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EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

)	Docket No.: FIFRA-10-2009-0012
)	
In the Matter Of:)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Swanson's Pest Management, Inc.,)	
)	
Respondent)	
)	
)	
)	

I. JURISDICTION

1. This administrative action for the assessment of a civil penalty is instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and 40 C.F.R. Part 22. Complainant is Region 10 of the United States Environmental Protection Agency (EPA), and Respondent is Swanson's Pest Management, Inc. Respondent has failed to comply with Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by using registered pesticides in a manner inconsistent with their labeling. This failure subjects Respondent to liability for the payment of a civil penalty in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2). Complainant has been duly delegated the authority to institute this action for the assessment of a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. Swanson's Pest Management, Inc. ("Respondent"), located at 90405 Prairie Road, Eugene, Oregon 97404, is a corporation organized and/or existing under the laws of the state of Oregon.

1 3. Dan Swanson is the President and Registered Agent of Swanson's Pest
2 Management, Inc.

3 4. Respondent's business includes the application of pesticides to provide pest
4 control services to the public.

5 5. Respondent is a "person" as that term is defined in Section 2(s) of FIFRA,
6 7 U.S.C. § 136(s).

7 6. Respondent is an applicator who holds or applies registered pesticides or uses
8 dilutions of registered pesticides, only to provide a service of controlling pests without delivering
9 any unapplied pesticide to any person so served.

10 7. Respondent is an "applicator" within the meaning of FIFRA section 14(a)(2),
11 7 U.S.C. § 136(a)(2).

12 8. Respondent is a licensed Pesticide Operator in the state of Oregon under license
13 number 000805.

14 9. On June 29, 2005, William Granstrom was an employee of Respondent and
15 applied pesticides on behalf of Respondent to provide pest control.

16 10. At the time of the applications described below, Mr. Granstrom was licensed as a
17 commercial pesticide applicator by the state of Oregon (#171633) for structural applications.
18 However, his "directly-supervised commercial pesticide trainee" license (#169662) which allowed
19 Mr. Granstrom to conduct these applications (under direct supervision) had expired on December
20 31, 2004.

21 11. At approximately 8:00 AM on June 29, 2005, while performing work on behalf of
22 Respondent at the residence of James Beck in Yachats, Oregon, Mr. Granstrom prepared a tank mix
23 containing the pesticide Conquer Residential Insecticide Concentrate ("Conquer") and the pesticide
24 ULD BP-100 Contact Insecticide ("ULD BP-100") in accordance with Respondent's direction.

25 12. Conquer, a distributor product, is a registered pesticide assigned the EPA
registration number, 1021-1641-57076.

1 13. ULD BP-100 is a registered pesticide assigned the EPA registration number
2 (“EPA Reg. No.”), 499-452.

3 14. The active ingredient in Conquer is esfenvalerate at 3.48% by weight.

4 15. The active ingredients in ULD BP-100 are Pyrethrins at 1.00% by weight,
5 Piperonyl butoxide technical at 2.00% by weight, and N-octyl bicycloheptene dicarboximide at
6 2.94% by weight.

7 16. Mr. Granstrom, mixed the pesticides “Conquer” and “ULD BP-100” into the
8 forty-four (44) ounce tank of the Respondent’s Whitmire Micro-Gen, Micro-Injector System
9 (“Micro-Gen”) application device.

10 17. The Micro-Gen is a device specifically designed to apply solvent based
11 insecticides, or other insecticides labeled for ultra low volume (“ULV”) applications, in cracks,
12 crevices, and walls or structural voids. The Micro-Gen consists, in part, of a compressor, chemical
13 tank and application wand. The compressor pressurizes the chemical tank and forces the liquid
14 insecticides to a nozzle at the end of a wand. The wand is used to direct the chemical into the
15 infested void areas and releases the chemical through the nozzle in extremely fine particles or fog.
16 The device is also referred to as a fogger or actisol.

17 18. The Micro Gen manual states, “The Micro-Injector System is a precision tool in the
18 hands of a trained Pest Control Technician for placing small amounts of ULV insecticide into the
19 deepest voids and crevices where insects hide and breed ... Follow all label directions carefully
20 when applying pesticides... Do not use this equipment as a space spray.”

