

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

06 JUN -5 AM 11:59  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

) Docket No. FIFRA-07-2006-0209

)

David Norman  
404 NW 12<sup>th</sup> Street  
Rt. 7, Box 7061  
Ava, Missouri 65608

) COMPLAINT AND NOTICE OF  
) OPPORTUNITY FOR HEARING

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and

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Mike Lansdown  
511 NE 2<sup>nd</sup> Street  
Ava, Missouri 65608

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Respondents

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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 Respondents have 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.

distributor, owner/landlord of affected residence, and the employer of Respondent, Mike Lansdown, located at 404 NW 12<sup>th</sup> Street, Rt. 7, Box 7061, Ava, Missouri. The Respondent, Mike Lansdown, is a pesticide distributor, a pesticide applicator, and an employee of Respondent, David Norman, located at 511 NE 2<sup>nd</sup> Street, Ava, Missouri. The Respondents, David Norman and Mike Lansdown, are and will at all times be referred to in this Complaint, as "persons" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

### Section III

#### Violations

##### General Allegations

5. The Complainant hereby states and alleges that Respondents have 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 (have 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 that is misbranded or adulterated.
9. 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.
10. Section 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(2)(K), states it shall be unlawful for any person to violate any cancellation order issued under this Act on the grounds of unreasonable adverse effects or fail to submit a notice in accordance with Section 6(g).
11. Section 6(g)(1)(A)(B)(C) of FIFRA, 7 U.S.C. § 136j(g)(1)(A)(B)(C), states any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who possesses any pesticide which has had its registration canceled or suspended under this section shall notify the Administrator and appropriate State and local officials of such possession, the quantity of such pesticide such person possesses, and the place at which such pesticide is stored.
12. The product, ORTHO-KLOR® 44 ORTHO CHLORADANE SPRAY, was a pesticide registered on January 11, 1951, under EPA Registration No. 239-478 to Chevron Chemical Company, Ortho Consumer Products Division, San Francisco, California.

13. The product, 72% CHLORDANE EMULSIFIABLE CONCENTRATE, was a pesticide registered on March 12, 1985, under EPA Registration No. 2169-320 to the Patterson GREEN-UP Company, Division of Curry-Cartwright, Inc., Kansas City, Missouri. The product's registration was transferred on March 12, 1985, to the Pursell Acquisition Company, Inc., Sylacauga, Alabama, under the EPA Registration No. 3442-846.

14. The product, FORD'S 72% CHLORDANE EMULSIFIABLE CONCENTRATE, was a pesticide registered on May 23, 1986, under EPA Registration No. 3442-846-10370 to Ford's Chemical & Service, Inc., Pasadena, Texas.

15. The registrations of the products mentioned in paragraphs 12, 13, and 14, were canceled on March 25, 1987, due to the carcinogenic (cancer-causing) effects in humans. The cancellations of the registrations of all chlordane products were published in the Federal Register, Volume 53, No. 68, Friday, April 8, 1988. This notice states that existing stocks of chlordane products could be used by property owners according to labeled directions on private property owned by these individuals, except in situations where the property is rented or leased to others and is occupied or is intended to be occupied by human beings or used on new structures intended for human occupation which are under construction for sale or lease.

16. On or about November 14, 2003, and November 18, 2003, a duly authorized representative of the Missouri Department of Agriculture investigated a complaint filed by Tom Pronti, Ava, Missouri, regarding several pesticide applications to property he was renting or leasing from Respondent, David Norman, located at 300A SW 3<sup>rd</sup> Avenue, Ava, Missouri. The investigation indicates that on or about October 14, 2003, and October 16, 2003, Respondent Mike Lansdown, acting in the scope of his employment, sprayed one or more of the products mentioned in paragraphs 12, 13, and 14 to the residence of Tom Pronti and distributed the product to Tom Pronti for further applications. Physical samples collected from the residence and from the spray tank used in the applications and in the distribution of the chlordane product(s) verify the presence of chlordane. Photographs and statements taken during the investigation confirm the existence and possession of the products mentioned in paragraphs 12, 13, and 14, and the spray tank by Respondent David Norman, which were used and distributed by Respondent Mike Lansdown.

#### Count 1

17. The facts stated in paragraphs 6 through 16 are realleged and incorporated as if fully stated herein.

18. On or about October 14, 2003, and October 16, 2003, Respondent Mike Lansdown, acting in the scope of his employment, sprayed one or more of the products mentioned in paragraphs 12, 13, and 14 to the residence of Tom Pronti and distributed the product(s) to Tom Pronti, for further applications.

19. At the time of their use and distribution, the product(s) mentioned in paragraphs 12, 13, 14, and 18, were unregistered pesticides. Their registrations were canceled by EPA on March 25, 1987, due to their carcinogenic (cancer-causing) properties.

