

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

05 MAY 2 AM 9:26
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF) Docket No. FIFRA-07-2005-0235
)
Yates Center Elevator, Inc.) COMPLAINT AND NOTICE OF
109 N. Pratt) OPPORTUNITY FOR HEARING
Yates Center, Kansas 66783)
)
)
)
)
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 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 Yates Center Elevator, Inc., a pesticide producing establishment, located at 109 N. Pratt, Yates Center, Kansas 66783. 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), and a corporation qualified to do business in the state of Kansas.

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(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.
8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.
9. 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.
10. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling does not contain directions for use which are necessary and if complied with are adequate to protect health and the environment.
11. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which is necessary and if complied with together with any requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment.
12. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it shall be unlawful for any person to distribute or sell, or make available for use, or to use, any registered pesticide classified for restricted use other than in accordance with Section 3(d) of FIFRA.
13. Sections 3(d)(1)(C)(i) and (ii) of FIFRA, 7 U.S.C. §§ 136a(d)(1)(C)(i) and (ii), state in pertinent part that a restricted use pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.
14. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), defines "certified applicator" as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, to use or supervise the use of any pesticide which is classified for restricted use.

15. Section 12(a)(2)(O) of FIFRA, 7 U.S.C. § 136j(a)(2)(O), states that it shall be unlawful for any person to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of the Act.

16. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), states that the term “produce” means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

17. GRAZON P+D is a restricted use pesticide registered to Dow AgroSciences, Indianapolis, Indiana, under EPA Registration No. 62719-182. The label of GRAZON P+D states in pertinent part: “RESTRICTED USE PESTICIDE . . . For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator’s certification.”

18. REMEDY is a pesticide registered to Dow AgroSciences, LLC, under EPA Registration No. 62719-70.

19. PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAG is a pesticide registered to Boehringer Ingelheim Vetmedica, Inc., St. Joseph, Missouri, under EPA Registration No. 4691-148. PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAG is customarily labeled, distributed, and sold in the marketplace as unit cases containing 2 pouches of 10 tags each within the unit case. Each individual packet contained within the unit case has the words “See Carton for Precautionary Statements and Directions for Use” clearly printed on each individual packet. The printed information displayed on the individual packets is not the complete EPA-accepted label.

20. PROZAP INSECTRIN X is a pesticide supplementally distributed by Loveland Industries, Inc., under EPA Registration No. 28293-128-36208. The basic registered pesticide is UNICORN PERMETHRIN SPRAY, EPA Registration No. 28293-128, registered to Unicorn Laboratories, Clearwater, Florida.

21. GLEAN FERTILIZER COMPATIBLE HERBICIDE, EPA Registration No. 352-522, is a pesticide registered to E.I. Du Pont De Nemours & Co., Inc., Newark, Delaware. The pesticide is packaged in 1 lb. 4 oz. containers.

22. On or about January 28, 2004, a representative of the Kansas Department of Agriculture (KDA) conducted a routine pesticide establishment inspection (inspection no. 012804 4022 01) at Respondent’s facility in Yates Center, Kansas, for the purpose of determining Respondent’s compliance with the FIFRA, including review of restricted use pesticide (RUP) sales and application records.

Count 1

23. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

24. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA collected a copy of invoice number 41098 from Respondent. The invoice documents Respondent's distribution and sale of 10 gallons of GRAZON P+D, EPA Registration No. 62719-182, to David Jones on May 31, 2003.

25. On or about January 28, 2004, the KDA representative obtained from David Jones a statement in which Mr. Jones acknowledged purchasing and applying the restricted use pesticide, GRAZON P+D, on his property (inspection no. 012804 4022 02).

26. On or about May 31, 2003, Respondent distributed or sold, and thereby made available for use to David Jones, Yates Center, Kansas, the restricted use pesticide, GRAZON P+D, as documented by invoice number 41098, dated May 31, 2003.

27. At the time of the sale referred to in paragraph 24, David Jones was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

28. David Jones used the GRAZON P+D and was not working under the direct supervision of a certified applicator at the time.

29. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

30. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 23 through 29, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 2

31. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

32. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA collected a copy of invoice number 40687 from Respondent. The invoice documents Respondent's distribution and sale of 1.5 gallons of GRAZON P+D, EPA Registration No. 62719-182, to Marvin Eagle on May 15, 2003.

33. On or about March 3, 2004, the KDA representative obtained from Marvin Eagle a statement in which Mr. Eagle acknowledged purchasing and applying the restricted use pesticide, GRAZON P+D, on his property (inspection no. 030304 4022 01).

