

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

07 SEP 27 PM 3:05

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	Docket No. FIFRA-07-2007-0024
)	
Revival Animal Health, Inc.)	COMPLAINT AND NOTICE OF
P.O. Box 200)	OPPORTUNITY FOR HEARING
1700 Albany Place SE)	
Orange City, Iowa 51041)	
)	
Respondent)	

COMPLAINT

Section I

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region VII.
4. The Respondent is Revival Animal Health, Inc., a pesticide dealer, located at 1700 Albany Place SE, Orange City, Iowa. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and an Iowa corporation qualified to do business in the state of Iowa.

Section III

Violations

General Allegations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA as follows:
6. 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.
7. 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.
8. 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 which is adulterated or misbranded.
9. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular way.
10. Section 2(q)(1)(C) of FIFRA, 7 U.S.C. § 136(q)(1)(C), states a pesticide is misbranded if it is an imitation of, or is offered for sale under the name of, another pesticide.
11. 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 (as compared with other words, statements, designs, or graphic matter in the labeling) 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.
12. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling 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.
13. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states a pesticide is misbranded if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under Section 3(d) of this Act, is adequate to protect health and the environment.

14. ADVANTAGE® 55 FOR DOGS (Imidacloprid) TOPICAL SOLUTION is a pesticide registered under EPA Reg. No. 11556-120, to Bayer Corporation, Animal Health, Agricultural Division, Shawnee Mission, Kansas.
15. FRONTLINE® PLUS FOR DOGS (Dogs & Puppies 8 weeks or older and up to 22 lbs., 23-44 lbs., 45-88 lbs., 89-132 lbs.), is a pesticide registered under EPA Reg. No. 65331-5, to Merial Limited, Duluth, Georgia.
16. ADVANTAGE® 9 FOR CATS is a pesticide registered under EPA Reg. No. 11556-116, to Bayer Corporation, Animal Health, Agricultural Division, Shawnee Mission, Kansas.
17. ADVANTAGE® 100 (Imidacloprid) TOPICAL SOLUTION, is a pesticide registered under EPA Reg. No. 11556-122, to Bayer Corporation, Animal Health, Agricultural Division, Shawnee Mission, Kansas.
18. ADVANTAGE® 250 FOR DOGS is an imitation of the EPA registered pesticide referred to in paragraph 14. It is misbranded as defined in paragraphs 9 through 13.
19. FRONTLINE® PLUS Sm DOG 3x0.67 11-22#, FRONTLINE® PLUS FOR DOGS 23-44 lbs., 45-88 lbs., and 89-132 lbs., are imitations of the EPA registered pesticide referred to in paragraph 15. They are misbranded as defined in paragraphs 9 through 13.
20. ADVANTAGE® 40 CAT ORANGE <9# is an imitation of the EPA registered pesticide referred to in paragraph 16. It is misbranded as defined in paragraphs 9 through 13.
21. ADVANTAGE 400 FOR LARGE DOGS is an imitation of the EPA registered pesticide referred to in paragraph 17. It is misbranded as defined in paragraphs 9 through 13.
22. On or about September 10, 2003 and October 8, 2003, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) conducted inspections at Respondent's place of business in Orange City, Iowa, to determine the status of Respondent's compliance with FIFRA. Distribution or sales of the pesticides mentioned in paragraphs 18 and 19 were documented. During the September 10, 2003 inspection, six state Stop Sales, Use, Or Removal Orders (SSUROs) were placed on misbranded pesticide products.
23. During the IDALS inspection on September 10, 2003, it was documented by Invoice No. E454015 (PF5018), dated July 8, 2003, that Respondent received the following pesticides from Abbyvet Export Ltd., Sherburn Enterprise Park, Aviation Way, Sherburn-in Elmet, Nr. LS25 6NB, North Yorkshire, England:

120 packages of ADVANTAGE® 250 FOR DOGS (referred to in paragraph 18)

600 packages of ADVANTAGE® 400 FOR DOGS (referred to in paragraph 21)

216 packages of ADVANTAGE® 40 CAT ORANGE (referred to in paragraph 20)

120 packages of FRONTLINE® PLUS SMALL DOG 11-22 lbs. (referred to in paragraph 19)

360 packages of FRONTLINE® PLUS LARGE DOG 45-88 lbs. (referred to in paragraph 19)

240 packages of FRONTLINE® PLUS EX LARGE DOG 89-132 lbs. (referred to in paragraph 19)

It was determined from this invoice that these ADVANTAGE® products originated from Germany and the FRONTLINE® products originated from France.

