

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2011 SEP 23 PM 1:57

In the Matter of: )  
)  
Galles Greenhouse )  
& Hepp Landscaping, Inc., )  
)  
Respondent )

**PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**

**DOCKET NO. : FIFRA-08-2011-0013**

FILED  
EPA REGION VIII

**INTRODUCTION (JURISDICTION)**

1. This Complaint and Notice of Opportunity for Hearing ("Complaint") is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136/(a). The rules for this proceeding are 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 (Rules of Practice)," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent Galles Greenhouse & Hepp Landscaping, Inc. has violated FIFRA by using pesticide in a manner inconsistent with its label and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. § 136/(a).

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (1595 Wynkoop Street; Denver, Colorado 80202-1129) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

## QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$550) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

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

## SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800-227-8917; extension 6924, 303-312-6924, or the address below. ***Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.***

## ALLEGATIONS

At all times pertinent to the complaint, the following general allegations apply:

8. Respondent, Galles Greenhouse & Hepp Landscaping, Inc., is incorporated in Wyoming.

9. Respondent is a "person" within the meaning of section 2(s) of FIFRA, and subject to the requirements of the statute and/or regulations. 7 U.S.C. § 136(s).

10. Respondent operates a greenhouse located at 3225 S. McKinley, Casper, Wyoming ("Facility").

11. Respondent produces and at all times pertinent to this Complaint has produced "agricultural plants" at its Facility, as that term is defined by 40 C.F.R. § 170.3.

12. Respondent engages and at all times pertinent to this Complaint has engaged in the indoor production of agricultural plants at its Facility.

13. Respondent's Facility is and at all times pertinent to this Complaint has been a "greenhouse," as that term is defined by 40 C.F.R. § 170.3.

14. Respondent's Facility is and at all times pertinent to this Complaint has been an "agricultural establishment," as that term is defined by 40 C.F.R. § 170.3.

15. On May 19, 2011 an EPA inspector conducted an inspection of Respondent's Facility. During the inspection, the EPA inspector determined that on or about May 16, 2011, Respondent had applied Hi-Yield Insect Control (EPA Reg. No. 7401-466) to the agricultural plants in the Facility.

16. Respondent is an "other person" within the meaning of section 14(a)(2) of FIFRA, 7 U.S.C. § 136(a)(2).

17. The Hi-Yield Insect Control label states: "For outdoor homeowner (residential) use only."

18. FIFRA section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), prohibits the use of registered pesticides in a manner inconsistent with its labeling.

19. Respondent's use of Hi-Yield Insect Control at an agricultural establishment constitutes the use of a pesticide in a manner inconsistent with label's direction and therefore a violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G).

### **PROPOSED CIVIL PENALTY**

20. For a Respondent that meets the definition of section 14(a)(2) of FIFRA, 7 U.S.C. § 136(a)(2), as is applicable in this proceeding, FIFRA authorizes the assessment of a civil penalty of up to \$1,100 for each offense of the Act and as adjusted by the Debt Collection Improvement Act of 1996. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this complaint, EPA proposes a penalty of \$550. The penalty narrative and calculation can be found in complainant's Exhibit Number 1.

21. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. In this case, the maximum would be \$1,100.

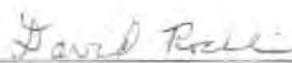
To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency  
Region 8, Office of Enforcement, Compliance and  
Environmental Justice, Complainant  
1595 Wynkoop Street (ENF-L)  
Denver, CO 80202-1129

Date: 9/22/11

By:   
Sandra A. Stavnes, Director  
Technical Enforcement Program

Date: September 22, 2011

By:   
Supervisory Enforcement Attorney  
Legal Enforcement Program

Date: 9/20/2011

By:   
Eduardo Quintana, Senior Enforcement Attorney  
Legal Enforcement Program

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

Christian L. Hepp  
Galles Greenhouse & Hepp Landscaping, Inc.  
3225 S. McKinley St.  
Casper, WY 82601

9/23/2011  
Date

Judith M. Mc Ternan

**Penalty Calculation Narrative  
Galles Greenhouse**

1. To ensure a uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) developed the December, 2009, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (2009 Policy).

