

**MEMORANDUM IN SUPPORT OF
MOTION FOR ACCELERATED DECISION AS TO LIABILITY**

TABLE OF CONTENTS

I.	INTRODUCTION	5
II.	STANDARD OF REVIEW FOR ACCELERATED DECISION	5
III.	STATUTORY AND REGULATORY BACKGROUND	7
	1. Definitions	8
	2. Registration of Pesticides & Repackaging	9
	3. Pesticide Misbranding	11
	4. FIFRA-Authorized Inspections	12
IV.	FACTUAL BACKGROUND	12
V.	COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNTS 1-10, DISTRIBUTING OR SELLING UNREGISTERED PESTICIDES.	15
	1. Respondent is a “person.”	16
	2. Respondent “distributed or sold” pesticides.	16
	a. <i>EPA Inspections</i>	16
	b. <i>Respondent does not deny selling/distributing pesticides</i>	19
	3. The products were “pesticides.”	20
	4. The pesticides were “unregistered.”	20
	a. <i>Pest Control Concentrate</i>	21
	b. <i>Termite & Ant Control</i>	22
	c. <i>Contrac Pellet Rodenticide</i>	23
	d. <i>FINAL Pellet Rodenticide</i>	24
	e. <i>Talon G Pellet Rodenticide</i>	25
	f. <i>Green Block Rodenticide</i>	26
	g. <i>Red Block Rodenticide</i>	27
	h. <i>Blue Block Rodenticide</i>	28
	i. <i>Brown Block Rodenticide</i>	29
	j. <i>Professional Growth Regulator</i>	30
VI.	COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNTS 11-20, DISTRIBUTING OR SELLING MISBRANDED PESTICIDES.	31
	1. The pesticides were “misbranded.”	31
	a. <i>Pest Control Concentrate</i>	31
	b. <i>Termite & Ant Control</i>	32
	c. <i>Contrac Pellet Rodenticide</i>	33
	d. <i>FINAL Pellet Rodenticide</i>	34
	e. <i>Talon G Pellet Rodenticide</i>	35
	f. <i>Green Block Rodenticide</i>	36
	g. <i>Red Block Rodenticide</i>	37
	h. <i>Blue Block Rodenticide</i>	39

	<i>i. Brown Block Rodenticide</i>	40
	<i>j. Professional Growth Regulator</i>	41
VII.	COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNT 21, DENIAL OF EPA INSPECTION.	43
VIII.	RESPONDENT’S ALLEGED DEFENSES FAIL.	46
	1. Safety data sheets were not provided and do not suffice as labels/labeling.	47
	2. Active ingredients and warning statements are only two of several topics required to be on pesticide label/labeling.	48
	3. Annual reporting via form 3540-16 is a separate requirement from registration and labeling requirements.	49
	4. EPA is not required to notify those subject to FIFRA of their requirements under FIFRA.	49
	5. Respondent’s alleged licensure does not resolve the fact that it lacked repackaging/distribution agreements.	50
	6. There is no right to counsel at FIFRA inspections.	51
IX.	CONCLUSION	51

TABLE OF AUTHORITIES

Cases

<i>Ass'n Ben. Servs. v. Caremark Rx, Inc.</i> , 493 F.3d 841	6
<i>Doe v. Veneman</i> , 380 F.3d 807, 816 (5 th Cir. 2004)	7
<i>In re BWX Techs., Inc.</i> , 9 E.A.D. 61 (E.P.A. April 5, 2000)	5, 7
<i>In the Matter of 99 Cents Only Stores</i> , 2008 EPA ALJ LEXIS 45 (E.P.A. June 2, 2008)	15, 31
<i>In the Matter of Chempace Corp.</i> , 1997 EPA ALJ LEXIS 164 (E.P.A. October 15, 1997)	31
<i>In the Matter of Coast Wood Preserving, Inc.</i> , 2001 EPA ALJ LEXIS 28 (E.P.A. June 28, 2001)	5-7
<i>In the Matter of Everyday Group, LLC</i> , 2013 EPA ALJ LEXIS 12 (E.P.A. August 21, 2013)	7, 15, 46
<i>In the Matter of: FMC Corp.</i> , 2017 EPA ALJ LEXIS 27 (E.P.A. July 17, 2017)	5
<i>In the Matter of Green Thumb Nursery, Inc.</i> , 6 E.A.D. 782 (E.P.A. March 6, 1997)	5, 7
<i>In the Matter of Rhee Bros., Inc.</i> , 2005 EPA ALJ LEXIS 52 (E.P.A. September 27, 2005)	15
<i>In the Matter of United Global Trading, Inc.</i> , 2014 EPA ALJ LEXIS 9 (E.P.A. February 28, 2014)	31
<i>In the Matter of Venquest Trading, Inc.</i> , 2008 EPA ALJ LEXIS 44 (E.P.A. November 21, 2008)	15, 50

Statutes

7 U.S.C. § 136 <i>et seq.</i>	7, 50
7 U.S.C. § 136	8, 9, 11, 16, 20, 21, 22, 23, 24, 25, 26, 27,

	28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 47, 48
7 U.S.C. § 136a	8, 9, 10, 11, 15, 20, 37, 38, 39, 41
7 U.S.C. § 136g	12, 14, 16, 43, 46, 51
7 U.S.C. § 136j	10, 11, 12, 15, 20, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, 44, 46

Rules

Fed. R. Civ. P. 56	5
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Regulations

40 C.F.R. Part 22	5, 6
40 C.F.R. § 22.16	5
40 C.F.R. § 22.20	5, 6
40 C.F.R. § 22.24	7
40 C.F.R. § 152.15	8, 20
40 C.F.R. Part 156	11, 37, 38, 39, 40, 41, 43
40 C.F.R. § 156.10	12, 34, 35, 36, 43
40 C.F.R. § 165.70	10, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 50
40 C.F.R. § 167.3	9, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
40 C.F.R. § 167.20	10

I. INTRODUCTION

Pursuant to Sections 22.16(a) and 22.20 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Part 22”), the U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) moves for an accelerated decision as to Timothy Wilson’s, d/b/a Wilson’s Pest Control (“Respondent”) liability for the violations alleged in the Complaint. Because there are no genuine issues of material fact and Complainant is entitled to a judgment of Respondent’s liability as a matter of law, Complainant respectfully requests an order granting this motion.

II. STANDARD OF REVIEW FOR ACCELERATED DECISION

Under Part 22, an accelerated decision is appropriate “if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.” 40 C.F.R. § 22.20(a). As the Environmental Appeals Board (“EAB” or “the Board”) and U.S. E.P.A. Administrative Law Judges (“EPA ALJs” or “ALJs”) have explained, the standard for deciding motions for accelerated decision is similar to the standard for granting summary judgment set forth in Rule 56 of the Federal Rules of Civil Procedure. *See, e.g., In re BWX Techs., Inc.*, 9 E.A.D. 61, 74 (E.P.A. April 5, 2000); *In the Matter of Green Thumb Nursery, Inc.*, 6 E.A.D. 782, 793 (E.P.A. March 6, 1997); *In the Matter of: FMC Corp.*, 2017 EPA ALJ LEXIS 27, *5 (E.P.A. July 17, 2017).

“A factual dispute is material where, under the governing law, it might affect the outcome of the proceeding.” *In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *7-8 (E.P.A. June 28, 2001) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1985)). Additionally, “a factual dispute is genuine if the evidence is such that a reasonable finder of fact

could return a verdict in favor of the nonmoving party. *In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *8 (E.P.A. June 28, 2001) (citing *Anderson, supra*, at 248).

“The party moving for summary judgment has the burden of showing the absence of a genuine issue as to any material fact.” *In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *7 (E.P.A. June 28, 2001) (citing *Anderson, supra*, at 248). Part 22 states the presiding officer may render an accelerated decision “upon such limited additional evidence, such as affidavits, as he may require.” 40 C.F.R. § 22.20(a). The United States Supreme Court has held that “the decision on a motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, submitted in support or opposition to the motion.” *In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *10 (E.P.A. June 28, 2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)).

