

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FILED

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the Matter of:)

Veterinary Service, Inc.,)

Respondent.)

Docket No. FIFRA-9-2007-0011

ANSWER AND REQUEST FOR A HEARING

Respondent Veterinary Service, Inc. (VSI), through its counsel, hereby answers the Complaint brought by the Director of the Communities and Ecosystems Division, U.S. Environmental Protection Agency (EPA), Region IX (Complainant) in this matter as follows:

AUTHORITY AND PARTIES

The first introductory paragraph constitutes Complainant's characterization of its case, to which no response is required.

The second introductory paragraph contains Complainant's characterization of its organization and authority, and Respondent lacks sufficient information to form a belief as to the truth of any allegations contained therein.

VSI admits that it is the Respondent in the above-captioned matter.

GENERAL ALLEGATIONS

1. Respondent admits that it is a California corporation. The remainder of Paragraph 1 does not contain any factual allegations; therefore no response is required.

2. Respondent admits the factual allegations in Paragraph 2.
3. Respondent admits that Tomcat Ground Squirrel Bait is used to control ground squirrels.
4. Paragraph 4 does not contain any factual allegations; therefore no response is required.
5. Paragraph 5 characterizes the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and EPA's FIFRA implementing regulations, which speak for themselves and are the best evidence of their contents.
6. Paragraph 6 does not contain any factual allegations; therefore no response is required.
7. Respondent admits that at all times relevant to this action, Tomcat Ground Squirrel Bait was registered with the California Department of Pesticide Regulation. To the extent that the allegations of Paragraph 7 call for a legal conclusion, no response is required.
8. Respondent lacks sufficient information to form a belief as to the truth of the factual allegations in Paragraph 8 and therefore denies them.
9. Paragraph 9 characterizes FIFRA Section 12(a)(1)(A), which speaks for itself and is the best evidence of its contents.

ALLEGED VIOLATIONS

10. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
11. Respondent admits that on or about September 9, 2005, it sold Tomcat Ground Squirrel Bait to Eastern Sierra Feed & Farm of Gardnerville, Nevada. The remainder of Paragraph 11 does not contain any factual allegations; therefore no response is required.

12. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
13. Respondent admits that on or about September 9, 2005, it sold Tomcat Ground Squirrel Bait to Feed World of Reno, Nevada. The remainder of Paragraph 13 does not contain any factual allegations; therefore no response is required.
14. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
15. Respondent admits that on or about September 12, 2005, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 15 does not contain any factual allegations; therefore no response is required.
16. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
17. Respondent admits that on or about September 28, 2005, it sold Tomcat Ground Squirrel Bait to Olsen's Grain Flagstaff of Chino, Arizona. The remainder of Paragraph 17 does not contain any factual allegations; therefore no response is required.
18. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
19. Respondent admits that on or about October 4, 2005, it sold Tomcat Ground Squirrel Bait to Olsen's Grain Flagstaff of Chino, Arizona. The remainder of Paragraph 19 does not contain any factual allegations; therefore no response is required.
20. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.

21. Respondent admits that on or about October 7, 2005, it sold Tomcat Ground Squirrel Bait to Fernley Hay & Grain of Fernley, Nevada. The remainder of Paragraph 21 does not contain any factual allegations; therefore no response is required.
22. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
23. Respondent admits that on or about October 26, 2005, it sold Tomcat Ground Squirrel Bait to S & W Feeds of Carson City, Nevada. The remainder of Paragraph 23 does not contain any factual allegations; therefore no response is required.
24. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
25. Respondent admits that on or about November 11, 2005, it sold Tomcat Ground Squirrel Bait to Eastern Sierra Feed & Farm of Gardnerville, Nevada. The remainder of Paragraph 25 does not contain any factual allegations; therefore no response is required.
26. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
27. Respondent admits that on or about December 2, 2005, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 27 does not contain any factual allegations; therefore no response is required.
28. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
29. Respondent admits that on or about March 10, 2006, it sold Tomcat Ground Squirrel Bait to Feed World of Reno, Nevada. The remainder of Paragraph 29 does not contain any factual allegations; therefore no response is required.

30. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
31. Respondent admits that on or about March 30, 2006, it sold Tomcat Ground Squirrel Bait to S & W Feeds of Carson City, Nevada. The remainder of Paragraph 31 does not contain any factual allegations; therefore no response is required.
32. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
33. Respondent admits that on or about April 6, 2006, it sold Tomcat Ground Squirrel Bait to S & W Feeds of Carson City, Nevada. The remainder of Paragraph 33 does not contain any factual allegations; therefore no response is required.
34. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
35. Respondent admits that on or about April 7, 2006, it sold Tomcat Ground Squirrel Bait to Feed World of Reno, Nevada. The remainder of Paragraph 35 does not contain any factual allegations; therefore no response is required.
36. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
37. Respondent admits that on or about April 19, 2006, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 37 does not contain any factual allegations; therefore no response is required.
38. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.

39. Respondent admits that on or about May 5, 2006, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 39 does not contain any factual allegations; therefore no response is required.
40. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
41. Respondent admits that on or about May 9, 2006, it sold Tomcat Ground Squirrel Bait to Olsen's Grain Flagstaff of Chino, Arizona. The remainder of Paragraph 41 does not contain any factual allegations; therefore no response is required.
42. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
43. Respondent admits that on or about July 6, 2006, it sold Tomcat Ground Squirrel Bait to Feed World of Reno, Nevada. The remainder of Paragraph 43 does not contain any factual allegations; therefore no response is required.
44. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
45. Respondent admits that on or about July 11, 2006, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 45 does not contain any factual allegations; therefore no response is required.
46. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
47. Respondent admits that on or about July 14, 2006, it sold Tomcat Ground Squirrel Bait to Benson's Feed & Tack of Carson City, Nevada. The remainder of Paragraph 47 does not contain any factual allegations; therefore no response is required.

48. To the extent a response is required, Respondent reasserts its responses to Paragraphs 1-9 above.
49. Respondent admits that on or about September 1, 2006, it sold Tomcat Ground Squirrel Bait to Olsen's Grain Flagstaff of Chino, Arizona. The remainder of Paragraph 49 does not contain any factual allegations; therefore no response is required.

PROPOSED CIVIL PENALTY

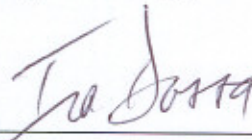
Respondent contests the proposed civil penalty in this matter. Specifically, Respondent contends that EPA's proposed penalty of \$117,000 (*i.e.*, \$5,850 x 20) is disproportionate to the modest level of gravity of the alleged violations and the lack of significant harm they posed to human health and the environment.

Respondent further contends that EPA has misapplied the Enforcement Response Policy for FIFRA by calculating a total gravity level of 7 rather than 3. In particular, EPA erred in assigning a gravity adjustment value for environmental harm of 3 rather than 1, and by assigning a gravity adjustment value for culpability of 2 rather than 0.

REQUEST FOR A HEARING

Pursuant to FIFRA Section 14(a)(3), 7 U.S.C. § 136l(a)(3), Respondent requests a hearing in the city of Modesto, California, the situs of Respondent's headquarters.

Respectfully submitted,



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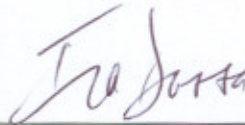
Attorneys for Respondent

Dated: September 4, 2007

CERTIFICATE OF SERVICE

In accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, I certify that on this 4th day of September, 2007, the original and one copy of the foregoing Answer and Request for Hearing were sent by overnight courier to the Regional Hearing Clerk for filing in this proceeding, and that a copy of the same was served by first class mail, postage pre-paid, on:

David H. Kim, Esquire
Assistant Regional Counsel
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San Francisco, CA 94105



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