2. According to the 2009 Policy, the appropriate enforcement response for the use of a registered pesticide in a manner inconsistent with its labeling is a civil penalty. Galles Greenhouse is charged with one count of use of a registered pesticide in a manner inconsistent with its labeling. The pesticide, Hi-Yield Insect Control, EPA registration number 7401-466, was applied to plants in the greenhouse. The label states "For outdoor homeowner (residential) use only". The use of Hi-Yield Insect Control in a commercial greenhouse is a use inconsistent with label directions.

3. FIFRA Section 14(a)(4) requires EPA to "consider the appropriateness of (a civil penalty) to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation."

4. Following the guidance in the 2009 Policy, EPA calculates a proposed civil penalty by first determining the gravity of the offense. The gravity of the offense is identified using Appendix A of the 2009 Policy. Appendix A identifies violations of using a registered pesticide in a manner inconsistent with its labeling as a gravity level 2 violation. Appendix A identifies a violation of FIFRA section 12(a)(2)(G) [to use any registered pesticide in a manner inconsistent with its labeling] as gravity level 2.

5. Second, according to the 2009 policy, the size of business is taken into account. The size of business is determined from the company's gross revenues from all revenue sources during the prior calendar year. When information concerning the size of business is not readily available, the 2009 Policy directs the use of Category I size of business. This will remain the base penalty value unless Galles Greenhouse can establish that it should be considered in a smaller category. EPA has determined the size of the business category for Galles Greenhouse as Category I (gross revenues over \$1,000,000).

6. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA Section 14(a)(2) violations on page 19 of the 2009 Policy to determine the dollar amount of the proposed penalty. Violations with level 2 gravity and in Business Category I are assessed a penalty of \$1,100 for each count. (The penalty amounts shown in the 2009 Civil Penalty Matrix have been changed by the Debt Collection Improvement Act of 1996 with the most recent adjustment to \$1,100; effective after January 12, 2009.)

7. The 2009 Penalty Policy then directs that the actual circumstances of the violations be considered using gravity adjustment criteria listed in Appendix B of that document. The penalty amounts determined from the matrix can be adjusted either upward or downward depending on the specifics of the case known to EPA at the time of the penalty calculation.

The following gravity adjustment values were used to evaluate the FIFRA violation associated with the use of a registered pesticide in a manner inconsistent with its labeling:

(a) Pesticide: a value of 1 is assigned due to the signal word "Caution."

(b) Harm to human health: a value of 0 is assigned as negligible harm to human health is anticipated.

(c) Environmental harm: a value of 0 is assigned as negligible harm to the environment is anticipated.

(d) Compliance history: a value of 2 is assigned as there is a history of one prior violation of FIFRA.

(e) Culpability: a value of 1 is assigned as culpability as the violation resulted from negligence.

This result is a total gravity adjustment value of 4 for the violation associated with the use of a registered pesticide in a manner inconsistent with its labeling.

8. Using a Gravity Adjustment Value of 4, Table 3 in Appendix C of the 2009 Policy states to reduce the matrix value by 50% (-\$550).

9. Finally, EPA attempts to take into consideration what effect the calculated penalty would have on the ability of Galles Greenhouse to pay based on limited information available to EPA. Adjustments of the proposed penalty can be made at a later date should information warranting such a change become available. No adjustments were made at this time.

10. In sum, EPA arrived at a total penalty of \$550 for Galles Greenhouse's violation of FIFRA section 12(a)(2)(G) by considering all of the FIFRA Section 14(a)(4) penalty criteria through the use of the 2009 Policy.

*David Golden 9.20.11*

**FIFRA CIVIL PENALTY CALCULATION WORKSHEET  
GALLES GREENHOUSE**

<b>Respondent:</b>	Galles Greenhouse
<b>Docket No.:</b>	
<b>APPENDIX A</b>	
1. Violation	§12(a)(2)(G)
2. FTIS Code & Violation Level	1GA / 2
<b>TABLE 1</b>	
3. Violator Category & Size of Business Category	§14(a)(2) / Category III
<b>APPENDIX A</b>	
4. Gravity of the Violation	2
<b>TABLE 2</b>	
5. Base Penalty	\$1,100
<b>APPENDIX B</b>	
6. Gravity Adjustments	
a. Pesticide Toxicity	1
b. Harm to Human Health	0
c. Environmental Harm	0
d. Compliance History	2
e. Culpability	1
f. Total Gravity Adjustment (Add 6a – 6e)	4
<b>TABLE 3</b>	
7. Percent & Dollar Adjustment	Reduce penalty by 50% (-\$550)
8. Economic Benefit	
<b>TABLE 4</b>	
9. Graduated Penalty	Not applied
<b>10. Final Penalty</b>	<b>\$550</b>