Although courts must resolve all evidentiary ambiguities and “must take the facts and all reasonable inferences from those facts in the light most favorable to the non-moving party,” *Ass’n Benefit Servs. v. Caremark RK*, 493 F.3d 841, 849 (7th Cir. 2007) (citations omitted), “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). The non-moving party “may not avoid summary judgment by resting on the allegations of its pleadings; it must come forward with specific facts showing that there is a genuine issue for trial.” *Id.* “A party opposing a properly supported motion for accelerated decision is required to ‘provide more than a scintilla of evidence on a disputed factual issue to show their entitlement to a[n] . . . evidentiary hearing: the evidence must be substantial and

probative in light of the appropriate evidentiary standard of the case.” *In the Matter of Everyday Group, LLC*, 2013 EPA ALJ LEXIS 12, *10 (E.P.A. August 21, 2013) (citing *In re BWX Techs., Inc.*, 9 E.A.D. 61, 76 (E.P.A. April 5, 2000)). The EAB has also held that a party opposing summary judgment must “raise an issue of material fact” and demonstrate that the issue is ‘genuine’ by referencing probative evidence in the record, or by producing such evidence.” *In the Matter of Green Thumb Nursery, Inc.*, 6 E.A.D. 782, 793 (E.P.A. March 6, 1997). Additionally, “the mere possibility that a factual dispute may exist, without more, is not sufficient to overcome a convincing presentation by the moving party.” *Id.* (footnote 24). Lastly, the non-moving party bears the burdens of both production and persuasion for any affirmative defenses. *In the Matter of Everyday Group, LLC*, 2013 EPA ALJ LEXIS 12, *11 (E.P.A. August 21, 2013).

The evidentiary standard must also be considered at the summary judgment stage. *In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *8 (E.P.A. June 28, 2001) (citing *Anderson, supra*, at 252). Pursuant to 40 C.F.R. § 22.24(b), the evidentiary standard for administrative litigation before the EPA is a preponderance of the evidence. *See also In the Matter of Coast Wood Preserving, Inc.*, 2001 EPA ALJ LEXIS 28, *13 (E.P.A. June 28, 2001).

III. STATUTORY AND REGULATORY BACKGROUND

Congress enacted the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, in 1947 and later amended it in 1972. FIFRA is a federal statute that regulates the manufacture, sale, distribution, and use of pesticides. “FIFRA establishes a comprehensive scheme for registering and regulating pesticides in order ‘to provide for the protection of’ humans and their environment.” *Doe v. Veneman*, 380 F.3d 807, 816 (5th Cir.

2004) (citation omitted). FIFRA grants enforcement authority to the EPA, including the authority to register pesticides and ensure that any registered pesticides comply with FIFRA's mandates.

See 7 U.S.C. § 136a.

A. Definitions

Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. The regulations at 40 C.F.R. § 152.15(a)(1) and (b) further define the term “pesticide” as any substance intended for a pesticidal purpose, and thus requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; or the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose.

Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest.

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. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “producer” to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has registered any pesticide pursuant to FIFRA.

Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” to mean the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” to mean all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except any current official publications of a variety of state or federal institutions or agencies.

B. Registration of Pesticides & Repackaging

Section 3 of FIFRA, 7 U.S.C. § 136a, requires a person to register a pesticide by filing an application with the EPA before distributing or selling the pesticide to another person. EPA then

approves or disapproves of the application to register a pesticide. 7 U.S.C. § 136a(c)(3). 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.

Generally, if a person repackages a pesticide, they must obtain a new registration for the new pesticide product. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a new registration for the pesticide or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA. Pursuant to 40 C.F.R. § 165.70(b), a person may repackage a registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all the following conditions in 40 C.F.R. § 165.70(b) are satisfied:

- a. The repackaging results in no change to the pesticide formulation.
- b. One of the following conditions regarding a registered refilling establishment is satisfied:
 - i. The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.
 - ii. The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.
- c. The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.
- d. The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.
- e. The pesticide product is labeled with the product's label with no changes except the

addition of an appropriate net contents statement and the refiller's EPA establishment number.

C. Pesticide Misbranding

Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states that a pesticide is misbranded if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content.

40 C.F.R. Part 156 provides labeling requirements for pesticides pursuant to FIFRA. 40

C.F.R. § 156.10 states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in this part. Under 40 C.F.R. § 156.10, the contents of a label must show clearly and prominently the following: the name, brand, or trademark under which the product is sold; the name and address of the producer, registrant, or person for whom produced; the net contents; the product registration number; the producing establishment number; an ingredient statement; hazard and precautionary statements for human and domestic animal hazards and environmental hazards; directions for use; and the use classification.

D. FIFRA-Authorized Inspections

Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1), officers or employees of EPA are authorized to enter at reasonable times any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Pursuant to Section 12 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by this subchapter.

IV. FACTUAL BACKGROUND

On June 15, 2022, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection of Respondent's facility located at 2400 N. Grand Boulevard, St. Louis, MO 63106 ("Grand Facility") to determine compliance with FIFRA and its implementing regulations. CX1. According to the inspection report, during the inspection, EPA observed that the following ten substances were being distributed, sold, offered for sale, held for distribution, and/or held for sale

at the Grand Facility:

- a. Contrac Ready-To-Use Place Pacs (“Contrac Pellet Rodenticide”) repackaged by Respondent into 1.5 ounce net weight insufficiently labelled bags;
- b. Green colored rodenticide blocks (“Green Block Rodenticide”), which Respondent’s representative, Tim Wilson, told EPA inspectors were the same product as Contrac Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags;
- c. FINAL Ready-To-Use Place Pack Pellets (“FINAL Pellet Rodenticide”) repackaged by Respondent into 0.88 ounce net weight insufficiently labeled bags;
- d. Red colored rodenticide blocks (“Red Block Rodenticide”), which Mr. Wilson told EPA inspectors were the same product as FINAL Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags;
- e. Talon G Bait Pack Mini-Pellets (“Talon G Pellet Rodenticide”) repackaged by Respondent into 0.88 ounce net weight insufficiently labeled bags;
- f. Blue colored rodenticide blocks (“Blue Block Rodenticide”), which Mr. Wilson told EPA inspectors were the same product as Talon G Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags;
- g. Brown colored rodenticide blocks (“Brown Block Rodenticide”), which Mr. Wilson told EPA inspectors were “Maki Mini Blocks” repackaged by Respondent into unlabeled clear resealable bags;
- h. Wilson’s Pest Control Professional Growth Regulator (“Professional Growth Regulator”), which Mr. Wilson told EPA inspectors was “Tekko Pro Insect

Growth Regulator Concentrate” repackaged by Respondent into insufficiently labeled small white bottles;

- i. Professional Pest Control Concentrate (“Pest Control Concentrate”) repackaged by Respondent into insufficiently labeled 16 ounce and 32 ounce bottles.

According to the registration number on the bottles, Pest Control Concentrate is a repackaging of a product called “Tengard HG Termiticide/Insecticide”; and

- j. Wilson’s Termite & Carpenter Ant Control (“Termite & Ant Control”) repackaged by Respondent into insufficiently labeled 16 ounce bottles. According to the registration number on the bottles, Termite & Ant Control is a repackaging of a product called “Monterey Termite and Carpenter Ant Control.”

CX1. Respondent has not registered any of the pesticides identified above. CX1 at 2. During the inspection, Mr. Wilson admitted that he did not have a written contract with any of the registrants to repackaging, distribute, or sell of any of the pesticides identified above. CX1 at 8. During the inspection, each of the pesticides identified above was not labeled with a full, unchanged, EPA-approved registered label.¹ CX1.

On July 27, 2023, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA attempted to conduct an inspection (attempted inspection) of Respondent’s facility located at 2616 Woodson Road in Overland, MO 63114 (Woodson Facility) to determine compliance with FIFRA and its implementing regulations. On July 27, 2023, Respondent refused to allow EPA to inspect the Woodson Facility. CX17; CX28 (Amelia Patterson’s Memo on Wilson’s Pest

¹ It should be noted that a refiller may change only the net contents and the EPA registration number on a label pursuant to 40 CFR § 165.70(b)(5).

Control, dated July 28, 2023).

Complainant filed the original Complaint in this matter on February 8, 2024. On September 5, 2024, Complainant filed an Amended Complaint in this matter, which was accepted by the Court and is now the governing Complaint in this matter pursuant to this Court's September 5, 2024 Order. This Court issued a Prehearing Order on March 20, 2024.

V. COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNTS 1-10 DISTRIBUTING OR SELLING UNREGISTERED PESTICIDES.

Complainant alleges in Counts 1-10 that Respondent violated Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) by distributing or selling pesticides that are not registered under FIFRA. In order to support a Motion for Accelerated Decision for these violations, Complainant must show that there are no genuine issues of material fact and that Complainant is entitled to judgment as a matter of law for each of the following²: (1) the respondent is a "person," (2) the respondent "distributed or sold" the products at issue, (3) the products at issue are "unregistered," and (4) the products at issue were "pesticides." *In the Matter of Everyday Group, LLC*, 2013 EPA ALJ LEXIS 12, *17 (E.P.A. August 21, 2013) (citing *In the Matter of Bullen Cos.*, 9 E.A.D. 620, 622 (E.P.A. February 1, 2001)).

² EPA ALJs have addressed and found liability for violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on accelerated decision. See: *In the Matter of: Everyday Group, LLC, Respondent*, 2013 WL 4648137; *In the Matter of 99 Cents Only Stores* 2008 EPA ALJ LEXIS 45 (E.P.A. June 2, 2008); *In the Matter of Venquest Trading, Inc.*, 2008 EPA ALJ LEXIS 44 (E.P.A. November 21, 2008); *In the Matter of Rhee Bros., Inc.*, 2005 EPA ALJ LEXIS 52, (E.P.A. September 27, 2005).

1. Respondent is a “person.”

Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Respondent Timothy Wilson operates a sole proprietorship under the registered fictitious name “Wilson’s Pest Control,” and is therefore a person via status as an individual. Additionally, Respondent admits in his Answer that he is a person. Answer p. 2. Therefore, there is no genuine issue of material fact with respect to this element for Counts 1-10 alleged in the Complaint.

2. Respondent “distributed or sold” pesticides.

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. As described below, the EPA found that Respondent distributed, sold, offered for sale, held for distribution, or held for sale pesticides at Respondent’s Grand Facility. Additionally, Respondent does not deny distributing or selling pesticides.

a. EPA Inspections

On June 15, 2022, pursuant to the inspection authority found in Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection of Respondent’s Grand Facility to determine compliance with FIFRA and its implementing regulations. *See* CX1, CX2. Specifically, the inspectors told Mr. Wilson they were interested in seeing what pesticides he sold or produced. CX1 at 3. According to the inspection report, Mr. Wilson told the inspectors he “sells pesticides to homeowners” and that “Wilson’s offers for sale many different types of pesticide products that

control and kill unwanted pests such as mice, rats, roaches, and ants.” CX1 at 2-3. At the inspection, Mr. Wilson shared with inspectors several products that he held for distribution/sale, described in further detail below. *See* CX1; CX2.

First, Mr. Wilson showed the inspectors Pest Control Concentrate repackaged by Respondent into misbranded 16 ounce and 32 ounce bottles (Pest Control Concentrate). CX1 at 4. Mr. Wilson explained to the inspectors that he takes a registered pesticide product “Termite Kill III” and repackages it into 16 ounce and 32 ounce bottles that he sells at the Grand Facility, and which inspectors photographed. CX1 at 4; CX2 at 5-15, 27-29. According to the registration number on the bottles, Pest Control Concentrate is a repackage of a registered pesticide product called “Tengard HG Termiticide/Insecticide.” CX1 at 4; CX2 at 5-15, 27-29. According to the inspection report, one of the inspectors observed Mr. Wilson selling a bottle of Professional Pest Control Concentrate to a customer during the inspection. CX1 at 8.

Second, Mr. Wilson showed the inspectors Termite & Ant Control repackaged by Respondent into misbranded 16 ounce bottles. CX1 at 5-6. Mr. Wilson repackages and holds for sale this product at the Grand Facility, where the inspectors photographed it. CX1 at 5-6; CX2 at 20-26. According to the registration number on the bottles, Termite & Ant Control is a repackage of a registered pesticide product called “Monterey Termite and Carpenter Ant Control.” CX1 at 5-6; CX2 at 20-26. Mr. Wilson told the inspectors that he tells customers to refer to the internet for complete labelling of this product. CX1 at 5-6.

Third, Mr. Wilson showed the EPA inspectors Contrac Pellet Rodenticide repackaged by Respondent into 1.5 ounce net weight misbranded bags. CX1 at 6. The inspectors took photos of these products. CX1 at 6-7; CX2 40-43.

Fourth, Mr. Wilson showed the EPA inspectors FINAL Pellet Rodenticide repackaged by Respondent into 0.88 ounce net weight misbranded bags. CX1 at 6. The inspectors took photos of these products. CX1 at 6-7; CX2 at 30-35, 86.

Fifth, Mr. Wilson showed the EPA inspectors Talon G Pellet Rodenticide repackaged by Respondent into 0.88 ounce net weight misbranded bags. CX1 at 6. The inspectors took photos of these products. CX1 at 6-7; CX2 at 36-39.

Mr. Wilson told inspectors that he sells the same rodenticide products offered in throw packs (the three pesticides just described) in block form to customers. CX1 at 7. Mr. Wilson told the inspectors that he tells customers to refer to the internet for complete labelling of the blocks. CX1 at 7.

Sixth, Mr. Wilson showed the inspectors Green Block Rodenticide, which Respondent's representative, Tim Wilson, told EPA inspectors were the same product as Contrac Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 47, 52, 76-78, 88.

Seventh, Mr. Wilson showed the inspectors Red Block Rodenticide, which Mr. Wilson told EPA inspectors were the same product as FINAL Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 48, 51, 89.

Eighth, Mr. Wilson showed the inspectors Blue Block Rodenticide, which Mr. Wilson told EPA inspectors were the same product as Talon G Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 49, 50, 90.

Ninth, Mr. Wilson Brown showed the inspectors Brown Block Rodenticide, which Mr. Wilson told EPA inspectors were "Maki Mini Blocks" repackaged by Respondent into unlabeled

clear resealable bags. CX1 at 7; CX2 at 53, 54, 90.

Tenth, Mr. Wilson showed the inspectors Professional Growth Regulator, which Mr. Wilson told EPA inspectors was “Tekko Pro Insect Growth Regulator Concentrate” repackaged by Respondent into misbranded small white bottles. CX2 at 56-70, 72. According to the inspection report, one of the inspectors observed Mr. Wilson selling a bottle of Wilson’s Pest Control Professional Growth Regulator to a customer during the inspection. CX1 at 8.

b. Respondent does not deny selling/distributing pesticides

In his Answer, Respondent does not deny selling or distributing pesticides. Respondent states that he has submitted annually an EPA Form 3540-16 to EPA Headquarters, which lists all products distributed, sold, or offered for sale and/or held for distribution and/or repackaged and/or relabeled by Respondent. Answer at 3. EPA Form 3540-16 is the form all pesticide-producing establishments must submit to the EPA every year.³ Respondent’s exhibit RX2 appears to be an EPA Form 3540-16 for reporting year 2021, which lists “Reality Termiticide/Insecticide,” “Termite Kill III,” “Monterey Termite & Carpet Ant Control,” and “Demon Max Insecticide.” RX2 at 2. Additionally, Respondent’s exhibit RX1 appears to be a letter to the EPA stating that he submits an EPA Form 3540-16 for several chemicals: Demon Max Insecticide, Tempo SC, Cyoara, Pemethrin, Bifenthrin, Dihacnone, Bromethalin, and Brodfacum. RX1. In its Answer, Respondent also claims that as a licensed pest control vendor and distributor, Respondent was authorized to distribute and/or sell pesticides. Answer at 4.

Based on the statements made by Mr. Wilson and his employees to both the MDA and the EPA inspectors, as well as the appearance/presentation of the ten pesticide products at the

³ <https://www.epa.gov/compliance/pesticide-establishment-registration-and-reporting>

store during several inspections, Respondent clearly held for distribution/sale the ten pesticides described in this section. Therefore, based on the evidence described above, there is no genuine issue of material fact with respect to this element for Counts 1-10 alleged in the Complaint.