21 19. On June 29, 2005, Mr. Granstrom applied the mixture of “Conquer” and “ULD
22 BP-100” to the Beck’s utility garage to control silverfish, spiders, earwigs and sow bugs using the
23 Micro-Gen. The utility garage had previously been a one-car garage and had an unsealed exterior
24 door and a door providing direct access to the house.

25 20. After applying the pesticides to the Beck’s utility garage, Mr. Granstrom did not
ventilate the treated area.

1 21. Mr. Granstrom instructed the Becks to stay out of the treated area for 2.5 hours,
2 but failed to instruct them to ventilate the treated area before entering it.

3 22. Mrs. Beck stated that about three hours after the application the smell of chemicals
4 was still very strong.

5 23. On June 27, 2005, while performing work on Respondent's behalf, Mr. Granstrom
6 met with Fred Kolbeck at the Kolbecks' residence in Florence, Oregon to inspect the premises for
7 pest problems.

8 24. During the inspection, Mr. Granstrom noted masses of tiny, pantry beetles, also
9 referred to as "sow bugs" or "drug store beetles," in most cabinets throughout the house and the
10 garage.

11 25. Mr. Kolbeck signed a Swanson Pest Management Inc. Special Service Agreement
12 (Swanson Service Agreement) on June 27, 2005. The Swanson Service Agreement identified sow
13 bugs and all of the pests listed on the form (carpenter ants, mice, rats, roaches, odorous house ants,
14 fleas, centipedes, millipedes, spiders and silverfish) as pests to be controlled. The Special
15 Instructions section on the Swanson Service Agreement stated "Exterior: treat base eaves &
16 perimeter, Deweb exterior. Interior treat cracks and crevices. Treat wall voids if covers are
17 removed by owner, Exterior treat monthly. Interior treat only on call as needed."

18 26. At approximately 1:30 PM on June 29, 2005, while performing work on behalf of
19 Respondent, Mr. Granstrom returned to the Kolbeck residence to provide the pesticide control
20 service. After paying Respondent for the pesticide control service, Mr. and Mrs. Kolbeck left the
21 house.

22 27. Mr. Granstrom told Mr. and Mrs. Kolbeck they could return to their house at
23 5:00 PM. He did not instruct them to ventilate the house before entering it.

24 28. Using the same tank mixture he mixed and used earlier in the day at the Beck
25 residence, Mr. Granstrom applied Conquer and ULD BP-100 to the interior of the Kolbeck's house
with the Micro-Gen.

1 29. While wearing his respirator, Mr. Granstrom used the Micro-Gen to fog or
2 “actisol” the cracks and crevices in the sunroom and when finished, closed the door so that the fog
3 would settle without a breeze dissipating it. Mr. Granstrom used the Micro-Gen to fog the kitchen
4 (with the cupboard doors open), the living room, bedrooms and bathrooms, and to treat the wall
5 voids and cracks and crevices throughout the home including along window frames and sills,
6 molding below sinks, and in the wall voids and plumbing areas in the kitchen, living room,
7 bathrooms, and other interior spaces in the house.

8 30. No windows were opened and no ventilation system was running during the
9 application. Mr. Granstrom did not ventilate the treated area after applying the pesticides.

10 31. After finishing spraying the interior of the Kolbecks’ home at about 1:45 PM,
11 Mr. Granstrom filled a hand pump sprayer with the pesticide “Dagnet SFR” for application to the
12 exterior of the home.

13 32. Mr. Granstrom completed the exterior application at about 2:55 PM, wrote up the
14 application record (a chemical service ticket) in his company truck, donned his respirator, re-entered
15 the house, left the yellow copy of the chemical service ticket on the kitchen table, exited the house,
16 and shut the door.

17 33. Mr. Granstrom left the premises and did not return.

18 34. Mr. and Mrs. Kolbeck returned, entering the house at about 5:15 PM that evening.

19 35. Within minutes of entering the house, both Mrs. and Mr. Kolbeck suffered
20 respiratory distress.

21 36. Mrs. Kolbeck became unconscious, and, later that night (June 29, 2005), was
22 pronounced dead at the scene by Siuslaw Valley Fire and Rescue. Mr. Kolbeck was briefly
23 hospitalized.

24 37. The Lane County Medical Examiner’s Office described the cause of death as
25 “Sudden cardiac arrhythmia following exposure to pyrethroid insecticide in an elderly woman with
significant heart disease.”

