

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

**BEFORE THE ADMINISTRATOR**

**In the Matter of:**

Timothy Wilson, d/b/a  
Wilson's Pest Control,

**Respondent.**

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**Docket No. FIFRA-07-2023-0135**

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**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 Respondent 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, Issuance of Compliance or Corrective Action Orders, 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. The Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Enforcement and Compliance Assurance Division, EPA, Region 7.
4. The Respondent is Timothy Wilson, d/b/a Wilson's Pest Control, a fictitious name registered under the laws of the state of Missouri.

### Section III

#### Statutory & Regulatory Background

5. Congress enacted FIFRA in 1947 and later amended it in 1972. 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 3(a) of FIFRA, 7 U.S.C. § 136a(a), requires a person to register a pesticide in accordance with the procedure described in Section 3(c) of FIFRA, 7 U.S.C. § 136a(c), before distributing or selling it to another person.
7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.
8. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.
9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.
10. 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.
11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (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-organism on or in living man or other living animal) which the Administrator declares to be a pest under Section 25(c)(1).
12. 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.
13. The regulations at 40 C.F.R. §§ 152.15(a)(1) and (b) further define the term “pesticide” as any substance intended for a pesticidal purpose, and thus requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used a pesticide; or the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose.

14. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” 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.

15. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.

16. 40 C.F.R. § 167.3 further defines “produce” to mean to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

17. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 136(w) defines “producer” to mean any person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.

18. 40 C.F.R. § 167.3 further defines “producer” to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device.

19. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has registered any pesticide pursuant to FIFRA.

20. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.

21. Pursuant to 40 C.F.R. § 165.70(b), a registrant may allow a person to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all the following conditions in 40 C.F.R. 165.70(b) are satisfied:

- a. The repackaging results in no change to the pesticide formulation.
- b. One of the following conditions regarding a registered refilling establishment is satisfied:
  - i. The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.
  - ii. The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.
- c. The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.
- d. The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

- e. The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.

22. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a registration or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA.

23. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

24. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) states that a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

25. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D) states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced.

26. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E) states that a pesticide is misbranded if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

27. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F) states that a pesticide is misbranded the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment.

28. Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C) state in part that a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content.

29. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1), officers or employees of EPA are authorized to enter at reasonable times (A) any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices, or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 136q of this title.

30. Pursuant to Section 12 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by this subchapter.

## **Section IV**

### **General Factual Allegations**

31. The Respondent is and was at all times referred to in this Complaint, a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

32. On June 15, 2022, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection (inspection) of Respondent's facility located at 2400 N. Grand Boulevard, St. Louis, Missouri 63106 (Grand Facility) to determine compliance with FIFRA and its implementing regulations.

33. During the inspection, EPA observed that the following ten substances were being distributed, sold, offered for sale, held for distribution, and/or held for sale at the Grand Facility:

- a. Conrac Ready-To-Use Place Pacs Meal repackaged by Respondent into 1.5 ounce net weight insufficiently labelled bags (Conrac Pellet Rodenticide);
- b. Green colored rodenticide blocks, which Respondent's representative, Tim Wilson, told EPA inspectors were the same product as Conrac Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags (Green Block Rodenticide);
- c. FINAL Ready-To-Use Place Pack Pellets repackaged by Respondent into 0.88 ounce net weight insufficiently labeled bags (FINAL Pellet Rodenticide);
- d. Red colored rodenticide blocks, which Mr. Wilson told EPA inspectors were the same product as FINAL Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags, (Red Block Rodenticide);
- e. Talon G Bait Pack Mini-Pellets repackaged by Respondent into 0.88 ounce net weight insufficiently labeled bags (Talon G Pellet Rodenticide);
- f. Blue colored rodenticide blocks, which Mr. Wilson told EPA inspectors were the same product as Talon G Pellet Rodenticide, but in block form, repackaged by Respondent into unlabeled clear resealable bags (Blue Block Rodenticide);
- g. Brown colored rodenticide blocks, which Mr. Wilson told EPA inspectors were "Maki Mini Blocks" repackaged by Respondent into unlabeled clear resealable bags (Brown Block Rodenticide);

