

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of:

DOCKET NO. FIFRA-07-2023-0135

**Timothy Wilson, d/b/a
Wilson's Pest Control**

**COMPLAINANT'S INITIAL
PREHEARING EXCHANGE**

Respondent.

COMPLAINANT'S INITIAL PREHEARING EXCHANGE

The United States Environmental Protection Agency ("EPA" or "Complainant"), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.1 to 22.45, and Administrative Law Judge Susan L Biro's Prehearing Order of March 20, 2024, submits this Initial Prehearing Exchange.

Brief Narrative Statement

EPA alleges that Respondent, who owns two retail pesticide facilities, located at 2400 N. Grand Boulevard, St. Louis, Missouri 63106 (Grand Facility) and 2616 Woodson Road, Overland, Missouri 63114 (Woodson Facility), violated the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") by selling unregistered and mislabeled pesticides. Further, Respondent refused EPA access for a duly-authorized inspection at the Woodson Facility. Finally, EPA will demonstrate that Respondent put the public at significant risk by selling unlabeled rat poison and other unregistered and mislabeled pesticides.

1(A) WITNESSES

At this time, Complainant expects to call as witnesses the following individuals whose testimony is expected to include, but may not be limited to, the matters described generally below. Complainant reserves the right to revise and supplement the matters to which each witness identified below may testify. Complainant respectfully reserves the right to file a motion to supplement this list of witnesses to the extent allowed for by 40 C.F.R. Part 22, or by order of the Presiding Officer.

To the extent that the parties can agree on stipulations and narrow the issues, or the issues are narrowed by accelerated decision, the number of witnesses, and/or the length of their testimonies, may be reduced.

Candace Bednar

U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

Candace Bednar will testify as a fact witness. Ms. Bednar is the chief of the Chemical Branch in the Enforcement Compliance & Assurance Division of the EPA, Region 7, and has worked in this position since January 2020. Previously, she was a compliance officer and credentialed inspector under the Toxic Substances Control Act and FIFRA. Her duties include providing enforcement and technical expertise and policy interpretation to enforcement staff and others regarding compliance determinations, appropriate enforcement response, evidentiary requirements, penalty calculations, and other matters related to enforcement response and case development. She will testify regarding her personal, education, and employment background, including her training and work experience at EPA. She will testify regarding her specific knowledge of EPA's FIFRA enforcement program, including the FIFRA Enforcement Response Policy, and to her observations and findings during her inspection of Respondent's business.

Kash Kruep

U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

Kash Kruep will testify as a fact witness. Mr. Kruep is a case officer with the Enforcement Compliance & Assurance Division of the EPA, Region 7, primarily specializing in pesticide issues and FIFRA compliance and enforcement. His duties include providing FIFRA and pesticide technical and compliance assistance and FIFRA enforcement work which includes, reviewing inspection reports, drafting and reviewing information requests, drafting enforcement actions and calculating penalties for violations found. He will testify regarding his personal, educational, and employment background, including his work at EPA and the Missouri Department of Agriculture. He will also testify regarding his investigation into this matter, including his inspection of Respondent's business, review of evidence, and the factual and evidentiary support for the determination that Respondent violated FIFRA.

Cassie Driskill

United States Department of Agriculture Farm Services Agency
3237 Eagle Way Bypass
Hopkinsville, Kentucky 42240

Cassie Driskill will testify as a fact witness. Ms. Driskill was a Pesticide Use Investigator for the Missouri Department of Agriculture. Ms. Driskill currently works for the USDA Farm Services Agency. Her duties involved inspecting establishments that held pesticide applicator licenses, conducting marketplace inspections at pesticide retail establishments to ensure the retailers were following the Missouri Pesticide Registration Act, and conducting investigations into citizen complaints of pesticide misuse. She will also testify regarding her personal, educational, and employment background, including her work at the Missouri Department of Agriculture. She

will also testify regarding her investigation into this matter, including her inspection of Respondent's business, review of evidence, and the factual and evidentiary support for the determination that Respondent violated FIFRA.

Timothy Wilson

Wilson's Pest Control
2400 N. Grand Boulevard
St. Louis, MO 63106

Timothy Wilson is the owner of Respondent Wilson's Pest Control. Mr. Wilson will testify as a fact witness.

Expert Witness(es)

Toxicology Witness

The EPA reserves the right and intends to call on an expert witness(es) to testify regarding the chemical composition and characteristics of the pesticides involved in the present case. Additionally, an expert witness(es) will testify about the methodology used by the lab in testing samples taken. Witness(es) may also testify to the potential health effects of pesticide exposure. Expert witness(es) may also testify as to any other relevant subjects that may arise during the proceeding of this litigation or during the hearing.

1(B) EXHIBITS

CX #	Description
1	FIFRA Producer Establishment Inspection, June 15, 2022
2	Digital images taken at June 15, 2022 inspection
3	Contrac 12455-76 EPA Approved Master Label
4	Final 12455-91 EPA Approved Master Label
5	Maki Mini Blocks 7173-202 EPA Approved Master Label
6	Talon G Rodenticide Bait Pack Mini Pellets with Bitrex 100-1050 EPA Approved Master Label
7	N + P Regulator aka Tekko Pro 53883-335 EPA Approved Master Label
8	Tengard HG Termiticide/Insecticide EPA Approved Master Label
9	Monterey Termite and Carpenter Ant Control EPA Approved Master Label
10	Missouri Department of Agriculture Special Investigation and Follow Up Report, May 2, 2022
11	Missouri Department of Agriculture Digital Images taken during May 2, 2022 investigation
12	Missouri Department of Agriculture Pesticide Business/Applicator Summaries
13	EPA's Stop Sale, Use, or Removal Order, July 5, 2022
14	Wilson's Pest Control, Inc. 2021 EPA Form 3540-16

