

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA-07-2009-0003
)	
Hunte Kennel Systems and)	
Animal Care, Inc.)	COMPLAINT AND NOTICE OF
117 N. Royhill Blvd.)	OPPORTUNITY FOR HEARING
Goodman, Missouri 64843)	
)	
Respondent)	

ANSWER

COMES NOW Respondent Hunte Kennel Systems and Animal Care, Inc. by and through its counsel of record, Carnahan, Evans, Cantwell & Brown, P.C. and for its Answer to the Complaint in the above-captioned cause, states, alleges, avers and denies as follows:

Jurisdiction

1. Respondent admits the allegation of Paragraph 1 but denies that Complainant is entitled to recover any civil penalties from this Respondent.
2. Respondent acknowledges receipt of Notice as alleged in Paragraph 2 but denies that it has committed any violations of federal law.

Parties

3. Respondent admits the allegations of Paragraph 3.
4. Respondent admits the allegations of Paragraph 4 except the allegation that it is "a pesticide dealer" which Respondent denies.

General Allegations

5. Respondent admits that the Complainant alleges violations of FIFRA, but denies that it has committed any violations.

6. Respondent admits the allegations of Paragraph 6.

7. Respondent admits the allegations of Paragraph 7.

8. Respondent admits the allegations of Paragraph 8.

9. Respondent admits the allegations of Paragraph 9.

10. Respondent admits the allegations of Paragraph 10.

11. Respondent admits the allegations of Paragraph 11.

12. Respondent admits the allegations of Paragraph 12

13. Respondent states that it is without sufficient knowledge or information to admit or deny the allegations of Paragraph 13, and therefore denies same.

14. Respondent states that it is without sufficient knowledge or information to admit or deny the allegations of Paragraph 14, and therefore denies same.

15. Respondent states that it is without sufficient knowledge or information to admit or deny the allegations of Paragraph 15, and therefore denies same.

16. Respondent admits that the Missouri Department of Agriculture conducted the inspections listed in Paragraph 16, but states it is without sufficient knowledge or information to determine the purpose of the inspections.

17. Respondent states that it is without sufficient knowledge or information to admit or deny the allegations of Paragraph 17, and therefore denies same.

Violations

Count 1 – Buffalo, Missouri
(Offered for sale a misbranded and unregistered pesticide)

18. Respondent restates and incorporates by reference its responses to Paragraphs 5 through 17.

19. Respondent denies the allegations of Paragraph 19.

20. Respondent denies the allegations of Paragraph 20.

21. Respondent states that Paragraph 21 does not allege any facts, but contains a conclusion of law, and Respondent denies same.

23. Respondent denies the allegations of Paragraph 23.

24. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 2 – Goodman, Missouri
(Offered for sale a misbranded and unregistered pesticide)

25. Respondent denies the allegations of Paragraph 25.

26. Respondent denies the allegations of Paragraph 26.

27. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 3
(Sales a misbranded and unregistered produce from both locations)

28. Respondent denies the allegations of Paragraph 28.

29. Respondent denies the allegations of Paragraph 29.

30. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 4
(Sales a misbranded and unregistered produce from both locations)

31. Respondent denies the allegations of Paragraph 31.

32. Respondent denies the allegations of Paragraph 32.

33. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 5

(Sales a misbranded and unregistered produce from both locations)

34. Respondent denies the allegations of Paragraph 34.
35. Respondent denies the allegations of Paragraph 35.
36. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 6

(Sales a misbranded and unregistered produce from both locations)

37. Respondent denies the allegations of Paragraph 37.
38. Respondent denies the allegations of Paragraph 38.
39. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 7

(Sales a misbranded and unregistered produce from both locations)

40. Respondent denies the allegations of Paragraph 40.
41. Respondent denies the allegations of Paragraph 41.
42. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 8 – Buffalo, Missouri

(Pesticide produced in unregistered establishment)

43. Respondent denies the allegations of Paragraph 43.
44. Respondent denies the allegations of Paragraph 44.
45. Respondent denies that a civil penalty is warranted to be assessed against it.

Count 9 – Goodman, Missouri

(Pesticide produced in unregistered establishment)

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46. Respondent denies the allegations of Paragraph 46.
 47. Respondent denies the allegations of Paragraph 47.
 48. Respondent denies that a civil penalty is warranted to be assessed against it.

Total Proposed Penalty

49. Respondent admits that the statutory provisions cited in Paragraph 49 authorize the assessment of civil penalties for violations of FIFRA, but Respondent denies that any civil penalties should be assessed against it in this action.

Appropriateness of Proposed Penalty

50. Respondent denies that the proposed penalty is appropriate based upon the statutory factors set forth in Section 14 of FIFRA, and affirmatively states that any conduct by Respondent which caused the alleged violations was de minimis in nature, was not a material part of Respondent's ordinary and customary business, and did not result in any material financial gain or advantage to Respondent, and that the proposed civil penalty vastly outweighs any alleged culpability or harm from Respondent's actions.

51. Respondent admits that its total business revenues were in excess of \$1 million per year, but affirmatively states that any sales of the product "Paramite" were an insignificant, insubstantial and de minimis portion of its business, were not a material part of Respondent's ordinary and customary business, and did not result in any material financial gain or advantage to Respondent, and that the proposed civil penalty vastly outweighs any alleged culpability or harm from Respondent's actions. Respondent intends to submit financial documentation to EPA to demonstrate that the proposed penalty is inappropriately large under these circumstances.

52. No response to Paragraph 52 is required, but Respondent states that it intends to submit reliable financial documentation in mitigation of the proposed penalty.

53. Respondent has raised bona fide affirmative defenses.

54. Respondent is raising its affirmative defenses at the earliest opportunity in this proceeding, in its Answer to the Complaint.

55. Respondent denies that the penalty sought is appropriate under the circumstances of this case.

56. Respondent contests the findings and assessment set forth above.

NOTICE OF OPPORTUNITY FOR HEARING

Answer and Request for Hearing

57. Respondent hereby requests a hearing pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Respondent has, on April 20, 2009, discussed the timing for filing its Answer in this matter with Chris Muehlberger, Assistant Regional Counsel of EPA, and the parties have agreed that Respondent's Answer will be timely if delivered to Mr. Muehlberger and the Regional Hearing Clerk on or before Friday, April 24, 2009.

58. Respondent requests that a hearing be held on the allegations of the Complaint in accordance with the Consolidated Rules of Practice.

59. Respondent has stated its denials of certain allegations of the Complaint, and has requested its right to a hearing under FIFRA in this Answer.

60. Respondent has not engaged in, and will not engage in any prohibited ex parte contact.

Settlement Conference

61. Respondent requests an informal settlement conference to confer with EPA concerning: (1) whether or not the alleged violations occurred; (2) the appropriateness of the proposed penalty in relation to the gravity of the alleged violations; and (3) Respondent's proposal to engage in a supplemental environmental project as a facet of a resolution of this Complaint.

62. Respondent has herewith filed its Answer and request for hearing, and requests that the informal settlement conference procedure be pursued simultaneously with the adjudicatory hearing procedure.

63. Respondent requests the opportunity to pursue the possibility of settlement.

Respectfully submitted,

CARNAHAN, EVANS, CANTWELL
& BROWN, P.C.

By



John E. Price
Missouri Bar No. 28150

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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original and one complete copy of the foregoing document was served upon the attorneys of record for each party to the above action:

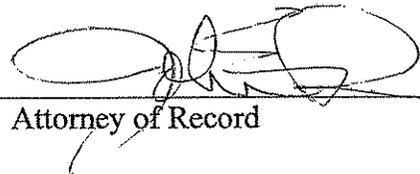
- A. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Missouri, as set forth below:

Regional Hearing Clerk
United States EPA – Region VII
901 North 5th Street
Kansas City, KS 66101

Chris Muehlberger
Assistant Regional Counsel
United States EPA – Region VII
901 North 5th Street
Kansas City, KS 66101

- B. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, via overnight delivery;
- C. by hand delivery to the business office of said attorneys;
- D. by handing same to said attorneys;
- E. via facsimile transmission to :
- F. via electronic filing with the applicable U.S. District Court;
- G. via e-mail transmission to:

on the 20th day of April, 2009, by the method checked above.



Attorney of Record