

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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

BEFORE THE ADMINISTRATOR

06 SEP 29 PM 1:55  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF ) Docket No. FIFRA-07-2006-0284  
)  
Cornhusker State Industries ) COMPLAINT AND NOTICE OF  
800 Pioneers Blvd. ) OPPORTUNITY FOR HEARING  
Lincoln, Nebraska 68502 )  
)  
)  
Respondent )

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 United States Code (U.S.C.) § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Cornhusker State Industries (CSI), located at 800 Pioneers Blvd., Lincoln, Nebraska. Respondent operated a business in the state of Nebraska. The Respondent is and was at all times referred to in this complaint a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

### Section III

#### Violations

##### General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:
6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest.
8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines, in part, the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
9. 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.
10. Pursuant to FIFRA Section 2(w), 7 U.S.C. § 136(w) and Part 40 of the Code of Federal Regulations (C.F.R.) § 167.3, the term “produce” means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to Section 5 of FIFRA, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.
11. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) defines the term “establishment” to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
12. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines the term “registrant” to mean a person who has registered any pesticide pursuant to the provisions of FIFRA.
13. 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 which is adulterated or misbranded.

14. Section 2(c) of FIFRA, 7 U.S.C. § 136(c)(1) states the term “adulterated” applies to any pesticide if its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold.

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

16. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states 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 3(d) of FIFRA, are adequate to protect health and the environment.

17. A registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own, provided notification to the EPA is made by submitting the required form to EPA and following all the conditions for supplemental distribution, which are stated at § 152.132(a) through (e). Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.” The distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

18. Respondent requested, and EPA assigned a pesticide-producing establishment number to Respondent’s facility, EPA Establishment Number (EPA Est. No.) 47359-NB-001, on or about September 9, 1982, pursuant to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.

19. Broadspec 256 is a pesticide registered under EPA Registration Number (EPA Reg. No.) 106-79 to the registrant, Brulin & Company, Inc., Indianapolis, Indiana. The label submitted by Brulin & Company, Inc. for EPA Reg. No. 106-79 was accepted by EPA on January 31, 2002, and was the label in effect for EPA Reg. No. 106-79 on April 15, 2005.

20. Brulin & Company, Inc. authorized CSI to supplementally distribute their product, Broadspec 256, EPA Reg. No. 106-79, using the name of Tec/Cide 256, and EPA Reg. No. 106-79-47359, after providing notice to EPA on Form 8570-5, Notice of Supplemental Distribution of a Registered Pesticide on or about March 8, 1996, as is required at 40 C.F.R. § 152.132.

21. Lonza Carpet Sanitizer CS-202 is a pesticide registered under EPA Reg. No. 6836-108 to the registrant, Lonza, Inc., 90 Boroline Road, Allendale, New Jersey 07410. The label submitted by Lonza, Inc., for EPA Reg. No. 6836-108 was accepted by EPA on March 31, 2003, and was the label in effect for EPA Reg. No. 6836-108 on April 15, 2005.

22. EPA’s records indicate Lonza, Inc., authorized Brulin & Company, Inc., to supplementally distribute EPA Reg. No. 6836-108 under the name of Carpetcare Carpet Sanitizer Plus, and the EPA Reg. No. 6836-108-106, after providing notice to EPA on Form 8570-5, Notice of

Supplemental Distribution of a Registered Pesticide on or about February 1, 1991, as is required at 40 C.F.R. § 152.132.

23. Simple Green d is a pesticide registered under EPA Reg. No. 56782-1 to the registrant, Sunshine Makers, Inc., 15922 Pacific Coast Highway, Huntington Harbour, California 92649. The label submitted by Sunshine Makers, Inc., for EPA Reg. No. 56782-1 was accepted by EPA on March 31, 2003, and was the label in effect for EPA Reg. No. 56782-1 on April 15, 2005. Simple Green d is distributed by Sunshine Makers, Inc., only to industrial distributors for sale to end-users. There are no supplemental distributors for Simple Green d.

24. Respondent purchased Simple Green d from IBT, Inc., an industrial distributor. Simple Green d arrived at Respondent's facility packaged and labeled in a 55 gallon drum. Photographs of the label on the drums of Simple Green d purchased from IBT, Inc., displayed the registrant's name, the EPA "Regulation" No. 56782-1 and EPA Establishment No. 40873-GA-1.

25. On April 15, 2005, a representative of the Nebraska Department of Agriculture (NDA) conducted an inspection at Respondent's facility to determine Respondent's compliance with FIFRA.

