



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
EDISON, NEW JERSEY 08837

SEP 26 2012

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Lisa Su, Chief Executive Officer  
Everyday Group LLC  
Building 3, Suite 308  
63 Flushing Avenue, Unit 148  
Brooklyn, New York, 11205

Re: In the matter of Everyday Group  
Docket No. FIFRA-02-2012-5201

Dear Ms Su:

Enclosed please find an Administrative Civil Complaint alleging violations documented under the Federal Insecticide, Fungicide and Rodenticide, Act as amended (FIFRA).

The United States Environmental Protection Agency (EPA) has records that reflect that your company distributed unregistered pesticides in violation of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Section 12(a)(1), U.S.C. § 136j(a)(1).

Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in part, that "it shall be unlawful for any person in any State to distribute or sell to any person a "pesticide" (as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3) that has been previously registered under section 3 of FIFRA, 7U.S.C. § 136a.

The Complaint alleges that you sold or distributed the unregistered pesticides Dettol Laundry Sanitizer, Fuji Lavender Moth Tablets, and Dettol Disinfectant Multi-Action Cleaner on thirty-two (32) separate occasions to various retail outlets. The complaint assesses a proposed civil penalty of Two Hundred Forty Thousand Dollars (\$240,000).

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2012 OCT 11 A 8:51  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
In the Matter of :  
 :  
Everyday Group, LLC, :  
 :  
Respondent. :  
 :  
Proceeding under the Federal :  
Insecticide, Fungicide and :  
Rodenticide Act, as amended. :  
-----X

COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

Docket No.  
FIFRA-02-2012-5201

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.11  
2012 OCT 11 A 8:51  
REGIONAL HEARING  
CLERK

COMPLAINT

Complainant, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), by and through her attorneys, hereby alleges as and for her Complaint against Respondent:

Jurisdiction

1. This is an administrative proceeding commenced pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a)(1), to assess a civil penalty against Respondent for having committed acts made unlawful under the provisions of Section 12(a)(1) of FIFRA, 7 U.S.C. § 136j(a)(1).

2. This tribunal has been vested with jurisdiction over this proceeding pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. § 22.1(a)(1).

3. Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2.

Statutory and Regulatory Definitions

4. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), "to distribute or sell" is defined 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.”<sup>1</sup>

5. Pursuant to 40 C.F.R. § 152.3, to “[d]istribute or sell” is defined to “mean[] the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

6. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), a pesticide includes, *inter alia*, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest” (the term “pest” further defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and in 40 C.F.R. § 152.5).

7. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5, the term “pest” includes, *inter alia*:

- a) a rodent, an insect, other arthropod, nematode or mollusk (excluding any internal parasite of living humans or other living animals); and
- b) bacteria, viruses, fungus or other micro-organisms (except for those bacteria, virus or other micro-organisms on or in living humans and other living animals).

8. Under 40 C.F.R. § 152.15, a substance is considered to be intended for a pesticidal purpose, and thus is deemed to be a pesticide requiring registration under Section 3 of FIFRA, 7 U.S.C. § 136a, if the person who sells or distributes said substance, *inter alia*:

- a) claims, states or implies (whether through the use of a label used in connection with such substance or otherwise) that it (either by itself or in combination with any other substance) can or should be used as a pesticide, or
- b) has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

### Unlawful and Prohibited Acts

9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides, in part, that “it shall be unlawful for any person in any State to distribute or sell to any person” a “pesticide” (as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3) that has not been

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<sup>1</sup> Unless specifically stated otherwise, terms or phrases defined by reference to specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

previously registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

10. Pursuant to 40 C.F.R. § 152.15, “[n]o person may distribute or sell any pesticide product [defined in 40 C.F.R. § 152.3] that is not registered under [FIFRA]....”