1 38. In addition to Mr. and Mrs. Kolbeck, 6 other people, including the emergency
2 response personnel, reported adverse health effects after entering the Kolbeck's home on
3 June 29, 2005.

4 39. On June 30, 2005, the Oregon Department of Agriculture ("ODA") initiated an
5 investigation into the Respondent's application of "Conquer" and "ULD BP-100" at the Kolbeck's
6 residence in response to information provided by the Oregon Health Service ("OHS").

7 40. ODA collected samples from Respondent of the tank mix used to treat both the
8 Beck's and the Kolbeck's residences.

9 41. Laboratory analysis of the tank mix used by Respondent revealed an esfenvalerate
10 concentration of 0.16%. This concentration equates to two (2) ounces of Conquer being mixed with
11 forty-two (42) ounces of ULD BP-100.

12 42. The EPA approved labeling for Conquer states, in pertinent parts:

13 ***

14 **PRECAUTIONARY STATEMENTS**
HAZARDS TO HUMANS AND DOMESTIC ANIMALS

15 **CAUTION**

16 Harmful if swallowed, inhaled or absorbed through the skin ... Avoid breathing
17 vapors or spray mist.

18 ***

19 **DIRECTIONS FOR USE**

20 It is a violation of Federal law to use this product in a manner inconsistent with its
21 labeling.

22 ***

23 Do not apply directly to food. Cover or remove all food and food processing
24 equipment during application ... In the home, all food processing surfaces and
25 utensils should be covered during treatment or thoroughly washed before use.
Cover exposed food.

FOR INDOOR PESTS:

GENERAL: Use **CONQUER Concentrate** insecticide to control the pests
indicated in the listed areas as a contact spray by mixing either one (1) or two (2)
fluid ounces of concentrate in one (1) gallon of water or oil and mix thoroughly
before use. One (1) ounce of Concentrate per gallon of water or oil will make a
spray containing .027% active ingredient, two (2) ounces per gallon will make a
spray containing .05% active ingredient. For initial clean out of heavy infestations
use two (2) ounces of concentrate per gallon of spray; for maintenance control or
light infestations use one (1) ounce of concentrate per gallon.

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FOR PREMISE PESTS: Application Within Residential and Non-Residential Buildings Including Homes ...

GENERAL: Apply as a course wet spray to thoroughly treat hiding places, such as cracks, crevices, and moist areas around pipes under refrigerators and along baseboards ... Use at the rate of (1) gallon of spray mixture per 1,000 feet.

To Kill Ants, Centipedes, Cockroaches, Crickets, Earwigs, Millipedes Psocids, Scorpions, Silverfish, Sowbugs, Spiders, and Waterbugs: Spray area where pest are found or may hide, including cracks crevices in walls; along baseboards and door and window frames; behind and beneath sinks, stoves, refrigerators and cabinets and around garbage cans, plumbing and other utility installations ...

To Kill Brown Dog Ticks and Fleas: ... thoroughly apply as a spot treatment to infested areas such as pet beds and resting quarters, nearby cracks and crevices, along and behind baseboards, window and door frames and localized areas of floor and floor coverings where these pests may be present. For control of fleas, thoroughly apply a fine particle broadcast spray, using the one (1) ounce per gallon of water dilution to infested rugs, carpets and pet resting areas.

To Kill Carpenter Ants: Apply two (2) ounces per one (1) gallon of water as a course spray, around doors, door frames, windows and other areas where these ants enter the premise or hide. Spray into cracks and crevices, through openings or small newly drilled holes into wall voids where these ants or their nests are present.

To Treat Voids in Equipment and Structures: To kill Ants (including Carpenter Ants), Centipedes, Cockroaches, Crickets, Earwigs, Psocids, Scorpions, Silverfish, Spiders, Waterbugs and Insect Pests of Stored Food: To kill insects harboring in wall voids and other inaccessible spaces in equipment and structures use injection equipment designed for deep void ULV (Ultra Low Volume) applications. Follow the injection equipment manufacturer's recommendations for proper set up and air pressures. Place the applicator tip at or into the void space to be treated. For inaccessible voids, it may be necessary to drill an access hole(s). Inject product into the void space in short bursts, allowing the air pressure to push insecticide deep into the space. Avoid applying to the point of runoff or drip. Ventilate area thoroughly before re-entry. Do not reapply more than every fourteen (14) days.