24. On or about January 21, and January 26, 2005, the Registrant of ADVANTAGE® products, Bayer Corporation, contacted EPA Region 7 with information regarding the distribution or sale of the pesticide mentioned in paragraph 20. The Registrant received a customer complaint regarding the authenticity of this product and an invoice and a sample of the product purchased by a customer over the internet from the Respondent. The Registrant verified that the product was an imitation of the pesticide product mentioned in paragraph 16. EPA requested that the Registrant forward this complaint, invoice, and pesticide product sample to EPA.

25. On or about February 1, 2005, EPA Region 7 received the items referred to in paragraph 24 and confirmed that the pesticide product was an imitation of the EPA registered pesticide referred to in paragraph 16.

26. On or about March 10, 2005, a representative of the IDALS and a representative of EPA conducted a follow-up inspection of Respondent's place of business in Orange City, Iowa. The inspectors issued a Federal SSURO on eight different ADVANTAGE® and FRONTLINE® pesticide products (see list below) and documented the distribution or sale of the ADVANTAGE® pesticide product mentioned in paragraph 20, 24, and 25.

Products placed under Federal SSURO on March 10, 2005

ADVANTAGE 100 FOR DOGS	EPA Reg. No. 11556-119 (stickered)	2 Units
ADVANTAGE 400 FOR LARGE DOGS	EPA Reg. No. 11556-122 (stickered)	56 Units

ADVANTAGE 250 FOR DOGS	EPA Reg. No. 11556-120 (stickered)	13 Units
FRONTLINE PLUS FOR DOGS 23-44 lbs.	EPA Reg. No. 65331-5 (stickered)	85 Units
FRONTLINE PLUS FOR DOGS 11-22 lbs.	EPA Reg. No. 65331-5 (stickered)	3 Units
FRONTLINE PLUS FOR DOGS 11-22 lbs.	EPA Reg. No. 65331-3 (stickered)	1 Unit
FRONTLINE PLUS FOR DOGS 45-88 lbs.	EPA Reg. No. 65331-5 (stickered)	1 Unit
FRONTLINE PLUS FOR DOGS 89-132 lbs.	EPA Reg. No. 65331-5 (stickered)	41 Units

Count 1

27. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

28. On or about September 2, 2003, Respondent sold one box containing four 2.5 ml. applicator tubes of the pesticide product mentioned in paragraph 18 to Kendra Thaddies, Atlanta, Georgia, as documented by Invoice 0324202400.

29. The pesticide product ADVANTAGE® 250 FOR DOGS referred to in paragraphs 18 and 28 was not encompassed within the terms of the product registration under EPA Reg. No. 11556-120, and required separate product registration under Section 3 of FIFRA.

30. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

31. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 27 through 31, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 2

33. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

34. On or about September 2, 2003, Respondent sold one box containing four 2.5 ml. applicator tubes of the pesticide product referred to in paragraph 18 to Kendra Thaddies, Atlanta, Georgia, as documented by Invoice 0324202400.

35. During the inspections referred to in paragraphs 22 and 23, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 18. Photographs document that this pesticide was misbranded as stated in paragraphs 9 through 13.

36. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

37. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 33 through 36, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 3

38. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

39. On or about September 2, 2003, Respondent sold one box containing three 0.67 ml. applicator tubes of the pesticide product referred to in paragraph 19 to Linda Hurlebaus, Palmetto, Georgia, as documented by Invoice 0324515900.

40. The pesticide product FRONTLINE® PLUS Sm DOG 3x0.67 11-22 # referred to in paragraphs 19 and 39 was not encompassed within the terms of the product registration under EPA Reg. No. 65331-5, and required separate product registration under Section 3 of FIFRA.

41. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

42. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

43. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 38 through 42, it is proposed that a civil penalty of \$2,750 be assessed against

Respondent.

Count 4

44. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

45. On or about September 2, 2003, Respondent sold one box containing three 0.67 ml. applicator tubes of the pesticide product referred to in paragraph 19 to Linda Hurlebaus, Palmetto, Georgia, as documented by Invoice 0324515900.

46. During the inspections referred to in paragraphs 22 and 23, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 19. Photographs document that this pesticide was misbranded as stated in paragraphs 9 through 13.

47. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

48. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 44 through 47, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 5

49. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

50. On or about March 16, 2004, Respondent sold one package containing four 0.4 ml. applicator tubes of the pesticide product referred to in paragraph 20 to Rebecca O'Keefe, West City, Illinois, as documented by Invoice 0407554100.