11. Any distribution or sale of a pesticide that has not previously been registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is made unlawful by (*i.e.* constitutes a prohibited act under) Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and thus constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

12. Any distribution or sale of a pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes a prohibited act under 40 C.F.R. § 152.15 and thus constitutes a violation of 40 C.F.R. § 152.15.

13. A violation of 40 C.F.R. § 152.15 constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

14. A violation of each of the following constitutes a violation of a provision of subchapter II of FIFRA, 7 U.S.C. §§ 136 -136y:

- a. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and/or
- b. 40 C.F.R. § 152.15.

#### Authority to Assess Penalty

15. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides, in part, that “[a]ny... wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y] may be assessed a civil penalty by the Administrator [of EPA] of not more than \$5,000 for each offense.”

16. Complainant, the Director of the Division of Enforcement and Compliance Assistance of EPA, Region 2, has been duly delegated the authority to institute this proceeding on behalf of the Administrator of the EPA.

17. Under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note), EPA has promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to:

- a) \$6,500 for any violation occurring after March 15, 2004 but before January 12, 2009; and
- b) \$7,500 for any violation occurring on or after January 12, 2009.

18. Section 14(a)(3) of FIFRA, 7 U.S.C. 136l(a)(3), provides that “[n]o civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged.”

19. This “COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING” (“Complaint”) constitutes the aforementioned (§ 18, above) notice.

#### Respondent’s Identity and Operations

20. Respondent is Everyday Group, LLC.

20. Respondent is a limited liability company organized, and existing since January 2009, under the laws of the State of New York.

21. Since its formation in January 2009, Respondent has been, and continues to be, a “person” (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

22. Respondent maintains its headquarters at a location the address of which is Brooklyn Navy Yard, Building 3, Suite 308, 63 Flushing Avenue, Unit 148, Brooklyn (Kings County), New York 11205 (hereinafter “Respondent’s facility”).

23. Respondent is engaged in the commercial importation of a number of products and substances that are intended for sale to, *inter alia*, household consumers, and such products and substances include health, beauty and personal hygiene products, and products and substances intended for use and retail sale as pesticides.

24. Respondent commercially distributes or sells to retail establishments in the New York City area the aforementioned (§ 23, above) products and substances.

25. On November 4, 2010, an employee of EPA conducted an inspection of imported pesticides being held at H&M International, a facility located at 700 Belleville Turnpike, Kearny, New Jersey 07032.

26. On each of the following dates, an employee of EPA conducted an inspection of Respondent’s facility: a) July 19, 2011; and b) August 4, 2011.

27. Each of the aforementioned (§s 25 and 26, above) three inspections was conducted for

the purposes of enforcing the provisions of Subchapter II of FIFRA, 7 U.S.C. §§ 136-136y.

**COUNT 1: Dettol Laundry Sanitiser**

28. Complainant repeats and realleges each of paragraphs 1 through 27, above, as if fully set forth below.

29. From time to time Respondent has imported (and continues to do so) a product commercially identified as "Dettol Laundry Sanitiser" (hereinafter "DLS").

30. On or about each of the following dates, Respondent distributed and/or sold quantities of DLS to various retail establishments in the New York City area:

- a) December 10, 2009;
- b) June 18, 2010;
- c) July 16, 2010;
- d) July 23, 2010;
- e) September 4, 2010;
- f) September 15, 2010;
- g) October 29, 2010; and
- h) April 12, 2011.

31. Subsequent to each of the dates of the aforementioned (§ 30, above) sales, the DLS product was made available for sale to the public.

32. Respondent intended that the DLS product be used for preventing the spread of, destroying, repelling or mitigating pests, *viz.* germs (which include bacteria, viruses and other micro-organisms).

33. Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding DLS) that DLS can or should be used as a pesticide.

34. The aforementioned (§ 33, above) claims, express statements or implied assertions included that DLS "Kills 99.9% Germs" and is a "Disinfectant."

35. DLS constitutes a pesticide.

36. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register DLS with the EPA.