15	Environmental Justice Index screening for Grand Facility – January 22, 2024
16	Environmental Justice Index screening for Woodson Facility – January 22, 2024
17	FIFRA Site Memo – Wilson’s Pest Control, Inc Woodson Facility, July 27, 2023 (attempted inspection)
18	OneStop Report - Wilson’s Pest Control
19	EPA FIFRA Delegations
20	FIFRA Enforcement Response Policy, December 2009, https://www.epa.gov/sites/default/files/documents/fifra-erp1209.pdf
21a	EPA’s Penalty Calculation: Counts 1-4
21b	EPA’s Penalty Calculation: Counts 5-7
21c	EPA’s Penalty Calculation: Counts 8-10
21d	EPA’s Penalty Calculation: Counts 11-14
21e	EPA’s Penalty Calculation: Counts 15-17
21f	EPA’s Penalty Calculation: Counts 18-20
21g	EPA’s Penalty Calculation: Count 21
22	USPS Green Card showing service of Complaint, February 8, 2024
23	EPA’s Prefiling Letter, April 13, 2023
24	EPA’s Emails to Respondent Requesting Ability to Pay information

Upon adequate notice to Respondent and with the Court’s leave, Complainant reserves the right to introduce: a) exhibits included by Respondent in its Prehearing Exchange, b) additional exhibits to rebut evidence presented by Respondent, and c) such other exhibits as otherwise may become necessary.

1(C) STATEMENT SPECIFYING AMOUNT OF TIME NEEDED BY COMPLAINANT TO PRESENT ITS DIRECT CASE AND WHETHER AN INTEPRETER IS NECESSARY

Complainant estimates that it will require approximately two days to present its case in chief. The length of time required for rebuttal testimony and cross-examination of Respondents’ witnesses will depend on the number and substance of documents and witnesses disclosed in Respondents’ Prehearing Exchange.

Complainant does not anticipate that the services of an interpreter will be necessary.

2(A) DOCUMENTATION SHOWING THAT SERVICE OF THE COMPLAINT WAS COMPLETED IN ACCORDANCE WITH SECTION 22.5(b)(1) OF THE RULES OF PRACTICE, 40 C.F.R. § 22.5(b)(1)

Documentation of service of the Complaint can be found in CX22.

2(B) A BRIEF NARRATIVE STATEMENT, AND A COPY OF ANY DOCUMENTS IN SUPPORT, EXPLAINING IN DETAIL THE FACTUAL AND/OR LEGAL BASES FOR

THE ALLEGATIONS DENIED OR OTHERWISE NOT ADMITTED IN RESPONDENT'S ANSWER

In Respondent's Answer, Respondent denies or otherwise does not admit the following allegations of the Complaint: 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, and 72.

Respondent admits Complaint paragraph 2 to the extent that this proceeding is an administrative action but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 32 to the extent that Respondent admits an EPA inspection occurred but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 33 to the extent that the EPA inspectors made observations but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 41 to the extent that the EPA inspectors appeared at Respondent's Facility but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 48 to the extent that the EPA inspectors made observations but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 48 to the extent that the EPA inspectors made observations but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 67 to the extent that the EPA inspectors appeared at Respondent's Facility but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 48 to the extent that the EPA inspectors made observations but denies all other allegations in the paragraph. Respondent admits Complaint paragraph 76 to the extent that the EPA notified Respondent of his right to submit or decline to submit financial information relating to his ability to pay but denies all other allegations in the paragraph.

Section I & Section II

Jurisdiction & Parties

Paragraphs 1, 2 and 3 of the Complaint contain descriptions of the Complainant as the EPA, EPA's enforcement action, and EPA's legal authority and its intention to exercise such authority. EPA has the authority to enforce FIFRA, and such authority has specifically been delegated to the Director of the Enforcement and Compliance Assurance Division of Region 7, as shown by CX19.

Section III

Statutory and Regulatory Background

Paragraphs 5 through 30 of the Complaint accurately set forth the purpose, relevant standards, and relevant definitions in FIFRA as follows:

5. Congress enacted FIFRA in 1947 and later amended it in 1972. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. Seq.*

6. 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.

7. 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, or whose registration has been cancelled or suspended.

9. 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.

10. 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.

11. 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 under Section 25(c)(1).

12. 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.

13. 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 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.

14. 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.

15. 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.

16. 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.

17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 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.

18. 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.

19. 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.

20. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.

21. Pursuant to 40 C.F.R. § 165.70(b), a registrant may allow a person to repackage the 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 refillers EPA establishment number.

22. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product 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 FIFRA.

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

24. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 (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.

30. 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.

Section IV

General Factual Allegations

Paragraph 32 sets forth a factual statement that about the date and location of the initial EPA inspection in this matter on or about June 15, 2022, at the Grand Facility, which the Respondent admits. There are no other allegations in the paragraph for the Respondent to deny. CX1 at 3 shows the date of the EPA's inspection and the location of the inspection. CX1 at 3 shows the date of the EPA's inspection and the location of the inspection.

Paragraph 33 sets forth a factual statement that the ten pesticides at issue in this case were being sold, offered for sale, held for distribution, and/or held for sale at the Grand Facility. Paragraph 33 also contains general statements about the pesticides' compliance with the labeling requirements of FIFRA. Respondent admits the EPA inspectors made observations of products in Respondent's Facility but denies all other allegations in the paragraph. CX1 shows that all ten products were being sold, offered for sale, held for distribution, and/or held for sale at the Grand Facility. Additionally, CX10 and CX11 show that Green Block Rodenticide, Red Block Rodenticide, Professional Growth Regulator, and Pest Control Concentrate were being sold, offered for sale, held for distribution, and/or held for sale at the Grand Facility at the time of the Missouri Department of Agriculture's (MDA) investigation on May 2, 2022.

Paragraph 33a states that Contrac Ready-To-Use Place Pacs Meal (Contrac Pellet Rodenticide) was repackaged by Respondent into 1.5-ounce net weight insufficiently labelled bags. CX2 at 40-43 shows that the Contrac Ready-To-Use Place Pacs Meal 1.5-ounce bags were put into insufficiently labelled bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility.