43. The use concentration required by the Conquer label for indoor pests is 1 or 2 ounces of Conquer concentrate per one gallon (128 ounces) of oil or water.

44. The EPA approved labeling for "ULD BP-100" states, in pertinent parts:

For Indoor and Outdoor Applications as a space spray, area or contacts spray. Dependent upon Insects to be controlled and the area to be treated, this product may be applied through mechanical aerosol or Ultra Low Volume

1 (ULV) generators such as Whitmire Micro-Gen equipment, as well as thermal
2 and conventional fogging or spraying.

3 **DIRECTIONS FOR USE**

4 **IT IS A VIOLATION OF FEDERAL LAW TO USE THIS PRODUCT IN A
MANNER INCONSISTENT WITH ITS LABELING.**

5 Do not apply directly to food ... Foods should be removed or covered during
6 treatment ... In the home, all food processing surfaces, dishes and utensils should be
covered during treatment or thoroughly washed before use.

7 **INDOOR USE**

8 **SPACE APPLICATION**

9 **FLYING INSECTS:** Use to kill flies, mosquitoes, gnats and small flying moths.
10 Use full strength or dilute product as desired according to dilution table ... Then
11 with a mechanical aerosol generator ... apply undiluted product at a dosage rate of
approximately one (1) fluid ounce per 1,000 cubic feet of room space or when
12 applying diluted product, apply at the rate of 1-2 fluid ounces per 1,000 cubic feet of
room space ... Do not remain in treated areas after application, and leave room
closed for at least one (1) hour. Ventilate thoroughly before occupants are allowed
to re-enter.

13 **DILUTION:**

Application Pyrethrin % Desired	Mixture Rate	Rate Per 1,000 Cu Ft.
0.50%	1 Part Concentrate to 1 Parts Oil	1 oz.
0.30%	3 Part Concentrate to 7 Parts Oil	1 - 2 oz.
0.15%	3 Part Concentrate to 17 Parts Oil	1 - 2 oz.

19 **SPACE SPRAY & DIRECTED SPRAY APPLICATION**

20 **CRAWLING INSECTS:** Use to kill roaches, silverfish, waterbugs, earwigs, ants,
21 spiders, and beetles ... Use product at full strength or diluted ... and apply through
22 equipment which can deliver a pin stream spray. Direct a pin stream into all cracks
and crevices in woodwork, walls, floors, underneath sinks, behind pipes and in all
23 places where these insects harbor ... Then with a mechanical aerosol generator ...
24 apply undiluted product at a dosage rate of approximately one (1) fluid ounce per
1,000 cubic feet of space ... Leave room closed for at least one (1) hour after
25 application. Do not remain in treated areas and, ventilate thoroughly before
occupants are allowed to re-enter.

DEEP VOID AND CRACK AND CREVICE APPLICATION

To flush and kill insects harbored in deep voids and behind cracks and crevices.

SPOT APPLICATION: With equipment designed for deep void Ultra Low Volume (ULV) applications, follow the manufacturer's recommendations for proper equipment set up and operating pressures. Place the tip of the applicator at or into the crack or crevice to be treated. Apply the product in short bursts while keeping tip in position ... Ventilate thoroughly before occupants are allowed to re-enter.

LINEAR APPLICATION ALONG BASEBOARDS, TRIM MOLDING ETC.:

With equipment designed for deep void ULV application, move applicator tip along the crevice to be treated applying a constant burst of insecticide ... Ventilate thoroughly before occupants are allowed to re-enter.

45. The application of "Conquer" by Respondent on June 29, 2005, as described above on two separate and distinct occasions constitutes "use(s) of a registered pesticide in a manner inconsistent with its labeling" as that phrase and those terms are defined in Sections 2(p), (u), and (ee) of FIFRA, 7 U.S.C. §§ 136(p), (u), and (ee).

46. The application of "ULD BP-100" by Respondent on June 29, 2005, as described above, on two separate and distinct occasions constitutes "use(s) of a registered pesticide in a manner inconsistent with its labeling" as that phrase and those terms are defined in Sections 2(p), (u), and (ee) of FIFRA, 7 U.S.C. §§ 136(p), (u), and (ee).