51. The pesticide product ADVANTAGE® 40 CAT ORANGE <9# referred to in paragraphs 20 and 50 was not encompassed within the terms of the product registration under EPA Reg. No. 11556-116, and required separate product registration under Section 3 of FIFRA.

52. Title 40 C.F.R. § 152.44 states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

53. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

54. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 49 through 53, it is proposed that a civil penalty of \$3,250 be assessed against Respondent.

Count 6

55. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

56. On or about March 16, 2004, Respondent sold one package containing four 0.4 ml. applicator tubes of the pesticide product referred to in paragraph 20 to Rebecca O'Keefe, West City, Illinois, as documented by Invoice 0407554100.

57. During the events referred to in paragraphs 24 and 25 and the inspection referred to in paragraph 26, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 20. The sample obtained through the Registrant document that this pesticide was misbranded as stated in paragraphs 9 through 13.

58. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

59. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 55 through 58, it is proposed that a civil penalty of \$3,250 be assessed against Respondent.

Count 7

60. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

61. On or about September 10, 2003, Respondent was holding for sale or distribution 56 packages of ADVANTAGE® 400 FOR LARGE DOGS, stickered with EPA Reg. No. 11556-122, as referred to in paragraphs 21 and 26.

62. ADVANTAGE® 400 FOR LARGE DOGS, stickered with EPA Reg. No. 11556-122, is an imitation of ADVANTAGE® 100 (Imidacloprid) TOPICAL SOLUTION, EPA Reg. No. 11556-122, as referred to in paragraph 17. This pesticide product described in paragraphs 17 and 61 was not encompassed within the terms of the product registration under EPA Reg. No. 11556-122, and required separate product registration under Section 3 of FIFRA.

63. Title 40 C.F.R. § 152.44, states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

64. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

65. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 60 through 64, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 8

66. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

67. On or about September 10, 2003, Respondent was holding for sale or distribution 56 packages of ADVANTAGE® 400 FOR LARGE DOGS, stickered with EPA Reg. No. 11556-122, as referred to in paragraphs 21 and 26.

68. During the inspections referred to in paragraphs 22 and 23, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 21. Photographs document that this pesticide was misbranded as stated in paragraphs 9 through 13.

69. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

70. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 66 through 69, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 9

71. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

72. On or about September 10, 2003, Respondent was holding for sale or distribution 12 packages of ADVANTAGE® 250 FOR DOGS, stickered with EPA Reg. No. 11556-120, as referred to in paragraphs 18 and 26.

73. ADVANTAGE® 250 FOR DOGS, stickered with EPA Reg. No. 11556-120, is an imitation of ADVANTAGE® 55 (Imidacloprid) TOPICAL SOLUTION, EPA Reg. No. 11556-120, as referred to in paragraph 14. This pesticide product described in paragraphs 18 and 72 was not encompassed within the terms of the product registration under EPA Reg. No. 11556-120, and required separate product registration under Section 3 of FIFRA.

74. Title 40 C.F.R. § 152.44, states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

75. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

76. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 71 through 75, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 10

77. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

78. On or about September 10, 2003, Respondent was holding for sale or distribution 12 packages of ADVANTAGE® 250 FOR DOGS, stickered with EPA Reg. No. 11556-120, as referred to in paragraphs 18 and 26.

79. During the inspections referred to in paragraphs 22 and 23, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 18. Photographs document that this pesticide was misbranded as stated in paragraphs 9 through 13.

80. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

81. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 77 through 80, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 11

82. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

83. On or about September 10, 2003, Respondent was holding for sale or distribution three packages of FRONTLINE® PLUS FOR DOGS 11-22 lbs., 85 packages of FRONTLINE® PLUS FOR DOGS 23-44 lbs., one package of FRONTLINE® PLUS FOR DOGS 45-88 lbs., and 39 packages of FRONTLINE® PLUS FOR DOGS 89-132 lbs., stickered with EPA Reg. No. 65331-5, as referred to in paragraphs 19 and 26.

84. FRONTLINE® PLUS FOR DOGS 11-22 lbs., 23-44 lbs., 45-88 lbs., and 89-132 lbs., stickered with EPA Reg. No. 65331-5, are imitations of FRONTLINE® PLUS FOR DOGS 11-22 lbs., 23-44 lbs., 45-88 lbs., and 89-132 lbs., EPA Reg. No. 65331-5, as referred to in paragraph 15. This pesticide product described in paragraphs 19 and 83 was not encompassed within the terms of the product registration under EPA Reg. No. 65331-5, and required separate product registration under Section 3 of FIFRA.