Paragraph 33b states that green colored rodenticide blocks (Green Block Rodenticide) were repackaged by Respondent into unlabeled clear resealable bags. Paragraph 33b also states Respondent told EPA inspectors Green Block Rodenticide was the same product as Contrac Pellet Rodenticide but in block form. CX2 at 46-47, 52 shows that Green Block Rodenticide was repackaged into unlabeled clear resealable bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX1 at 6-7 also shows Respondent's statements to EPA inspectors confirming that Green Block Rodenticide was the same product as Contract Pellet Rodenticide. CX10 and CX11 show that Green Block Rodenticide was being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility at the time of the MDA's investigation on May 2, 2022.

Paragraph 33c states that Final Ready-To-Use Pack Pellets (FINAL Pellet Rodenticide) were repackaged by Respondent into 0.88-ounce net weight bags that were insufficiently labeled. CX2 at 30-35 shows that Final Ready-To-Use Pack Pellets were repackaged into insufficiently labeled bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX2 at 30-35 shows that Final Ready-To-Use Pack Pellets were repackaged into insufficiently labeled bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility.

Paragraph 33d states that red colored rodenticide blocks (Red Block Rodenticide) were repackaged by Respondent into unlabeled clear resealable bags. Paragraph 33d also states the Respondent told EPA inspectors Red Block Rodenticide was the same product as FINAL Pellet Rodenticide but in block form. CX2 at 46, 48, 51 shows that Red Block Rodenticide was repackaged into unlabeled clear resealable bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX2 at 46, 48, 51 shows that Red Block Rodenticide was repackaged into unlabeled clear resealable bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX1 at 6-7 also shows Respondent's statements to EPA inspectors confirming that Red Block

Rodenticide was the same product as FINAL Pellet Rodenticide. CX1 at 6-7 also shows Respondent's statements to EPA inspectors confirming that Red Block Rodenticide was the same product as FINAL Pellet Rodenticide. CX10 and CX11 show that Red Block Rodenticide was being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility at the time of the MDA's investigation on May 2, 2022.

Paragraph 33e states Talon G Bait Pack Mini-Pellets (Talon G Pellet Rodenticide) were repackaged by Respondent into 0.88 ounce insufficiently labeled bags. CX2 at 36-39 shows Talon G Bait Pack Mini-Pellets were repackaged into insufficiently labeled bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility.

Paragraph 33f states blue colored rodenticide blocks (Blue Block Rodenticide) were repackaged by Respondent into unlabeled clear resealable bags. Paragraph 33f also states Respondent told EPA inspectors Blue Block Rodenticide was the same product as Talon G Pellet Rodenticide but in block form. CX2 at 46, 49-50 shows blue colored rodenticide blocks were repackaged into unlabeled clear resealable bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX1 at 6-7 shows Respondent's statements to EPA inspectors confirming that Blue Block Rodenticide was the same product as Talon G Pellet Rodenticide.

Paragraph 33g states brown colored rodenticide blocks (Brown Block Rodenticide) were "Maki Mini Blocks" repackaged by Respondent into unlabeled clear resealable bags. CX2 at 53-55 shows brown rodenticide blocks were repackaged into unlabeled clear resealable bags and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX1 at 7 shows Respondent's statements to EPA inspectors confirming that Brown Block Rodenticide was the same product as Maki Mini Blocks.

Paragraph 33h states Wilson's Pest Control Professional Growth Regulator (Professional Growth Regulator) was repackaged by Respondent into insufficiently labeled small white bottles. Paragraph 33h also states that the Respondent told EPA inspectors that Professional Growth Regulator was Tekko Pro Insect Growth Regulator Concentrate that was repackaged into the insufficiently labeled white bottles. CX2 at 56-69 show Wilson's Pest Control Professional Growth Regulator was repackaged into insufficiently labeled small white bottles and was being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX1 at 8 also shows Respondent's statements to EPA inspectors confirming that Professional Growth Regulator was the same product as Tekko Pro Insect Growth Regulator. CX10 and CX11 show that Wilson's Pest Control Professional Growth Regulator was being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility at the time of the MDA's investigation on May 2, 2022. CX7 shows the EPA registration number associated with Tekko Pro Insect Growth Regulator Concentrate.

Paragraph 33i states Professional Pest Control Concentrate (Pest Control Concentrate) was repackaged by Respondent into insufficiently labeled 16-ounce and 32-ounce bottles. Paragraph 33i also states that according to the EPA Registration Number on the bottles, Pest Control Concentrate is a repackage of a product called Tengard HG Termiticide/Insecticide. CX2

at 4-15 show Pest Control Concentrate was repackaged into insufficiently labeled 16-ounce and 32-ounce bottles and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX10 and CX11 show that Pest Control Concentrate was being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility at the time of the MDA's investigation on May 2, 2022. CX8 shows the EPA registration number associated with Tengard HG Termiticide/Insecticide.

Paragraph 33j states Wilson's Termite & Carpenter Ant Control (Termite & Ant Control) was repackaged into insufficiently labeled 16-ounce bottles. Paragraph 33j also states that according to the EPA registration number on the bottle, Termite & Ant Control is a repackage of a product called Monterey Termite and Carpenter Ant Control. CX2 at 20-26 shows Termite & Ant Control was repackaged into insufficiently labeled 16-ounce and 32-ounce bottles and were being sold, offered for sale, held for distribution, and/or held for sale at Respondent's Grand Facility. CX9 shows the EPA registration number associated with Monterey Termite and Carpenter Ant Control.