3. The products were “pesticides.”

Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines pesticide as, inter alia, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 40 C.F.R. § 152.15(a)(1) further defines pesticide as a substance where, inter alia, the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

Complainant alleges in paragraph 32 of the Complaint that several products are pesticides. Respondent admits in his Answer that the pesticides listed in paragraph 32 of the Complaint are pesticides under 7 U.S.C. § 136(u) and 40 C.F.R. § 152.15(a)(1). Answer at 3. Therefore, there is no genuine issue of material fact with respect to this element for Counts 1-10 alleged in the Complaint.

4. The pesticides were “unregistered.”

Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), requires a person to register a pesticide in accordance with the procedure described in Section 3(c) of FIFRA, 7 U.S.C. § 136a(c), before distributing or selling it to another person. 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.

Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has

registered any pesticide pursuant to FIFRA. If a registered pesticide is repackaged by a person, the repackaged product must also obtain registration as a new pesticide unless the repackager meets several requirements. 40 C.F.R. § 165.70(b). Pursuant to 40 C.F.R. § 165.70(b), repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of the FIFRA. One of the requirements to qualify for protection under an existing registration is to enter a written contract with the registrant of a pesticide to repackage the pesticide and to use the same label. 40 C.F.R. § 165.70(b)(3).

Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repackage, label, relabel, or otherwise change the container of any pesticide or device. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “producer” to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device.

At the time of the EPA inspection at the Grand Facility, Respondent was not a registrant for any pesticide. *See* CX1 at 2. However, during the EPA inspection at the Grand Facility, Mr. Wilson explained to the EPA inspectors how he repackages the ten pesticides described in Section 2 above. CX1.

a. Pest Control Concentrate

First, Respondent explained to the inspectors that he takes a registered pesticide product

“Termite Kill III” and repackages it into 16 ounce and 32 ounce bottles called Pest Control Concentrate that he sells at the Grand Facility, and which inspectors photographed. CX1 at 4; CX2 at 5-15, 27-29. The pesticide registration number on the bottles for Pest Control Concentrate is for a registered pesticide called “Tengard HG Termiticide/Insecticide.” CX1 at 4; CX2 at 5-15, 27-29. Respondent’s 16 ounce and 32 ounce bottles of Pest Control Concentrate, described in CX1 at 4 and seen in CX2 at 5, are not themselves registered pesticide products with the EPA. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3, Respondent produced a pesticide by manufacturing, preparing, or processing a registered pesticide, Tengard HG Termiticide/Insecticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise changing the container of an existing registered pesticide, Tengard HG Termiticide/Insecticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide by repackaging a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for its new pesticide, Pest Control Concentrate, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Tengard HG Termiticide/Insecticide. CX1 at 8. Therefore, Respondent’s pesticide product Pest Control Concentrate is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

b. Termite & Ant Control

Second, Respondent showed the inspectors Termite & Ant Control repackaged by

Respondent into misbranded 16 ounce bottles. CX1 at 5-6. Mr. Wilson repackages and holds for sale this product at the Grand Facility, where the inspectors photographed it. CX1 at 5-6; CX2 at 20-26. The pesticide registration number on the bottles for Termite & Ant Control is for a registered pesticide called “Monterey Termite and Carpenter Ant Control.” CX1 at 5-6; CX2 at 20-26. Respondent’s product Termite & Ant Control, described in CX1 at 5-6 and seen in CX2 at 20, is not a registered pesticide product with the EPA. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing a registered pesticide, Monterey Termite and Carpenter Ant Control, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, “Monterey Termite and Carpenter Ant Control,” into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide by repackaging a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for its new pesticide, Termite & Ant Control, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because it did not enter into a contract with the registrant for Monterey Termite and Carpenter Ant Control. CX1 at 8. Therefore, Respondent’s pesticide product Termite & Ant Control is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

c. Contrac Pellet Rodenticide

Third, Respondent showed the EPA inspectors Contrac Pellet Rodenticide repackaged by Respondent into 1.5 ounce net weight misbranded bags. CX1 at 6. This product was held for sale

by Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and are not intended for individual sale. CX1 at 41, 43. The Contrac Pellet Rodenticide throw packs say, “individual sale is prohibited by law.” CX2 at 41, 43.⁴ The registered version of this product is a 16-pound container of 174 throw packs.⁵ Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Contrac Pellet Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Contrac Pellet Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for his new pesticide, Contrac Pellet Rodenticide, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Contrac Pellet Rodenticide. CX1 at 8. Therefore, Respondent’s pesticide product Contrac Pellet Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

d. FINAL Pellet Rodenticide

Fourth, Respondent showed the EPA inspectors FINAL Pellet Rodenticide repackaged by Respondent into 0.88 ounce net weight misbranded bags. CX1 at 6. This product was held for

⁴ See also CX3 at 1, letter approving updated labeling for Contrac Rodenticide Ready-to-Use Place Pacs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

⁵ https://www.belllabs.com/wp-content/uploads/2023/10/Contrac_Rodenticide_Place_Pacs_16lb_12455-76_243PP-4_2008-9_CP1715_US_10252018_S-1.pdf

sale by Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and are not intended for individual sale. CX1 at 34. The FINAL Pellet Rodenticide throw packs say, “individual sale is prohibited by law.” CX2 at 34.⁶ The registered version of this product is a 16 pound container of 291 throw packs.⁷ Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, FINAL Pellet Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, FINAL Pellet Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for his new pesticide, FINAL Pellet Rodenticide, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for FINAL Pellet Rodenticide. CX1 at 8. Therefore, Respondent’s pesticide product FINAL Pellet Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

e. Talon G Pellet Rodenticide

Fifth, Respondent showed the EPA inspectors Talon G Pellet Rodenticide repackaged by Respondent into 0.88 ounce net weight misbranded bags. This product was held for sale by

⁶ See also CX4 at 1, letter approving updated labeling for FINAL Rodenticide Ready-to-Use Place Pacs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

⁷ https://www.belllabs.com/wp-content/uploads/2023/10/FP2925_SPECIMEN_12455-91_Final_Rodenticide_ready_to_use_Place_pacs_291_x_.88_oz_PP_USA_2417-2_243FP-3_12282018_1.pdf

Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and are not intended for individual sale. CX1 at 38. The Talon G Pellet Rodenticide throw packs say, “individual sale prohibited by law.” CX2 at 38.⁸ The registered version of this product is an 8 pound, 4 ounce container of 150 throw packs.⁹ Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Talon G Pellet Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Talon G Pellet Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for his new pesticide, Talon G Pellet Rodenticide, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Talon G Pellet Rodenticide. CX1 at 8. Therefore, Respondent’s pesticide product Talon G Pellet Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

f. Green Block Rodenticide

Sixth, Respondent showed the inspectors Green Block Rodenticide, which Respondent

⁸ See also CX6 at 1 & 9, letter dated July 3, 2012 approving updated labeling for Talon-G Rodenticide Bait Pack Mini Pellets (“this submission revises the Use Restrictions to the labeling of the product... you may distribute or sell existing stocks of this product with current labeling for eighteen (18) months from the date of this letter” and “Individual Sale Prohibited by Law.”)

