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1 UNITED STATES
2 ENVIRONMENTAL PROTECTION AGENCY
3 REGION IX
4 75 HAWTHORNE STREET
5 SAN FRANCISCO, CA 94105

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U.S. EPA. REGION IX
REGIONAL HEARING CLERK

6 In the Matter of:) Docket No. FIFRA-09-2007-0032
7 Pioneer Chemical Company,)
8 Respondent.) COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

9 **COMPLAINT**

10 **PRELIMINARY STATEMENT**

11 This is a civil administrative action instituted pursuant to
12 Section 14(a) of the Federal Insecticide, Fungicide, and
13 Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. §136
14 et seq., for the assessment of a civil administrative penalty.
15 Complainant is the Associate Director for Agriculture,
16 Communities and Ecosystems Division, United States Environmental
17 Protection Agency, Region IX ("EPA"), who has been duly delegated
18 the authority to bring this action. Respondent is Pioneer
19 Chemical Company, a corporation doing business in the State of
20 California.

21 This Complaint serves as notice that Complainant has reason
22 to believe that Respondent has violated Section 12(a)(2)(L) of
23 FIFRA, 7 U.S.C. § 136j(a)(2)(L).

24 **GENERAL ALLEGATIONS**

25 1. Respondent is a corporation and therefore a "person" as
26 that term is defined in Section 2(s) of FIFRA, 7 U.S.C.
27 § 136(s).

28 2. Respondent owns, operates, controls or is otherwise

1 responsible for a facility located at 13717 South Normandie
2 Avenue in Gardena, California (the "Facility").

3 3. Respondent has registered the Facility as a pesticide
4 producing establishment in compliance with Section 7(a) of FIFRA,
5 7 U.S.C. § 136e(a). The establishment number is 151-CA-001.

6 4. As a producer, Respondent is subject to the
7 requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the
8 applicable regulations promulgated pursuant thereto contained in
9 40 C.F.R. Part 167.

10 5. Pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C.
11 § 136e(c)(1), and 40 C.F.R. § 167.85, Respondent is required to
12 complete and submit a pesticide production report to EPA on or
13 before March 1, annually.

14 6. A producer must include in the pesticide production
15 report the amount of each pesticidal product produced during the
16 past year, sold or distributed during the past year and estimated
17 to be produced during the current year. Section 7(c)(1) of
18 FIFRA, 7 U.S.C. § 136e(c)(1); 40 C.F.R. § 167.85.

19 7. It is unlawful for any person who is a producer to
20 violate any provision of Section 7 of FIFRA. Section 12(a)(2)(L)
21 of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

22 **COUNT I**

23 8. Paragraphs 1 through 7 are realleged and incorporated
24 herein by reference.

25 9. During the 2002 production year, Respondent produced
26 the pesticidal product, Super 60 PYM Foamer.

1 17. During the 2004 production year, Respondent produced
2 the pesticidal product, Super 60 PYM Foamer.

3 18. Respondent did not include the amount of Super 60 PYM
4 Foamer that it produced during the 2004 production year in its
5 pesticide production report for the 2004 production year due on
6 March 1, 2005.

7 19. Respondent's failure to include the amount of Super 60
8 PYM Foamer that it produced during the 2004 production year in
9 its 2004 production year pesticide production report constitutes
10 a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §
11 136j(a)(2)(L).

12 COUNT IV

13 20. Paragraphs 1 through 7 are realleged and incorporated
14 herein by reference.

15 21. During the 2005 production year, Respondent produced
16 the pesticidal product, Super 60 PYM Foamer.

17 22. Respondent did not include the amount of Super 60 PYM
18 Foamer that it produced during the 2005 production year in its
19 pesticide production report for the 2005 production year due on
20 March 1, 2006.

21 23. Respondent's failure to include the amount of Super 60
22 PYM Foamer that it produced during the 2005 production year in
23 its 2005 production year pesticide production report constitutes
24 a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. §
25 136j(a)(2)(L).

26 ///

1 PROPOSED CIVIL PENALTY

2 Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361(a)(1), provides
3 that any registrant, commercial applicator, wholesaler, dealer,
4 retailer or other distributor who violates any provision of FIFRA
5 may be assessed a civil administrative penalty of up to \$5,000
6 for each offense. The maximum penalty amount of \$5,000 has been
7 adjusted to \$5,500 for FIFRA violations that occur on or after
8 January 30, 1997 but before March 15, 2004 and to \$6,500 for
9 FIFRA violations that occur on or after March 15, 2004, pursuant
10 to the Civil Monetary Penalty Inflation Adjustment Rule at 40
11 C.F.R. Part 19, which implements the Debt Collection Improvement
12 Act of 1996, 31 U.S.C. § 3701. After consideration of (1) the
13 size of Respondent's business, (2) Respondent's ability to
14 continue in business, and (3) the gravity of Respondent's
15 violations, EPA proposes the assessment of the following civil
16 penalty pursuant to Section 14(a)(1) of FIFRA and the Enforcement
17 Response Policy for FIFRA dated July 2, 1990 (a copy of which is
18 enclosed):

