



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAY 10 2007

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL  
RECEIPT NO. 7001 0320 0005 8910 5232

Jean E. Mason, President  
Mason Chemical Company  
721 West Algonquin Road  
Arlington Heights, Illinois 60005

In the Matter of: Mason Chemical Company, Docket No. FIFRA-05-2007-0027

Dear Ms. Mason:

I have enclosed the Complaint filed by the United States Environmental Protection Agency (U.S. EPA), Region 5, against Mason Chemical Company under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Luis Oviedo, Assistant Regional Counsel at (312) 353-9538.

Sincerely,

*Tony Martey, for M. Klevs*

Mardi Klevs, Chief  
Pesticides and Toxics Branch  
Waste, Pesticides and Toxics Division

Enclosures

cc: Jerry Kirbach, Illinois Department of Agriculture  
Regional Hearing Clerk, E-13J

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. FIFRA-05-2007-0027</b>
	)	
<b>Mason Chemical Company</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Arlington Heights, Illinois</b>	)	<b>Under Section 14(a) of the Federal</b>
	)	<b>Insecticide, Fungicide, and Rodenticide</b>
<b>Respondent.</b>	)	<b>Act, 7 U.S.C. § 136l(a)</b>
<hr/>	)	

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (FIFRA), 7 U.S.C. § 136l(a).

2. The Complainant is, by lawful delegation, the Chief, Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Mason Chemical Company, a corporation organized under the laws of the State of Delaware, with a place of business located at 721 West Algonquin Road, Arlington Heights, Illinois 60005.

**Statutory And Regulatory Background**

4. The term "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

5. The term "pesticide" is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

6. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

7. The term “misbranded” is defined in Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), which states that 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.”

8. The term “misbranded” is further defined in Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), which states a pesticide is misbranded if “the label 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 this Act, are adequate to protect health and the environment.”

9. The term “misbranded” is further defined in Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), which states that a pesticide is misbranded if “the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment.”

10. 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 misbranded.

11. According to the Regulations at 40 C.F.R. § 152.132, supplemental distribution is permitted upon written notification to U.S. EPA by both the registrant and the distributor,

provided that all of the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the distributor. Supplemental distribution allows the registrant to distribute or sell the registered product under another person's name and address, and such distribution and sale is termed "supplemental distribution," and the product is referred to as "distributor product." 40 C.F.R. § 152.132.

12. According to the Regulations at 40 C.F.R. § 152.132(d)(3), the registration number of the registered product must be followed by a dash, followed by the distributor's company number.

13. According to 40 C.F.R. 152.132, 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.

14. According to 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: 1) the product name of the distributor product may be different, 2) the name and address of the distributor may appear instead of that of the registrant, 3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, 4) the establishment number must be that of the final establishment at which the product was produced, and 5) specific claims may be deleted, provided that no other changes are necessary.

#### **General Allegations**

15. Respondent was, at all times relevant to this Complaint, a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16. At all times relevant to this Complaint, Respondent was either a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor of pesticides within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

17. At all times relevant to this Complaint, Respondent “distributed” or “sold” pesticides, as those terms are defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

18. On or about April 22, 1994, Respondent and its agent, Norman Manufacturing Company (Norman), located at 31473 Utica Road, Fraser, Michigan 48026, submitted to U.S. EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) allowing Norman to distribute Respondent’s registered pesticide product, “MAQUAT MC1412-10%-W,” EPA Reg. No. 10324-43, under Norman’s brand name “ALGAE CHECK,” EPA Reg. No. 10324-43-38122.

19. “MAQUAT MC1412-10%-W” EPA Reg. No. 10324-43 is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

20. On or about April 22, 1994, Respondent and Norman submitted to U.S. EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) allowing Norman to distribute Respondent’s registered pesticide product, “MAQUAT TC 76-50%,” EPA Reg. No. 10324-19, under Norman’s brand name “ALGAECIDE AQUA GUARD 50,” EPA Reg. No. 10324-19-38122.