26. The NDA representative documented by observations, photographs, and copies of documents collected during the inspection, that Respondent purchased Lonza Carpet Sanitizer CS-202, EPA Reg. No. 6836-108-106, and Simple Green d, EPA Reg. No. 56782-1, from independent providers, repackaged the pesticides, and further distributed or held them for distribution in gallon and quart bottle containers bearing labels applied by Respondent to the repackaged pesticides.

27. The NDA representative documented by observations, photographs, and copies of documents collected during the inspection that Respondent also purchased from Brulin & Company, Inc., quantities of EPA Reg. No. 106-79, and repackaged it for supplemental distribution.

28. Respondent provided a copy of the "Repackaging Agreement - For Redistribution of EPA Regulated Product" signed by Respondent and IBT, Inc., 5620 Fletcher Avenue, Lincoln, NE 68507, to the NDA representative during the inspection of April 15, 2005, which indicated Respondent agreed to purchase Simple Green d from IBT, Inc., and repackage it.

29. On April 15, 2005, the NDA representative collected a physical sample for laboratory analysis of a repackaged product bearing a label displaying the name, Tec/Cide 256, the EPA Reg. No. 106-79-47359, and the EPA Est. No. 47359-NE-1. For identification purposes, the representative assigned Sample No. 041505 F3234 0102 to this physical sample which was collected from Respondent's repackaged inventory of Batch Number 128 dated March 22, 2005.

30. On April 15, 2005, the NDA representative collected a physical sample for laboratory analysis of a repackaged product bearing a label displaying the name Carpetcare Carpet Sanitizer Plus, EPA Reg. No. 6836-108-106, and the EPA Est. No. 106-IN-1, from Respondent's inventory of 1 gallon containers of this product which were packaged, labeled, and released for

shipment. For identification purposes, the representative assigned Sample No. 041505 F3234 0101 to this physical sample.

31. A copy of Respondent's production record for EPA Reg. No. 6836-108-106 indicates the sample referred to in paragraph 30 was collected from Batch Number 20 dated February 4, 2005, of Respondent's repackaged inventory of Carpetcare Carpet Sanitizer Plus. The NDA representative collected photographs of Respondent's inventory of the sampled and repackaged product.

32. On April 15, 2005, the NDA representative collected the following physical samples for laboratory analysis from Respondent's inventory of repackaged Simple Green d, EPA Reg. No. 56782-1, which was packaged, labeled, and released for distribution. For identification purposes, the representative assigned numbers as follows to these physical samples:

- Sample No. 041505 F3234 0105 – collected from Lot Number/Batch Code 260 03 05.
- Sample No. 041505 F3234 0107 – collected from Lot Number/Batch Code 250 11 04. The representative collected photographs of Respondent's inventory of the sampled and repackaged product.

33. Respondent initiated telephone contact with EPA on December 13 and 14, 2005, regarding its receipt of the results of analysis of the physical samples referred to in paragraph 32. EPA requested, and Respondent further provided to EPA written documentation, accompanied by exhibits, which describes the process used by Respondent to repackage and label EPA Reg. No. 56782-1.

#### Count 1

34. The facts stated in paragraphs 6 through 29 are realleged and incorporated as if fully stated herein.

35. The label on the container of Sample Number 041505 F3234 0102, collected from Respondent's Batch Number 128-02-05, displayed the product name of Tec/Cide 256, EPA Reg. No. 106-79-47359 and the EPA Est. No. 47359-NE-1.

36. Respondent's production records indicate Respondent's remaining inventory on April 15, 2005, of Lot Number/Batch Code 128-02-05 included twelve (12) 4x1 gallon cases (48 total gallons) of the repackaged product, EPA Reg. No. 106-79-47359.

37. A copy of Respondent's Order Number 0508831 indicates CSI distributed and delivered on or about February 16, 2005, a quantity of 2 cases of the pesticide referenced in paragraph 36 to HHS-Geneva Youth Rehab & Treatment Center, Geneva, Nebraska.

38. A copy of the label on the container of Sample Number 041505 F3234 0102, EPA Reg. No. 106-79-47359, displayed the following misbranded items:

- a) The text regarding the Statement of Practical Treatment on the front panel is incorrect;
- b) Incorrect EPA Establishment Number;
- c) Incorrect statement under the Hazards to Humans and Domestic Animals;

- d) First Aid Statement and required text is missing;
- e) Veterinary Clinics site listed without specific Veterinary Clinic directions for use stated on the label;
- f) Under Storage and Disposal – the word, “Prohibitions” and the text following should be deleted; a Pesticide Storage heading is not on the label and should be; a heading titled “General” and the statement immediately following should be deleted; a heading titled “Container Disposal-Plastic Container” is incorrect; and,
- g) Instructions for cleaning personal protective equipment are not listed on label.