Respondent's Answer addresses paragraphs 33a, 33b, 33c, 33d, 33e, 33f, 33g, and 33h by stating that, at the time of each and every sale, "Respondent delivers to each customer a safety data sheet from the manufacturer of the product or item in question stating the following information: active ingredients and specific directions as to how to use the product. Further, Respondent also 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." There is no evidence that Respondent followed these steps for each and every sale, and there is evidence to the opposite. CX1 at 6-7 shows Respondent told EPA inspectors that he only "sometimes" handed out the safety data sheet during a sale. CX1 at 7 shows Respondent told EPA inspectors he does not always hand out a safety data sheet with every sale. CX1 at 7 shows that Respondent was unable to produce a safety data sheet when an EPA inspector asked for one during the inspection. Most notably, even if Respondent had followed these steps for each and every sale, these steps would not be sufficient to bring Respondent into compliance with FIFRA and its implementing regulations regarding proper registration and labeling of pesticides. See discussion of Counts 11-20 below for further analysis of Respondent's misbranding violations.

Respondent's Answer addresses paragraphs 33h, 33i, and 33j by stating "Respondent's labels on the subject products 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." This statement is not factual. CX1 at 4-5 shows that Respondent used a third party to create his own labels for the pesticides listed above. These labels were not reviewed by EPA as required by FIFRA to ensure it met all the requirements under FIFRA and its implementing regulations. Therefore, Respondent's labels did not fully comply with EPA statutes and regulations. See discussion of Counts 11-20 below for further analysis of Respondent's misbranding violations.

Respondent's Answer also addresses paragraph 33 by stating that for the past thirty-one years, Respondent has "submitted...to the EPA headquarters in Washington D.C....EPA Form

3540-16. EPA Form 3540-16 lists all products distributed, sold or offered for sale and/or held for distribution and/or repackaged and/or relabeled by Respondent. The EPA has approved each and every Form 3540-16 submitted by Respondent.” In response to this claim, the EPA responds that, while EPA acknowledges that Respondent submitted a Form 3540-16 for the year 2021, the mere submittal of Form 3540-16(CX14) does not serve as evidence that Respondent followed the applicable registration and labeling requirements, and therefore does not operate as a shield from liability. The EPA does not approve Form 3540-16. The form merely identifies Respondent as a producer of pesticides and states what pesticides Respondent claims to produce or distribute at Respondent’s establishment.

Paragraphs 36 states that by repackaging each pesticide identified in paragraph 33 into smaller quantities and different containers, Respondent “produced” these pesticides as that term is defined in 40 C.F.R. § 165.3. 40 C.F.R. § 165.3 defines “produce” as to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device. CX1 at 4-10 shows that Respondent told EPA inspectors that it repackaged and relabeled the pesticides at issue in this case. Respondent’s repackaging and relabeling of the pesticides at issue in this case shows Respondent produced these pesticides.

Paragraph 37 states that by repackaging each pesticide identified in paragraph 33 into smaller quantities and different containers, Respondent is a “producer” of these pesticides as that term is defined in 40 C.F.R. § 165.3. CX14 shows that Respondent self-identified as a producer of pesticides. Further, 40 C.F.R. § 165.3. defines “producer” as any person ... who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling). CX1 at 4-10 shows that Respondent told EPA inspectors that Respondent repackaged and relabeled the pesticides at issue in this case. Respondent’s repackaging and relabeling of the pesticides at issue in this case shows Respondent is a producer of these pesticides.

Paragraph 38 states Respondent has not obtained a registration for any of the pesticides identified in paragraph 33. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a. CX1 at 4-8 shows that Respondent did not register any of the pesticides listed in paragraph 33. Respondent’s Answer denies paragraph 38, arguing that because EPA never notified or requested that Respondent obtain a registration, and that Respondent was required to obtain a registration for any of the pesticides identified in paragraph 33 of the complaint. EPA is not required to inform producers of the registration requirements under FIFRA and its implementing regulations. It is the responsibility of the Respondent, as a producer of pesticides, to operate in compliance with the applicable laws.

Paragraph 39 states Respondent did not have a written contract with any of the registrants to repackage, distribute, or sell any of the pesticides identified in paragraph 33 above. Respondent’s Answer denies paragraph 39 and claims EPA never notified Respondent that a contract with the registrants was necessary in this instance. EPA is not required to inform

producers about the legal necessity of a written contract with the registrant of a pesticide. It is responsibility of a producer to operate in compliance with the applicable laws. Respondent also claims that Respondent is a licensed pest control vendor and distributor and was authorized to sell and/or distribute the pesticides listed in paragraph 33. Respondent's status as a licensed pest control vendor and distributor with the state of Missouri does not absolve Respondent's responsibility to comply with federal laws and regulations, including FIFRA and its implementing regulations.

Further, because Respondent did not register the pesticides listed in paragraph 33, Respondent was required by FIFRA to follow the requirements listed in 40 C.F.R. § 165.70(b). 40 C.F.R. § 165.70(b) requires Respondents to, among other things, enter into a written contract with the registrant of the pesticide to repackage the product. 40 C.F.R. § 165.70(c) states "Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act." CX1 shows Respondent did not register the pesticides listed in paragraph 33. Further, CX1 at 4-8 shows Respondent did not enter into a contract with the registrants to repackage the pesticides listed in paragraph 33. CX1 at 8 shows that the Respondent told EPA inspectors that Respondent did not have any written contract with the registrants of the pesticides listed in paragraph 33.

Paragraph 40 states that each label for the pesticides listed in paragraph 33 was not 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. This paragraph repeats the requirement of 40 C.F.R. § 165.70(b)(5). Respondent's Answer states the label on each pesticide listed in paragraph 33 listed all the active ingredients of the product and complete warnings which fully complied with applicable EPA statutes and regulations. This is not factual. CX1 at 4-8 shows Respondent made changes to the labels of the pesticides listed in paragraph 33 beyond amending the net contents as permitted by 40 C.F.R. § 165.70(b)(5).