- h. Wilson's Pest Control Professional Growth Regulator, which Mr. Wilson told EPA inspectors was "Tekko Pro Insect Growth Regulator Concentrate" repackaged by Respondent into insufficiently labeled small white bottles (Professional Growth Regulator);
  - i. Professional Pest Control Concentrate repackaged by Respondent into insufficiently labeled 16 ounce and 32 ounce bottles (Pest Control Concentrate). According to the registration number on the bottles, Pest Control Concentrate is a repackaging of a product called "Tengard HG Termiticide/Insecticide"; and
  - j. Wilson's Termite & Carpenter Ant Control repackaged by Respondent into insufficiently labeled 16 ounce bottles (Termite & Ant Control). According to the registration number on the bottles, Termite & Ant Control is a repackaging of a product called "Monterey Termite and Carpenter Ant Control."
34. All substances identified in Paragraph 33 above are intended for preventing, destroying, repelling, or mitigating pests and therefore each meets the definition of "pesticide" under Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
35. All substances identified in Paragraph 33 above are intended for a pesticidal purpose and Respondent and its representatives claim, state, or imply that each substance can or should be used as a pesticide. Therefore, each substance meets the definition of "pesticide" under 40 C.F.R. § 152.15(a)(1).
36. By repackaging each pesticide identified in Paragraph 33 above into smaller quantities and different containers, Respondent "produced" these pesticides as that term is defined in 40 C.F.R. § 165.3.
37. By repackaging each pesticide identified in Paragraph 33 above into smaller quantities and different containers, Respondent is also a "producer" of these pesticides as that term is defined in 40 C.F.R. § 165.3.
38. Respondent has not obtained a registration for any of the pesticides identified in Paragraph 33 above.
39. During the inspection, Mr. Wilson admitted that Respondent did not have a written contract with any of the registrants to repackage, distribute, or sell of any of the pesticides identified in Paragraph 33 above.
40. During the inspection, each label for the pesticides identified in Paragraph 33 above was not labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

41. On July 27, 2023, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA attempted to conduct an inspection (attempted inspection) of Respondent's facility located at 2616 Woodson Road in Overland, Missouri 2400 N. Grand Boulevard, St. Louis, Missouri 63106 (Woodson Facility) to determine compliance with FIFRA and its implementing regulations.

42. On July 27, 2023, Respondent refused to allow EPA to inspect the Woodson Facility, and therefore denied EPA's attempted inspection.

### **Section V**

### **Violations**

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

#### **Counts 1-10 - Sale of Unregistered and/or Illegally Packaged Pesticides**

44. The facts stated in paragraphs 31 through 42 above are realleged and incorporated as if fully stated herein.

45. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under 7 U.S.C. § 136a.

46. Pursuant to 40 C.F.R. § 165.70(b), a registrant may allow a person to repack the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all conditions in 40 C.F.R. 165.70(b) are satisfied.

47. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a registration or meeting all of the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA.

48. During the June 15, 2022 inspection, EPA inspectors observed the pesticides identified in Paragraph 33 above, offered for sale by Respondent at the Grand Facility.

49. For each pesticide identified in Paragraph 33 above, Respondent did not obtain a registration, as required by 40 C.F.R. §§ 165.70(b) and (c).

50. For each pesticide identified in Paragraph 33 above, Respondent did not enter into a written contract with the registrant to repack the product and to use the registrant's label, as required by 40 C.F.R. §§ 165.70(b)(3) and (c).

51. For each pesticide identified in Paragraph 33 above, the pesticide product was not labelled with the product's label, as required by 40 C.F.R. §§ 165.70(b)(5) and 165.70(c).

52. Respondent's distribution and sale of repackaged Contrac Pellet Rodenticide, Green Block Rodenticide, FINAL Pellet Rodenticide, Red Block Rodenticide, Talon G Pellet Rodenticide, Blue Block Rodenticide, Brown Block Rodenticide, Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control without obtaining a registration nor meeting all of the conditions in 40 C.F.R. § 165.70(b) constitutes separate distributions of an unregistered pesticide, each of which is a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### **Counts 11-20 - Misbranding**

53. The facts stated in paragraphs 31 through 42 above are realleged and incorporated as if fully stated herein.

54. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

55. Pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

56. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is misbranded if its label does not bear the registration number assigned under section 136e of this title to each establishment in which it was produced.

57. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

58. Pursuant to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment.

59. Pursuant to Sections 2(q)(2)(A)-(C) of FIFRA, 7 U.S.C. §§ 136(q)(2)(A)-(C), a pesticide is misbranded if the label does not contain: an ingredient statement; statement of use classification; the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; and the net weight or measurement of the content.



60. During the June 15, 2022 inspection, EPA inspectors observed the pesticides identified in Paragraph 33 above, offered for sale by Respondent at the Grand Facility.

61. At the time of the Inspection, each of the pesticides identified in Paragraph 33 above were misbranded for multiple reasons, including, but not limited to, the following:

- a. The label for the repackaged Contrac Pellet Rodenticide stated "INDIVIDUAL SALE IS PROHIBITED BY LAW" and was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal.
- b. the Green Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156.
- c. the label for the repackaged FINAL Pellet Rodenticide distributed, sold, offered for sale, or held for distribution by Respondent stated "INDIVIDUAL SALE IS PROHIBITED BY LAW" and was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and directions for storage and disposal.
- d. the Red Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156.
- e. the label for the repackaged Talon G Pellet Rodenticide stated "INDIVIDUAL SALE PROHIBITED BY LAW" and was incomplete and missing elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: complete directions for use; use restrictions; hazard and precautionary statements for human, domestic, and environmental hazards; and a statement of practical treatment (first aid or otherwise) in case of poisoning, and directions for storage and disposal.
- f. the Blue Block Rodenticide was repackaged by Respondent into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156.
- g. the Brown Block Rodenticide was repackaged into clear resealable bags with no labeling, and therefore missing all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156.

