



### Procedural History

This case was initiated by the filing of a Complaint, Notice of Intent to Terminate Establishment Registration, and Notice of Opportunity for Settlement Conference and Hearing on September 27, 1990, by the U.S. Environmental Protection Agency ("EPA" or "Complainant"), Region IV under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") against Safe & Sure Pesticide Company and Lester Workman, Respondent. This initial Complaint alleged violations of Section 7(c) of FIFRA and the implementing regulations found at 40 C.F.R. § 167.85. This violation was for the Respondent's purported failure to file an annual pesticides report for a pesticide producing establishment for the 1989 calendar year. EPA's proposed penalty for this violation of the Act was \$3,000.

Respondents answered the Complaint by letter Answer dated October 18, 1990 providing a denial of the alleged violation and requesting a hearing in this matter. A first Amended Complaint, naming only Safe & Sure Pesticide Company as Respondent was filed on March 8, 1991. It repeated the same alleged violation. This First Amended Complaint again sought, in a single count, a \$3,000 penalty and offered a settlement of \$2,400.

On July 23, 1991, EPA filed a Second Amended Complaint seeking a proposed penalty of \$3,000 also offering a settlement figure of \$2,400 for the same violation alleged in the earlier complaints. This time Safe & Sure Pesticide Company and Lester Workman, individually, were named as Respondents. EPA alleged that both Respondents were "persons" under FIFRA. Thereafter, on January 10, 1992, EPA filed a Motion for Final Order Upon Default based upon Respondent's failure to file a written Answer to the Second Amended Complaint. Respondents' Response to this Motion was mailed on January 27, 1992, and on January 29, 1992, Respondents' Answer to the Second Amended Complaint was mailed, along with its pretrial exchange. By Order dated February 5, 1992, then presiding Administrative Law Judge J.F. Greene denied the Motion for Default Order and issued a Scheduling Order.

EPA filed a Third Amended Complaint and Notice of Opportunity for a Hearing on August 31, 1993. This Third Amended Complaint named Safe & Sure Products Inc. and Lester J. Workman as Respondents. Both Respondents were alleged to be "persons" within the meaning of Section 2(s) of FIFRA. This Amended Complaint increased the violations alleged from one to eighty-five and increased the proposed penalty from \$3,000 to \$423,000. No offer of settlement was made with the Third Amended Complaint.

A hearing was held in this matter on November 13, 1997, in Sarasota, Florida. At the outset of the hearing Complainant reduced the amount of the penalty being sought to \$229,800. Respondent Lester J. Workman was assisted, but not formally represented, at the hearing by his grandson, William A. Heller, Esquire. The Environmental Protection Agency was represented by Alan Dion, Esquire.

### Findings of Fact<sup>(1)</sup>

1. The Respondent Safe & Sure Products, Inc. ("Safe & Sure") is a corporation doing business at 4239 Derek Way, Sarasota, Florida.

2. Prior to its incorporation on December 27, 1990, Safe & Sure, Inc., was owned and operated, between 1987 and 1990, as a sole proprietorship by Respondent Lester J. Workman d/b/a/ Safe & Sure Pesticides Company.

3. From 1978 through 1987, Lester J. Workman did business as the sole proprietor of Safe & Sure Pest-Kill Company and also used various other company names.

4. From 1978 through the present, Lester J. Workman has been the president, operator and owner of the various business manifestations of Safe & Sure.

5. Safe & Sure, in each of its various business manifestations, has been a

manufacturing establishment that produces pesticides for pet care.

6. Between December 1983 and March 1985, the Florida Department of Agriculture and Consumer Services ("FLDACS") conducted investigations of Lester J. Workman's sales of the product "De-Flea Concentrate."

7. In 1985, after receipt of FLDACS's warnings, Lester J. Workman applied for an EPA registration for the product "De-Flea Concentrate."

8. In September 1985, EPA conditionally registered the product "De-Flea Concentrate."

9. On July 1, 1987, EPA canceled the product's conditional registration due to Lester J. Workman's failure to provide EPA with testing data on the product as required by 40 C.F.R. §§ 152 et seq and 158 et seq.

10. In 1987, Lester J. Workman, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, applied for and received EPA establishment number 45729-FL-001, for the Safe & Sure Pesticide Company.

11. Pursuant to Section 7 of FIFRA, 7 U.S.C. § 136(c), annual establishment registration information is required to be filed by March 1 of every year. In 1987 and 1988, Respondent Workman failed to file the required annual information until after EPA issued Notices of Warning to him on July 5, 1988 and July 31, 1989, respectively.

