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U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL HEARING CLERK

NANCY MARVEL  
Regional Counsel

CAROL BUSSEY  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 972-3950

Attorneys for Complainant

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

_____	)	Docket No. FIFRA-09-2011- 0006
In the Matter of:	)	
	)	
BNJ Ultra Services Inc.	)	<b>COMPLAINT AND NOTICE OF</b>
dba UltraMax Chemical Company,	)	<b>OPPORTUNITY FOR HEARING</b>
	)	
Respondent.	)	
_____	)	

**AUTHORITY AND PARTIES**

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against BNJ Ultra Services Inc. dba UltraMax Chemical Company for the failure to complete and submit an annual pesticide production report for the 2009 reporting year by March 1, 2010 in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator

of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is BJN Ultra Services Inc. dba UltraMax Chemical Company ("Respondent"), a California corporation with corporate offices located at 42400 Winchester Road in Temecula, California.

### **GENERAL ALLEGATIONS**

1. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), provides that a "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not..
2. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), provides that a "producer" is a person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.
3. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides that a "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. . . ."
4. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), provides that a "pest" means "(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator

- declares to be a pest under section 25(c)(1).”
5. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), provides that a “device” means “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”
  6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85 provide that each producer operating an establishment registered under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), is required to complete and submit an annual report to EPA on or before March 1 of each year that includes the amount of each pesticidal product produced during the past year, sold or distributed during the past year, and estimated to be produced during the current year.
  7. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any provision of Section 7 of FIFRA..

### **ALLEGED VIOLATION**

COUNT 1: Failure to Complete and Submit Annual Pesticide Production Report for 2009

Reporting Year, 7 U.S.C. § 136j(a)(2)(L).

8. Paragraphs 1 through 7 are realleged and incorporated herein by reference.
9. Respondent is a “person,” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
10. Respondent is a “producer, “ as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. §

136(w).

11. 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 to Section 7 at 40 C.F.R. Part 167.
12. Respondent owns, operates, controls and/or is otherwise responsible for a facility located at 381 Olive Avenue in Vista, California (the "Facility").
13. Respondent has registered the Facility as a pesticide producing establishment in accordance with Section 7(a) of FIFRA, 7 U.S.C. § 136e. The Establishment Number is 73546-CA-1.
14. Respondent was required to complete and submit an annual pesticide report for the 2009 production year for the Facility by March 1, 2010, pursuant to Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. § 167.85.
15. Respondent failed to complete and submit an annual pesticide report for the 2009 production year for the Facility by March 1, 2010.
16. Respondent's failure to complete and submit an annual pesticide report for the 2009 production year for the Facility by March 1, 2010 constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).
17. Respondent previously failed to complete and submit an annual pesticide report for the 2007 production year by March 1, 2008, a violation for which EPA issued a Notice of Warning on May 20, 2008.

**PROPOSED CIVIL PENALTY**

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection

Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 75,340 (December 11, 2008)), authorizes the assessment of a civil administrative penalty of up to \$7,500 for each violation of FIFRA after January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violation alleged. Accordingly, based on the violation alleged in this Complaint, and after consideration of the statutory factors enumerated above, EPA proposes the assessment of the following civil penalty pursuant to FIFRA Section 14(a) and the Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements dated May 2010 ( a copy of which is enclosed with this Complaint):

Count 1

Failure to Complete and Submit Annual Pesticide Production Report for 2009 Reporting Year Section 12 (a)(2)(L)[7 U.S.C. § 136j(a)(2)(L) . . . . .	\$3,300
Total Proposed Penalty . . . . .	\$3,300

**NOTICE OF OPPORTUNITY FOR HEARING**

**Answer and Administrative Hearing**

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt

of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

Carol Bussey  
Assistant Regional Counsel (ORC-2)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Ms. Bussey is the attorney assigned to represent EPA in this matter. Her telephone number is (415)972-3950.

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 *et seq.*, and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

After the issuance of this Complaint, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

### **Informal Settlement Conference**

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency through Carol Bussey, the EPA attorney assigned to this case, concerning the alleged violation, the facts of this case, or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel.

**An informal conference does not, however, affect your obligation to file an Answer to this Complaint.** If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of a Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

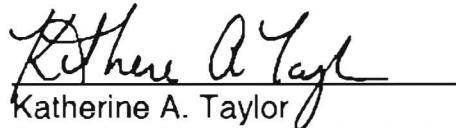
### **Quick Resolution**

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to resolve the 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 within thirty (30) days after receiving the Complaint. If you wish to resolve the proceeding in this manner instead of filing an answer but need additional time to pay the penalty, you may file a written statement stating that you agree to pay the proposed penalty in accordance with 40 C.F.R. §

22.18(a)(1) with the Regional Hearing Clerk within thirty (30) days after receiving the Complaint.

The written statement need not contain any response to, or admission of, the allegations in the Complaint. Within sixty (60) days after receiving the Complaint, the full amount of the proposed penalty must be paid. Failure to make such payment within this 60-day period may subject you to default. Upon receipt of payment in full, the Regional Judicial Officer will issue a final order. Payment shall constitute a waiver of the respondent's rights to contest the allegations in the Complaint and to appeal the final order.

Dated at San Francisco, California on this 23 day of November, 2010.



Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
USEPA, Region IX



CERTIFICATE OF SERVICE

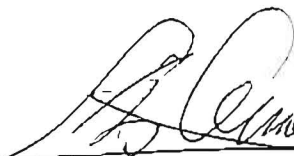
I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Complaint and Notice of Opportunity for Hearing, the Consolidated Rules of Practice at 40 C.F.R. Part 22, and the Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Bruce Johnson, President  
UltraMax Chemical Company  
42400 Winchester Road  
Temecula, CA 92590

Dated: NOV 29 2010

By:   
\_\_\_\_\_

Ekho Lim  
U.S. Environmental Protection Agency, Region IX



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
RECEIPT NO: 7010 1060 0000 5106 8290

Date: **NOV 28 2010**

Mr. Bruce Johnson, President  
UltraMax Chemical Company  
42400 Winchester Road  
Temecula, CA 92590

Re: Federal Insecticide, Fungicide and Rodenticide Act  
Complaint and Notice of Opportunity for Hearing  
Docket No. FIFRA-9-2011-0006

Dear Mr. Johnson:

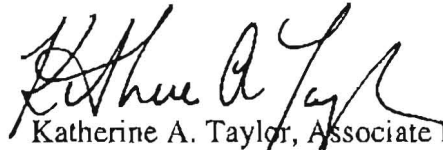
Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), by UltraMax Chemical Company. The Complaint will allege that UltraMax Chemical Company has violated Section 12(a)(2)(L) of FIFRA by failing to complete and submit an annual pesticide production report for the 2009 production year by March 1, 2010.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: 1) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; and 2) EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act dated July 2, 1990. Please note that the Civil Penalties Matrices in Appendix C have been modified by the Debt Collection Improvement Act of 1996, as implemented by the Civil Monetary Penalties Inflation Adjustment Rule.

If you have any questions, please have your attorney contact Carol Bussey, Assistant Regional Counsel at U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, California 94105. Ms. Bussey can be reached by telephone at (415) 972-3950.

Sincerely,



Katherine A. Taylor, Associate Director  
Communities and Ecosystems Division

Enclosures