Paragraph 41 states that EPA attempted to conduct an inspection (attempted inspection) of Respondent's Woodson Facility¹ to determine compliance with FIFRA and its implementing regulations. Respondent's Answer states that Respondent exercised his purported right to have counsel present at the inspection and admits that Respondent did not let EPA inspectors onto the premises. There is no right to have counsel present at an EPA inspection under Section 9 of FIFRA, 7 U.S.C. § 136g. While Respondent may choose to have counsel present at an inspection, a lack of counsel present at the inspection does not prevent EPA inspectors from carrying out an inspection, and EPA is under no obligation to contact a respondent's counsel before, during, or after an attempted inspection. Pursuant to 7 U.S.C. § 136g(a)(1), EPA is not required to provide advance notice of inspections and may inspect establishments at "reasonable times." CX17 details the EPA attempt at an inspection at Respondent's Woodson Road Facility.

¹ Paragraph 41 of the Complaint mistakenly lists two addresses while referring to the location of the attempted inspection. The correct address for the attempted inspection is 2616 Woodson Road, Overland, Missouri 63114 or "Woodson Facility."

CX17 shows the EPA attempted an inspection at approximately 2:15pm and was refused by Respondent because Respondent's attorney could not be present.

Paragraph 42 is a continuation of the event described in paragraph 41. EPA's response to this denial is the same as the preceding paragraph.

Section V

Violations

Counts 1-10 – Sale of Unregistered and/or Illegally Packaged Pesticides

Paragraphs 45, 46, and 47 state the legal requirements for FIFRA and its implementing regulations regarding the sale of unregistered and/or illegally packaged pesticides. These paragraphs set forth a legal standard under FIFRA.

Paragraph 48 states that during June 15, 2022, inspection the EPA inspectors observed the pesticides in paragraph 33 being offered for sale at the Respondent's Grand Facility. CX1 shows that the pesticides in paragraph 33 were offered for sale at Respondent's Grand Facility.

Paragraph 49 states that for each pesticide identified in paragraph 33, Respondent did not obtain a registration, as required by 40 C.F.R. § 165.70(b) and (c). CX1 shows that Respondent did not obtain a registration for the pesticides listed in paragraph 33. As stated above, EPA is not required to notify Respondent about the requirements of FIFRA.

Paragraph 50 states that for each pesticide listed in paragraph 33, Respondent did not enter into a written contract with registrant to repackage the product and to use the registrant's label, as required by 40 C.F.R. §§ 165.70(b)(3) and (c). 40 C.F.R. § 165.70(b)(3) requires that a refiller must enter into a written contract with the registrant to repackage the pesticide product and to use the label of the registrant's pesticide product. CX1 at 8 shows Respondent told EPA inspectors that he did not have a written contract with any of the registrants of the pesticides listed in paragraph 33. As stated above, EPA is not required to notify Respondent about the requirements of FIFRA.

Paragraph 51 states that for each pesticide identified in paragraph 33, the pesticide product was not labelled with the product's label, as required by 40 C.F.R. §§ 165.70(b) and 165.70(c). 40 C.F.R. § 165.70(b)(5) requires that a refiller make no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number to the registrant's label. CX1 at 4-8 shows Respondent changed the labels or did not attach a label to the pesticide products listed in paragraph 33. CX1 at 4-5 also shows Respondent told EPA inspectors that he used a third-party entity to print the new labels for the products listed in paragraph 33.

Paragraph 52 states that Respondent's distribution and sale of repackaged Contrac Pellet Rodenticide, Green Block Rodenticide, FINAL Pellet Rodenticide, Red Block Rodenticide,

Talon G Pellet Rodenticide, Blue Block Rodenticide, Brown Block Rodenticide, Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control without obtaining a registration nor meeting all of the conditions in 40 C.F.R. § 165.70(b) constitutes separate sales and/or distributions of an unregistered pesticide, each of which is a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). The evidence and analysis supporting this allegation is laid out in the preceding paragraphs.

Counts 11-20 - Misbranding

Paragraphs 54, 55, 56, 57, 58, and 59 state the legal requirements for FIFRA and its implementing regulations regarding the misbranding of pesticides. These paragraphs set forth a legal standard under FIFRA.

Paragraph 60 states that during the June 15, 2022, inspection, EPA inspectors observed the pesticides identified in paragraph 33 offered for sale at Respondent's Grand Facility. CX1 at 4-8 shows that Respondent was offering the pesticides listed in paragraph 33 for sale at Respondent's Grand Facility.

Paragraph 61 states that at the time of the inspection, each of the pesticides identified in paragraph 33 above were misbranded for multiple reasons. 7 U.S.C. § 136j(a)(1)(E) states it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

Paragraph 61a states that the label for the repackaged Contrac Pellet Rodenticide stated, "INDIVIDUAL SALE IS PROHIBITED BY LAW" and was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal. CX2 at 40-43 shows the label on Contrac Pellet Rodenticide was marked "INDIVIDUAL SALE IS PROHIBITED BY LAW." also shows that the label for Contrac Pellet Rodenticide lacked complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal. The information not found on the individual bags would be found on the bulk container that held the 1.5-ounce bags. The individual bags are not intended for individual sale and therefore do not contain all of the required labeling under FIFRA. CX3 shows the complete label that is required to legally sell Contract Pellet Rodenticide.

Paragraph 61b states that the Green Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156. CX2 at 46-47, 52 shows that Green Block Rodenticide was repackaged into clear resealable bags with no label.

Paragraph 61c states that the label for the repackaged FINAL Pellet Rodenticide distributed, sold, offered for sale, or held for distribution by Respondent stated "INDIVIDUAL SALE IS PROHIBITED BY LAW" and was incomplete and missing elements required under

Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal. CX2 at 34 shows FINAL Pellet Rodenticide was marked “INDIVIDUAL SALE IS PROHIBITED BY LAW.” CX2 at 30-35 also shows that the label for FINAL Pellet Rodenticide lacked complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal. The information not found on the individual bags would be found on the bulk container that held the .88-ounce bags. The individual bags are not intended for individual sale and therefore do not contain all of the required labeling under FIFRA. CX4 shows the complete label that is required to sell Final Pellet Rodenticide.