12. In 1990, Respondent Workman again failed to file the required information by the March deadline. This violation resulted in EPA's filing of the original Complaint in this case.

13. On May 28, 1992 and again on May 29, 1992, inspectors from FLDACS and EPA presented Respondent Workman with an Administrative Search Warrant in order to gain access to the facility.

14. During the initial phase of the inspection, seven different pesticide products were collected and documented by EPA as being held for distribution or sale: "De-Flea Shampoo Concentrate Plus;" "De-Flea Shampoo Concentrate;" "New Super Spray De-Flea Pet Spray Refill;" "De-Flea Pet Spray;" "California Special Shampoo Lotion Concentrate Plus;" "California Special Pet Spray Lotion;" and "California Special Dip Concentrate".

15. None of the pesticide products listed in paragraph 14 above were registered with EPA at the time of the May 28-29, 1992, inspection as required by Section 3 of FIFRA, 7 U.S.C. § 136(c).

16. Respondent Workman failed to submit an Annual Establishment Pesticide Production Report for the reporting year 1989, and failed to update the information on its Annual Establishment Reports from 1986 to 1991.

17. On July 10, 1991, a representative duly designated by the Administrator of the U.S. EPA, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, inspected Bloomingdale Animal Hospital in Valrico, Florida. During the inspection the below listed pesticides of Respondent Safe & Sure were observed and documented by the EPA inspector as being displayed for sale or distribution by Bloomingdale Animal Hospital: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 071091 2403 0401; "De-Flea Pet Spray," EPA Inspection Sample Number 071091 2403 0402; "De-Flea Dip," EPA Inspection Sample Number 071091 2403 0403. Documentary evidence was obtained during this inspection indicating that the pesticides had been distributed or sold to Bloomingdale Animal Hospital by Respondent Safe & Sure.

18. All of the products listed in paragraph 17 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

19. At the time of the Bloomingdale inspection, the pesticides distributed by

Respondent Safe & Sure that were found during the inspection and listed in paragraph 17 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

20. At the time of the Bloomingdale inspection, the pesticides distributed by Respondent Safe & Sure that were found during the inspection and listed in paragraph 17 above, were misbranded in violation of Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Bloomingdale Animal Hospital by Respondent Safe & Sure, constitutes separate violations of Section 12 (a)(1)(E) of FIFRA, 7 U.S.C. § 136j (a)(1)(E).

21. On August 9, 1991, a representative duly designated by the Administrator of the EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. § 136f and 136g, Tucker Farm and Garden Center in Sanford, Florida. During the inspection, the below listed pesticide products of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Tucker Farm Garden Center: "De-Flea Dip Concentrate," EPA Inspection Sample Number 080991 2663 0501; "De-Flea Pet Spray," EPA Inspection Sample Number 080991 2663 0502; "De-Flea Shampoo Concentrate," EPA Inspection Sample Number 080991 2663 0503; "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 080991 2663 0504; "Tick Tox Shampoo Concentrate," EPA Inspection Sample Number 080991 2663 0505. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Tucker Farm and Garden Center by Respondent Safe & Sure.

22. All of the products listed in paragraph 21 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. At the time of the Tucker Farm inspection, the pesticide products distributed by Respondent Safe & Sure listed in paragraph 21 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

24. As a result of the Tucker Farm inspection, EPA determined that the pesticides listed in paragraph 21 above were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Tucker Farm and Garden Center by Respondent Safe & Sure constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j (a)(1)(E).

25. On November 26, 1991, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Lafauns Pet Center in Cape Coral, Florida. During the inspection, the below listed pesticide products of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Lafauns Pet Center. Documentary evidence was obtained during the inspection indicating that the pesticide products had been sold to Lafauns Pet Center by Respondent Safe & Sure. The following pesticides were documented during the inspection: "De-Flea Pet Spray," EPA Inspection Sample Number 1126912181 0201; "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 112691 2181 0202.

26. Both of the products listed in paragraph 25 above are pesticides within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

27. At the time of the Lafauns inspection, the pesticide products distributed by Respondent Safe & Sure found during the inspection, listed in paragraph 25 above, were not registered with the EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitutes separate violations of FIFRA under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

28. As a result of the Lafauns inspection, EPA determined that the pesticides listed in paragraph 25 above were also misbranded pursuant to Section 2(q)(1)(A) of

FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Lafauns Pet Center, by Respondent Safe & Sure, constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

29. On December 5, 1991, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Canine Care Center in Gainesville, Florida. During the inspection the below listed pesticide products of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale and distribution by Canine Care Center. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Canine Care Center by Respondent Safe & Sure. The following pesticides were documented during this inspection: "De-Flea Dip Concentrate," EPA Inspection Sample Number 120591 2663 0401; "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 120591 2663 0402; "De-Flea Pet Spray," EPA Inspection Sample Number 120591 2663 0403.