21. “MAQUAT TC 76-50%” EPA Reg. No. 10324-19 is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

22. On or about April 22, 1994, Respondent and Norman submitted to U.S. EPA a “Notice of Supplemental Distribution of a Registered Pesticide Product” (EPA Form 8570-5) allowing Norman to distribute Respondent’s registered pesticide product, “MAQUAT TC76-10%,” EPA Reg. No.10324-15, under Norman’s brand name “ALGAE TREK,” EPA Reg. No. 10324-15-38122.

23. “MAQUAT TC76-10%” EPA Reg. No. 10324-15, is a “pesticide”as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

24. The number “38122,” in EPA Reg. Nos. 10324-43-38122, 10324-19-38122, and 10324-15-38122 is Norman’s company number and indicates that Norman is an agent and a supplemental distributor of Respondent’s above-mentioned registered pesticide products.

25. On August 22, 2002, an inspector employed by the MDA and duly authorized to conduct inspections under FIFRA, conducted an inspection under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, at Norman’s establishment located at 31473 Utica Road, Fraser, Michigan 48026, to examine and collect samples of any pesticides packaged, labeled, and released for shipment.

26. During the August 22, 2002 inspection, the MDA inspector collected documentary samples of letters, pesticide product labels, EPA Notices of Supplemental Distribution, Production Records, Shipping Invoices, and copies of Distribution Agreements.

27. Upon collection of the samples, the inspector issued a “Receipt For Samples” to an authorized representative of Norman, who acknowledged, by signature on the document, that the samples were obtained from pesticides that were packaged, labeled, and released for shipment or sale.

28. The distributor pesticide product label of "ALGAE CHECK," EPA Reg. No. 10324-43-38122, that was collected during the August 22, 2002 inspection, differs from that of the label of July 27, 1993, which was submitted to U.S. EPA by the Respondent and "Accepted" in support of the registration of this pesticide product.

29. The "Accepted" label, of July 27, 1993, in the "DIRECTIONS FOR USE" section, contains the statement "***Do not use water containing residue from use of this product to irrigate crops used for food or feed.***" Norman's distributor product label from the November 26, 2001 inspection **does not** contain this statement.

30. In a letter to Respondent, dated July 27, 1993 from the U.S. EPA, Respondent was instructed to make the following label change before releasing the product for shipment:

**Add** the following additional instructions: "***Use of the product in either public/municipal or single or multiple family private/residential potable/drinking water systems is strictly prohibited. Use of the product in any cooling water system that discharges effluent within 1/4 mile of either a public/municipal or single or multiple family private/residential potable/drinking water intake is strictly prohibited.***" Respondent's distributor product label from the November 26, 2001 inspection **did not** contain this statement.

31. The pesticide product label of "ALGAECIDE AQUA GUARD 50," EPA Reg. No. 10324-19-38122, that was collected during the August 22, 2002 inspection, differs from that of the label of February 17, 1994, which was submitted to U.S. EPA by Respondent, and "Accepted" in support of the registration of this pesticide product.

32. The “Accepted” label of February 17, 1994 contains the following information:
- (A) In the “STORAGE AND DISPOSAL” section, subheading “SPILL OR LEAK PROCEDURES,” contains the statement “*Large spills should be contained. The material then moved into containers and disposed of by approved methods for hazardous wastes.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.
  - (B) In the “STORAGE AND DISPOSAL” section, subheading “PESTICIDE DISPOSAL,” contains the statement “*Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray moisture, or resale is a violation of federal law. If these wastes cannot be disposed of by the use according to label instructions, contact your state pesticide or environmental control agency, or the hazardous waste representative at the nearest EPA regional office for guidance.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.
  - (C) In the “STORAGE AND DISPOSAL” section, subheading “CONTAINER DISPOSAL,” contains the statement “*Triple rinse (or equivalent). Then offer for recycling or reconditioning or puncture and dispose of in a sanitary landfill, or by other procedures approved by state and local authorities.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.