20. The products mentioned in paragraphs 12, 13, 14, and 18 were misbranded in that their labels bore false or misleading EPA Registration Numbers.

21. Respondents violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that they distributed or sold an unregistered pesticide or mix of unregistered pesticides.

22. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 17 through 21, it is proposed that a civil penalty of \$ 5,500 be assessed against Respondents.

#### Count 2

23. The facts stated in paragraphs 6 through 16 are realleged and incorporated as if fully stated herein.

24. On or about October 14, 2003, and October 16, 2003, Respondent Mike Lansdown, acting in the scope of his employment, sprayed one or more of the products mentioned in paragraphs 12, 13, and 14 to the residence of Tom Pronti and distributed the product(s) to Tom Pronti, for further applications.

25. At the time of their use and distribution, the product(s) mentioned in paragraphs 12, 13, 14, 18 and 24, were unregistered pesticides. Their registrations were canceled by EPA on March 25, 1987, due to their carcinogenic (cancer-causing) properties.

26. Respondents violated Section 12(a)(2)(K) of FIFRA, 7 U.S.C. § 136j(a)(2)(K), in that they violated any cancellation order issued under the Act on grounds of unreasonable adverse effects and failed to submit a notice to the Agency in accordance with Section 6(g).

27. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 23 through 26, it is proposed that a civil penalty of \$5,500 be assessed against Respondents.

#### Section IV

#### Total Proposed Penalty

28. 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 occurring prior to March 15, 2004. The EPA proposes to assess a total civil penalty of \$11,000 against Respondents for the above-described violations.

#### Appropriateness of Proposed Penalty

29. 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)).

30. For purposes of calculating the proposed penalty, Respondents were 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 both 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.

31. Respondents have 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 Respondents to continue in business.

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

33. 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.

34. Payment of the total penalty - \$11,000 - 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

35. If Respondents do 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 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and a copy to:

Rupert G. Thomas  
Assistant Regional Counsel

EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

36. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondents have 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 Respondents wish to avoid being found in default, Respondents must file a written answer and request for hearing with:

Regional Hearing Clerk  
EPA - Region 7  
901 North 5<sup>th</sup> 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(s) has any knowledge, or shall clearly state that Respondent(s) 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(s) 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.

37. 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).

38. If Respondent(s) 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 both 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.

39. Respondents are 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

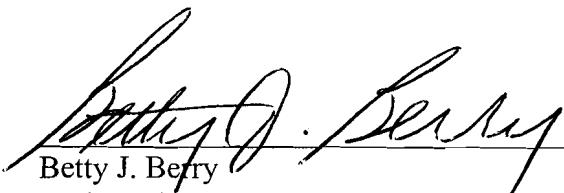
40. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondents may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's 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 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone: (913) 551-7282

41. 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.

42. 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.

06/02/06  
Date

  
Betty J. Berry  
Acting Director  
Water, Wetlands, and Pesticides Division



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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 5<sup>th</sup> 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:

David Norman  
404 NW 12<sup>th</sup> Street  
Rt. 7, Box 7061  
Ava, Missouri 65608

and

Mike Lansdown  
511 NE 2<sup>nd</sup> Street  
Ava, Missouri 65608

6-5-06  
Date

Julia A. Cacho  
Julia A. Cacho

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

RESPONDENT: David Norman  
 ADDRESS: 404 NW 12<sup>th</sup> Street  
 Rt. 7, Box 7061  
 Ava, Missouri 65608

& Mike Lansdown  
 511 NE 2<sup>nd</sup> Street  
 Ava, Missouri 65608

Prepared By: Mark K. Leshner  
 Date: 04/21/06

	Count 1	Count 2	Count 3	Count 4
<b>Appendix A</b>				
1. Statutory Violation	Sec. 12(a)(1)(A) Sec. 12(a)(1)(E)	Sec. 12(a)(2)(K)		
2. FTTS Code	1AA 1EA	2KA 2KC		
3. Violation Level	2 2	1 2		
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	14(a)(1)	14(a)(1)		
5. Size of Business Category	1	1		
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$5,500	\$5,500		
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	2	2		
7b. Human Harm	3	3		
7c. Environmental Harm	3	3		
7d. Compliance History	0	0		
7e. Culpability	2	2		
7f. Total Gravity Adjustment Value (add items 7a - 7e)	10	10		
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	None	None		
7h. Dollar Adjustment	None	None		
8. Final Penalty** (item 7h from item 6)	\$5,500	\$5,500		
Combined Total Penalty (total of all columns for line 8, above)	\$11,000			

\* 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.