30. All of the products listed in paragraph 29 above are pesticides within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. At the time of the Canine Care Center inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and listed in paragraph 29 above were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136j(a)(1)(A). Therefore, the sale or distribution of these unregistered pesticides constitute separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

32. As a result of the Canine Care Center inspection, EPA determined that the pesticides listed above in paragraph 29 were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Canine Care Center, by Respondent Safe & Sure, constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

33. On December 6, 1991, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Robbies Reef Pet Store in Gainesville, Florida. During the inspection the below listed pesticide products of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Robbies Reef Pet Store by Respondent Safe & Sure. The following pesticides were documented during the inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 120691 2663 0101; "De-Flea Dip Concentrate," EPA Inspection Sample Number 120691 2663 0103.

34. All of the products listed above in paragraph 33 are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. At the time of the Robbies Reef inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and which are listed above in paragraph 33 were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitutes separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. As a result of the inspection, EPA determined that the pesticides listed in paragraph 33 above were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Robbies Reef Pet Store by Respondent Safe & Sure constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

37. On March 17, 1992, the FLDACS initiated a producer establishment inspection at Safe & Sure Products, Inc., to document the distribution of unregistered pesticide products. Respondent Safe & Sure refused to allow the inspectors to enter the facility to inspect, copy records or sample, in violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C.

§ 136j(a)(2)(B)(iii), and 40 C.F.R. § 169.3(d)(2).

38. On May 28, 1992, EPA and FLDACS, pursuant to an Administrative Search Warrant, initiated a producer establishment inspection at Safe & Sure Products, Inc., to assess and document the distribution of unregistered pesticide products. Respondent Safe & Sure refused to allow the inspectors to enter the facility to inspect, copy records or sample, in violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), and 40 C.F.R. § 169.3(d)(2).

39. On May 28, 1992, as set forth above, EPA and FLDACS, during the initial phase of the inspection and prior to being denied access to the facility, observed, documented and sampled the following pesticide products as being displayed for sale or distribution by Respondents. The following pesticides were documented during the inspection:

"De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 052892 5753 0101.

"De-Flea Shampoo Concentrate," EPA Inspection Sample Number 052892 5753 0102.

"New Super Spray De-Flea Pet Spray Refill," EPA Inspection Sample Number 052892 5753 0103.

"De-Flea Pet Spray," EPA Inspection Sample Number 052892 5753 0104.

"California Special Shampoo Lotion Concentrate Plus," EPA Inspection Sample Number 052892 5753 0105.

"California Special Pet Spray Lotion," EPA Inspection Sample Number 052892 5753 0106.

"California Special Dip Concentrate," EPA Inspection Sample Number 052892 5753 0107.

40. All of the products listed in paragraph 39 above are pesticides within the meaning of Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

41. At the time of the May 28-29 inspection, the pesticide products distributed by the Respondent Safe & Sure, found during the inspection and listed in paragraph 39 above were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitute separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

42. Respondent Safe & Sure's products "De-Flea Shampoo Concentrate Plus," "De-Flea Shampoo Concentrate," "New Super Spray De-Flea Pet Spray Refill" and "De-Flea Pet Spray" were misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore each sale or distribution of these misbranded pesticides by Respondent Safe & Sure constitutes a separate violation of Section 12 (a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

43. On June 2, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Alpharetta Grooming in Alpharetta, Georgia. During the inspection, the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by

the EPA inspector as being displayed for sale or distribution by Alpharetta Grooming. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Alpharetta Grooming by Respondent Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060292 4942 0101.

44. The product referenced above in paragraph 43 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

45. At the time of the Alpharetta Grooming inspection, the pesticide product distributed by Respondent Safe & Sure referenced in paragraph 43 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

46. As a result of the inspection, EPA determined that the pesticide listed in paragraph 43 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Alpharetta Grooming by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

47. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Purrs & Wags in Stone Mountain, Georgia. During the inspection the below listed pesticide product of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Purrs & Wags. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Purrs & Wags by Respondent Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060492 4942 0201.

