

FILED

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

2015 APR 29 AM 9:54

US EPA - REGION IX  
HEARING CLERK

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In the Matter of: )  
)  
)  
Pivot Chemical Company, )  
)  
Respondent. )  
\_\_\_\_\_)

Docket No. FIFRA-09-2015-0004

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**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 Pivot Chemical Company for the failure to complete and submit an initial pesticide production report within 30 days of registration of its establishment and failure to complete and submit an annual pesticide production report for the 2013 reporting year by March 1, 2014 in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Complainant is the Assistant Director of the Water and Pesticides Branch, Enforcement Division, United States Environmental Protection Agency (“EPA”), Region IX, who has been duly delegated to bring this action under FIFRA.

Respondent is Pivot Chemical Company (“Respondent”), an Arizona corporation that owns, operates, controls and/or is otherwise responsible for a facility located at 1426 North Marvin St., Suite 106, Gilbert, Arizona 85233.

## GENERAL ALLEGATIONS

1. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a “person” means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not..
2. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a “producer” is a person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.
3. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that a “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . .” .
4. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), provides that a “pest” means “(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-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).”
5. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit to EPA an initial pesticide production report within 30 days of its establishment registration and an annual pesticide production report on or before March 1 of each year thereafter that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.

6. Section 12(a)(2)(L) of FIFRA , 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

### ALLEGED VIOLATIONS

#### COUNTS 1-2: Failure to Complete and Submit An Initial Pesticide Production Report and An Annual Pesticide Production Report for 2013 Reporting Year, 7 U.S.C. § 136j(a)(2)(L).

7. Paragraphs 1 through 6 are realleged and incorporated herein by reference.
8. Respondent is a “person,” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
9. Respondent is a “producer, “ as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
10. As a “producer,” Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant to Section 7 at 40 C.F.R. Part 167.
11. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 1426 North Marvin St., Suite 106, Gilbert, Arizona 85233 (the “Facility”).
12. On September 24, 2012, Respondent registered the Facility as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). The Establishment Number is 89499-AZ-001.
13. Respondent was required to complete and submit to EPA an initial pesticide production report for the Facility within 30 days of registration of the establishment, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.
14. Respondent failed to complete and submit to EPA an initial pesticide production report

for the Facility within 30 days of registration of the establishment, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.

15. Respondent was required to complete and submit to EPA an annual pesticide production report for the Facility for the 2013 production year by March 1, 2014, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.
16. Respondent failed to complete and submit to EPA an annual pesticide production report for the Facility for the 2013 production year by March 1, 2014, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.
17. Respondent's failures to complete and submit to EPA an initial pesticide production report and an annual pesticide report for the 2013 production year for the Facility by March 1, 2014 constitute two (2) violations of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
18. On July 1, 2014, EPA issued a Notice of Warning to Respondent for failure to complete and submit to EPA an annual pesticide production report for the 2013 production year by March 1, 2014, which required Respondent to complete and submit the annual pesticide production report for the 2013 production year within 21 days of receiving the Notice.
19. Respondent failed to complete and submit to EPA an annual pesticide production report for the 2013 production year within 21 days of receiving the Notice of Warning, as required by the Notice.

#### **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 (73 Fed.

Reg. 75,340 (December 11, 2008)), authorizes the assessment of a civil administrative penalty of up to \$7,500 for each violation of FIFRA after January 12, 2009. 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 violation alleged. Accordingly, based on the violations alleged in this Complaint, and after consideration of the statutory factors enumerated above, EPA requests that the Administrator assess a civil administrative penalty of up to \$7,500 for each violation of FIFRA.

### **NOTICE OF OPPORTUNITY FOR HEARING**

#### **Answer and Administrative Hearing**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination 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:

Carol Bussey  
Assistant Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Ms. Bussey is the attorney assigned to represent EPA in this matter. Her telephone number is (415)972-3950.

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. The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

After the issuance of this Complaint, 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.

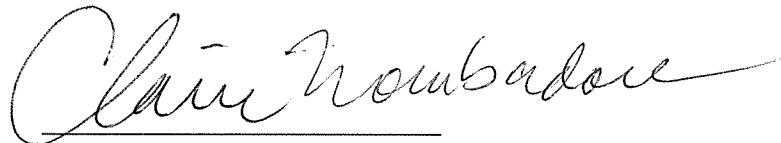
#### **Informal Settlement Conference**

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 through Carol Bussey, the EPA attorney assigned to this case, concerning the alleged violation, the facts of this case, or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel.

**An informal conference does not, however, affect your obligation to file an Answer to this Complaint.** 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 a Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

Dated at San Francisco, California on this 22<sup>nd</sup> day of April 2015.



Claire Trombadore  
Assistant Director  
Water and Pesticides Branch, Enforcement Division  
U.S. Environmental Protection Agency, Region IX

CERTIFICATION OF SERVICE

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

Regional Hearing Clerk  
U.S. EPA, Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

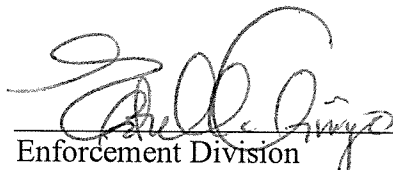
And that a true and correct copy of the Complaint and Notice of Opportunity for Hearing, the Consolidated Rules of Practice at 40 C.F.R Part 22, and the Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements were placed in the United State Mail, certified mail, return receipt requested, addressed to the following:

Dawn Kennedy, President  
Pivot Chemical Company  
2962 E. Sierra Madre Ave.  
Gilbert, AZ 85296

**CERTIFIED MAIL NUMBER**

**7011 1570 0000 6494 7170**

Dated: 4/29/15

By:   
Enforcement Division  
U.S. Environmental Protection Agency, Region IX