85. Title 40 C.F.R. § 152.44, states that any modification in the composition, labeling, or packaging of a registered product must be submitted by application to and approved by the Agency before the product as modified may be distributed or sold.

86. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

87. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 82 through 86, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Count 12

88. The facts stated in paragraphs 6 through 26 are realleged and incorporated as if fully stated herein.

89. On or about September 10, 2003, Respondent was holding for sale or distribution three packages of FRONTLINE® PLUS FOR DOGS 11-22 lbs., 85 packages of FRONTLINE® PLUS FOR DOGS 23-44 lbs., one package of FRONTLINE® PLUS FOR DOGS 45-88 lbs., and 39 packages of FRONTLINE® PLUS FOR DOGS 89-132 lbs., stickered with EPA Reg. No. 65331-5, as referred to in paragraphs 19 and 26.

90. During the inspections referred to in paragraphs 22 and 23, it was documented that Respondent was distributing, or holding for sale, the pesticide product referred to in paragraph 19. Photographs document that this pesticide was misbranded as stated in paragraphs 9 through 13.

91. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by selling or distributing a pesticide which is adulterated or misbranded.

92. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based upon the facts stated in paragraphs 88 through 91, it is proposed that a civil penalty of \$2,750 be assessed against Respondent.

Section IV

Total Proposed Penalty

93. Section 14 of FIFRA, 7 U.S.C. § 136l, and the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the issuance of this Complaint for the assessment of a civil penalty of up to Five Thousand Five Hundred Dollars (\$5,500) for each violation occurring prior to March 15, 2004. For any such violation occurring on or after March 15, 2004, the maximum statutory penalty per violation is Six Thousand Five Hundred Dollars (\$6,500). The EPA proposes to assess a total civil penalty of \$34,000 against Respondent for the above-described violations.

Appropriateness of Proposed Penalty

94. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

95. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$1,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

96. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

97. The proposed penalty constitutes a demand *only if* Respondent fails to raise *bona fide* issues of ability to pay, or other *bona fide* affirmative defenses relevant to the determination of any final penalty.

98. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

99. Payment of the total penalty - \$34,000 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

100. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and a copy to:

Jennifer Trotter
Assistant Regional Counsel
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

NOTICE OF OPPORTUNITY FOR HEARING

Section V

Answer and Request for Hearing

101. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file a written answer and request for hearing with:

Regional Hearing Clerk
EPA - Region 7
901 North 5th Street
Kansas City, Kansas 66101

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny, or explain each of the factual allegations contained

in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- A. The circumstances or arguments that are alleged to constitute the grounds of defense;
- B. The facts that Respondent intends to place at issue; and
- C. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

102. 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 (copy enclosed).

103. 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.

104. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, members of the Environmental Appeals Board, the Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case.

Section VI

Settlement Conference

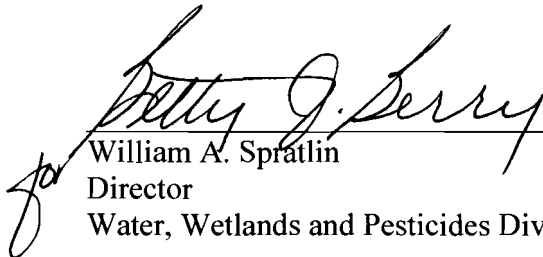
105. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent's request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent's 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:

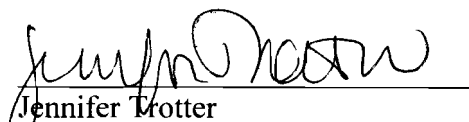
Jennifer Trotter
Assistant Regional Counsel
EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101
Telephone: (913) 551-7180

106. 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.

107. 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.