48. The product listed in paragraph 47 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

49. At the time of the Purrs & Wags inspection, the pesticide product distributed by Respondent Safe & Sure found during the inspection and listed in paragraph 47 above was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

50. As a result of the inspection, EPA determined that the pesticide listed in paragraph 47 above, was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Purrs & Wags by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

51. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Grooming at Live Oak in St. Petersburg, Florida. During the inspection, the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Grooming at Live Oak. Documentary evidence was obtained during the inspection indicating that the pesticide product had been distributed or sold to Grooming at Live Oak by Respondent Safe & Sure. The following pesticide was documented during this inspection: "California Special Shampoo Lotion Concentrate Plus," EPA Inspection Sample Number 060492 2639 0301.

52. The above product listed in paragraph 51 above is a pesticide as defined by

Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

53. At the time of the Grooming at Live Oaks inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 51 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

54. On June 4, 1992, a representative duly designated by the Administrator of the EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Grooming at Live Oak in St. Petersburg, Florida. During the inspection, the below listed pesticide of Respondent Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Grooming at Live Oak. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Grooming at Live Oak by Safe & Sure. The following pesticide was documented during this inspection: "California Special Shampoo Lotion Concentrate Plus," EPA Inspection Sample Number 060492 2639 0301.

55. The product listed in paragraph 54 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

56. At the time of the Grooming at Live Oaks inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and listed in paragraph 54 above was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

57. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Parkway Pet Grooming in Pensacola, Florida. During the inspection, the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Parkway Pet Grooming. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Parkway Pet Grooming by Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate," EPA inspection Sample Number 060492 2870 0101.

58. The product referenced above in paragraph 57 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

59. At the time of the Parkway Pet Grooming inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and listed in paragraph 57 above was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

60. As a result of this inspection, EPA determined that the pesticide listed in paragraph 57 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that the labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Parkway Pet Grooming by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

61. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Keenon Grooming in Largo, Florida. During the inspection, the below listed pesticides of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Keenon Grooming. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Keenon grooming by Safe & Sure. The



following pesticides were documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060492 2639 0101; "California Special Area Spray Lotion," EPA Inspection Sample Number 060492 2639 0103.

62. Both of the products listed in paragraph 61 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

63. At the time of the Keenon Grooming inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and which are listed in paragraph 61 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitutes separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

64. As a result of the inspection, EPA determined that the pesticide "De-Flea Shampoo Concentrate Plus," listed in paragraph 61 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Keenon Grooming by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

65. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Pet Safari in Clearwater, Florida. During the inspection, the below listed pesticides of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Pet Safari. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Pet Safari by Safe & Sure. The following pesticides were documented during this inspection: "De-Flea Shampoo Concentrate," EPA Inspection Sample Number 060492 2639 0201; "De-Flea Shampoo Concentrate," EPA Inspection Number 060492 2639 0202; "California Special Dip Concentrate," EPA Inspection Sample Number 060492 2639 0203.

66. All of the products listed in paragraph 65 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

67. At the time of the Pet Safari inspection, the pesticide products distributed by Safe & Sure that were found during the inspection and which are listed in paragraph 65 above were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides by Safe & Sure constitutes separate violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j (a)(1)(A).

68. As a result of the inspection, EPA determined that the pesticides "De-Flea Pet Spray" and "De-Flea Shampoo Concentrate," listed in paragraph 65 above were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Pet Safari by Respondent Safe & Sure constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

69. On June 4 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Designer Pet Products, Inc., in Hollywood, Florida. During the inspection, the below listed pesticides of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Designer Pet Products, Inc. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Designer Pet Products, Inc., by Respondent Safe & Sure. The following pesticides were documented during this inspection: "California Special Dip Concentrate," EPA Inspection Sample Number 060492 2823 0101; "De-Flea My Carpet," EPA Inspection Sample Number 060492 2823 0103.

70. Both of the products listed in paragraph 69 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

71. At the time of the Designer Pet inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and listed in paragraph 69 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitutes separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

72. As a result of the inspection, EPA determined that the pesticide "De-Flea My Carpet," listed in paragraph 69 above, was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Designer Pet Products, Inc., by Respondent Safe & Sure constitutes a separate violation of Section 12 (a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

73. On June 4, 1992, a representative duly authorized by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. § 136f and 136g, Marie's Grooming Salon in Liberty, Kentucky. During the inspection, the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Marie's Grooming Salon. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Marie's Grooming Salon by Respondent Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060492 28 0101.