19 COUNT I

20 Failure to include pesticide production in pesticide production
21 report for production year 2002.....\$ 5,500.00

22 COUNT II

23 Failure to include pesticide production in pesticide production
report for production year 2003.....\$ 5,500.00

24 COUNT III

25 Failure to include pesticide production in pesticide production
report for production year 2004.....\$ 6,500.00

26 COUNT IV

27 Failure to include pesticide production in pesticide production

1 report for production year 2005.....\$ 6,500.00
2 Total Proposed Penalty.....\$24,000.00

3 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

4 You have the right to request a formal hearing to contest
5 any material fact set forth in this Complaint or to contest the
6 appropriateness of the proposed penalty. Any hearing requested
7 will be conducted in accordance with the Administrative Procedure
8 Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of
9 Practice Governing the Administrative Assessment of Civil
10 Penalties and the Revocation/Termination or Suspension of Permits
11 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of
12 the Consolidated Rules of Practice is enclosed with this
13 Complaint.

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

26 The Answer shall also state the circumstances and arguments,
27
28

1 if any, which are alleged to constitute the grounds of defense,
2 and shall specifically request an administrative hearing, if
3 desired. If you deny any material fact or raise any affirmative
4 defense, you will be considered to have requested a hearing.

5 The Answer must be filed with:

6 **Regional Hearing Clerk**
7 **USEPA, Region IX**
8 **75 Hawthorne Street**
9 **San Francisco, CA 94105**

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

12 **Carol Bussey**
13 **Assistant Regional Counsel**
14 **Office of Regional Counsel (ORC-2)**
15 **USEPA, Region IX**
16 **75 Hawthorne Street**
17 **San Francisco, CA 94105**

18 Ms. Bussey is the attorney assigned to represent EPA in this
19 matter. Her telephone number is (415)972-3950.

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

26 **INFORMAL SETTLEMENT CONFERENCE**

27 EPA encourages all parties against whom a civil penalty is
28 proposed to pursue the possibility of settlement through informal
conferences. Therefore, whether or not you request a hearing,
you may confer informally with EPA through Carol Bussey, the EPA

1 attorney assigned to this case, regarding the facts of this case,
2 the amount of the proposed penalty, and the possibility of
3 settlement. An informal settlement conference does not, however,
4 affect your obligation to file an Answer to this Complaint.

5 **ALTERNATIVE DISPUTE RESOLUTION**

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

12 **QUICK RESOLUTION**

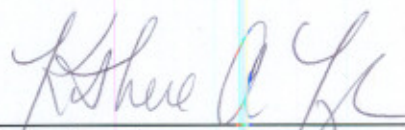
13 Instead of requesting an informal settlement conference or
14 filing an Answer requesting a hearing, you may choose to resolve
15 the proceeding by paying the specific penalty proposed in the
16 Complaint and filing a copy of the check or other instrument of
17 payment with the Regional Hearing Clerk within thirty (30) days
18 after receiving the Complaint. If you wish to resolve the
19 proceeding in this manner instead of filing an answer but need
20 additional time to pay the penalty, you may file a written
21 statement stating that you agree to pay the proposed penalty in
22 accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing
23 Clerk within 30 days after receiving the Complaint. The written
24 statement need not contain any response to, or admission of, the
25 allegations in the Complaint. Within sixty (60) days after
26 receiving the Complaint, the full amount of the proposed penalty

1 must be paid. Failure to make such payment within this sixty-day
2 period may subject you to default. Upon receipt of payment in
3 full, the Regional Judicial Officer will issue a final order.
4 Payment by a respondent shall constitute a waiver of the
5 respondent's rights to contest the allegations and to appeal the
6 final order. In addition, full payment of the proposed penalty
7 shall only resolve Respondent's liability for Federal civil
8 penalties for violations and facts alleged in the Complaint and
9 does not affect the right of EPA or the United States to pursue
10 appropriate injunctive or other equitable relief or criminal
11 sanctions for any violations of law.

12 **CONSENT AGREEMENT AND FINAL ORDER**

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

21
22 Date: Sept. 26, 2007



Katherine A. Taylor
Associate Director of Agriculture
Communities and Ecosystems Division
U.S. EPA, Region IX

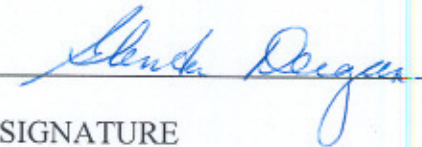
CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA 09-2007-0032 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7007 3110 0006 1997 8465), return receipt requested, to:

Mr. William S. Horwitz, President
Pioneer Chemical Company
13717 Normandie Ave.
Gardena, CA 90249

9-27-06

DATE



SIGNATURE