- (D) In the “STORAGE AND DISPOSAL” section, subheading “GENERAL,” contains the statement “*Consult federal, state or local disposal authorities for approval of alternative procedures such as limited open burning.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.

33. In a letter to Respondent, dated February 17, 1994 from the U.S. EPA, Respondent was instructed to make the following labeling changes before releasing the product for shipment: **Add** the following additional instructions to the Directions For Use section: “*Use of the product in either public/municipal or single or multiple family private/residential potable/drinking water systems is strictly prohibited. Use of the product in any cooling water system that discharges effluent within 1/4 mile of either a public/municipal or single or multiple family private/residential potable/drinking water intake is strictly prohibited.*” Respondent’s distributor product label from the November 26, 2001 inspection **did not** contain this statement.

34. The pesticide product label of “ALGAE TREK,” EPA Reg. No. 10324-15-38122, that was collected during the August 22, 2002 inspection, differs from that of the label of March 4, 1994, which was submitted to U.S. EPA by the Respondent, and “Accepted” in support of the registration of this pesticide product.

35. The “Accepted” label, of March 4, 1994, contains the following information:

- (A) In the “STORAGE AND DISPOSAL” section, subheading “SPILL OR LEAK PROCEDURES,” contains the statement “*Large spills should be contained. The material then moved into containers and disposed of by*

*approved methods for hazardous wastes.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.

- (B) In the “STORAGE AND DISPOSAL” section, subheading “GENERAL,” contains the statement “*Consult federal, state or local disposal authorities for approval of alternative procedures such as limited open burning.*” Norman’s distributor product label from the November 26, 2001 inspection **does not** contain this statement.

36. On or about June 17, 2002, Respondent distributed or sold the pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, to Goldblatt Store, located at 5630 West Belmont, Chicago, Illinois 60634.

37. On or about July 31, 2002, Respondent distributed or sold the pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, to Lafayette Pavilion, located at One Lafayette Plaisance, Detroit, Michigan 48207.

38. On or about August 14, 2002, Respondent distributed or sold the pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, to U.A.W. Solidarity House, located at 8000 East Jefferson Avenue, Detroit, Michigan 48214.

39. On or about June 17, 2002, Respondent distributed or sold the pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, to Goldblatt Store, located at 5630 West Belmont, Chicago, Illinois 60634.

40. On or about July 31, 2002, Respondent distributed or sold the pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, to Lafayette Pavilion, located at One Lafayette Plaisance, Detroit, Michigan 48207.

41. On or about August 14, 2002, Respondent distributed or sold the pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, to U.A.W. Solidarity House, located at 8000 East Jefferson Avenue, Detroit, Michigan 48214.

**Count 1**

42. Complainant incorporates paragraphs 1 through 41 of this complaint, as if set forth in this paragraph.

43. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, on or about August 22, 2002.

44. Respondent failed to insure that its distributor pesticide product label for “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, was in agreement with the “Accepted” label of July 27, 1993, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

45. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under

Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §136l(a).

**Count 2**

46. Complainant incorporates paragraphs 1 through 45 of this complaint, as if set forth in this paragraph.

47. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, on or about August 14, 2002 to U.A.W. Solidarity House, located at 8000 East Jefferson Avenue, Detroit, Michigan 48214.

48. Respondent failed to insure that its distributor pesticide product label for “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, was in agreement with the “Accepted” label of July 27, 1993, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

49. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Count 3**

50. Complainant incorporates paragraphs 1 through 49 of this complaint, as if set forth in this paragraph.

51. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product "ALGAE CHECK," EPA Reg. No. 10324-43-38122, on or about July 31, 2002 to Lafayette Pavilion, located at One Lafayette Plaisance, Detroit, Michigan 48207.