47. Pursuant to Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), it is unlawful for Respondent to use a registered pesticide in a manner inconsistent with its labeling.

48. Pursuant to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(1), Respondent is subject to a civil penalty for having committed violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

III. VIOLATIONS

Violations 1 and 2

49. On June 29, 2005, Respondent applied a tank mix containing the pesticide Conquer, EPA Reg. No. 1021-1641-57076 and the pesticide ULD BP-100, EPA Reg. No. 499-452

1 containing over 0.05% esfenvalerate inside the utility garage at the Beck residence located in
2 Yachats, Oregon.

3 50. On June 29, 2005, Respondent applied a tank mix containing the pesticide
4 Conquer, EPA Reg. No. 1021-1641-57076, and the pesticide ULD BP-100, EPA Reg. No. 499-452,
5 containing over 0.05% esfenvalerate inside the Kolbeck residence in Florence, Oregon.

6 51. The "Conquer" label directs the user to mix one (1) or two (2) ounces of
7 "Conquer" with one (1) gallon (128 ounces) of water or oil to make 0.027% or 0.05% (maximum)
8 concentrations of esfenvalerate when applying to residential homes.

9 52. The tank mix Respondent used in the Beck residence on June 29, 2005 contained
10 an esfenvalerate concentration of 0.16%; in excess of the maximum concentration specified on the
11 label.

12 53. The tank mix Respondent used in the Kolbeck residence on June 29, 2005
13 contained an esfenvalerate concentration of 0.16%; in excess of the maximum concentration
14 specified on the label.

15 54. Respondent used the registered pesticide Conquer, EPA Reg. No. 1021-1641-
16 57076, in the Beck residence on June 29, 2005, in a manner inconsistent with its labeling in
17 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

18 55. Respondent used the registered pesticide Conquer, EPA Reg. No. 1021-1641-
19 57076, in the Kolbeck residence on June 29, 2005, in a manner inconsistent with its labeling in
20 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

21 **Violation 3 and 4**

22 56. On June 29, 2005, Respondent applied the registered pesticide Conquer, EPA Reg.
23 No. 1021-1641-57076, inside the utility garage at the Beck residence in Yachats, Oregon.

24 57. On June 29, 2005, the Respondent applied the registered pesticide Conquer, EPA
25 Reg. No. 1021-1641-57076, inside the Kolbeck residence in Florence, Oregon.

1 58. The Conquer label requires the user to "Ventilate area thoroughly before re-entry"
2 when applying the product in voids in equipment and structures.

3 59. After applying Conquer, Respondent did not ventilate the treated areas in the Beck
4 residence before the home owners reentered their home.

5 60. After applying Conquer, Respondent did not ventilate the treated areas in the
6 Kolbeck home before the home owners reentered their home.

7 61. On June 29, 2005, Respondent used the pesticide Conquer, EPA Reg. No. 1021-
8 1641-57076, in the Beck residence in a manner inconsistent with its labeling in violation of Section
9 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

10 62. On June 29, 2005, Respondent used the pesticide Conquer, EPA Reg. No. 1021-
11 1641-57076, in the Kolbeck residence in a manner inconsistent with its labeling in violation of
12 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

13 **Violation 5**

14 63. On June 29, 2005, the Respondent used the Micro-Gen to apply the pesticide
15 Conquer, EPA Reg. No. 1021-1641-57076, as an Ultra Low Volumetric space spray to the living
16 room, kitchen, bedroom, bathrooms and other interior areas of the Kolbeck residence in Florence,
17 Oregon.

18 64. The EPA approved labeling for the pesticide Conquer only allows Ultra Low
19 Volume sprays when treating wall voids and other inaccessible spaces of equipment and structures.

20 65. As a result, Respondent used Conquer, a registered pesticide, in a manner
21 inconsistent with its labeling in the Kolbeck residence on June 29, 2005 in violation of
22 Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

23 **Violation 6 and 7**

24 66. On June 29, 2005, the Respondent applied a tank mix containing the registered
25 pesticide ULD BP-100, EPA Reg. No. 499-452 to inside areas of the Beck residence.

1 67. On June 29, 2005, the Respondent applied a tank mix containing the registered
2 pesticide ULD BP-100, EPA Reg. No. 499-452, to inside areas of the Kolbecks' residence.

