18/2005 ¹⁵⁰
206	Count 187	4245	8/16/2005
207	Count 188	4239	8/12/2005 ¹⁵¹
208	Count 189	4221	8/9/2005
209	Count 190	4206	8/4/2005 ¹⁵²
210	Count 191	4205	8/4/2005 ¹⁵³
211	Count 192	4202	8/2/2005 ¹⁵⁴
212	Count 193	4195	8/2/2005 ¹⁵⁵
213	Count 194	4617Duplicate	12/22/2005
214	Count 195	4347Duplicate	9/22/2005 ¹⁵⁶
215	Count 196	062906A	6/29/2006

216. Respondent, by selling the pesticide “3030” as described in Paragraphs 8-215 above, in a manner where the composition of the pesticide sold differed from the composition accepted in the applicable pesticide registration, has sold one hundred ninety six (196) times an adulterated pesticide in violation of FIFRA section 12(a)(1)(C). 7 U.S.C. section 136j(a)(1)(C).

PROPOSED CIVIL PENALTY

217. For pesticide registrants and producers, FIFRA authorizes the assessment of a civil penalty of up to \$6,500 for each offense of the Act and the Debt Collection Improvement Act of 1996. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the

¹⁴³ Contains “Natural” additive

¹⁴⁴ Contains “Natural” additive

¹⁴⁵ Contains “Natural” additive

¹⁴⁶ Contains “Natural” additive

¹⁴⁷ Contains “Natural” additive

¹⁴⁸ Contains “Natural” additive

¹⁴⁹ Contains “Natural” additive

¹⁵⁰ Contains “Natural” additive

¹⁵¹ Contains “Natural” additive

¹⁵² Contains “Natural” additive

¹⁵³ Contains “Natural” additive

¹⁵⁴ Contains “Natural” additive

¹⁵⁵ Contains “Natural” additive

¹⁵⁶ Contains “Natural” additive

business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. **For the one hundred ninety six (196) FIFRA violations alleged in this complaint, EPA proposes a penalty assessment of \$1,019,200 (as shown in the table below.)** The penalty narrative and calculation can be found in Complainant's Exhibit Number 1. A summary of the proposed penalties per count in table form:

Counts 1-196 @ \$5,200 per count	
Total	\$1,019,200.00

The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

To discuss settlement or ask any questions you may have about this process, please contact Dana J. Stotsky, Senior Enforcement Attorney, at 1-800-227-8917; ext. 312-6905, or at the address below.

ATTACHMENTS:

1. Memorandum on Penalty Calculation Worksheet, dated August 6, 2008.
2. Consolidated Rules of Practice ("CROP,") 40 C.F.R. part 22
3. EPA FIFRA Penalty Policy dated 1990.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129

Date: August 6, 2008 By: Mark Chalfant
Mark Chalfant, Director
Technical Enforcement Program

Date: 8/11/08 By: David J. Janik for
David J. Janik, Director
Legal Enforcement Program

Date: July 18, 2008 By: Dana J. Stotsky
Dana J. Stotsky, Senior Enforcement Attorney
Legal Enforcement Program
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Colorado Bar # 14717
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FAX: (303) 312-6953
stotsky.dana@epa.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail, Postage Pre-Paid, to:

Mr. Grant Babb, General Manager
ChemStation of Denver
4800 Lima Street
Denver, CO 80239

8/12/08
Date

Judith McTernan
Judith McTernan

FIFRA PENALTY CALCULATION WORKSHEET

Respondent: **Chemstation of Denver**
4800 Lima Street
Denver, CO 80239

	Counts 1-196
Appendix A Statutory violation FIFRA section:	§12(a)(1)(C) Composition Differed
2. FTIS code	1CA
3. Violation level	2
Table 2 4. Violation category: §14(a)(1) or §14(a)(2)	§14(a)(1)
5. Size of business category	I
Table 1 6. Base penalty (Base penalty includes a 10% increase in accordance with the Civil Monetary penalty Inflation Adjustment Rule.)	\$6,500 per count
Appendix B 7. Gravity adjustments	
a. pesticide toxicity	2 (Danger)
b. human harm	0
c. environmental harm	0
d. compliance history	0
e. culpability	4
f. total gravity adjustment value (add items 7a-7e)	6
Table 3 g. percent adjustment	20%
h. dollar adjustment	-\$1,300.00 per count
8. Final penalty (item 7h from item 6)	\$5,200 x 196 counts = \$1,019,200
Total Penalty	\$1,019,200