37. Respondent had not registered DLS with the EPA at any time prior to any of the aforementioned (§ 30, above) dates.

38. Each aforementioned (¶ 30, above) distribution or sale of DLS constituted a distribution or sale of an unregistered pesticide.

39. Each (¶ 30, above) distribution or sale of DLS without having registered DLS with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

**COUNT 2: Fuji Lavender Moth Tablets**

40. Complainant repeats and realleges each of paragraphs 1 through 27, above, as if fully set forth below.

41. From time to time Respondent has imported (and continues to do so) a product commercially identified as “Fuji Lavender Moth Tablets” (hereinafter “FLMT”).

42. On or about each of the following dates, Respondent distributed and/or sold quantities of FLMT to various retail establishments in the New York City area:

- a) November 6, 2009;
- b) March 24, 2010;
- c) June 7, 2010;
- d) June 10, 2010;
- e) June 12, 2010;
- f) June 16, 2010;
- g) June 17, 2010;
- h) June 18, 2010;
- i) June 22, 2010;
- j) June 28, 2010; and
- k) September 14, 2010.

43. Subsequent to each of the dates of the aforementioned (¶ 42, above) sales, the FLMT product was made available for sale to the public.

44. Respondent intended that the FMLT product be used for preventing the spread of, destroying, repelling or mitigating pests, viz. insects (moths).

45. Respondent claimed, stated or implied (*inter alia*, through the label on the containers

holding FLMT) that FLMT can or should be used as a pesticide.

46. The aforementioned (§ 45, above) claims, express statements or implied assertions included that FLMT is an "Insect Repellent" and a "Moth Preventative chemical."

47. FMLT constitutes a pesticide.

48. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register FMLT with the EPA.

49. Respondent had not registered FMLT with the EPA at any time prior to any of the aforementioned (§ 42, above) dates.

50. Each aforementioned (§ 42, above) distribution or sale of FLMT constituted a distribution or sale of an unregistered pesticide.

51. Each (§ 42, above) distribution or sale of FLMT without having registered FLMT with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

**COUNT 3: Dettol Disinfectant Multi-Action Cleaner**

52. Complainant repeats and realleges each of paragraphs 1 through 27, above, as if fully set forth below.

53. From time to time Respondent has imported (and continues to do so) a product commercially identified as "Dettol Disinfectant Multi-Action Cleaner" (hereinafter "DDMAC").

54. On or about each of the following dates, Respondent distributed and/or sold quantities of DDMAC to various retail establishments in the New York City area:

- a) December 10, 2009;
- b) December 29, 2009;
- c) February 2, 2010;
- d) April 22, 2010;
- e) May 1, 2010;
- f) June 23, 2010;



- g) June 25, 2010;
- h) July 13, 2010;
- i) July 23, 2010;
- j) July 28, 2010;
- k) September 15, 2010;
- l) October 16, 2010; and
- m) October 29, 2010.

55. Subsequent to each of the dates of the aforementioned (¶ 54, above) sales, the DDMAC product was made available for sale to the public.

56. Respondent intended that the DDMAC product be used for preventing the spread of, destroying, repelling or mitigating pests, *viz.* germs (which include bacteria, viruses and other micro-organisms).

57. Respondent claimed, stated or implied (*inter alia*, through the label on the containers holding DDMAC) that DDMAC can or should be used as a pesticide.

58. The aforementioned (¶ 57, above) claims, express statements or implied assertions included that DDMAC was “kills 99.8% of germs” and a “disinfectant.”

59. DDMAC constitutes a pesticide.

60. Pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, Respondent was required to register DDMAC with the EPA.

61. Respondent had not registered DDMAC with the EPA at any time prior to any of the aforementioned (¶ 54, above) dates.

62. Each aforementioned (¶ 54, above) distribution or sale of DDMAC constituted a distribution or sale of an unregistered pesticide.