⁹ <https://www.syngentapmp.com/current-label/talon-g-bait-pack>

told EPA inspectors were the same product as Contrac Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 47, 52, 76-78, 88. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Green Block Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Green Block Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to both obtain registration for his new pesticide, Green Block Rodenticide, and to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Green Block Rodenticide. CX1 at 8. Therefore, Respondent's pesticide product Green Block Rodenticide, is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

g. Red Block Rodenticide

Seventh, Respondent showed the inspectors Red Block Rodenticide, which Respondent told EPA inspectors were the same product as FINAL Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 48, 51, 89. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Red Block Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also

pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Red Block Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to both obtain registration for its new pesticide, Red Block Rodenticide, and to meet the conditions for exemption in 40 C.F.R. § 165.70 because it did not enter into a contract with the registrant for Red Block Rodenticide. CX1 at 8. Therefore, Respondent's pesticide product Red Block Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

h. Blue Block Rodenticide

Eighth, Mr. Wilson showed the inspectors Blue Block Rodenticide, which Mr. Wilson told EPA inspectors were the same product as Talon G Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 46, 49, 50, 90. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Blue Block Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Blue Block Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to both obtain registration for his new pesticide, Blue Block Rodenticide, and to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Blue Block Rodenticide. CX1 at 8. Therefore, Respondent's pesticide product Blue Block Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

i. Brown Block Rodenticide

Ninth, Mr. Wilson Brown showed the inspectors Brown Block Rodenticide, which Mr. Wilson told EPA inspectors were "Maki Mini Blocks" repackaged by Respondent into unlabeled clear resealable bags. CX1 at 7; CX2 at 53, 54, 90. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Brown Block Rodenticide, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Brown Block Rodenticide, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to both obtain registration for his new pesticide, Brown Block Rodenticide, and to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Brown Block Rodenticide. CX1 at 8. Therefore, Respondent's pesticide product Brown Block Rodenticide is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

j. Professional Growth Regulator

Tenth, Mr. Wilson showed the inspectors Professional Growth Regulator, which Mr. Wilson told EPA inspectors was “Tekko Pro Insect Growth Regulator Concentrate” repackaged by Respondent into insufficiently labeled small white bottles. CX2 at 56-70, 72. At the EPA inspection, “Mr. Wilson explained that he repackages the Tekko product into these small bottles and puts his labeling on them.” CX1 at 8. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), Respondent produced a pesticide by manufacturing, preparing, or processing an existing registered pesticide, Tekko Pro Insect Growth Regulator, into a new form previously unregistered and unapproved by EPA for sale or distribution. Also pursuant to 40 C.F.R. § 167.3, Respondent produced a pesticide by repackaging, labeling, relabeling, or otherwise change the container of an existing registered pesticide, Tekko Pro Insect Growth Regulator, into a new form previously unregistered and unapproved by the EPA for sale or distribution. Therefore, Respondent produced a pesticide pursuant to 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

Respondent failed to obtain registration for his new pesticide, Professional Growth Regulator, and also failed to meet the conditions for exemption in 40 C.F.R. § 165.70 because he did not enter into a contract with the registrant for Tekko Pro Insect Growth Regulator. CX1 at 8. Therefore, Respondent’s pesticide product Professional Growth Regulator is an unregistered pesticide product pursuant to 40 C.F.R. § 165.70.

In conclusion, at the time of the EPA inspection at the Grand Facility, Respondent repackaged ten pesticides at this location. *See generally* CX1. Repackaging pesticides constitutes producing pesticides under 40 C.F.R. § 167.3. Respondent did not register the pesticides that he produced, which means Respondent produced unregistered pesticides which he then

sold/distributed. Based on the evidence above, there is no genuine issue of material fact with respect to this element for Counts 1-10 alleged in the Complaint.

VI. COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNTS 11-20, DISTRIBUTING OR SELLING MISBRANDED PESTICIDES.

1. The pesticides were “misbranded.”

Complainant alleges in Counts 11-20 that Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing or selling pesticides that are misbranded. In order to support a Motion for Accelerated Decision, Complainant must show that there are no genuine issues of material fact, and that Complainant is entitled to judgment as a matter of law for each of the following¹⁰: (1) Respondent is a person, (2) who distributed or sold, (3) any pesticide, (4) that is adulterated or misbranded. For analysis regarding the first three elements, see Section V(1), (2), and (4) above.

a. Pest Control Concentrate

First, Respondent held for distribution/sale 16 ounce and 32 ounce bottles of Pest Control Concentrate at the Grand Facility, and which the EPA inspectors photographed. CX1 at 4; CX2 at 5-15, 27-29. The pesticide registration number on the bottles for Pest Control Concentrate is for a registered pesticide called Tengard HG Termiticide/Insecticide. CX1 at 4; CX2 at 5-15, 27-

¹⁰ EPA ALJs have addressed motions for accelerated decision and found liability for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). *See In the Matter of United Global Trading, Inc.*, 2014 EPA ALJ LEXIS 9 (E.P.A. February 28, 2014) (holding that Respondent unlawfully sold/distributed the pesticide Royalty Black Disinfectant which was missing from its label the product registration number, producing establishment number, ingredient statement, and instructions for use based upon an inspection report and photographs); *In the Matter of 99 Cents Only Stores*, 2008 EPA ALJ LEXIS 45 (E.P.A. June 2, 2008) (holding that the sale/distribution of the pesticide PiC Boric Acid with labels that were “inside out, upside down and/or misaligned” based on an inspection report and photographs); *In the Matter of Chempace Corp.* 1997 EPA ALJ LEXIS 164 (E.P.A. October 15, 1997) (holding that Respondent sold/distributed three misbranded pesticides – Uni-Quat, Complete, and Eradicate – because they were missing an active EPA establishment number on their labels).

29.

Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use. At the time of the EPA inspection, both the 16 and 32 ounce bottles of Pest Control Concentrate were missing directions for use. CX2 at 5-15. Sections 2(q)(2)(B)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(B)-(C), state that a pesticide is misbranded if the labeling does not contain a statement of the use classification. At the time of the EPA inspection, both the 16 and 32 ounce bottles of Professional Pest Control Concentrate were missing a statement of the use classification. CX2 at 5-15.

Because the product Pest Control Concentrate produced and sold or distributed by Respondent lacked directions for use and a statement of the use classification, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(F) & (2)(B)-(C). Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

b. Termite & Ant Control

Second, Respondent held for distribution/sale Termite & Ant Control in 16 ounce bottles. CX1 at 5-6. Mr. Wilson repackaged and held for sale this product at the Grand Facility, where the inspectors photographed it. CX1 at 5-6; CX2 at 20-26. According to the registration number on the Termite & Ant Control bottles, Termite & Ant Control is a repackaging of a registered pesticide called Monterey Termite and Carpenter Ant Control.¹¹ CX1 at 5-6; CX2 at 20-26.

¹¹ See also CX9 at 1, letter dated May 30, 2014 approving updated labeling for Menace 2.4% ME Insecticide, a precursor to the repackaged product Monterey Termite and Carpenter Ant Control; CX2 at 21 (Wilson's Termite & Carpenter Ant Control label from Grand Facility Inspection displaying EPA Reg. No. 228-459-54705); https://ordspub.epa.gov/ords/pesticides/f?p=PPLS:8:::::P8_PUID,P8_RNUM:496806,228-459-54705.

Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use. At the time of the EPA inspection, the product Termite & Ant Control was missing directions for use. CX2 at 20-26. Sections 2(q)(2)(B)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(B)-(C), state that a pesticide is misbranded if the labeling does not contain a statement of the use classification. At the time of the EPA inspection, the product Termite & Ant Control was missing a statement of the use classification. CX2 at 20-26.

Because the product Termite & Ant Control produced and sold or distributed by Respondent lacked directions for use and a statement of the use classification, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(F) & (2)(B)-(C). Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

c. Contrac Pellet Rodenticide

Third, Respondent held for distribution/sale Contrac Pellet Rodenticide in 1.5 ounce net weight bags. CX1 at 6. This product was held for sale by Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and say, “individual sale is prohibited by law.”¹² CX2 at 40-43.

Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use. At the time of the EPA inspection, the product Contrac Pellet Rodenticide was missing directions for use. CX2 at 40-43. Specifically, the throw packs have a section titled “Directions for Use,” but in that

¹² See also CX3 at 1, letter dated September 28, 2015 approving updated labeling for Contrac Rodenticide Ready-to-Use Place Pacs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

section, it says “See outer package label for complete directions for use, including use restrictions, and application directions. It is illegal to sell this product unless it is accompanied by a complete set of its accepted labeling.” CX2 at 43. 40 C.F.R. § 156.10(a)(1)(vii) states that a pesticide label must have hazard and precautionary statements for human, domestic animal, and environmental hazards. At the time of the EPA inspection, the product Contrac Pellet Rodenticide was missing hazard and precautionary statements for human, domestic animal, and environmental hazards. CX2 at 40-43.

Because the product Contrac Pellet Rodenticide produced and sold or distributed by Respondent lacked directions for use and hazard and precautionary statements for human, domestic animal, and environmental hazards, it was misbranded pursuant to 7 U.S.C. § 136(q)(1)(F) and 40 C.F.R. § 156.10(a)(1)(vii). Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

d. FINAL Pellet Rodenticide

Fourth, Respondent held for distribution/sale FINAL Ready-To-Use Place Pack Pellets in 0.88 ounce net weight insufficiently-labeled bags (FINAL Pellet Rodenticide). CX1 at 6. This product was held for sale by Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and are not intended for individual sale. CX2 at 34. The FINAL Pellet Rodenticide throw packs say, “individual sale is prohibited by law.”¹³ CX2 at 34.

Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use. At the time of the

¹³ See also CX4 at 1 & 12, letter dated September 28, 2015 approving updated labeling for FINAL Rodenticide Ready-to-Use Place Packs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling” and “Individual Sale is Prohibited by Law.”)

EPA inspection, the product FINAL Pellet Rodenticide was missing complete directions for use. CX2 at 30-35. 40 C.F.R. § 156.10(a)(1)(vii) states that a pesticide label must have hazard and precautionary statements for human, domestic animal, and environmental hazards. At the time of the EPA inspection, the product FINAL Pellet Rodenticide throw packs said, “see label on outer packaging for additional precautionary information.” CX2 at 31. At the time of the EPA inspection, the product FINAL Pellet Rodenticide was missing hazard and precautionary statements. CX2 at 30-35.

Because the product FINAL Pellet Rodenticide produced and sold or distributed by Respondent lacked directions for use and hazard and precautionary statements for human, domestic animal, and environmental hazards, it was misbranded pursuant to 7 U.S.C. § 136(q)(1)(F) and 40 C.F.R. § 156.10(a)(1)(vii). Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

e. Talon G Pellet Rodenticide

Fifth, Respondent held for distribution/sale Talon G Pellet Rodenticide in 0.88 ounce net weight insufficiently-labeled bags. This product was held for sale by Respondent in the form of “throw packs,” which are pre-packaged bags with incomplete labelling and are not intended for individual sale. CX2 at 38. The Talon G Pellet Rodenticide throw packs say, “individual sale prohibited by law.”¹⁴ CX2 at 38.

Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is

¹⁴ See also CX6 at 1 & 9, letter dated July 3, 2012 approving updated labeling for Talon-G Rodenticide Bait Pack Mini Pellets (“this submission revises the Use Restrictions to the labeling of the product... you may distribute or sell existing stocks of this product with current labeling for eighteen (18) months from the date of this letter” and “Individual Sale Prohibited by Law.”)

misbranded if the labeling accompanying it does not contain directions for use. At the time of the EPA inspection, the product Talon G Pellet Rodenticide was missing directions for use. CX2 at 30-35. Specifically, the throw packs state, “read the entire directions for use and conditions of sale and limitation of warranty and liability on the outer package before buying or using this product.” CX2 at 38. 40 C.F.R. § 156.10(a)(1)(vii) states that a pesticide label must have precautionary statements for human, domestic animal, and environmental hazards. At the time of the EPA inspection, the product Talon G Pellet Rodenticide was missing precautionary statements for human, domestic animal, and environmental hazards. CX2 at 30-35.

Because the product Talon G Pellet Rodenticide produced and sold or distributed by Respondent lacked directions for use and hazard and precautionary statements for human, domestic animal, and environmental hazards, it was misbranded pursuant to 7 U.S.C. § 136(q)(1)(F) and 40 C.F.R. § 156.10(a)(1)(vii). Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

f. Green Block Rodenticide

Sixth, Respondent held for distribution/sale Green Block Rodenticide, which Respondent told EPA inspectors were the same product as Contrac Pellet Rodenticide, in repackaged by Respondent into unlabeled clear resealable bags.¹⁵ CX1 at 7; CX2 at 46, 47, 52.

Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. At the time of the inspection, Green Block

¹⁵ See also CX3 at 1 & 7, letter dated September 28, 2015 approving updated labeling for Contrac Rodenticide Ready-to-Use Place Packs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling” and “Individual Sale is Prohibited by Law.”)

Rodenticide lacked a label containing a registration number. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment. At the time of the inspection, Green Block Rodenticide lacked a label containing any directions for use. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. At the time of the inspection, Green Block Rodenticide lacked a label containing an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. 40 C.F.R. Part 156 sets forth additional labeling requirements. At the time of the EPA inspection, Green Block Rodenticide lacked any labeling, and was therefore missing all specific information described 40 C.F.R. Part 156.

Because the Green Block Rodenticide produced and sold or distributed by Respondent lacked any labeling, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(D) & (F), 7 U.S.C. §§ 136(q)(2)(A)-(C), and 40 C.F.R. Part 156. Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

g. Red Block Rodenticide

Seventh, Respondent held for distribution/sale Red Block Rodenticide, which

Respondent told EPA inspectors were the same product as FINAL Pellet Rodenticide repackaged by Respondent into unlabeled clear resealable bags.¹⁶ CX1 at 7; CX2 at 46, 48, 51.

Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. At the time of the inspection, Red Block Rodenticide lacked a label containing a registration number. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under Section 136a(d) of this title, are adequate to protect health and the environment. At the time of the inspection, Green Block Rodenticide lacked a label containing any directions for use. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. At the time of the inspection, Red Block Rodenticide lacked a label containing an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. 40 C.F.R. Part 156 sets forth additional labeling requirements. At the time of the EPA inspection, Red Block Rodenticide lacked any labeling,

¹⁶ See also CX4 at 1, letter dated September 28, 2015 approving updated labeling for FINAL Rodenticide Ready-to-Use Place Pacs (“you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

and was therefore missing all specific information described 40 C.F.R. Part 156.

Because the Red Block Rodenticide produced and sold or distributed by Respondent lacked any labeling, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(D) & (F), 7 U.S.C. §§ 136(q)(2)(A)-(C), and 40 C.F.R. Part 156. Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

h. Blue Block Rodenticide

Eighth, Respondent held for distribution/sale Blue Block Rodenticide, which Respondent told EPA inspectors were the same product as Talon G Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags.¹⁷ CX1 at 7; CX2 at 46, 49, 50.

Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. At the time of the inspection, Blue Block Rodenticide lacked a label containing a registration number. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment. At the time of the inspection, Blue Block Rodenticide lacked a label containing any directions for use. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address

¹⁷ See also CX6 at 1, letter dated July 3, 2012 approving updated labeling for Talon-G Rodenticide Bait Pack Mini Pellets (“this submission revises the Use Restrictions to the labeling of the product... you may distribute or sell existing stocks of this product with current labeling for eighteen (18) months from the date of this letter.”)

of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. At the time of the inspection, Blue Block Rodenticide lacked a label containing an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. 40 C.F.R. Part 156 sets forth additional labeling requirements. At the time of the EPA inspection, Blue Block Rodenticide lacked any labeling, and was therefore missing all specific information described 40 C.F.R. Part 156.

Because the Blue Block Rodenticide produced and sold or distributed by Respondent lacked any labeling, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(D) & (F), 7 U.S.C. §§ 136(q)(2)(A)-(C), and 40 C.F.R. Part 156. Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

i. Brown Block Rodenticide

Ninth, Respondent held for distribution/sale Brown Block Rodenticide, which Respondent told EPA inspectors were “Maki Mini Blocks”, in block form, repackaged by Respondent into unlabeled clear resealable bags.¹⁸ CX1 at 7; CX2 at 53, 54, 55.

Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. At the time of the inspection, Brown Block Rodenticide lacked a label containing a registration number. Section 2(q)(1)(F) of FIFRA, 7

¹⁸ See also CX5 at 1, letter dated November 18, 2015 approving updated labeling for Maki Mini Blocks. (“After 18 months, you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment. At the time of the inspection, Brown Block Rodenticide lacked a label containing any directions for use. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. At the time of the inspection, Brown Block Rodenticide lacked a label containing an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content. 40 C.F.R. Part 156 sets forth additional labeling requirements. At the time of the EPA inspection, Brown Block Rodenticide lacked any labeling, and was therefore missing all specific information described 40 C.F.R. Part 156.