39. The label referenced in paragraph 38 was not the label accepted by EPA on January 31, 2002, for EPA Reg. No. 106-79.

40. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and holding for distribution a misbranded pesticide.

41. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 34 through 40, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

#### Count 2

42. The facts stated in paragraphs 6 through 31 are realleged and incorporated as if fully stated herein.

43. The label on the container of Sample Number 041505 F3234 0101 displayed the product name of Carpetcare Carpet Sanitizer Plus, EPA Reg. No. 6836-108-106, EPA Est. No. 106-IN-1. Sample Number 041505 F3234 0101 was collected from Respondent’s inventory of Lot Number/Batch Code 20-02-05.

44. Respondent’s production records indicate Respondent’s remaining inventory on April 15, 2005, of Lot Number/Batch Code 20-02-05, included nine (9) 4x1 gallon cases (36 total gallons) of the repackaged product, EPA Reg. No. 6836-108-106.

45. Respondent repackaged product from a labeled 55 gallon drum bearing the name, Carpetcare Carpet Sanitizer Plus, and the EPA Reg. No. 6836-108-106, into smaller 1 gallon containers and applied a label to the repackaged containers. The label applied to the repackaged containers bore the name, Carpetcare Carpet Sanitizer Plus, and displayed the EPA Reg. No. 6836-108-106, and the EPA Est. No. 106-IN-1.

46. A copy of Respondent’s Order Number 0507773 indicates CSI distributed and delivered on or about February 7, 2005, a quantity of 1 case (4 gallons) of the pesticide referenced in paragraph 45 to the Game & Parks Commission, Lincoln, Nebraska.

47. Respondent repackaged the pesticide referenced in paragraphs 43 through 46 without authorization from the registrant, Lonza, Inc., and the repackaged containers did not bear the accepted label dated March 31, 2003.

48. The repackaged pesticide described in paragraphs 43 through 46 was not encompassed within the terms of the basic registration under EPA Reg. No. 6836-108, and required separate product registration with EPA under provisions of Section 3 of FIFRA.

49. 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the EPA before the product as modified may be distributed or sold.

50. Respondent violated Section 12(a)(1)(A) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E), in that it failed to comply with the provisions of FIFRA by producing and distributing a misbranded and unregistered pesticide .

51. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 42 through 50, it is proposed that a civil penalty of \$6,500 be assessed against Respondent.

### Count 3

52. The facts stated in paragraphs 6 through 33 are realleged and incorporated as if fully stated herein.

53. The pesticide, Simple Green d, identified as Sample Number 041505 F3234 0105, from Lot Number/Batch Code 260 03 05, and Sample Number 041505 F3234 0107 from Lot Number/Batch Code 250 11 04 was misbranded in that the label claims on the repackaged products stated, in pertinent part:

“\* \* \*

Simple Green d

\* \* \*

#### ACTIVE INGREDIENTS:

Octyl decyl dimethyl ammonium chloride.....	0.30%
Dioctyl dimethyl ammonium chloride.....	0.15%
Didecyl dimethyl ammonium chloride.....	0.15%
Alkyl (C <sub>14</sub> , 50%; C <sub>12</sub> , 40%; C <sub>16</sub> , 10%)	
Dimethyl benzyl ammonium chloride.....	0.40%
INERT INGREDIENTS.....	99.00%.”

The label claims for active ingredients on each of the repackaged products for total quarternary ammonium chloride is 1%. However, Sample Number 041505 F3234 0105, when analyzed, contained 12% of the label claim for total quarternary ammonium chloride, and the laboratory check analysis of the sample indicated the product contained 11% of the label claim for total quarternary ammonium chloride. Sample Number 041505 F3234 0107, when analyzed, contained 11% of the label claim for total quarternary ammonium chloride, and the check analysis of the formulation showed the product contained 7% of the label claim for total quarternary ammonium chloride.

54. The pesticides referenced in paragraph 53 were adulterated in that the strength or purity fell below the professed standard of quality expressed on the labeling.

55. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), in that it sold or distributed or held for distribution the misbranded and adulterated pesticides described above.

56. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 52 through 55, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

#### Count 4

57. The facts stated in paragraphs 6 through 33 are realleged and incorporated as if fully stated herein.

58. Respondent repackaged the pesticide, Simple Green d, identified as Sample No. 041505 F3234 0105 from Lot Number/Batch Code 260 03 05 and Sample No. 041505 F3234 0107 from Lot Number/Batch Code 250 11 04, without authorization from the registrant, Sunshine Makers, Inc.

