

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2008 SEP 30 PM 12:39

EPA REGION VIII
HEARING CLERK

In the Matter of:

Diatect International Corp.,)
875 S. Industrial Parkway)
Heber City, Utah,)
)
Respondent.)

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

DOCKET NO.: FIFRA-08-2008-0029

JURISDICTION

1. This civil administrative enforcement action is authorized by Congress in 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 Diatect International Corporation (Respondent) has violated FIFRA by offering to sell misbranded pesticides or in the alternative, offering to sell pesticides while making claims that substantially differ from the claims made in the pesticides' registrations. For these violations, EPA proposes the assessment of a civil penalty as more fully explained below.

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 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 (8RC), Denver, Colorado 80202, within thirty (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 THIRTY (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 proposed in this 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. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check, including the name and docket number of this case, payable to "Treasurer, United States of America," in care of:

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

A copy of the check must be mailed simultaneously to the attorney listed below.

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 Senior Enforcement Attorney Eduardo Quintana at (303) 312-6924 or the address below. **Please note that calling or requesting a settlement conference does NOT delay the running of the thirty (30) day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

[THIS COMPLAINT PLEADS ALTERNATIVE COUNTS]

8. Respondent is the Diatect International Corporation, a Utah limited liability company and the owner and operator of a company located at 875 S. Industrial Parkway, Heber City, Utah 84032.

9. Respondent is a "person" within the meaning of the statute, 7 U.S.C. § 136(s), and therefore subject to the requirements of the statute and/or regulations.
10. Respondent is a "producer" as defined by FIFRA, 7 U.S.C. §136(w), and a "distributor/seller" as defined by the statute, 7 U.S.C. §136(2)(gg), of a "pesticide" as defined by the statute, 7 U.S.C. §136(2)(u).
11. Respondent produces nine (9) pesticides that are registered with EPA under four (4) separate EPA registration numbers that are the subject of this Complaint. The nine (9) pesticides are: "Diatect III Commercial Grade Insect Killer," EPA registration number 42850-1; "Roach Killer," EPA registration number 42850-1; "Flea and Tick Killer," EPA registration number 42850-3; "Ant and Insect Killer," EPA registration number 42850-4; "Bed Bug Killer," EPA registration number 42850-4; "Fire Ant Killer," EPA registration number 42850-4; "Garden Floral Insect Control," EPA registration number 42850-4; "Indoor Insect Killer," EPA registration number 42850-4; and "Organic Insect Control," EPA registration number 42850-5.
12. At all times relevant to this Complaint, Respondent offered for sale the pesticides listed in counts 1 through 9, in at least one of its websites: <http://www.diatect.com> and <http://www.deadbugsnaturally.com>.
13. Under FIFRA, a pesticide is misbranded if its labeling contains any statement that is false or misleading. 7 U.S.C. § 136 (q)(1)(A), 40 C.F.R. section 156.10(a)(5).
14. FIFRA makes it unlawful to distribute or sell a pesticide that is misbranded. 7 U.S.C. § 136j (A)(1)(E). The term "to distribute or sell" includes to "offer for sale" a pesticide. 7 U.S.C. § 136 (gg).
15. At all times relevant to this Complaint, Respondent referenced at least one of its websites (<http://www.diatect.com> or <http://www.deadbugsnaturally.com>) on the label for the pesticides listed in Counts 1 through 9. The contents of the websites is the same.
16. The statements made in the websites are "written, printed, or graphic matter - (B) to which reference is made on the label ..." and therefore, meet the definition of labeling pursuant to FIFRA section 2 (p)(2)(B). 7 U.S.C. § 136 (p)(2)(B).
17. FIFRA makes it unlawful to sell or distribute "any registered pesticide if any claims made for it as part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 136a of this." 7 U.S.C. § 136j (a)(1)(B).
18. At all times relevant to this Complaint, Respondent advertised and offered for sale the pesticides listed in counts 1 through 9, in both websites

(<http://www.diatect.com> or <http://www.deadbugsnaturally.com>). Respondent's websites are available to the public and therefore constitutes "advertising" within the meaning of 40 C.F.R. section 168.22.

19. EPA documented statements made about the nine pesticides listed in Counts 1 through 9 on Respondent's websites. The false or misleading statements were documented on various dates in October and November of 2007, and April, 2008.

20. As more fully explained in counts 1 through 9, Respondent made statements in its website(s) that are specifically identified as false or misleading pursuant to FIFRA section 2(q)(1)(A) and 40 C.F.R. section 156.10(a)(5). *In the alternative*, Respondent's statements made in its website, are claims that substantially differ from the claims made in connection with the statements required as part of the pesticides' registrations. 7 U.S.C. § 136j (a)(1)(B).

COUNT 1

20. Paragraphs 1-19 are incorporated herein by reference.

21. Respondent produces the pesticide "Diatect III Commercial Grade Insect Killer," EPA registration number 42850-1.

22. The label for "Diatect III Commercial Grade Insect Killer" makes reference to Respondent's website (<http://www.diatect.com>), where the pesticide is offered for sale.

23. Respondent has made statements in its website regarding its "Diatect III Commercial Grade Insect Killer" pesticide. The statements are part of the "Diatect III Commercial Grade Insect Killer" pesticide's labeling.

24. The statements made include but are not limited to: (a) "because the EPA continues to de-list more toxic insecticide products, the industry is always in search of products that are safe. Diatect III was designed and formulated to fill that need;" and (b) "99% natural - uses no harmful chemicals and has no known negative effect to people or plants". These statements were documented on October 5, 2007 by EPA. Additional statements are included in Complainant's Exhibit 1.

25. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Diatect III Commercial Grade Insect Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

26. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

27. Respondent's offer to sell the misbranded pesticide "Diatect III Commercial Grade Insect Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

28. In the alternative, Respondent's offer to sell the "Diatect III Commercial Grade Insect Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 24 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Diatect III Commercial Grade Insect Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 2

29. Paragraphs 1-19 are incorporated herein by reference.

30. Respondent produces the pesticide "Roach Killer," EPA registration number 42850-1.

31. The label for "Roach Killer" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.

32. Respondent has made statements in its website regarding its "Roach Killer" pesticide. The statements are part of the "Roach Killer" pesticide's labeling.

33. The statements made include but are not limited to: (a) "NATURAL ROACH KILLER 99% natural - safer around people and pets with immediate access to treated areas;" and (b) "Natural Roach Killer." These statements were documented on October 4, 2007 and April 28, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.

34. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Roach Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

35. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

36. Respondent's offer to sell the misbranded pesticide "Roach Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

37. In the alternative, Respondent's offer to sell the "Roach Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 33 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Roach Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 3

38. Paragraphs 1-19 are incorporated herein by reference.

39. Respondent produces the pesticide "Flea and Tick Killer," EPA registration number 42850-3.

40. The label for "Flea and Tick Killer" makes reference to Respondent's website (<http://www.deadbugsaturally.com>), where the pesticide is offered for sale.

41. Respondent has made statements in its website regarding its "Flea and Tick Killer" pesticide. The statements are part of the "Flea and Tick Killer" pesticide's labeling.

42. The statements made include but are not limited to: (a) "99% natural - safe around people and pets with immediate access to treated areas;" and (b) "The Environmental Protection Agency classifies our indoor Insect Killer as "Least Toxic". This is the same classification as table salt.'" These statements were documented on October 3, 2007 by EPA. Additional statements are included in Complainant's Exhibit 1.

43. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Flea and Tick Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

44. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

45. Respondent's offer to sell the misbranded pesticide "Flea and Tick Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

46. In the alternative, Respondent's offer to sell the "Flea and Tick Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 42 and Complainant's Exhibit 1, are "claims" that "substantially differ"

from the statement accepted in the registration of the "Flea and Tick Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 4

47. Paragraphs 1-19 are incorporated herein by reference.

48. Respondent produces the pesticide "Ant and Insect Killer," EPA registration number 42850-4.

49. The label for "Ant and Insect Killer" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.

50. Respondent has made statements in its website regarding its "Ant and Insect Killer" pesticide. The statements are part of the "Ant and Insect Killer" pesticide's labeling.

51. The statements made include but are not limited to: (a) "This means the Ant & Insect Killer is safe to use around children, pets, and throughout your home;" and (b) "RESULTS Ant & Insect Killer is the fastest acting insect control product on the market." These statements were documented on October 4, 2007 and April 28, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.

52. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Ant and Insect Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

53. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

54. Respondent's offer to sell the misbranded pesticide "Ant and Insect Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

55. In the alternative, Respondent's offer to sell the "Ant and Insect Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 51 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Ant and Insect Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 5

56. Paragraphs 1-19 are incorporated herein by reference.
57. Respondent produces the pesticide "Bed Bug Killer," EPA registration number 42850-4.
58. The label for "Bed Bug Killer" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.
59. Respondent has made statements in its website regarding its "Bed Bug Killer" pesticide. The statements are part of the "Bed Bug Killer" pesticide's labeling.
60. The statements made include but are not limited to: (a) "This means the Indoor Insect Killer is safe to use around children, pets, and throughout your home;" and (b) "Our Bed Bug Killer has a pleasant citrus scent which is a distinct difference from other products you may find." These statements were documented on October 3, 2007 and April 29, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.
61. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Bed Bug Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).
62. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).
63. Respondent's offer to sell the misbranded pesticide "Bed Bug Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).
64. In the alternative, Respondent's offer to sell the "Bed Bug Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 60 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Bed Bug Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 6

65. Paragraphs 1-19 are incorporated herein by reference.
66. Respondent produces the pesticide "Fire Ant Killer," EPA registration number 42850-4.

67. The label for "Fire Ant Killer" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.
68. Respondent has made statements in its website regarding its "Fire Ant Killer" pesticide. The statements are part of the "Fire Ant Killer" pesticide's labeling.
69. The statements made include but are not limited to: (a) "Plus!...they are also safer to use around children, pets, and homes. Immediate access to treated areas - safer around people and pets;" and (b) "RESULTS fire Ant Killer is the fastest acting Fire Ant control product on the market." These statements were documented on October 3, 2007 and April 28, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.
70. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Fire Ant Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).
71. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).
72. Respondent's offer to sell the misbranded pesticide "Fire Ant Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).
73. In the alternative, Respondent's offer to sell the "Fire Ant Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 69 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Fire Ant Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 7

74. Paragraphs 1-19 are incorporated herein by reference.
75. Respondent produces the pesticide "Garden Floral Insect Control," EPA registration number 42850-4.
76. The label for "Garden Floral Insect Control" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.

77. Respondent has made statements in its website regarding its "Garden Floral Insect Control" pesticide. The statements are part of the "Garden Floral Insect Control" pesticide's labeling.

78. The statements made include but are not limited to: (a) "This means the Garden Insect Control is not only safe to use around your garden and plants, but also children, pets, and throughout your home;" and (b) "Our Garden Insect Control is the fastest acting garden insect killer on the market today." These statements were documented on October 4, 2007 and April 28, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.

79. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Garden Floral Insect Control" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

80. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

81. Respondent's offer to sell the misbranded pesticide "Garden Floral Insect Control" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

82. In the alternative, Respondent's offer to sell the "Garden Floral Insect Control" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 78 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Garden Floral Insect Control" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 8

83. Paragraphs 1-19 are incorporated herein by reference.

84. Respondent produces the pesticide "Indoor Insect Killer," EPA registration number 42850-4.

85. The label for "Indoor Insect Killer" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.

86. Respondent has made statements in its website regarding its "Indoor Insect Killer" pesticide. The statements are part of the "Indoor Insect Killer" pesticide's labeling.

87. The statements made include but are not limited to: (a) "Safe to use around children and pets;" and (b) "Natural Indoor Insect Killer." These statements were documented on October 4, 2007 and April 28, 2008 by EPA. Additional statements are included in Complainant's Exhibit 1.

88. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Indoor Insect Killer" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

89. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

90. Respondent's offer to sell the misbranded pesticide "Indoor Insect Killer" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

91. In the alternative, Respondent's offer to sell the "Indoor Insect Killer" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 87 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Indoor Insect Killer" pesticide. 7 U.S.C. § 136j (a)(1)(B).

COUNT 9

92. Paragraphs 1-19 are incorporated herein by reference.

93. Respondent produces the pesticide "Organic Insect Control," EPA registration number 42850-5.

94. The label for "Organic Insect Control" makes reference to Respondent's website (<http://www.deadbugsnaturally.com>), where the pesticide is offered for sale.