3 68. The ULD BP-100 label directs the user to "Ventilate thoroughly before occupants
4 are allowed to re-enter" when applying the product as a space spray, in deep void crack and
5 crevices, or as a linear application along baseboards, trim molding, etc.

6 69. After applying the pesticide, Respondent did not ventilate the areas in the Beck
7 residence before the homeowners re-entered their home.

8 70. After applying the pesticide, Respondent did not ventilate the areas in the Kolbeck
9 residence before the homeowners re-entered their home.

10 71. As a result, on June 29 2005, Respondent used the registered pesticide ULD BP-
11 100, EPA Reg. No. 499-452, in the Beck residence, in a manner inconsistent with its labeling in
12 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

13 72. As a result, on June 29 2005, Respondent used the registered pesticide ULD BP-
14 100, EPA Reg. No. 499-452, in the Kolbeck home, in a manner inconsistent with its labeling in
15 violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

16
17 **V. PROPOSED CIVIL PENALTY**

18 73. According to Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), Respondent is
19 subject to a civil penalty of up to \$650 for each violation involving pesticides that are non classified
20 or classified as General Use. Based on the violation cited in this Complaint, and after consideration
21 of (a) the appropriateness of the proposed penalty to the size of the Respondent's business, (b) the
22 effect on Respondent's ability to continue operating, and (c) the gravity of the alleged violations,
23 and in accordance with Section 14 of FIFRA, 7 U.S.C. § 136l(a), Complainant proposes the
24 assessment of a civil penalty in the amount of Four Thousand Five Hundred Fifty Dollars
25 (\$4,550.00). The civil penalty is proposed in accordance with the "Enforcement Response Policy
for the Federal Insecticide, Fungicide, and Rodenticide Act," as amended, dated July 2, 1990 and

1 the Civil Penalty Monetary Inflation Adjustment Rule as published in the Federal Register on
2 February 13, 2004 (69 FR 7121). A copy of the policy and the rule are enclosed with the
3 Complaint.

4
5 **VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

6 74. The Consolidated Rules of Practice (Rules), 40 C.F.R. Part 22, 64 Federal
7 Register 40176-40190 July 23, 1999, govern this proceeding. Under the Rules, Respondent has the
8 right to request a formal hearing to contest any material fact set forth in this Complaint or the
9 appropriateness of the proposed penalty.

10 75. To avoid being found in default, which constitutes an admission of all material
11 facts alleged in the Complaint, a waiver of the right to a hearing, and the potential assessment of
12 the proposed civil penalty, Respondent must file, with the Regional Hearing Clerk, a written
13 Answer within thirty (30) days after service of this Complaint. The Answer must clearly and
14 directly admit, deny, or explain each of the factual allegations contained in this Complaint with
15 regard to which Respondent has any knowledge. Where Respondent has no knowledge of a
16 particular fact and so states, the allegation is deemed denied. Failure to deny any material factual
17 allegation constitutes an admission of the allegation. The Answer must also state: (a) the
18 circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts
19 which Respondent intends to place at issue; and, (c) whether a hearing is requested. A hearing is
20 deemed requested if Respondent contests any material fact upon which the Complaint is based,
21 raises any affirmative defense, or contends the amount of the penalty proposed in the Complaint
22 is inappropriate, or claims that Respondent is entitled to judgment as a matter of law. The
23 Answer must be sent to:

24
25 Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900 ORC-158
Seattle, Washington 98101

1 76. A copy of the Answer and all other documents which Respondent files in this
2 action must be furnished to Juliane Matthews, Assistant Regional Counsel, the attorney assigned to
3 represent EPA in this action, at:

4 Office of Regional Counsel
5 U.S. Environmental Protection Agency, Region 10
6 1200 Sixth Avenue, Suite 900 ORC-158
7 Seattle, Washington 98101

7 **VII. INFORMAL SETTLEMENT CONFERENCE**

8 77. Whether or not a hearing is requested, Respondent may confer informally with
9 Ms. Matthews to arrange for a settlement conference to discuss the facts of this case, the amount of
10 the proposed penalty, and the possibility of settlement. An informal settlement conference does not,
11 however, relieve Respondent of the obligation to file a written Answer to the Complaint.