59. The repackaged products described in paragraph 58 were not encompassed within the terms of the basic registration under EPA Reg. No. 56782-1, and therefore required separate product registration under provisions of Section 3 of FIFRA.

60. 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the EPA before the product as modified may be distributed or sold.

61. Respondent violated Sections 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), in that it failed to comply with the provisions of FIFRA by producing and holding for distribution an unregistered pesticide.

62. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 57 through 61, it is proposed that a civil penalty of \$4,550 be assessed against Respondent.

#### Section IV

#### Total Proposed Penalty

63. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty for each violation. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). The EPA proposes to assess a total civil penalty of \$22,100 against Respondent for the above-described violations.



### Appropriateness of Proposed Penalty

64. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

65. For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were in excess of \$1,000,000 per year. This information placed Respondent in Category I size of business, as set forth in the FIFRA Civil Penalty Calculation Worksheet attached hereto and incorporated herein by reference (See Enclosure). If EPA's estimate of Respondent's total business revenues is incorrect, Respondent may submit reliable financial documentation indicating another category is appropriate.

66. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

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

68. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

69. Payment of the total penalty - \$22,100 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank  
EPA - Region 7  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251

70. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

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

and a copy to:

Mr. Kent Johnson  
Assistant Regional Counsel  
EPA - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

71. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with:

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

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

72. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (copy enclosed).

73. If Respondent fails to file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a

binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

74. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

## Section VI

### Settlement Conference

75. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's business, the gravity of the violation, and the effect of the proposed penalty on Respondent's ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

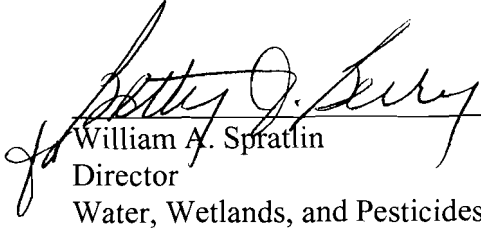
Mr. Kent Johnson  
Assistant Regional Counsel  
EPA Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101  
Telephone: (913) 551-7284

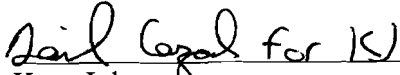
76. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

77. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

09/29/06

Date

  
William A. Spratlin  
Director  
Water, Wetlands, and Pesticides Division



Kent Johnson

Assistant Regional Counsel

Office of Regional Counsel

Enclosures:

1. FIFRA Civil Penalty Calculation Worksheet
2. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22
3. Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, July 2, 1990
4. U.S. EPA Small Business Resources Fact Sheet (SBREFA)
5. Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

Mr. Robert Houston  
Director  
Cornhusker State Industries  
Folsom & West Prospector #15  
Lincoln, Nebraska 68522

9/29/06  
Date

Julia A. Cacho  
Julia A. Cacho

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

RESPONDENT: Cornhusker State Industries  
 ADDRESS: 800 Pioneers Blvd.  
 Lincoln, NE 68502

Prepared By: Barbara Shepard  
 Date: 09/21/06

	Count 1	Count 2	Count 3	Count 4
<b>Appendix A</b>				
1. Statutory Violation	12(a)(1)(E)	12(a)(1)(A) 12(a)(1)(E)	12(a)(1)(E)	12(a)(1)(A)
2. FTTS Code	1EE	1AA & 1EE	1EE	1AA
3. Violation Level	2	2	2	2
<b>Appendix C - Table 2 - Size of Business Category</b>				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§14(a)(1)	§14(a)(1)	§14(a)(1)	§14(a)(1)
5. Size of Business Category	I	I	I	I
<b>Appendix C - Table 1 - FIFRA Civil Penalty Matrix</b>				
6. BASE PENALTY	\$6,500	\$6,500	\$6,500	\$6,500
<b>Appendix B - Gravity Adjustments</b>				
7a. Pesticide Toxicity	2	2	1	1
7b. Human Harm	3	3	1	1
7c. Environmental Harm	3	3	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	10	10	5	5
<b>Appendix C - Table 3 - Adjustments</b>				
7g. Percent Adjustment	-0-	-0-	30%	30%
7h. Dollar Adjustment	-0-	-0-	-\$1,950	-\$1,950
8. Final Penalty** (item 7h from item 6)	\$6,500	\$6,500	\$4,550	\$4,550
Combined Total Penalty (total of all columns for line 8, above)	\$22,100			

\* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

\*\*The final penalty in each column of line 8 cannot exceed the statutory maximum.

ADMINISTRATIVE CIVIL PENALTY CONCURRENCE