74. The product listed in paragraph 73 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

75. At the time of the Marie's Grooming inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 73 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

76. As a result of the inspection, EPA determined that the pesticide listed in paragraph 73 above, was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution this misbranded pesticide to Marie's Grooming Salon by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

77. On June 4, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Shady Groves Kennels in Danville, Kentucky. During the inspection the below listed pesticides of the Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Shady Grove Kennels. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Shady Grove Kennels by Respondent Safe & Sure. The following pesticides were documented during this inspection: "De-Flea Dip Concentrate," EPA Inspection Sample Number 060492 28 0201 and De-Flea Shampoo Concentrate," EPA Inspection Sample Number 060492 28 0202.

78. Both of the products listed in paragraph 77 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

79. At the time of the Shady Grove Kennels inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and which are listed in paragraph 77 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of

these unregistered pesticides constitutes separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

80. As a result of the inspection, EPA determined that the pesticides listed in paragraph 77 above, were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Shady Grove Kennels by Respondent Safe & Sure constitutes separate violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

81. On June 5, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Adorable Pets in Knoxville, Tennessee. During the inspection the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled as being displayed for sale or distribution by Adorable Pets. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Adorable Pets by Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060592 2179 9391.

82. The product listed in paragraph 81 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

83. At the time of the Adorable Pets inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 81 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

84. As a result of this inspection, EPA determined that the pesticide listed in paragraph 81 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Adorable Pets by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

85. On June 5, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Shear Perfection in Collierville, Tennessee. During the inspection the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Shear Perfection. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Shear Perfection by Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060592 2824 0101.

86. The product listed in paragraph 84 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

87. At the time of the Shear Perfection inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 85 above was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

88. As a result of the inspection, EPA determined that the pesticide listed in paragraph 85 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Shear

Perfection by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

89. On June 5, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Hillcrest Animal Hospital in Bartlett, Tennessee. During this inspection the below listed pesticides of Respondent Safe & Sure were observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Hillcrest Animal Hospital. Documentary evidence was obtained during the inspection indicating that the pesticides had been distributed or sold to Hillcrest Animal Hospital by Respondent Safe & Sure. The following pesticides were documented during this inspection: "De-Flea Dip Concentrate," EPA Inspection Sample Number 060592 2824 0201 and "De-Flea Shampoo Concentrate," EPA Inspection Sample Number 060592 2824 0202.

90. Both of the products listed in paragraph 89 above are pesticides as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

91. At the time of the Hillcrest Animal Hospital inspection, the pesticide products distributed by Respondent Safe & Sure that were found during the inspection and which are listed in paragraph 89 above, were not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of these unregistered pesticides constitutes separate violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

92. As a result of the inspection, EPA determined that the pesticides listed in paragraph 89 above, were also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that their labeling bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of these misbranded pesticides to Hillcrest Animal Hospital by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

93. On June 8, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. § 136f and 136g, Pet Inn Kennels in Chattanooga, Tennessee. During the inspection the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Pet Inn Kennels. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Pet Inn by Respondent Safe & Sure. The following pesticide was documented during this inspection: "California Special Shampoo Lotion Concentrate Plus," EPA Inspection Sample Number 060892 2779 0101.

94. The product listed in paragraph 93 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

95. At the time of the Pet Inn inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 93 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

96. On June 9, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Tail Waggers in Peachtree City, Georgia. During the inspection the below listed pesticide of Respondent Safe & Sure was observed, documented and sampled by the EPA inspector as being displayed for sale or distribution by Tail Waggers. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Tail Waggers by Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 060992 4942 0201.

97. The product listed in paragraph 96 above is a pesticide as defined by Section

2(u) of FIFRA, 7 U.S.C. § 136(u).

98. At the time of the Tail Waggers inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 96 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

99. As a result of this inspection, EPA determined that the pesticide listed in paragraph 96 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Tail Waggers by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

100. On June 11, 1992, a representative duly designated by the Administrator of the U.S. EPA, inspected, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, Paws for Grooming in Newnan, Georgia. During this inspection, the below listed pesticide product of Respondent Safe & Sure was observed, documented and sampled as being displayed for sale or distribution by Paws for Grooming. Documentary evidence was obtained during the inspection indicating that the pesticide had been distributed or sold to Paws for Grooming by Respondent Safe & Sure. The following pesticide was documented during this inspection: "De-Flea Shampoo Concentrate Plus," EPA Inspection Sample Number 061192 4942 0101.