Paragraph 61d states that the Red Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156. CX2 at 46, 48, 51 shows that Red Block Rodenticide was repackaged by Respondent into clear resealable bags with no label.

Paragraph 61e states that the label for the repackaged Talon G Pellet Rodenticide stated, “INDIVIDUAL SALE PROHIBITED BY LAW” and was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and a statement of practical treatment (first aid or otherwise) in case of poisoning, and directions for storage and disposal. CX2 at 38 shows that Talon G Pellet Rodenticide was marked “INDIVIDUAL SALE PROHIBITED BY LAW.” CX2 at 36-39 also shows that the label for Talon G Pellet Rodenticide lacked complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and a statement of practical treatment (first aid or otherwise) in case of poisoning, and directions for storage and disposal. The information not found on the individual bags would be found on the bulk container that held the .88-ounce bags. The individual bags are not designed to contain all the required labeling information under FIFRA and its implementing regulations which is why individual sale of the bags is not allowed. CX6 shows the complete label that is required to sell Talon G Pellet Rodenticide.

Paragraph 61f states that the Blue Block Rodenticide was repackaged by Respondent into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156. CX2 at 46, 49-50 shows that Blue Block Pesticide was repackaged by Respondent into clear resealable bags with no labeling.

Paragraph 61g states that the Brown Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156. CX2 at 53-54 shows that Brown Block Rodenticide was repackaged by Respondent into clear resealable bags with no labeling. CX5 shows the complete label that is required to sell Maki Mini Blocks.

Paragraph 61h states that the Professional Growth Regulator was repackaged into small white bottles bearing only the name of the product, a phone number for poison control, and a skull and crossbones. The label therefore was missing nearly all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: the producing establishment number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e; directions for use; an ingredient statement; use classification; name and address of the producer, registrant, or person for whom produced; the net weight or measure of the content; registration number; hazard and precautionary statements; and directions for storage/disposal. CX2 at 56-69 shows that the label for Professional Growth Regulator lacked directions for use; an ingredient statement; use classification; name and address of the producer, registrant, or person for whom produced; the net weight or measure of the content; registration number; hazard and precautionary statements; and directions for storage/disposal. CX7 shows the complete label that is required to sell Tekko Pro Insect Growth Regulator Concentrate.

Paragraph 61i states the Pest Control Concentrate was repackaged into 16-ounce and 32-ounce bottles and the labels were missing some labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: directions for use; use classification, name and address of the producer, registrant, or person for whom produced; and directions for storage/disposal. CX2 at 4-15 shows that the label for Pest Control Concentrate lacked directions for use; use classification, name and address of the producer, registrant, or person for whom produced; and directions for storage/disposal. CX8 shows the complete label that is required to sell Tengard HG Termiticide/Insecticide.

Paragraph 61j states the Termite & Ant Control was repackaged into 16-ounce bottles and the labels were missing some labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: directions for use; use classification; address of the producer, registrant, or person for whom produced; and directions for storage/disposal. CX2 at 20-26 shows that the label for Termite & Ant Control lacked directions for use; use classification; address of the producer, registrant, or person for whom produced; and directions for storage/disposal. CX9 shows the complete label that is required for the sale of Monterey Termite and Carpenter Ant Control.

Paragraph 62 states that due to the labeling issues identified above, the repackaged pesticides listed above were each misbranded pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q). The evidence and analysis supporting this allegation are included in the preceding paragraphs.

Paragraph 63 states that Respondent's distribution or sale of the misbranded pesticides are separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E). The responses to paragraphs 45 through 62 address this distinction and reference separate authorities under FIFRA and its implementing regulations.

Count 21 – Refusal to Allow Inspection

Paragraphs 65 and 66 state that the legal requirements for FIFRA regarding inspections and outline the EPA's authority to conduct inspections. These paragraphs set forth a legal standard under FIFRA.

Paragraph 67 states that pursuant to its inspection authority under 7 U.S.C. § 136g, the EPA attempted to conduct an inspection (attempted inspection) of Respondent's Woodson Facility to determine compliance with FIFRA and its implementing regulations. CX17 details the EPA attempt at an inspection at Respondent's Woodson Road Facility on July 27, 2023.

Paragraph 68 states that Respondent refused to allow EPA personnel to inspect the Woodson Facility, and therefore denied EPA's attempted inspection. CX17 shows Respondent denied EPA's inspection because Respondent would not proceed with the inspection without its attorney present. 7 U.S.C. § 136g(a)(1) states 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. While an attorney may be present at an inspection, there is no legal requirement that EPA must wait for Respondent's attorney to appear before an inspection can begin under FIFRA.

Paragraph 69 states Respondent's refusal to allow EPA to inspect the Woodson Facility was a violation of Section 12 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii). The evidence and analysis supporting this allegation are included in the previous paragraphs.

Section VI

Relief Sought

Paragraph 70 states Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum daily penalties to \$24,255 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. EPA proposes to assess a total civil penalty of \$149,659 against Respondent for the above-described violations. EPA maintains it has the right to demand penalty for the above referenced violations based on the factual and legal allegations in stated herein and in the Complaint. A penalty is also authorized under FIFRA, a publicly available statute.

Appropriateness of Proposed Penalty

Paragraph 71 states the penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, December 2010, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)). Sections 2(C) and 2(E) below describe in further detail how EPA assessed a penalty in this case. The factors related to calculating a penalty are described in FIFRA, a publicly available statute, as well as in the FIFRA Enforcement Response Policy, CX20.

Paragraph 72 states for purposes of calculating the proposed penalty, Respondent was placed in Category III size of business (total business revenues under \$1,000,000 per year). Respondent has not disclosed any information regarding the total business revenues of Wilson's Pest Control. If evidence of Respondent's business revenues is submitted that indicates the Category III categorization is incorrect, the proposed penalty will be adjusted.