34. On or about May 15, 2003, Respondent distributed or sold, and thereby made available for use to Marvin Eagle, Yates Center, Kansas, the restricted use pesticide, GRAZON P+D, as documented by invoice number 40687, dated May 15, 2003.

35. At the time of the sale referred to in paragraph 32, Marvin Eagle was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

36. Marvin Eagle used the GRAZON P+D and was not working under the direct supervision of a certified applicator at the time.

37. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

38. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 31 through 37, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 3

39. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

40. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA collected a copy of invoice number 40730 from Respondent. The invoice documents Respondent's distribution and sale of 25 gallons of GRAZON P+D, EPA Registration No. 62719-182, to Darwin Deets on May 17, 2003. The pesticide was picked up by Jerry Shaffer.

41. On or about February 27, 2004, the KDA representative obtained from Darwin Deets a statement in which Mr. Deets acknowledged purchasing and applying the restricted use pesticide, GRAZON P+D, on his property (inspection no. 022704 4022 01).

42. On or about May 17, 2003, Respondent distributed or sold, and thereby made available for use to Darwin Deets, Yates Center, Kansas, the restricted use pesticide, GRAZON P+D, as documented by invoice number 40730, dated May 17, 2003.

43. At the time of the sale referred to in paragraph 40, neither Jerry Shaffer nor Darwin Deets were certified applicators as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

44. Darwin Deets used the GRAZON P+D on or about May 18, 2003, and was not working under the direct supervision of a certified applicator at the time.

45. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

46. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 39 through 45, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 4

47. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

48. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA collected a copy of invoice number 40846 from Respondent. The invoice documents Respondent's distribution and sale of 2.5 gallons of GRAZON P+D, EPA Registration No. 62719-182, to Darwin Deets on May 21, 2003.

49. On or about February 27, 2004, the KDA representative obtained from Darwin Deets a statement in which Mr. Deets acknowledged purchasing and applying the restricted use pesticide, GRAZON P+D, on his property (inspection no. 022704 4022 01).

50. On or about May 21, 2003, Respondent distributed or sold, and thereby made available for use to Darwin Deets, Yates Center, Kansas, the restricted use pesticide, GRAZON P+D, as documented by invoice number 40846, dated May 21, 2003.

51. At the time of the sale referred to in paragraph 48, Darwin Deets was not a certified applicator as that term is defined in Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1).

52. Darwin Deets used the GRAZON P+D on or about May 21-22, 2003, and was not working under the direct supervision of a certified applicator at the time.

53. Respondent violated Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), by selling or making available for use a registered pesticide classified for a restricted use other than in accordance with Section 3(d) of FIFRA, 7 U.S.C. § 136a(d).

54. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 47 through 53, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 5

55. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

56. On or about May 15, 2003, Respondent sold 1.5 gallons of the pesticide, GRAZON P+D, packaged in a 2.5 gallon container to Marvin Eagle, Yates Center, Kansas, as documented by invoice number 40687 collected by the KDA representative on January 28, 2004.

57. GRAZON P+D is a restricted use pesticide registered to Dow AgroSciences, LLC, under EPA Registration No. 62719-182.

58. The repackaged pesticide, GRAZON P+D, described in paragraphs 56 and 57, was not encompassed within the terms of the product registration under EPA Registration No. 62719-182 and required separate product registration under Section 3 of FIFRA.

59. Title 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 Agency before the product as modified may be distributed or sold.

60. The pesticide described in paragraphs 56 and 57 was adulterated in that its contents had been manipulated in that part of the pesticide had been removed from the container sold prior to sale and did not meet the requirements of registration under Section 3 of FIFRA.

61. Respondent violated Sections 12(a)(1)(A) and (E) and (2)(O) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E) and (2)(O), by distribution or sale of an adulterated, unregistered pesticide whose contents had been manipulated and did not meet the requirements of registration under Section 3 of FIFRA.

62. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 55 through 61, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 6

63. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

64. On or about May 15, 2003, Respondent sold 0.5 gallon of the pesticide, REMEDY, in an opened, partially filled container to Marvin Eagle, Yates Center, Kansas, as documented by invoice number 40687 collected by the KDA representative on January 28, 2004.

65. The repackaged pesticide, REMEDY, described in paragraph 64 was not encompassed within the terms of the product registration under EPA Registration No. 62719-70, and required separate product registration under Section 3 of FIFRA.

66. Title 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 Agency before the product as modified may be distributed or sold.