09/27/07
Date

for 
William A. Spratlin
Director
Water, Wetlands and Pesticides Division


Jennifer Trotter
Assistant Regional Counsel
Office of Regional Counsel

Enclosures:

1. FIFRA Civil Penalty Calculation Worksheet
2. Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22
3. July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act
4. SBREFA Fact Sheet
5. Notice of Securities and Exchange Commission Registrants Duty to Disclose Environmental Legal Proceedings

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22; a copy of the July 2, 1990, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; a copy of the FIFRA Civil Penalty Calculation Worksheet; the SBREFA Fact Sheet; and the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings, to the following:

Roy Nielsen III
Registered Agent for Revival Animal Health, Inc.
1700 Albany Place SE
Orange City, Iowa 51041

9-27-07

Date


Linda Koska

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

RESPONDENT: Revival Animal Health, Inc.
 ADDRESS: P.O. Box 200
 1700 Albany Place SE
 Orange City, Iowa 51041

Prepared By: Mark K. Leshner
 Date: 09/18/07

	Count 1	Count 2	Count 3	Count 4
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)
2. FTTS Code	1AA	1EA, 1EC, 1EE, 1EF, 1EG	1AA	1EA, 1EC, 1EE, 1EF, 1EG
3. Violation Level	2	2, 2, 3, 2, 2	2	2, 2, 3, 2, 2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	I	I	I	I
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$5,500	\$5,500	\$5,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	0	0	0	0
7f. Total Gravity Adjustment Value (add items 7a - 7e)	3	3	3	3
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	50%	50%	50%	50%
7h. Dollar Adjustment	-\$2,750	-\$2,750	-\$2,750	-\$2,750
8. Final Penalty** (item 7h from item 6)	\$2,750	\$2,750	\$2,750	\$2,750
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

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

RESPONDENT: Revival Animal Health, Inc.
 ADDRESS: P.O. Box 200
 1700 Albany Place SE
 Orange City, Iowa 51041

Prepared By: Mark K. Leshner
 Date: 09/18/07

	Count 5	Count 6	Count 7	Count 8
Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)
2. FTTS Code	1AA	1EA, 1EC, 1EE, 1EF, 1EG	1AA	1EA, 1EC, 1EE, 1EF, 1EG
3. Violation Level	2	2, 2, 3, 2, 2	2	2, 2, 3, 2, 2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	1	1	1	1
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$6,500	\$6,500	\$5,500	\$5,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	0	0	0	0
7f. Total Gravity Adjustment Value (add items 7a - 7e)	3	3	3	3
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	50%	50%	50%	50%
7h. Dollar Adjustment	-\$3,250	-\$3,250	-\$2,750	-\$2,750
8. Final Penalty** (item 7h from item 6)	\$3,250	\$3,250	\$2,750	\$2,750
Combined Total Penalty (total of all columns for line 8, above)				

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.

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

Appendix A				
1. Statutory Violation	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)	Sec. 12(a)(1)(A)	Sec. 12(a)(1)(E)
2. FTTS Code	1AA	1EA, 1EC, 1EE, 1EF, 1EG	1AA	1EA, 1EC, 1EE, 1EF, 1EG
3. Violation Level	2	2, 2, 3, 2, 2	2	2, 2, 3, 2, 2
Appendix C - Table 2 - Size of Business Category				
4. Violator Category * § 14(a)(1) or § 14(a)(2)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)	§ 14(a)(1)
5. Size of Business Category	1	1	1	1
Appendix C - Table 1 - FIFRA Civil Penalty Matrix				
6. BASE PENALTY	\$5,500	\$5,500	\$5,500	\$5,500
Appendix B - Gravity Adjustments				
7a. Pesticide Toxicity	1	1	1	1
7b. Human Harm	1	1	1	1
7c. Environmental Harm	1	1	1	1
7d. Compliance History	0	0	0	0
7e. Culpability	0	0	0	0
7f. Total Gravity Adjustment Value (add items 7a - 7e)	3	3	3	3
Appendix C - Table 3 - Adjustments				
7g. Percent Adjustment	50%	50%	50%	50%
7h. Dollar Adjustment	-\$2,750	-\$2,750	-\$2,750	-\$2,750
8. Final Penalty** (item 7h from item 6)	\$2,750	\$2,750	\$2,750	\$2,750
Combined Total Penalty (total of all columns for line 8, above)	\$34,000			

* Section 14(a)(1) of FIFRA - Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$5,000 for each offense.

Section 14(a)(2) of FIFRA - Any private applicator or other person not included in paragraph (1) who violates any provision of this subchapter subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than \$1,000 for each offense, except that any applicator not included under paragraph (1) of this subsection who holds or applies registered pesticides, or use dilutions of registered pesticides, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, and who violates any provision of this subchapter may be assessed a civil penalty by the Administrator of not more than \$500 for the first offense nor more than \$1,000 for each subsequent offense.

**The final penalty in each column of line 8 cannot exceed the statutory maximum.