52. Respondent failed to insure that its distributor pesticide product label for "ALGAE CHECK," EPA Reg. No. 10324-43-38122, was in agreement with the "Accepted" label of July 27, 1993, which was submitted in support of the pesticide product's registration, and is therefore "misbranded," according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

53. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Count 4**

54. Complainant incorporates paragraphs 1 through 53 of this complaint, as if set forth in this paragraph.

55. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, on or about June 17, 2002 to Goldblatt Store, located at 5630 West Belmont, Chicago, Illinois 60634.

56. Respondent failed to insure that its distributor pesticide product label for “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, was in agreement with the “Accepted” label of July 27, 1993, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

57. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

#### **Count 5**

58. Complainant incorporates paragraphs 1 through 57 of this complaint, as if set forth in this paragraph.

59. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAECIDE AQUA GUARD 50” EPA Reg. No. 10324-19-38122, on or about August 22, 2002.

60. Respondent failed to insure that its distributor pesticide product label for “ALGAECIDE AQUA GUARD 50” EPA Reg. No. 10324-19-38122, was in agreement with the “Accepted” label of February 17, 1994, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

61. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

### **Count 6**

62. Complainant incorporates paragraphs 1 through 61 of this complaint, as if set forth in this paragraph.

63. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE TREK” EPA Reg. 10324-15-38122, on or about August 22, 2002.

64. Respondent failed to insure that its distributor pesticide product label for “ALGAE TREK” EPA Reg. 10324-15-38122, was in agreement with the “Accepted” label of March 4, 1994, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

65. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Count 7**

66. Complainant incorporates paragraphs 1 through 65 of this complaint, as if set forth in this paragraph.

67. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, on or about August 14, 2002 to U.A.W. Solidarity House, located at 8000 East Jefferson Avenue, Detroit, Michigan 48214.

68. Respondent failed to insure that its distributor pesticide product label for “ALGAE TREK,” EPA Reg. No. 10324-15-38122, was in agreement with the “Accepted” label of March 4, 1994, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

69. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under



Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Count 8**

70. Complainant incorporates paragraphs 1 through 69 of this complaint, as if set forth in this paragraph.

71. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, on or about July 31, 2002 to Lafayette Pavilion, located at One Lafayette Plaisance, Detroit, Michigan 48207.

72. Respondent failed to insure that its distributor pesticide product label for “ALGAE TREK,” EPA Reg. No. 10324-15-38122, was in agreement with the “Accepted” label of March 4, 1994, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

73. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Count 9**

74. Complainant incorporates paragraphs 1 through 73 of this complaint, as if set forth in this paragraph.

75. According to evidence obtained by the U.S. EPA, Respondent distributed or sold the misbranded pesticide product “ALGAE TREK,” EPA Reg. No. 10324-15-38122, on or about June 17, 2002 to Goldblatt Store, located at 5630 West Belmont, Chicago, Illinois 60634.

76. Respondent failed to insure that its distributor pesticide product label for “ALGAE TREK,” EPA Reg. No. 10324-15-38122, was in agreement with the “Accepted” label of March 4, 1994, which was submitted in support of the pesticide product’s registration, and is therefore “misbranded,” according to Section 2(q)(1)(A) and (q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) and (q)(2)(A).

77. Such failure constitutes an unlawful act according to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which states that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded, and subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

**Proposed Civil Penalty**

Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of a civil penalty of up to \$5,000 for each offense of FIFRA. However, this \$5,000 maximum civil penalty was increased to \$5,500 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C.

§ 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, see 61 Fed. Reg. 69360 (Dec. 31, 1996) and 62 Fed. Reg. 13514 (March 20, 1997).