67. The pesticide described in paragraphs 64 and 65 was adulterated in that its contents had been manipulated in that part of the pesticide had been removed from the container sold prior to sale and did not meet the requirements of registration under Section 3 of FIFRA.

68. Respondent violated Sections 12(a)(1)(A) and (E) and (2)(O) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E) and (2)(O), by distribution or sale of an unregistered pesticide whose

contents had been manipulated and did not meet the requirements of registration under Section 3 of FIFRA.

69. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 63 through 68, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 7

70. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

71. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, Respondent was holding for distribution or sale individual packets of PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAGS, EPA Registration No. 4691-148, which had been removed from the original end-user carton. The KDA representative placed a state Stop Sale, Use, or Removal Order on the PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAGS at that time.

72. The repackaged pesticide, PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAGS, described in paragraph 71 was not encompassed within the terms of the product registration under EPA Registration No. 4691-148, and required separate product registration under Section 3 of FIFRA.

73. Title 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 Agency before the product as modified may be distributed or sold.

74. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by holding for distribution or sale an unregistered pesticide.

75. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 70 through 74, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 8

76. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

77. The pesticide, PATRIOT DEFENSE SYSTEM INSECTICIDE CATTLE EAR TAGS, described in paragraphs 71 and 72 was misbranded in that it failed to bear complete directions for use and precautionary statements other than "Keep Out of Reach of Children" and "WARNING" which are necessary and, if complied with, are adequate to protect health and the environment. The package referred users to the original carton for directions for use and detailed precautionary statements.

78. The pesticide described in paragraphs 71 and 72 was misbranded in that it failed to bear an ingredient statement, as required by the regulation at 40 C.F.R. Part 156.10.

79. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by holding for distribution or sale a pesticide which was misbranded in that the labeling accompanying it did not contain complete directions for use, a warning or caution statement, or an ingredient statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of the Act, is adequate to protect health and the environment.

80. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 76 through 79, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 9

81. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

82. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA documented a 1 quart container of PROZAP INSECTRIN X, EPA Registration No. 28293-128-36208, referenced in paragraph 20, which was being held for sale. The Directions for Use label pamphlet was missing from the back of the container. The KDA representative placed a state Stop Sale, Use, or Removal Order on the PROZAP INSECTRIN X at that time.

83. Respondent violated Section 12(a)(1)(E) by holding for distribution or sale a pesticide which was misbranded in that the labeling accompanying it did not contain the directions for use which are necessary, and if complied with, is adequate to protect health and the environment.

84. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 81 through 83, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Count 10

85. The facts stated in paragraphs 6 through 22 are realleged and incorporated as if fully stated herein.

86. On or about January 28, 2004, during the inspection referenced in paragraph 22 above, a representative of KDA documented an open container of GLEAN FERTILIZER COMPATIBLE HERBICIDE being held for distribution or sale. Approximately one-half of its labeled contents was in the container. The KDA representative placed a state Stop Sale, Use or Removal Order on the pesticide at that time.

87. The repackaged pesticide, GLEAN fertilizer compatible herbicide, described in paragraph 86 was not encompassed within the terms of the product registration under EPA Registration No. 352-522, and required separate product registration under Section 3 of FIFRA.

88. Title 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 Agency before the product as modified may be distributed or sold.

89. The pesticide described in paragraphs 86 and 87 was adulterated in that its contents had been manipulated in that part of the pesticide had been removed from the container sold prior to sale and did not meet the requirements of registration under Section 3 of FIFRA.

90. Respondent violated Sections 12(a)(1)(A) and (E) and (2)(O) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A) and (E) and (2)(O), by holding for distribution or sale an unregistered, adulterated pesticide whose contents had been manipulated and did not meet the requirements of registration under Section.

91. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 85 through 90, it is proposed that a civil penalty of \$5,500 be assessed against Respondent.

Section IV

Total Proposed Penalty

92. 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 of up to Five Thousand Five Hundred Dollars (\$5,500) for each violation. The EPA proposes to assess a total civil penalty of \$55,000 against Respondent for the above-described violation.

Appropriateness of Proposed Penalty

93. 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)).

94. For purposes of calculating the proposed penalty, EPA obtained financial information indicating that Respondent's total business revenues were over \$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.

95. 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.

96. 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.

97. 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.

98. Payment of the total penalty - \$55,000 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

EPA-Cincinnati Finance Center
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

99. 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 5th Street
Kansas City, Kansas 66101

and a copy to:

Chris R. Dudding
Assistant Regional Counsel
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

100. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136(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 5th 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.

