



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

MAY 25 2021

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Patrick B. Starke
Registered Agent for
Kunkel Enterprises, Inc., d/b/a C K Enterprises, Inc.
801 NW Vesper Street
Blue Springs, Missouri 64015

Re: Complaint and Notice of Opportunity for Hearing
In the Matter of Kunkel Enterprises, Inc. d/b/a C K Enterprises, Inc.
EPA Docket No. FIFRA-07-2021-0017

Dear Mr. Starke:

Enclosed, please find the Complaint and Notice of Opportunity for Hearing (Complaint) in the matter of Kunkel Enterprises, Inc.'s alleged violation of Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j. The alleged violation occurred with regard to the Kunkel Enterprises, Inc. facility with establishment number 49614-MO-1, located at 1204 SW Jefferson Street, Lee's Summit, Missouri.

The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. § 136 *et. seq.* The EPA attempted to settle this matter via an Expedited Settlement Agreement, which was sent to Kunkel Enterprises, Inc. on or about November 12, 2019. The EPA has made several attempts to get in contact with Kunkel Enterprises, Inc. regarding this matter, but has received no substantial communication from Kunkel Enterprises, Inc. Because a timely response to the settlement agreement offer was not received by the EPA, the settlement agreement offer has been withdrawn. The Complaint initiates an administrative action for the assessment of penalties pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

If you have any questions or wish to discuss this matter further, please contact Katherine Kacsur, Office of Regional Counsel, within **10 calendar days** at kacsur.katherine@epa.gov or (913) 551-7743.

Sincerely,

WENDY
LUBBE

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WENDY LUBBE
Date: 2021.05.21
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David Cozad
Director
Enforcement & Compliance Assurance Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Kunkel Enterprises, Inc.)	Docket No. FIFRA-07-2021-0017
1992 NW US Highway 50)	
Lone Jack, MO 64070)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
<u>Respondent.</u>)	

COMPLAINT

Section I

Jurisdiction

1. This Complaint and Notice of Opportunity for Hearing (Complaint) serves as notice that the United States Environmental Protection Agency (EPA), Region 7 has reason to believe that Kunkel Enterprises, Inc., d/b/a C K Enterprises, Inc., has violated Section 12 of FIFRA, 7 U.S.C. § 136j.
2. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, and in accordance with the EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which is enclosed along with this Complaint.

Section II

Parties

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of Enforcement and Compliance Assurance Division, EPA, Region 7.
4. Respondent is Kunkel Enterprises, Inc., doing business as C K Enterprises, Inc., a chemical wholesaler incorporated in the state of Missouri and whose headquarters is located at 1992 NW US Highway 50, Lone Jack, Missouri.

Section III

Statutory & Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. § 136 *et. seq.*
6. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that no person shall produce any pesticide unless the establishment in which it is produced is registered with the Administrator of EPA.
7. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), provides that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to submit updated information annually to the Administrator of the EPA as required under such regulations as the Administrator may prescribe. Pursuant to Section 7(c)(1), the Administrator promulgated the regulations at 40 C.F.R. Part 167, which govern the registration of pesticide and active ingredient producing establishments and the submission of pesticide reports.
8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s) defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
9. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.
10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, *inter alia*.
11. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
12. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3 define the term “producer” to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.
13. 40 C.F.R. § 167.85(d) requires producers operating a registered establishment to submit an annual production report on or before March 1st for the prior calendar year.
14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA.