Prepared by: Amy Hambrick *A. Hambrick* 8/6/2008
EPA Region 8 Technical Enforcement Program

Penalty Calculation Narrative Chemstation of Denver

1. To ensure a uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) developed the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990 Policy).

2. According to the 1990 Policy, the appropriate enforcement response for selling or distributing a pesticide whose composition differed (specifically, whose composition differed from the composition accepted in the pesticide registration), is a civil penalty. Chemstation of Denver is charged with one-hundred and ninety-six (196) counts of selling or distributing a pesticide whose composition differed from the pesticide registration.

- Chemstation 3030 (EPA registration number 65072-20001) is a 100% repackaging registration based on Van Waters and Rogers Inc. LiquiChlor (EPA registration number 550-20001). The registration denotes sodium hypochlorite at 12.5% as its active ingredient.
- Chemstation of Denver repackages Chemstation 3030 using a different EPA registered pesticide, Dixichlor (EPA registration number 813-16) purchased from DPC Industries, Inc. Dixichlor contains 10% sodium hypochlorite as its active ingredient.

3. FIFRA Section 14(a)(4) requires EPA to "consider the appropriateness of (a civil penalty) to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation."

4. Following the guidance in the 1990 Policy, EPA calculates a proposed civil penalty using the following process. First, the gravity of the offense is identified using Appendix A of the 1990 Policy. Appendix A identifies a violation of FIFRA section 12(a)(1)(C), selling or distributing a pesticide whose composition differed, as gravity level 2.

5. Second, according to the 1990 policy, the size of business is taken into account. The size of business is determined from the company's gross revenues from all revenue sources during the prior calendar year. When information concerning the size of business is not readily available, the 1990 Policy directs the use of Category I size of business. This will remain the base penalty value unless Chemstation of Denver can establish that it should be considered in a smaller category. Thus, EPA has determined the size of the business category for Chemstation of Denver as Category I (gross revenues over \$1,000,000).

6. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA Section 14(a)(1) violations on page 19 of the 1990 Policy to determine the dollar amount of the proposed penalty. Violations with level 2 gravity and in Business Category I are assessed a penalty of \$6,500 for each count. Thus, counts 1 through 196 of FIFRA section 12(a)(1)(C) have a base penalty of \$6,500 per count, for a total base penalty of

Adding the assigned gravity adjustment valued results in a total gravity adjustment value of 6 for the violations associated with distributing and selling Chemstation 3030 whose composition differed from the composition represented in the registration.

8. Using a Gravity Adjustment Value of 6, Table 3 in Appendix C of the 1990 Policy states to reduce matrix value by 20%. Therefore, the penalty for Counts 1-196 is adjusted to \$5,200 per count resulting in a final penalty amount of \$1,019,200.

9. Finally, EPA attempts to take into consideration what effect the calculated penalty would have on the ability of Chemstation of Denver to continue in business. Based on the limited information available to EPA, no change has been made to the proposed penalty. Adjustments of the proposed penalty can be made at a later date should information warranting such a change become available. No adjustments were made at this time.

10. In sum, EPA arrived at a total penalty of \$1,019,200 for Chemstation of Denver's violations of FIFRA sections 12(a)(1)(C) by considering all of the FIFRA Section 14(a)(4) penalty criteria through the use of the 1990 Policy.

A. Hambrick 8/6/2008

Prepared by: Amy Hambrick
EPA Region 8 Technical Enforcement Program