12 78. EPA has the authority to modify the amount of the proposed penalty, where
13 appropriate, to reflect a settlement reached with Respondent. The terms and conditions of such an
14 agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement
15 entered into by EPA and Respondent would be binding as to all the terms and conditions specified
16 therein upon signatures by both parties and upon signature of a Final Order by the EPA Regional
17 Administrator.

18 79. Respondent is advised that after the Complaint is issued, the Rules prohibit any ex
19 parte (unilateral) discussion of the merits of any action with the Environmental Appeals Board
20 Judges, Administrative Law Judge, or any person likely to advise these officials in deciding this
21 case.

22 **VIII. PAYMENT OF PENALTY**

23 80. Instead of requesting an informal settlement conference or filing a written Answer,
24 Respondent may choose to pay the total amount of the proposed penalty. In order to do this,
25 Respondent must pay the proposed penalty within 30 days after receipt of the Complaint, and file a
copy of the check with the Regional Hearing Clerk (at the address noted in Section VI of the

1 Complaint). Respondent can obtain a 30 day extension to pay the proposed penalty in full without
2 filing an Answer by complying with the requirements of 40 C.F.R. § 22.18(a). A copy of the check
3 should also be provided to Ms. Matthews. Payment of the proposed penalty must be made by
4 sending a cashier's or certified check payable to the "Treasurer, United States of America", in the
5 full amount of the proposed penalty in this Complaint to the following addressee:

6
7 US Bank - USEPA - Region 10
8 Fines and Penalties
9 Cincinnati Finance Center
10 PO Box 979077
11 St. Louis, MO 63197-9000

12 A transmittal letter indicating Respondent's name, complete address, and this case docket number
13 must accompany the payment. Such payment of the civil penalty terminates this administrative
14 litigation and the civil proceedings arising out of the allegation made in this Complaint.

15
16 Dated:

3rd December, 2008

17
18
19 Issued by:



20 Michael A. Bussell, Director
21 Office of Compliance and Enforcement
22 United States Environmental Protection Agency
23 Region 10
24
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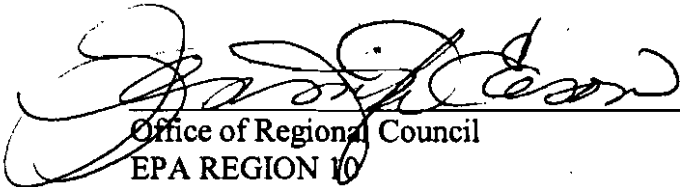
CERTIFICATE OF SERVICE

I hereby certify that I have, on the date stated hereunder, filed with the EPA Region 10 Hearing Clerk the original of the foregoing Complaint Docket Number FIFRA-10-2009-0012 and that I have on the same date served a true and correct copy thereof (with an accompanying copy each of the Consolidated Rules of Practice, the Enforcement Response Policy for FIFRA, a June 5, 2006, Penalty Policy Supplement, and the February 13, 2004, Civil Monetary Penalty Inflation Adjustment Rule by Certified Mail, Return Receipt Requested, on:

Daniel Swanson
Swanson's Pest Management, Inc.
P. O. Box 40728
Eugene, Oregon 97404

12-3-08

DATE


Office of Regional Council
EPA REGION 10

SENDER: COMPLETE THIS SECTION

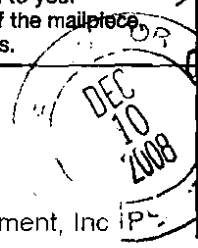
COMPLETE THIS SECTION ON DELIVERY

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece or on the front if space permits.

A. Signature *Sheri Gilbert* Agent Addressee
B. Received by (Printed Name) *Sheri Gilbert* C. Date of Delivery *12/10/08*
D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

Article Addressed to:

Mr Daniel Swanson
Swanson's Pest Management, Inc
P O Box 40728
Eugene, OR 97404



HEARINGS CLERK
SEA --- REGION 10

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

Article Number: 7008 0150 0000 8076 2497 *FIFRA-10-09-0012*
Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	

12/3/08

Postmark Here

Sent To: Mr Daniel Swanson
Swanson's Pest Management, Inc
P.O Box 40728
Eugene, OR 97404
Street, Apt. No., or PO Box No.
City, State, ZIP+4