*David Golden 9/20/11*

**FIFRA ENFORCEMENT RESPONSE POLICY**  
**FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT**

**Waste and Chemical Enforcement Division**  
**Office of Civil Enforcement**  
**Office of Enforcement and Compliance Assurance**  
**United States Environmental Protection Agency**

**December 2009**

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.

## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### EPA's Small Business Websites

Small Business Environmental Homepage - [www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

Small Business Gateway - [www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

EPA's Small Business Ombudsman - [www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888

#### EPA's Compliance Assistance Homepage

[www.epa.gov/compliance/assistance/  
business.html](http://www.epa.gov/compliance/assistance/business.html)

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

#### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

#### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

#### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

#### Automotive Service and Repair

[www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK

#### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

#### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

#### Education

[www.campusere.org](http://www.campusere.org)

#### Food Processing

[www.fpeac.org](http://www.fpeac.org)

#### Healthcare

[www.hercenter.org](http://www.hercenter.org)

#### Local Government

[www.lgean.org](http://www.lgean.org)

#### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

#### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

#### Printed Wiring Board Manufacturing

[www.pwbrc.org](http://www.pwbrc.org)

#### Printing

[www.pneac.org](http://www.pneac.org)

#### Ports

[www.portcompliance.org](http://www.portcompliance.org)

#### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

#### Hotlines, Helplines and Clearinghouses

[www.epa.gov/epahome/hotline.htm](http://www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

#### Antimicrobial Information Hotline

[info-antimicrobial@epa.gov](mailto:info-antimicrobial@epa.gov) or  
1-703-308-6411

#### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/cate](http://www.epa.gov/ttn/cate) or 1-919-541-0800

#### Emergency Planning and Community Right-To-Know Act

[www.epa.gov/superfund/resources/  
infocenter/epcra.htm](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

#### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or  
734-214-4100

#### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

#### National Response Center Hotline -

to report oil and hazardous substance spills  
[www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

#### Pollution Prevention Information Clearinghouse (PPIC)

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or  
1-202-566-0799

#### Safe Drinking Water Hotline

[www.epa.gov/safewater/hotline/index.  
html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791

#### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone](http://www.epa.gov/ozone) or 1-800-296-1996

## **Toxic Substances Control Act (TSCA) Hotline**

[tsca-hotline@epa.gov](mailto:tsca-hotline@epa.gov) or 1-202-554-1404

## **Wetlands Information Helpline**

[www.epa.gov/owow/wetlands/wetline.html](http://www.epa.gov/owow/wetlands/wetline.html) or 1-800-832-7828

## **State and Tribal Web-Based Resources**

### **State Resource Locators**

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### **State Small Business Environmental Assistance Programs (SBEAPs)**

[www.smallbiz-enviroweb.org](http://www.smallbiz-enviroweb.org)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

### **EPA's Tribal Compliance Assistance Center**

[www.epa.gov/tribalcompliance/index.html](http://www.epa.gov/tribalcompliance/index.html)

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

### **EPA's Tribal Portal**

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal helps users locate tribal-related information within EPA and other federal agencies.

### **EPA Compliance Incentives**

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

#### **EPA's Small Business Compliance Policy**

[www.epa.gov/compliance/incentives/smallbusiness/index.html](http://www.epa.gov/compliance/incentives/smallbusiness/index.html)

This Policy offers small businesses special incentives to come into compliance voluntarily.

#### **EPA's Audit Policy**

[www.epa.gov/compliance/incentives/auditing/auditpolicy.html](http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### **Commenting on Federal Enforcement Actions and Compliance Activities**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247), or go to their website at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### **Your Duty to Comply**

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*