The civil penalty proposed in this Complaint has been determined in accordance with the statutory penalty criteria of FIFRA, set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), which provides that the Administrator shall consider the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent's ability to continue in business, in light of the proposed penalty, and the gravity of the violation alleged herein. In analyzing the facts of this case and in consideration of the statutory criteria, Complainant has utilized the "Enforcement Response Policy for FIFRA Section 7(c) Pesticide Producing Establishment Reporting Requirement," dated February 10, 1986, and the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)," dated July 2, 1990, as amended. Complainant proposes that Respondent be assessed the following civil penalty for the violation alleged in the Complaint:

**Counts 1 - 9**

Distribution/sale of the misbranded pesticides, “ALGAE CHECK,” EPA Reg. No. 10324-43-38122, “ALGAECIDE AQUA GUARD 50” EPA Reg. No. 10324-19-38122, and “ALGAE TREK,” EPA Reg. No. 10324-15-38122, on nine occasions:	
7 U.S.C. § 136j(a)(1)(E). . . . .	\$49,500
<b>Total Proposed Civil Penalty . . . . .</b>	<b>\$49,500</b>

**Rules Governing This Proceeding**

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” (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999),

codified at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

**Filing And Service Of Documents**

Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Luis Oviedo, Assistant Regional Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Mr. Oviedo at (312) 353-9538. His address is:

Luis Oviedo (C-14J)  
Office of Regional Counsel  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Terms of Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and by delivering the check to:

U.S. EPA - Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251

If Respondent pays the proposed penalty in full within 30 days after receiving the Complaint, no answer need be filed. A copy of the check, however, must be filed with the Regional Hearing Clerk at the address listed above.

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Mr. Oviedo and to:

Joseph G. Lukascyk (DT-8J)  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

#### **Answer and Opportunity to Request a Hearing**

The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 16(a) of the Act, 15 U.S.C. § 2615(a). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its Answer, as discussed below.

Respondent must file a written Answer to this Complaint if Respondent contests any material fact of the Complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above, and must serve copies of the written Answer on the other parties.

If Respondent chooses to file a written Answer to the Complaint, it must do so within 30 calendar days after receiving the Complaint. In counting the 30 day time period, the date of receipt is not counted, but Saturdays, Sundays, and Federal legal holidays are counted. If the

30 day time period expires on a Saturday, Sunday, or Federal legal holiday, the time period extends to the next business day.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's Answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and
- d. Whether Respondent requests a hearing

If Respondent does not file a written Answer within thirty (30) calendar days after receiving this Complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings thirty (30) days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

**Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Joseph G. Lukascyk, Enforcement Case Officer, at phone number (312) 886-6233, or the address on page 20.

Respondent's request for an informal settlement conference does not extend the thirty (30) calendar day period for filing a written answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. The U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Also, please be advised that Section 22.08 of the Consolidated Rules of Practice prohibits any ex parte (unilateral) discussion of the merits of this action, after this Complaint was issued, with the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in a decision on this case.

**Continuing Obligation To Comply**

Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with FIFRA and any other applicable Federal, State, or local law.

*Tony Marty, acting for M. Klevs*

\_\_\_\_\_  
Mardi Klevs, Chief  
Pesticides and Toxics Branch  
Waste, Pesticides and Toxics Division

*5/9/07*

\_\_\_\_\_  
Date

**FIFRA-05-2007-0027**

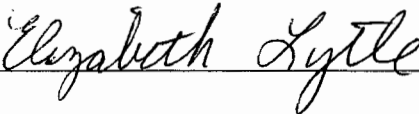
**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the original signed Complaint in resolution of the civil administrative action involving Mason Chemical Co., Inc., was filed on May 10, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 5232, a copy of the original to the Respondents:

Jean E. Mason, President  
Mason Chemical Company  
721 West Algonquin Road  
Arlington Heights, Illinois 60005

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Luis Oviedo, Counsel for Complainant/C-14J  
Eric Volck, USEPA Cincinnati Finance/NWD (w/Encl)



Elizabeth Lytle  
Pesticides and Toxics Branch  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Docket No. **FIFRA-05-2007-0027**