Section IV

Allegations of Fact and Law

15. Respondent is a corporation registered in the state of Missouri and is therefore a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
16. At all times relevant herein, Respondent owned, operated, controlled and/or was otherwise responsible for an establishment located at 1204 SW Jefferson Street, Lee’s Summit, Missouri (hereinafter “the Establishment”).
17. Respondent’s operations at the Establishment include the manufacture and distribution of chemicals, including pesticides, for use in various industries.
18. Respondent registered the Establishment with EPA as a pesticide-producing establishment as required by Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), on or about December 12, 1988.
19. The establishment number assigned to Respondent’s Establishment is 49614-MO-1.
20. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and, as a producer, Respondent is subject to the requirements of Section 7 of FIFRA, 7 U.S.C. § 136e, and the applicable regulations promulgated pursuant thereto contained in 40 C.F.R. Part 167.
21. Respondent failed to complete and timely submit an annual pesticide production report for the 2014 production year by March 1, 2015.
22. Respondent submitted the annual pesticide production report for the 2014 production year on May 4, 2015.
23. A Notice of Warning was issued to Respondent on April 17, 2015 for Respondent’s failure to timely submit an annual pesticide production report for the 2014 production year.
24. Respondent failed to complete and timely submit an annual pesticide production report for the 2016 production year by March 1, 2017.
25. Respondent submitted the annual pesticide production report for the 2016 production year on September 22, 2017.
26. Respondent and EPA executed an Expedited Settlement Agreement on June 6, 2018 whereby Respondent agreed to pay a civil penalty of \$1,200.
27. Respondent failed to complete and submit an annual pesticide production report for the 2018 production year by March 1, 2019.

28. Respondent submitted the 2018 production year report via email on August 14, 2020.

Alleged Violation

29. Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder as follows:

Count 1

30. The facts stated in paragraphs 15 through 30 are realleged and incorporated as if fully stated herein.

31. Respondent failed to submit an annual pesticide production report for the 2018 production year prior to or on March 1, 2019, as required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, which constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

32. Pursuant to Section 14 of FIFRA, 7 U.S.C. § 136l, and based on the facts stated in paragraphs 15 through 30, it is proposed that a civil penalty of \$8,900 be assessed against Respondent.

Section V

Relief Sought

33. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense under FIFRA. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$7,500 for violations that occurred before November 2, 2015, and to \$20,528 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 23, 2020. Complainant proposes to assess a total civil penalty of \$8,900 against Respondent for the above-described violation (See Enclosure, Penalty Calculation Worksheet).

Appropriateness of Proposed Penalty

34. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). Specifically, EPA considered the size of the business of Respondent, the effect of the proposed penalty on Respondent's ability to continue in business, and the gravity of the alleged violations. In its calculation of the proposed penalty, EPA has taken into account the particular facts and circumstances of the alleged violations, with specific reference to EPA guidance for the calculation of proposed penalties under FIFRA (See Enclosure, May 2010, Enforcement Response Policy for FIFRA Section 7(c)).

35. For purposes of calculating the proposed penalty, Respondent was placed in Category I size of business (total business revenues in excess of \$10,000,000 per year) when Complainant was unable to obtain specific information as to Respondent's gross revenues. If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

36. For purposes of calculating the proposed penalty, Respondent was classified as a repeat violator. Respondent violated Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85, on two separate occasions in the five years prior to the current violation as referenced in Paragraphs 22 through 26, above.

37. For the purposes of calculating the proposed penalty, the penalty amount for a respondent categorized as a Category I, third time offender, is \$7,500. Per the 2020 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4, the penalty for violations assessed on or after December 23, 2020 is to be multiplied by a factor of 1.19045 and rounded to the nearest hundred dollars, bringing Respondent's total penalty to \$8,900.

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

39. EPA recognizes that the COVID-19 pandemic may be impacting Respondent's operations. Said issues of ability to pay or other affirmative defenses relevant to a final penalty may and should be brought to the attention of Complainant at the earliest opportunity in this proceeding.

40. If Respondent does not contest the findings and assessments set forth above, payment of the total penalty assessed herein (\$8,900) may be made by certified or cashier's check payable to the "Treasurer, United States of America." Such payment shall identify Respondent by name and docket number and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.
In addition, a copy of the penalty payment should be sent to:

Regional Hearing Clerk
EPA - Region 7
R7_Hearing_Clerk_Filings@epa.gov,

and to:

Katherine Kacsur
Office of Regional Counsel
EPA - Region 7
kacsur.katherine@epa.gov

NOTICE OF OPPORTUNITY FOR HEARING

Section VI

Answer and Request for Hearing

41. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Respondent has the right to request a hearing to contest any material fact contained in this Complaint or to contest the appropriateness of the penalty proposed herein. If Respondent wishes to avoid being found in default, Respondent must file an answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, via email, at:

Regional Hearing Clerk
EPA - Region 7
R7_Hearing_Clerk_Filings@epa.gov

within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. In accordance with Standing Order: Authorization of EPA Region 7 Part 22 Electronic Filing System For Electronic Filing and Service of Documents (See Enclosure), said email must have the name of the party and the docket number of the proceeding in the title. Documents shall be submitted in portable document format (PDF), shall contain the contact name, phone number, mailing address and email address of the filing party or its authorized representative and shall otherwise conform to all applicable requirements of 40 C.F.R. § 22.5(c). In accordance with 40 C.F.R. § 22.5(a)(3), each document electronically filed shall be accompanied by a certificate of service.

42. Any answer filed shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

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

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

43. A copy of each document filed in the proceeding, including an answer and a request for

hearing, shall be served on the Presiding Officer and on each party in accordance with 40 C.F.R. § 22.5(b).

44. Any hearing that is requested shall be held and conducted in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22.

45. If Respondent fails to file an answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent’s right to a hearing under FIFRA. A Default Order may thereafter be issued by the Regional Administrator and/or his delegates, and the civil penalties proposed therein shall become due and payable without further proceedings.

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

Section VII

Settlement Conference

47. Whether or not a hearing is requested, an informal settlement conference may be arranged at Respondent’s request. Respondent may confer with the EPA concerning: (1) whether or not the alleged violation occurred; or (2) the appropriateness of the proposed penalty in relation to the size of Respondent’s business, the gravity of the violation, and the effect of the proposed penalty on Respondent’s ability to continue in business. Additionally, the proposed penalty may be adjusted if Respondent establishes a bona fide issue of ability to pay. To explore the possibility of settlement in this matter, contact:

Katherine Kacsur
Attorney-Adviser
EPA Region 7
kacsur.katherine@epa.gov
(913) 551-7734.

48. A request for an informal settlement conference does not extend the thirty (30) day period during which an answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to and simultaneously with the adjudicatory hearing procedure.

49. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an

informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement, and a Final Order will be issued. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date

**WENDY
LUBBE**

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Date: 2021.05.21
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David Cozad, Director
Enforcement and Compliance Assurance Division

Date

**Kacsur,
Katherine**

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Kacsur, Katherine
Date: 2021.05.21
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Katherine Kacsur
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date below, I delivered one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219, via email to *R7_Hearing_Clerk_Filings@epa.gov*. I further certify that a true and correct copy of the foregoing order was sent this day in the following manner to the addressees:

Copy via E-mail to Respondent:

Charles J. Kunkel III, Owner/President
Kunkel Enterprises, Inc.
charlesk@ckeinc.com.

Copy via Certified Mail, Return Receipt Requested to Respondent:

Patrick B. Starke
Registered Agent for Kunkel Enterprises, Inc.
801 NW Vesper St.
Blue Springs, Missouri 64015

Kunkel Enterprises, Inc.
Headquarters
1992 NW Highway 50
Lone Jack, Missouri 64070.

Kunkel Enterprises, Inc., d/b/a C K Enterprises, Inc.
Establishment No. 49614-MO-1
1204 SW Jefferson Street
Lee's Summit, Missouri 64081

Dated this 25th day of May, 2021.


Signed

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

RESPONDENT: C K Enterprises, Inc.
 ADDRESS: 1204 SW Jefferson Street
 Lee's Summit, Missouri

	Count 1 Est No. 49614-MO-1
1. Statutory Violation	7(c)
2. Violation Level	2 nd ESA Non-Reporting
3. Size of Business Category	I
4. BASE PENALTY	\$7,500
5. Adjustments	
Inflation Adjustment Assessed on or after December 23, 2020 multiplied by a factor of 1.19045	\$1,400.00
Dollar Adjustment	\$8,928.38
6. Final Penalty (Rounded to nearest 100)	\$8,900
Combined Total Penalty (total of all columns for line 8, above)	\$8,900.00

* Penalty calculated pursuant to the Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements (2010) and The Federal Insecticide, Fungicide, and Rodenticide Act Section 7(c) Expedited Settlement Agreement Program (2019)