95. Respondent has made statements in its website regarding its "Organic Insect Control" pesticide. The statements are part of the "Organic Insect Control" pesticide's labeling.

96. The statements made include but are not limited to: (a) "100% organic insect control;" and (b) "Fast acting and hard hitting, yet is safe to workers, the environment and wildlife." These statements were documented on October 5, 2007 by EPA. Additional statements are included in Complainant's Exhibit 1.

97. These statements fall within one or more of the examples of false or misleading pesticidal and/or non-pesticidal claims or representations listed in 40 C.F.R. section 156.10(a)(5). Since the statements are false or misleading pursuant to 40 C.F.R. section 156.10(a)(5), the "Organic Insect Control" pesticide is misbranded under 7 U.S.C. § 136 (q)(1)(A).

98. FIFRA makes it unlawful to sell or distribute a pesticide that is misbranded. 7 U.S.C. § 136j (a)(1)(E).

99. Respondent's offer to sell the misbranded pesticide "Organic Insect Control" constitutes a violation of FIFRA section 12(a)(1)(E). 7 U.S.C. § 136j (a)(1)(E).

100. In the alternative, Respondent's offer to sell the "Organic Insect Control" pesticide is a violation of FIFRA section 12(a)(1)(B) since the statements made by Respondent regarding this pesticide in Respondent's website that are listed in paragraph 96 and Complainant's Exhibit 1, are "claims" that "substantially differ" from the statement accepted in the registration of the "Organic Insect Control" pesticide. 7 U.S.C. § 136j (a)(1)(B).

PROPOSED CIVIL PENALTY

101. FIFRA, 7 U.S.C. § 136/(a)(1), authorizes the assessment of a civil penalty of up to \$6,500.00 per day for each violation. In arriving at the penalty proposed below, EPA, as required by the statute, 7 U.S.C. § 136/(a)(4), has taken into consideration, to the extent known, (1) the size of Respondent's business; (2) Respondent's ability to continue in business in light of the proposed penalty; and (3) the gravity of the alleged violations.

102. EPA's approach to calculating appropriate penalties is outlined in its Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), July 2, 1990 (enclosed), which provides a rational, consistent, and equitable method for applying these statutory factors to the facts and circumstances of specific cases. Using the policies to apply the statutory factors to the facts of this case, **EPA proposes that a penalty of \$5,200 per count for a total of \$46,800, be assessed against Respondent for the violations alleged above.** EPA's penalty calculation/narrative is enclosed and incorporated as Complainant's Exhibit 2 to this complaint. Additionally, Complainant has enclosed a copy of "Information for Small Businesses."

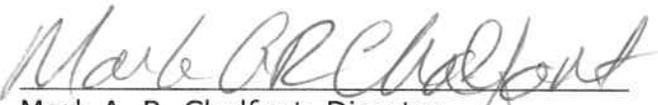
103. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

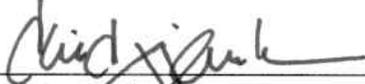
In the Matter of: Diatect International Corp.

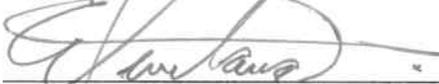
Docket No.: FIFRA-08-2008-0029

To discuss settlement or ask any questions you may have about this process, please contact the attorney indicated below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant

Date: 9/30/2008 By: 
Mark A. R. Chalfant, Director
Technical Enforcement Program

Date: 9.30.2008 By: 
David J. Janik, Supervisory Attorney
Legal Enforcement Program

Date: 9/29/2008 By: 
Eduardo Quintana, Senior Enforcement Attorney
USEPA Region 8
1595 Wynkoop Street
Denver, CO 80202
303.312.6924
quintana.eduardo@epa.gov

In the Matter of: Diatect International Corp.
Docket No.: FIFRA-08-2008-0029

CERTIFICATE OF SERVICE

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

Dave Andrus
Registered Agent
Diatect International Corp.
875 S. Industrial Parkway
Heber City, UT 84032

9/30/08
Date

Judith M. McTernan