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BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

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ENVIR. APPEALS BOARD

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FIFRA Appeal No. 07-(02)

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In The Matter Of:

Rizing Sun, L.L.C.  
Peoria, Arizona

Docket No. FIFRA-9-2004-0024 (Region IX)

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Appeal from the Initial Decision of the  
Presiding Officer, Administrative Law Judge  
Spencer T. Nissen, Dated May 8, 2007

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NOTICE OF APPEAL BY THE ASSOCIATE DIRECTOR FOR AGRICULTURE,  
COMMUNITIES AND ECOSYSTEMS DIVISION,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION IX

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The Associate Director for Agriculture, Communities and Ecosystems Division, United States Environmental Protection Agency, Region IX (the "Appellant"), for the Complainant in the proceedings below, by and through her counsel, David H. Kim, in accordance with 40 C.F.R. § 22.30(a), hereby submits this Notice of Appeal of the Initial Decision issued on May 8, 2007 by the Presiding Officer, Administrative Law Judge Spencer T. Nissen,

in the above-referenced proceeding brought pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA" or the "Act"), 7 U.S.C. §§ 136 et seq., for the assessment of a civil penalty. Included herewith is the Appellant's Brief In Support of Notice of Appeal ("Brief").

In accordance with 40 C.F.R. § 22.30(a), Appellant submits the following single issue for review:

I. Alternative Conclusion of Law

Appellant requests that the EAB make the following conclusion of law reversing and replacing conclusion of law ¶7 made by the Presiding Officer in the Initial Decision:

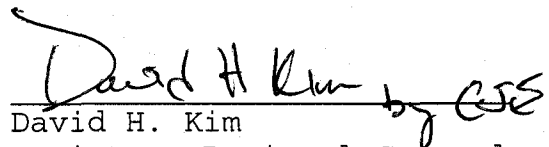
EPA can assess a separate civil penalty for violations of section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), arising from the distribution or sale of the same pesticide in the same transaction.

II. Proposed Order

Appellant proposes that, pursuant to 40 C.F.R. § 22.30(f), the EAB issue a Final Order in this proceeding that SETS ASIDE IN PART the Initial Decision of the Presiding Officer issued on May 8, 2007. The Final Order should find that EPA may assess separate civil penalties for a violation of FIFRA section 12(a)(1)(A) and a violation of FIFRA section 12(a)(1)(E) arising from the distribution or sale of the same pesticide in the same transaction.

Dated: June 8, 2007

Respectfully submitted,

Handwritten signature of David H. Kim in cursive, with the initials "DJK" written to the right of the signature.

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CERTIFICATE OF SERVICE

I certify that the original and five copies of the foregoing  
Notice of Appeal of Initial Decision was hand delivered to:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1341 G Street, N.W., Suite 600  
Washington, DC 20005

and that a true and correct copy of the said document was sent by  
either Intra-Agency Overnight Pouch Mail or First Class United  
States Mail, addressed to the following:

Spencer T. Nissen  
Administrative Law Judge  
Office of Administrative Law Judges (M/C 1900L)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

. . . .

Allen H. Smith  
P.O. Box 5491  
Peoria, AZ 85385

. . . .

Regional Hearing Clerk  
Office of Regional Counsel (ORC-1)  
U.S. Environmental Protection Agency, Region IX  
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San Francisco, CA 94105

Dated: 6/8/07

By:   
Carl Eichenwald

Office of Enforcement and  
Compliance Assurance  
U.S. EPA