- h. the Professional Growth Regulator was repackaged into small white bottles bearing only the name of the product, a phone number for poison control, and a skull and crossbones. The label therefore was missing nearly all labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: the producing establishment number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e; directions for use; an ingredient statement; use classification; name and address of the producer, registrant, or person for whom produced; the net weight or measure of the content; registration number; hazard and precautionary statements; and directions for storage/disposal.
  - i. the Pest Control Concentrate was repackaged into 16 ounce and 32 ounce bottles and the labels were missing some labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: directions for use; use classification, name and address of the producer, registrant, or person for whom produced; and directions for storage/disposal.
  - j. the Termite & Ant Control was repackaged into 16 ounce bottles and the labels were missing some labeling elements required under Section 2(q) of FIFRA, 7 U.S.C. § 136(q) and 40 C.F.R. Part 156, including but not limited to: directions for use; use classification; address of the producer, registrant, or person for whom produced; and directions for storage/disposal.
62. Due to the labeling issues identified above, the repackaged pesticides listed above were each misbranded pursuant to Section 2(q) of FIFRA, 7 U.S.C. § 136(q).
63. Respondent's distribution or sale of the misbranded pesticides are separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### **Count 21- Refusal to Allow Inspection**

64. The facts stated in paragraphs 31 through 42 above are realleged and incorporated as if fully stated herein.
65. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1), officers or employees of EPA are authorized to enter at reasonable times (A) any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices, or (B) any place where there is being held any pesticide the registration of which has been suspended or canceled for the purpose of determining compliance with section 136q of this title.
66. Pursuant to Section 12 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by this subchapter.

67. On July 27, 2023, pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA attempted to conduct an inspection (attempted inspection) of Respondent's Woodson Facility to determine compliance with FIFRA and its implementing regulations.

68. On July 27, 2023, Respondent refused to allow EPA personnel to inspect the Woodson Facility, and therefore denied EPA's attempted inspection.

69. Respondent's refusal to allow EPA to inspect the Woodson Facility is a violation of Section 12 of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii).

## **Section VI**

### **Relief Sought**

70. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. 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 daily penalties to \$24,255 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. EPA proposes to assess a total civil penalty of \$149,659 against Respondent for the above-described violations.

### **Appropriateness of Proposed Penalty**

71. The penalty proposed above has been calculated after consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. 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, December 2010, Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)).

72. For purposes of calculating the proposed penalty, Respondent was placed in Category III size of business (total business revenues under \$1,000,000 per year). If this categorization is incorrect, the proposed penalty will be adjusted upon submittal of reliable financial information indicating another category is appropriate.

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

74. The proposed penalty constitutes a demand only if Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

75. 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.

76. Complainant has repeatedly sought financial information from Respondent. To date, Respondent has not provided any financial information.

77. Payment of the total penalty - \$149,659 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979078  
St. Louis, Missouri 63197-9000.

78. If Respondent does not contest the findings and assessments set forth above, payment of the penalty assessed herein may be remitted as described in the preceding paragraph, including a reference to the name and docket number of the Complaint. In addition, a copy of the check should be sent to:

Regional Hearing Clerk  
[R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov)

and a copy to:

Chris Muehlberger  
Chief, Chemical Branch  
[muehlberger.christopher@epa.gov](mailto:muehlberger.christopher@epa.gov)

## **NOTICE OF OPPORTUNITY FOR HEARING**

### **Section VII**

#### **Answer and Request for Hearing**

79. 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 in accordance with the June 8, 2020 memo Standing Order: "Authorization of EPA Region 7 Part 22 Electronic Filing System For Electronic Filing and Service of Documents," file a written answer and request for hearing with the EPA Region 7 Regional Hearing Clerk, at [R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov) within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer 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.

80. 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.

81. If Respondent fails to file a written 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 the civil penalties proposed therein shall become due and payable without further proceedings.

82. 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 VIII**

### Settlement Conference

83. 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:

Chris Muehlberger  
Chief, Chemical Branch  
*muehlberger.christopher@epa.gov*  
(913) 551-7623

84. A request for an informal settlement conference does not extend the thirty (30) day period during which a written 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.

85. 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.

### **Section IX**

#### Electronic Filing

86. EPA consents to electronic filing of documents in the present case.

87. If Respondent files an answer to this complaint, EPA requests that Respondent affirmatively consent to electronic filing in the present case in their answer.

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad, Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chris Muehlberger  
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date below, I delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that a true and correct copy of the foregoing document was sent this day in the following manner to the addressees:

Copy via Email to Respondent's Attorney:

Melvin Raymond  
*mraymondattorney1@att.net*

AND

Copy via Certified Mail, Return Receipt Requested to Respondent:

Timothy Wilson  
2400 N. Grand Boulevard  
St. Louis, Missouri  
63106

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signed