Because the Brown Block Rodenticide produced and sold or distributed by Respondent lacked any labeling, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(D) & (F), 7 U.S.C. §§ 136(q)(2)(A)-(C), and 40 C.F.R. Part 156. Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

j. Professional Growth Regulator

Tenth, Respondent showed the inspectors Professional Growth Regulator, which Mr. Wilson told EPA inspectors was “Tekko Pro Insect Growth Regulator Concentrate” in

insufficiently labeled small white bottles. CX1 at 8; *see* CX7. Mr. Wilson repackaged and held for distribution/sale this product at the Grand Facility, where the inspectors photographed it. CX1 at 8; CX2 at 56-69. The registration number on the bottles confirms that the Professional Growth Regulator is a repackage of a registered pesticide called “Tekko Pro Insect Growth Regulator Concentrate.”¹⁹ CX1 at 8; *see* CX2 at 56-69 and CX7.

Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced. At the time of the EPA inspection, the product Professional Growth Regulator was missing an establishment registration number. CX2 at 56, 57, 63-69. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states that a pesticide is misbranded if the labeling accompanying it does not contain directions for use. At the time of the EPA inspection, the product Professional Growth Regulator was missing directions for use. CX2 at 56, 57, 63-69. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), states that a pesticide is misbranded if the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase. At the time of the EPA inspection, the product Professional Growth Regulator was missing an ingredient statement. CX2 at 56, 57, 63-69. Sections 2(q)(2)(B)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(B)-(C), state that a pesticide is misbranded if the labeling does not contain a statement of the use classification;

¹⁹ *See also* CX7 at 1, letter dated November 22, 2017 approving updated labeling for N + P Regulator, a/k/a Tekko Pro 53883-335. (“After 18 months, you may only distribute or sell this product if it bears this new revised labeling or subsequently approved labeling.”)

address of the producer, registrant, or person for whom produced; and net weight or measure of the content. At the time of the EPA inspection, the product Professional Growth Regulator was missing a statement of the use classification; address of the producer, registrant, or person for whom produced; and net weight or measure of the content. CX2 at 56, 57, 63-69. 40 C.F.R. § 156.10(a)(1)(vii) states that a pesticide label must have hazard and precautionary statements for human, domestic animal, and environmental hazards. At the time of the EPA inspection, the product Professional Growth Regulator was missing hazard and precautionary statements for human, domestic animal, and environmental hazards. CX2 at 56, 57, 63-69.

Because the product Professional Growth Regulator produced and sold or distributed by Respondent lacked an establishment registration number, directions for use, an ingredient statement, a statement of the use classification, the address of the producer, registrant, or person for whom produced, the net weight or measure of the content, and hazard and precautionary statements for human, domestic animal, and environmental hazards, it was misbranded pursuant to 7 U.S.C. §§ 136(q)(1)(D) & (F), 7 U.S.C. §§ 136(q)(2)(A)-(C), and 40 C.F.R. Part 156. Therefore, Respondent is in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

In conclusion, there is no genuine issue of material fact with respect to this element for Counts 11-20 alleged in the Complaint.

VII. COMPLAINANT IS ENTITLED TO ACCELERATED DECISION ON LIABILITY FOR COUNT 21, DENIAL OF EPA INSPECTION.

Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1),

“For purposes of enforcing the provisions of this subchapter, officers or employees of EPA are authorized to enter at reasonable times (A) any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such

pesticides or devices, or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 136q of this title.”

Pursuant to Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by this subchapter.

On July 27, 2023, at approximately 2:15 pm CT, two EPA inspectors (Candace Bednar and Amelia Patterson) arrived at Respondent’s facility located at 2616 Woodson Road, Overland, MO (“Overland Facility”) to perform an inspection. CX17 at 1; CX28 at 1. The inspectors noted that the entry door was propped open and there was an “open” sign. CX17 at 1; CX28 at 1. The EPA inspectors entered the store and observed approximately five to six bins with:

“... rodenticide throw packets or clear zip top baggies containing rat and/or animal bait blocks. Each bin had a name and price printed label affixed to the top of the bin stating the price of the pesticide. The throw packs and bait blocks stick in the store were similar in appearance to the throw packs and bait blocks that were observed during the June 15, 2022 FIFRA Inspection of Wilson’s Pest Control Inc. located at 2400 North Grand Boulevard, St. Louis, Missouri.”

CX17 at 1; *see* CX28 at 1-2. The inspectors concluded the products were likely the same as the pesticides for sale at Respondent’s Grand Facility. CX17 at 1; CX28 at 1-2. Ms. Bednar also noted there were liquid products on the south wall of the store. CX17 at 1-2; *see* CX28 at 1.

At the attempted inspection, the EPA inspectors spoke to an unnamed woman behind the counter. CX17 at 1; CX28 at 1. Inspector Candace Bednar showed her EPA inspection credential to the woman and told the woman that she was there to perform a FIFRA inspection. CX17 at 1; CX28 at 1. The woman asked the EPA inspectors to step outside to wait while she contacted her attorney; the EPA inspectors complied. CX17 at 1; CX28 at 1. Mr. Wilson then arrived, and

everyone entered the store. The woman told the EPA inspectors that the animal bait pesticides in the bins along the north wall were not for sale, and that she would remove the pricing off the bins after they left. CX17 at 2. Despite what the woman at the store told inspectors, the packaging and display of the containers led both inspectors to believe that the products in the containers were for sale. CX17 at 1; CX28 at 1-2.

Mr. Wilson told the EPA inspectors that his attorney could not come to the inspection that day, and the woman told the EPA inspectors that they would not allow an inspection without their attorney. CX17 at 2; CX28 at 1. Ms. Bednar advised that denying an inspection could be a violation of FIFRA and offered to come at a different day or time, but Mr. Wilson and the woman did not propose a different day or time. CX17 at 2; CX28 at 1. Around 2:50 pm CT, the EPA inspectors left the store. CX17 at 2; CX28 at 1.

Mr. Wilson's denial of the EPA inspection constitutes an unlawful violation of FIFRA. Ms. Bednar and Ms. Patterson traveled to Respondent's Overland Facility for the purpose of performing a lawful "For Cause Inspection" under FIFRA. CX17 at 1; CX29. The inspectors arrived and attempted to inspect during on a Thursday during normal business hours (at approximately 2:15pm), a reasonable time. CX17 at 1; CX28 at 1. The purpose of the inspection was to ensure the SSURO issued by the EPA on or about July 5, 2022 was being properly followed by Respondent. CX13; CX29. The Overland Facility held pesticides for distribution or sale because (1) of the similarity in presentation to the pesticides held for sale at the St. Louis, MO facility; (2) the exterior appearance of the facility had a sign that said "Wilson's Pest Control," a propped front door, and an "open" sign out front; (3) there were bins with price tags containing the pesticide products; and (4) the unnamed woman said she would remove the price

tags when the inspectors pointed them out.

However, the inspectors were unable to obtain any samples or photographs. CX17 at 1; CX28 at 1. The unnamed woman told Ms. Bednar that she could not facilitate an inspection because she was busy all day. CX17 at 1; CX28 at 1. When Ms. Bednar advised the woman that denying an inspection was a violation of FIFRA, the woman asked the inspectors to leave the store. CX17 at 1; CX28 at 1. When Mr. Wilson arrived, the inspectors were allowed to reenter the store. CX17 at 1; CX28 at 1. Ms. Bednar again advised that denial of a FIFRA inspection was a violation of FIFRA. CX28 at 2, but Mr. Wilson and the woman refused to allow the inspection without their attorney present, who they said was not available that day. CX17 at 2; CX28 at 1. The EPA inspectors then left. CX17 at 2; CX28 at 1.

The evidence shows that Respondent refused to allow the EPA inspectors access and information or to otherwise substantively engage with the inspectors on July 27, 2023 at the Overland, MO location. Respondent's behavior constitutes a denial of an EPA inspection. Because Respondent refused to allow an EPA inspection pursuant to 7 U.S.C. § 136g(a)(1), Respondent is in violation of 7 U.S.C. § 136j(a)(2)(B)(iii).

VIII. RESPONDENT'S ALLEGED DEFENSES FAIL.

Respondent makes several affirmative arguments for why he should not be found liable for the above-described violations. Respondent has both the burdens of production and persuasion regarding affirmative defenses. *In the Matter of Everyday Group, LLC*, 2013 EPA ALJ LEXIS 12, *11 (E.P.A. August 21, 2013). Here, all of Respondents' arguments fail to demonstrate that there is a genuine dispute of any material fact.

