

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

2015 FEB -3 AM 8: 50

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Camicide, LLC

Respondent

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Docket No. FIFRA-07-2015-0017

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

Section I

Jurisdiction

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.
2. 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, and in accordance with the EPA's 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 (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

Section II

Parties

3. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.
4. The Respondent is Camicide, LLC, 4357 California, St. Louis, Missouri, an organization which is in active status in the State of Missouri.

Section III

Statutory & Regulatory Background

5. Congress enacted FIFRA in 1947 and later amended it in 1972. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. 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, or whose registration has been cancelled or suspended.

9. 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.

10. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

11. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading.

14. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on

the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Section IV

General Factual Allegations, Counts 1 through 18

15. 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).

16. The Respondent is, and was at all times referred to in this Complaint, a “registered establishment” as defined by Section 7 (a) of FIFRA, 7 U.S.C. § 136(e).

17. On or about June 17, 2013, the Missouri Department of Agriculture (“MDA”) conducted an inspection at the Camicide LLC facility at 4357 California, St. Louis, Missouri to determine the Respondent’s compliance with the requirement of the FIFRA.

18. The inspector photographed labels of some of the pesticides that were held for sale or distribution by Camicide, LLC.

19. The inspector also obtained from Respondent, copy of Supplemental Distributor agreements between Respondent and the McLaughlin Gormley King Company for the products Camicide Home Pest Control, bearing EPA Registration Number (EPA Reg. No.) 1021-1779-82264 and Camicide Insect Spray – Classic Formula 50, bearing EPA Reg. No. 1021-923-82264.

20. Respondent held for sale or distribution the products Camicide Home Pest Control, bearing EPA Reg. No. 1021-1779-82264 and Camicide Insect Spray – Classic Formula 50, bearing EPA Reg. No. 1021-923-82264.

21. Respondent held for sale or distribution products labeled Camicide Insect Killer and Pyrethum & Synergized Insect Killer.

Violations

22. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder as follows:

Counts 1 thru 6

23. The facts stated in paragraphs 15 through 21 are realleged and incorporated as if fully stated herein.

24. On or about (1) October 3, 2012, (2) November 7, 2012, (3) December 4, 2012, (4) March 3, 2013, (5) April 9, 2013 and (6) April 11, 2013, Respondent sold or distributed or held for sale or distribution a quantity of Camicide Home Pest Control, bearing EPA Reg. No. 1021-1779-82264.

25. On the dates of the sale and/or distribution, the pesticide product Camicide Home Pest Control, bearing EPA Reg. No. 1021-1779-82264, was misbranded as the product label for the distributor product failed to include all the required language from the EPA accepted label.

26. Respondent violated 40 C.F.R. §§ 152.132, 156.10 and Section 12(a)(1)(E) of the FIFRA, on at least six occasions, by selling or distributing a pesticide whose label failed to include all the required language from the EPA accepted label.

27. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, it is proposed that a civil penalty of \$42,900, or \$7,150 per violation, be assessed against Respondent.

Counts 7 thru 8

28. The facts stated in paragraphs 15 through 21 are realleged and incorporated as if fully stated herein.

29. On or about (7) December 4, 2012 and (8) April 9, 2013, Respondent sold or distributed or held for sale or distribution a quantity of Camicide Insect Spray – Classic Formula 50, bearing EPA Reg. No. 1021-923-82264.

30. On the dates of the sale and/or distribution, the pesticide product Camicide Insect Spray – Classic Formula 50, bearing EPA Reg. No. 1021-923-82264, was misbranded as the product label for the distributor product failed to include all the required language from the EPA accepted label.

31. Respondent violated 40 C.F.R. §§ 152.132, 156.10 and Section 12(a)(1)(E) of the FIFRA, on at least two occasions, by selling or distributing a pesticide whose label failed to include all the required language from the EPA accepted label.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, it is proposed that a civil penalty of \$14,300, or \$7,150 per violation, be assessed against Respondent.

Counts 9 thru 13

33. The facts stated in paragraphs 15 through 21 are realleged and incorporated as if fully stated herein.

34. On or about (9) November 29, 2012, (10) December 4, 2012, (11) April 9, 2013, (12) April 22, 2013 and (13) May 20, 2013, Respondent sold or distributed or held for sale or distribution a quantity of Camicide Insect Killer, which label bore the erroneous EPA Reg. No. 1021-1587-82264.

35. On the dates of the sale and/or distribution of the pesticide product Camicide Insect Killer, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

36. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, it is proposed that a civil penalty of \$35,750, or \$7,150 per violation, be assessed against Respondent.

Counts 14 thru 18

38. The facts stated in paragraphs 15 through 21 are realleged and incorporated as if fully stated herein.

39. On or about (14) December 4, 2012, (15) April 9, 2013, (16) April 22, 2013, (17) May 20, 2013, and (18) May 22, 2013, Respondent sold or distributed or held for sale or distribution a quantity of Camicide Pyrethrum Plus, which label bore the erroneous EPA Reg. No. 1021-1732-82264.

40. On the dates of the sale and/or distribution of the pesticide product Camicide Pyrethrum Plus, the product was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

41. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling or distributing a pesticide whose registration has been cancelled or which is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

42. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, it is proposed that a civil penalty of \$35,750, or \$7,150 per violation, be assessed against Respondent.

Section V

Relief Sought

43. 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 for each violation. For any such violation occurring on or after March 15, 2004, through January 12, 2009, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). For any such violation occurring after January 12, 2009, the maximum statutory penalty per violation

51. 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
11201 Renner Boulevard
Lenexa, Kansas 66219

and a copy to:

Mark Leshner
WWPD-TOPE
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

52. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(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 the EPA Region 7 Regional Hearing Clerk, at:

Regional Hearing Clerk
EPA - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

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.

53. Any hearing that is requested shall be held and conducted in accordance with 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.

54. 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.

55. 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 VII

Settlement Conference

56. 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:

Lucretia Myers
Assistant Regional Counsel
EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
Telephone: (913) 551-7917

57. 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.

58. 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.

1-30-15
Date

Karen Flournoy
Karen Flournoy
Director
Water, Wetlands and Pesticides Division

1-30-15
Date

Lucretia Myers
Lucretia Myers
Assistant Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of the Complaint and Notice of Opportunity for Hearing in the matter of Camicide, LLC, Docket No. FIFRA-07-2015-0017 to the Regional Hearing Clerk, EPA, 11201 Renner Boulevard, Lenexa, Kansas 66219.

I further certify that on the date noted below I sent a copy of the above-referenced documents to the following:

via Certified Mail, to:

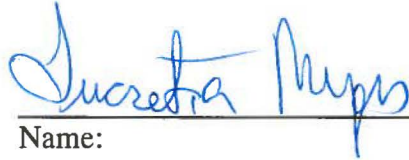
Richard Veatch
Camicide, LLC
4357 California Street
St. Louis, Missouri 63111

via Certified Mail, to:

Amy Wachs, Esq.
Husch, Blackwell
Suite 600
190 Carondelet Plaza
St. Louis, Missouri 63105

2/3/15

Date



Name: