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REGIONAL PUBLIC AFFAIRS

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

_____	)	Docket No. FIFRA-09-2009- <u>0012</u>
In the Matter of:	)	
	)	
Dollar Store, Inc.,	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent	)	
_____	)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Dollar Store, Inc. for the sale and distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under

FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is Dollar Store, Inc. (“Respondent”).

#### GENERAL ALLEGATIONS

1. Respondent, a California corporation, is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Respondent distributes or sells various household goods at its facility (the “Facility”) located at 2021 Business Center Drive, Irvine, California 92612.
3. On or about November 1, 2007, Respondent “distributed” or “sold” the “Garden Pesticide Dispenser” and “Yellow Candle” at the Facility, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
4. The labeling of “Garden Pesticide Dispenser” and “Yellow Candle” claims that it kills or repels mosquitos.
5. Mosquitos are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
6. A “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s).
7. “Garden Pesticide Dispenser” and “Yellow Candle” are “pesticides” as defined at 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s) in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating “pests.”

8. At all times relevant to this action, "Garden Pesticide Dispenser" and "Yellow Candle" were not registered with EPA under Section 3 of FIFRA.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

### ALLEGED VIOLATIONS

COUNTS 1-2: Sale or Distribution of an Unregistered Pesticide, 7 U.S.C. § 136j(a)(1)(A).

### COUNTS 1- 2

10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.
11. On or about November 1, 2007, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Garden Pesticide Dispenser" to Red Mesa Trading Company, Inc., in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
12. On or about November 1, 2007, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof "Yellow Candle" to Red Mesa Trading Company, Inc., in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
13. The distribution or sale of "Garden Pesticide Dispenser" and "Yellow Candle" to Red Mesa Trading Company, Inc. on or about November 1, 2007 each constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection

Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (December 31, 1996), 62 Fed. Reg. 13513 (March 20, 1997) and 69 Fed. Reg. 7121 (February 13, 2004)), authorizes the assessment of a civil administrative penalty of up to \$6,500 for each violation of FIFRA after March 15, 2004. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$6,500 for each violation of the Act set forth above.

#### NOTICE OF OPPORTUNITY FOR HEARING

##### Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of

receipt of this Complaint. A copy of your Answer should also be sent to:

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

#### Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX.

The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

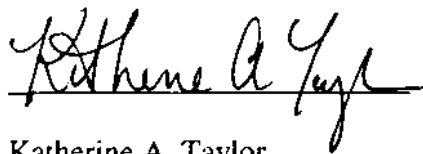
David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

His telephone number is (415) 972-3882.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Kim to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 18 day of September, 2009.



Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
USEPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

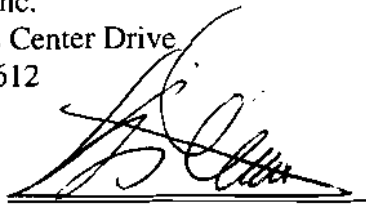
The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Mr. Rex Mehta  
President  
Dollar Store, Inc.  
2021 Business Center Drive  
Irvine, CA 92612

Dated: SEP 18 2009

By:



Ekho Lim  
U.S. Environmental Protection Agency, Region IX