101. Any hearing that is requested shall be held and conducted in accordance with the "Consolidated Rules of Practices 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).

102. 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.

103. 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

104. 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:

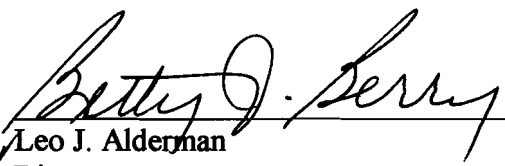
Chris R. Dudding
Assistant Regional Counsel
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7524

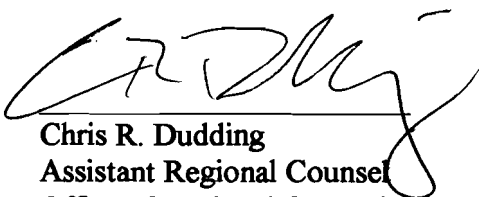
105. A request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

106. 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.

04/28/05

Date


for Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division


Chris R. Dudding
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. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
4. SBREFA Fact Sheet
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 5th 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. Ed Jones
Registered Agent for
Yates Center Elevator, Inc.
109 N. Pratt
Yates Center, Kansas 66783

5/2/05
Date

Lisa Stufflebeam
Lisa Stufflebeam

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

RESPONDENT: Yates Center Elevator, Inc.
ADDRESS: 109 N. Pratt
Yates Center, KS 66783

Prepared By: Christena Windmeyer
Date: April 11, 2005

	Count 1	Count 2	Count 3	Count 4
Appendix A				
1. Statutory Violation	12(a)(2)(F)	12(a)(2)(F)	12(a)(2)(F)	12(a)(2)(F)
2. FTTS Code	2FA	2FA	2FA	2FA
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
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
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$5,500	\$5,500	\$5,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	2	2	2
7b. Human Harm	3	3	3	3
7c. Environmental Harm	2	2	2	2
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	12	12	12
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment				
7h. Dollar Adjustment				
8. Final Penalty** (item 7h from item 6)	\$5,500	\$5,500	\$5,500	\$5,500
Combined Total Penalty (total of all columns for line 8, above)	\$55,000			

* 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.

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

RESPONDENT: Yates Center Elevator, Inc.
 ADDRESS: 109 N. Pratt
 Yates Center, KS

Prepared By: Christena Windmeyer
 Date: April 11, 2005

	Count 5	Count 6	Count 7	Count 8
Appendix A				
1. Statutory Violation	12(a)(1)(A) 12(a)(1)(E) 12(a)(2)(O)	12(a)(1)(A) 12(a)(1)(E) 12(a)(2)(O)	12(a)(1)(A)	12(a)(1)(E)
2. FTTS Code	1AA, 1EM, 2OA	1AA, 1EM, 2OA	1AA	1EF, 1EG, 1EI
3. Violation Level	2	2	2	2
Appendix C - Table 2 - Size of Business Category				
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
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$5,500	\$5,500	\$5,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	2	1	1	1
7b. Human Harm	3	3	3	3
7c. Environmental Harm	2	3	3	3
7d. Compliance History	2	2	2	2
7e. Culpability	2	2	2	2
7f. Total Gravity Adjustment Value (add items 7a - 7e)	12	11	11	11
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment				
7h. Dollar Adjustment				
8. Final Penalty** (item 7h from item 6)	\$5,500	\$5,500	\$5,500	\$5,500
Combined Total Penalty (total of all columns for line 8, above)	\$55,000			

* 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.

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

RESPONDENT: Yates Center Elevator, Inc.
ADDRESS: 109 N. Pratt
Yates Center, KS

Prepared By: Christena Windmeyer
Date: April 11, 2005

	Count 9	Count 10		
Appendix A				
1. Statutory Violation	12(a)(1)(E)	12(a)(1)(A) 12(a)(1)(E) 12(a)(2)(O)		
2. FTTS Code	1EF	1AA, 20A		
3. Violation Level	2	2		
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)		
5. Size of Business Category	1	1		
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$5,500		
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1		
7b. Human Harm	3	3		
7c. Environmental Harm	3	3		
7d. Compliance History	2	2		
7e. Culpability	2	2		
7f. Total Gravity Adjustment Value (add items 7a - 7e)	11	11		
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment				
7h. Dollar Adjustment				
8. Final Penalty** (item 7h from item 6)	\$5,500	\$5,500		
Combined Total Penalty (total of all columns for line 8, above)	\$55,000			

* 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.