Paragraph 76 states Complainant has sought financial information from Respondent. To date, Respondent has not provided any financial information. Respondent's Answer admits that EPA has notified Respondent of his right to submit financial information related to ability to pay. CX24 shows that EPA has reached out to Respondent requesting ability to pay paperwork.

Affirmative Defenses

First, Respondent states the evidence regarding Respondent's protocols and labeling supports a finding that Respondent has not committed the violations alleged in the Complaint and that no civil penalty should be assessed against Respondent. Section 2(B) outlines how Respondent's protocols and labeling were in violation of FIFRA and its implementing regulations.

Second, Respondent states Respondent simply exercised his lawful right to have his counsel of record present for the inspection. Respondent also states the exercise of that right did not constitute an unlawful refusal to allow an inspection. Section 2(B) outlines EPA's authority to conduct inspections and that EPA acted in accordance with that authority on July 27, 2023. While Respondent may have an attorney present during an EPA inspection the fact that Respondent's attorney was not present during the attempted inspection does not grant Respondent the right to refuse an EPA inspection.

2(C) ALL FACTUAL INFORMATION AND SUPPORTING DOCUMENTATION RELEVANT TO THE ASSESSMENT OF A PENALTY, AND A COPY, OR A STATEMENT OF THE INTERNET ADDRESS (URL), OF ANY POLICY OR GUIDANCE

INTENDED TO BE RELIED ON BY COMPLAINANT IN CALCULATING A PROPOSED PENALTY

Section 14(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a)(4) provides that in determining the amount of the penalty, the EPA shall consider the appropriateness of such penalty to (1) the size of the business of the person charged, (2) the effect on the person's ability to continue in business, and (3) the gravity of the violation. The EPA also evaluates penalties for violations of FIFRA according to its document FIFRA Enforcement Response Policy (December 2009) (CX20), found at <https://www.epa.gov/enforcement/guidance-fifra-enforcement-response-policy>.

In Sections 1(A) and 1(B) above, the EPA has included descriptions of all witness testimony, factual information, supporting documentation, and guidances it currently is relying on to calculate a proposed penalty in accordance with FIFRA Section 14(a)(4).

2(D) A COPY, OR A STATEMENT OF THE INTERNET ADDRESS (URL), OF ANY EPA GUIDANCE DOCUMENTS AND/OR POLICIES, INCLUDING ANY UPDATES OR REVISIONS TO SUCH GUIDANCE AND/OR POLICIES, AND ANY PREAMBLES TO REGULATIONS THAT COMPLAINANT HAS RELIED UPON WITH REGARD TO THE ALLEGATIONS SET FORTH IN THE COMPLAINT

The FIFRA Enforcement Response Policy (December 2009) (CX20) can be found attached to this Complainant's Initial Prehearing Exchange or at <https://www.epa.gov/enforcement/guidance-fifra-enforcement-response-policy>.

2(E) A DETAILED EXPLANATION OF THE FACTORS CONSIDERED AND METHODOLOGY UTILIZED IN CALCULATING THE AMOUNT OF THE PROPOSED PENALTY, IN ACCORDANCE WITH THE CRITERIA SET FORTH IN THE PARTICULAR STATUTE AUTHORIZING THIS PROCEEDING AND AS REFERENCED IN THE RELIEF SECTION OF THE COMPLAINT

Section 2(C) above describes the statutory factors used in assessing a penalty under FIFRA. The FIFRA Enforcement Response Policy provides more detail for assessing penalties under FIFRA. These factors are economic benefit of noncompliance, pesticide toxicity, harm to human health, environmental harm, compliance history, and culpability. CX23 shows EPA's evaluation of these additional factors for each grouping of counts.

EPA did not calculate an economic benefit in this case for the following reasons: EPA had insufficient information to accurately assess the economic benefit derived from noncompliance in this case. EPA did not have any information pertaining to Respondent's sales at the Grand Facility nor the cost of a supplemental distribution agreement for the pesticides listed in paragraph 33. The Respondent was placed in a size III category of business for having an annual gross revenue of less than \$1,000,000.

Counts 1-4

Counts 1-4 are for the sale of the following unregistered pesticides: Green Block Rodenticide, Red Block Rodenticide, Blue Block Rodenticide, and Brown Block Rodenticide. These four counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 1 violation per the FIFRA Enforcement Response Policy (ERP).

Pesticide toxicity was assessed at a 1 out of 3 because the master labels for the rodenticide blocks used the signal word “Caution.” Per the FIFRA ERP, the use of the signal word “Caution” warrants the assessment of a 1 for pesticide toxicity.

Harm to human health was assessed at a 3 out of 5. The master labels state that if some of the rodenticide is swallowed or absorbed through the skin it may reduce the clotting ability of the blood and cause bleeding. Further, this product is especially dangerous to children. The master label states that tamper-resistant bait stations must be used whenever children may have access to the bait placement location. However, Respondent sold the products in plastic bags that could easily be opened by a child. Any purchaser of the rodenticide blocks from Respondent would not have immediate access to this information or have reason to be aware of this information because the blocks were sold in clear resealable bags without any labeling. Additionally, if a child were to be harmed from this product, a purchaser would be unable to tell a medical professional in an emergency what poison a child had ingested because no label was present. This lack of information on proper use of the block rodenticide coupled with the potential bodily harm shows potentially serious harm to human health.

Environmental harm was assessed at a 3 out of 5. As stated above, a pesticide lacking all labeling has the potential to cause serious harm to the environment because the user has no way to know the proper instructions for using it or the potential hazards from misuse. The master labels state the rodenticides are extremely toxic to mammals and birds. The pesticides are also toxic to fish. Runoff contaminated with these pesticides may be hazardous to aquatic organisms in adjacent waters. The lack of information on proper use of the block rodenticides coupled with the toxicity to animal life shows potentially serious harm to the environment.

Compliance history was assessed at a 0 out of 4. Respondent had no prior FIFRA violations.