63. Each (¶ 54, above) distribution or sale of DMAC without having registered DDMAC with the EPA pursuant to and in accordance with Section 3 of FIFRA, 7 U.S.C. § 136a, constitutes:

- a. an unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and
- b. a prohibited act pursuant to and under 40 C.F.R. § 152.15.

**PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$7,500 for each violation on or after January 12, 2009, of "any provision of" subchapter II of FIFRA, 7 U.S.C. §§ 136 - 136y.

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA "shall consider the appropriateness of such 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." Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4).

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA's "Enforcement Response Policy for The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)," dated July 2, 1990 (hereinafter referred to as the "ERP"). A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>. This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases.

Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

**COUNT 1: ILLEGAL DISTRIBUTION OR SALE OF DLS:**

Eight (8) separate instances of illegal distribution or sale of an unregistered pesticide after January 12, 2009, @ \$7,500 per transaction = **\$60,000**

**COUNT 2: ILLEGAL DISTRIBUTION OR SALE OF FLMT:**

Eleven (11) separate instances of illegal distribution or sale of an unregistered pesticide after January 12, 2009, @ \$7,500 per transaction = **\$82,500**

**COUNT 3: ILLEGAL DISTRIBUTION OR SALE OF DDMAC:**

Thirteen (13) separate instances of illegal distribution or sale of an unregistered pesticide after January 12, 2009, @ \$7,500 per transaction = **\$97,500**

Total Proposed Gravity-Based Penalty for all counts:  $\$60,000 + 82,500 + \$97,500 = \$240,000$

**Total Proposed Penalty: \$240,000****PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 *Fed. Reg.* 40138 (July 23, 1999), codified at 40 C.F.R. Part 22, entitled, "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS." A copy of these rules accompanies this Complaint.

**A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

### B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with Section 14(a)(3) of FIFRA, 7 U.S.C. § 1361(a)(3), and 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

### C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [*i.e.* in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefor shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

### D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the EPA's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)] pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the EAB, Respondent must do so "within 30 days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by "first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) [discussing when an initial decision becomes a final order] does not pertain to or extend the time

period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### INFORMAL SETTLEMENT CONFERENCE

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the FIFRA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to the EPA Assistant Regional Counsel listed below:

Lee A. Spielmann  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
212-637-3222

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

#### RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may resolve this proceeding by paying the specific penalty proposed in the Complaint and filing a copy of the check or other instrument of payment with the Regional Hearing Clerk, Region 2 (at the New York address noted above). 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified previously.

Alternatively, Respondent may make such payment by electronic fund transfer (EFT). To do so, Respondent must provide the following information to its remitter bank for the making of payment:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727  
Environmental Protection Agency**


f. Name of Respondent: **Everyday Group, LLC**

g. Case docket number: **FIFRA-02-2012-5201**

Proof that full payment has been effected by EFT shall be provided to the EPA Assistant Regional Counsel identified previously.

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable FIFRA statutory and regulatory requirements, and to maintain such compliance.

Dated: September 26, 2012  
New York, New York

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 21<sup>st</sup> floor  
New York, New York 10007-1866

**CERTIFICATE OF SERVICE**

This is to certify that on this day set forth below, I caused to be mailed a true and correct copy of the foregoing "COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING," captioned *In re Everyday Group, LLC*, and bearing Docket Number FIFRA-02-2012-5201 (hereinafter referred to as the "Complaint"), together with a copy of the "CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENTS OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION COMPLIANCE ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS," 40 C.F.R. Part 22, by certified mail, return receipt requested, to the addressee listed below. I also on said date hand carried the original and a copy of the Complaint to the Office of the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2, 290 Broadway, 16<sup>th</sup> floor, New York, New York 10007-1866.

Lisa Su, Chief Executive Officer  
Everyday Group, LLC  
Building 3, Suite 308  
63 Flushing Avenue, Unit 148  
Brooklyn, New York 11205

Dated: OCT - 9 2012  
New York, New York

Mildred N. Bag