1. Safety data sheets do not suffice as labels/labeling.²⁰

First, Respondent argues in his Answer that it delivers a safety data sheet (SDS) to “each customer.” Answer at 2, 10. Respondent also claims that he “notifies each customer if the customer should lose or misplace the safety data sheet, the safety data sheet can be accessed on a mobile telephone by entering the name of the product on said device.” Answer at 2. Lastly, Respondent’s Answer claims “Respondent has followed this protocol with each and every customer at the time of each and every sale.” Answer at 2-3.

Respondent’s argument that he provides SDSs fails as a defense for two reasons. First, Respondent’s statements demonstrate a fundamental misunderstanding of the labeling requirements under FIFRA. An SDS is different from a label and does not contain all the information a pesticide label is required to contain. Section 2(q) of FIFRA, 7 U.S.C. § 136(2)(p), requires that several items be present on the label or labeling of a pesticide. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2) defines the term “labeling” as “all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device.” Here, all ten pesticides described above were missing several components required to be on the label or labeling. Further, there is no evidence the SDSs were on, attached to, accompanying, or referenced in the labels of the ten pesticides described above.

Second, despite Respondent’s cursory statements in his Answer that he delivers SDSs to

²⁰ Notably, safety data sheets were not made available to EPA inspectors upon request. CX1 at 7.

all customers, he provides no evidence of this practice; notably, he contradicted this statement when speaking to the EPA inspectors. CX1 at 5-6, 7. At the EPA inspection, Respondent did not mention the practice of sharing SDSs with customers until the middle of the inspection; Respondent told EPA inspectors that he sometimes provides the SDS, and admitted Google could provide better and more updated information than many of the product labels. CX1 at 5-6. When asked by EPA inspectors if Respondent could provide an SDS for the rodenticide blocks, Respondent could not provide an example. CX1 at 7. Therefore, Respondent's argument that he provides SDSs to all customers is inaccurate, unsupported by evidence, and, even if true, does not fulfill FIFRA labeling requirements.

2. Active ingredients and warning statements are only two of several elements required to be on pesticide label/labeling.

Second, Respondent claims in his Answer that "each label on the pesticides identified in paragraph 32 of the Complaint listed all active ingredients of the product and complete warnings (precautionary statements as to hazards to humans and animals), which fully complied with applicable EPA statutes and regulations." Answer at 4. Respondent repeats this on page 6 of the Answer, and specifically identifies three of his products – Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control – as having "listed all active ingredients of the product and complete warnings (precautionary statements as to hazards to humans and animals) which fully complies with applicable EPA statutes and regulations." Answer at 3. However, active ingredients and hazard and precautionary statements are only two of several items required to be on the labeling of pesticides. *See* 7 U.S.C. § 136(q). Section VI above analyzes each product listed in paragraph 32 of the complaint and the required items they were missing from their labels. Therefore, Respondent's statements that all active ingredients and warning

statements were on each product is unsupported by evidence and, even if true, does not alone demonstrate compliance with the label requirements listed in FIFRA.

3. Annual reporting via form 3540-16 is a different and separate requirement from registration and labeling requirements.

Third, Respondent states that he has submitted a Form 3540-16 to the EPA each year for 31 years, and that these forms have been approved by the EPA. Answer at 3. These forms list all products “distributed, sold, or offered for sale and/or held for distribution and/or repackaged and/or relabeled by Respondent. Answer at 3. These statements were made in response to paragraph 3[2]²¹ of the Complaint, which alleges that ten specific pesticides were being distributed, sold, offered for sale, held for distribution, and/or held for sale at the Grand Facility. Complaint para. 32. However, EPA does not review and individually approve each form.²² Additionally, Form 3560-14 merely lists pesticides present that are produced and/or sold at an establishment; it does not provide information on all aspects of FIFRA compliance for a pesticide, including the existence of repackaging agreements, labeling, and whether a pesticide is properly registered or not. *See* CX14. Therefore, Respondent’s argument that his submission of 3540-16 forms fails to demonstrate that the requirements of pesticide registration or labeling are fulfilled.

4. EPA is not required to notify those subject to FIFRA of their requirements under FIFRA.

Fourth, Respondent argues that “the EPA has never at any time notified or requested that Respondent obtain a registration, nor that Respondent was required to obtain a registration for

²¹ The Answer refers to paragraph 33, which was amended to become paragraph 32 after Complainant was granted leave to amend its complaint by this Court’s Order on September 5, 2024.

²² *See* <https://www.epa.gov/compliance/electronic-reporting-pesticide-establishments>.

any of the pesticides identified in paragraph 32 of the Complaint.” Answer at 4. Respondent also says that the EPA never notified Respondent “that Respondent was required to obtain a written contract with any registrant to repackage any product and to use the registrant’s label.” Answer at 6. However, FIFRA does not require the EPA to notify every person subject to FIFRA (1) that it is under the purview of FIFRA and (2) of the specific requirements that it must follow under FIFRA. *In the Matter of Venquest Trading, Inc.*, 2008 EPA ALJ LEXIS 44, *8 (E.P.A. November 21, 2008); *see* 7 USC § 136 *et seq.* Therefore, Respondent’s argument that the EPA failed to provide notice of FIFRA’s requirements is irrelevant.

5. Respondent’s alleged licensure does not resolve the fact that it lacked repackaging/distribution agreements.

Fifth, Respondent argues that he is a “licensed pest control vendor and distributor” and was therefore “authorized to distribute and/or sell pesticides.”²³ Answer at 4. Therefore, Respondent argues he does not need a written contract with “any registrant to distribute and sell the pesticides identified in paragraph [32].” Answer at 4. However, 40 C.F.R. § 165.70(b) clearly states, “A registrant may allow you [a repackager] to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration” only if all of the conditions listed in that section are satisfied. One of the conditions is that “the registrant has entered into a written contract with you [the repackager] to repackage the pesticide product and to use the label of the registrant's pesticide product.”

Respondent, as a repackager selling and distributing pesticides without a obtaining its own pesticide registration, was required to enter into a contract with the registrant of the pesticides in

²³ It is unclear what licensure or governmental regime Respondent is referring to in stating it is a licensed pesticide control vendor and distributor.

order to distribute or sell such pesticides. Therefore, it is unclear what Respondent is referring to when he states it was a licensed vendor and distributor, and his argument that he did not need a written contract to repackage pesticides is inaccurate under FIFRA.

6. There is no right to counsel at FIFRA inspections.

Last, Respondent argues he had a right to counsel at FIFRA inspections. Answer at 4-5, 10. While counsel *may* be present for a FIFRA inspection, FIFRA provides no *right* to counsel at inspections. *See* 7 U.S.C. § 136g(a). Additionally, the EPA inspectors were willing to wait for Respondent to contact counsel before proceeding with the inspection. CX17 at 1; CX28 at 1. Inspector Bednar tried to work with Respondent by postponing the inspection an entire day to ensure that Respondent's counsel could be present, but Respondent said that its counsel was not available that same day or the next day. CX17 at 1; CX28 at 1. Because FIFRA provides no right to counsel (and Respondent refused to allow inspection without his counsel) Respondent's argument that he had a right to counsel at inspections is incorrect and irrelevant.

IX. CONCLUSION

Complainant respectfully requests that this Court grant this Motion for Accelerated Decision. Based on the current pleadings and exhibits on file, there are no genuine issues of any material fact as to Respondent's liability for the alleged violations. The Complainant is therefore entitled to judgment as a matter of law as to liability for all 21 counts alleged in the Complaint. In the alternative, should such relief not be granted, Complainant requests an accelerated decision resolving any of the issues in this case, which will aid in narrowing the scope of the hearing and allow for an efficient use of resources among all parties. Complainant also seeks an accelerated decision on affirmative defenses raised by Respondent on the basis they lack

necessary support or raise genuine issues of fact or law that are pertinent to any material fact

RESPECTFULLY SUBMITTED this 31st day of October, 2024.

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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Motion for Accelerated Decision in the matter of Timothy Wilson d/b/a Wilson's Pest Control, Docket No. FIFRA-07-2023-0135, has been submitted electronically using the OALJ E-Filing System.

A copy was sent via email to Mr. Melvin Raymond, counsel for Respondent, at *mraymondattorney1@att.net*.

Date: October 31, 2024

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