Culpability was assessed at a 2 out of 4. The Respondent did not demonstrate an immediate return to compliance after EPA's June 15, 2022 inspection. The operation of a pesticide establishment requires interactions with both the state of Missouri and the EPA, as evidenced by Respondent's filing of the EPA Form 3540-16 and Missouri Department of Agriculture Pesticide Dealer Outlet License, which imputes familiarity with state and federal pesticide law. The total for these Appendix B factors is 9 and does not change the base penalty of \$7,150.

Counts 5-7

Counts 5-7 for the unregistered sale of Contrac Pellet Rodenticide, FINAL Pellet Rodenticide, and Talon G Pellet Rodenticide. These three counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 1 violation per the FIFRA ERP.

Pesticide toxicity was assessed at a 1 out of 3 because on the master label for the rodenticide blocks the signal word “Caution” is used. Per the FIFRA ERP, the use of the signal word “Caution” warrants the assessment of a 1 for pesticide toxicity.

Harm to human health was assessed at a 1 out of 5. The master labels state that if some of the rodenticide is swallowed or absorbed through the skin it may reduce the clotting ability of the blood and cause bleeding. Further, this product is especially dangerous to children. The master labels state that tamper-resistant bait stations must be used whenever children may have access to the bait placement location. However, the lower number was assessed because these products did have some incomplete labeling including first aid instructions and a physician’s note.

Environmental harm was assessed at a 1 out of 5. The master labels state the rodenticides are extremely toxic to mammals and birds. The pesticide is also toxic to fish. Runoff contaminated with this pesticide may be hazardous to aquatic organisms in adjacent waters. However, the lower number was assessed because the products did have some incomplete labeling.

Compliance history was assessed at a 0 out of 4. Respondent had no prior FIFRA violations.

Culpability was assessed at a 2 out of 4. The operation of a pesticide establishment requires interactions with both the state of Missouri and the EPA, as evidenced by Respondent’s filing of the EPA Form 3540-16 and Missouri Department of Agriculture Pesticide Dealer Outlet License, which imputes familiarity with state and federal pesticide law. The total for these Appendix B factors is 5. Based on Table 3 of the FIFRA ERP a total of 5 warrants a 40% reduction of the base penalty of \$7,150 for an updated base penalty of \$2,860.

Counts 8-10

Counts 8-10 are for the unregistered sale of Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control. These three counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 1 violation per the FIFRA ERP.

Pesticide toxicity was assessed at a 1 out of 3 because on the master label for the rodenticide blocks the signal word “Caution” is used. Per the FIFRA ERP, the use of the signal word “Caution” warrants the assessment of a 1 for pesticide toxicity.

Harm to human health was assessed at a 1 out of 5. The master labels for the pesticides requires a user to thoroughly wash hands with soap and water after handling the pesticides and before eating or drinking. The master label for Termite & Ant Control states that the product is a pyrethroid and if large amounts are ingested the stomach and intestines should be evacuated. The pesticides did have some incomplete labeling and low active ingredient strength.

Environmental harm was assessed at a 1 out of 5. The master label for Termite & Ant Control states the pesticide is extremely toxic to fish and aquatic invertebrates. The product is also highly toxic to bees exposed to direct treatment or residues on blooming crops and weeds.

Compliance history was assessed at a 0 out of 4. Respondent had no prior FIFRA violations.

Culpability was assessed at a 2 out of 4. The operation of a pesticide establishment requires interactions with both the state of Missouri and the EPA, as evidenced by Respondent's filing of the EPA Form 3540-16 and Missouri Department of Agriculture Pesticide Dealer Outlet License, which imputes familiarity with state and federal pesticide law. The total for these Appendix B factors is 5. Based on Table 3 of the FIFRA ERP a total of 5 warrants a 40% reduction of the base penalty of \$7,150 for an updated base penalty of \$2,860.

Counts 11-14

Counts 11-14 for the misbranding of Green Block Rodenticide, Red Block Rodenticide, Blue Block Rodenticide, and Brown Block Rodenticide. These four counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 1 violation per the FIFRA ERP.

The numbers and justifications for this count are the same as Counts 1-4. The total for these Appendix B factors is 9 and does not change the base penalty of \$7,150.

Counts 15-17

Counts 15-17 are for the misbranding of Contrac Pellet Rodenticide, FINAL Pellet Rodenticide, and Talon G Pellet Rodenticide. These three counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 3 violation per the FIFRA ERP. The reason this group of counts is a level 3 violation instead of a level 1 violation like the others is that the small packets of rodenticide pellets did have original labeling that contained some of the required information on the packets unlike the other pesticides at issue in this case.

The numbers and justifications for this count are the same as Counts 5-7. The total for these Appendix B factors is 5. Based on Table 3 of the FIFRA ERP a total of 5 warrants a 40% deduction of the base penalty of \$2,830 for an updated base penalty of \$1,698.

Counts 18-20

Counts 18-20 are for the misbranding of Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control. These three counts were grouped together for the purpose of calculating a penalty because of the similarity in the products and violations. This is a level 1 violation per the FIFRA ERP.

The numbers and justifications for this count are the same as Counts 8-10. The total for these Appendix B factors is 5. Based on Table 3 of the FIFRA ERP a total of 5 warrants a 40% deduction of the base penalty of \$7,150 for an updated base penalty of \$2,860.

Count 21

Count 21 is for failure to allow an inspection. This is a level 2 violation with a base penalty amount of \$4,250.

Final Penalty

The penalty sum for the preceding counts is \$100,904. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum daily penalties to \$24,255 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. After accounting for inflation, the final penalty in this matter is \$149,659.

RESERVATIONS

Upon the discovery of new information, Complainant reserve its right to amend the Complaint to better conform it to the facts available to this tribunal.

RESPECTFULLY SUBMITTED this 3rd day of May 2024.

Adam Hilbert
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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Prehearing Exchange 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: May 3, 2024

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