101. The product listed in paragraph 100 above is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

102. At the time of the Paws for Grooming inspection, the pesticide product distributed by Respondent Safe & Sure that was found during the inspection and which is listed in paragraph 100 above, was not registered with EPA pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a(a). Therefore, the sale or distribution of this unregistered pesticide constitutes a separate violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

103. As a result of this inspection, EPA determined that the pesticide listed in paragraph 100 above was also misbranded pursuant to Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), in that its labeling bore the claim that the pesticide was registered with EPA (EPA Reg. No. 45729-1) which was false and misleading. Therefore, the sale or distribution of this misbranded pesticide to Paws for Grooming by Respondent Safe & Sure constitutes a separate violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

#### Conclusions of Law

1. Both Respondents in this matter, Lester J. Workman and Safe & Sure Products, Inc., meet the legal definition of a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s) and therefore is subject to FIFRA and the implementing regulations promulgated thereunder.

2. It is a violation of Section 12(a)(2)(B) of FIFRA, 7 U.S.C. § 136j(a)(2)(B) and 40 C.F.R. § 167.20(e) for any person to fail to submit or to fail to update an Annual Establishment Pesticides Production Report to the Administrator.

3. Respondent Lester J. Workman violated Section 12(a)(2)(B) of FIFRA and 40 C.F.R. § 167.20(e), when, as a sole proprietor of Sure Pesticide Company, he failed to submit the 1989 Annual Establishment Pesticide Production report to the Administrator.

4. It is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for any person to sell or distribute unregistered pesticides.

5. Each sale of unregistered pesticides constitutes separate violations of FIFRA pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

6. The following products of Respondent Safe & Sure are "pesticides" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u):

De-Flea Shampoo Concentrate Plus;

De-Flea Shampoo Concentrate;

New Super Spray De-Flea Pet Spray Refill;

De-Flea Pet Spray;

De-Flea Dip;

De-Flea Dip Concentrate;

De-Flea My Carpet;

Tick Tox Shampoo Concentrate;

California Special Shampoo Lotion Concentrate Plus;

California Special Pet Spray Lotion;

California Special Dip Concentrate; and

California Special Area Spray Lotion.

7. During the time periods relevant to this action, none of the above-named pesticides were registered with EPA, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136ja(a).

8. Respondent Safe & Sure Products, Inc., violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on 44 separate occasions between July 10, 1991 and June 11, 1992, by selling or distributing the pesticides listed in paragraph 6 above to:

Bloomingtondale Animal Hospital

Tucker Farm and Garden Center

Lafauns Pet Center

Canine Care Center

Robbies Reef Pet Store

Alpharetta Grooming

Purrs & Wags

Grooming at Live Oak

Parkway Pet Grooming

Keenon Grooming

Pet Safari

Designer Pet Products

Marie's Grooming Salon

Shady Grove Kennels

Adorable Pets

Shear Perfection

Hillcrest Animal Hospital

Pet Inn Kennels

Tail Waggers

Paws for Grooming

9. It is a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for any person to sell or distribute a pesticide which is "misbranded," as that term is defined in Section 2(q) of FIFRA, 7 U.S.C. § 136(q).

10. Pursuant to Section 2(q)(1)(A), "a pesticide is misbranded if its labeling bears any statement . . . which is false or misleading in any particular."

11. Between July 10, 1991 and June 11, 1992, the labels of:

De-Flea Shampoo Concentrate Plus;

De-Flea Shampoo Concentrate

New Super Spray De-Flea Pet Spray Refill

De-Flea Pet Spray

De-Flea Dip

De-Flea Dip Concentrate

De-Flea My Carpet

Tick Tox Shampoo Concentrate

were misbranded in that their labels bore the claim that the pesticides were registered with EPA (EPA Reg. No. 45729-1), which is false and misleading.

12. Respondent Safe & Sure violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on 36 separate occasions between July 10, 1991 and June 11, 1992, by selling or distributing:

De-Flea Shampoo Concentrate Plus;

De-Flea Shampoo Concentrate;

New Super Spray De-Flea Pet Spray Refill;

De-Flea Pet Spray;

De-Flea Dip;

De-Flea Dip Concentrate;

De-Flea My Carpet;

Tick Tox Shampoo Concentrate;

with misbranded labels to:

Bloomingtondale Animal Hospital

Tucker Farms and Garden Center

Lafauns Pet Center

Canine Care Center

Robbies Reef Pet Store

Alpharetta Grooming

Purrs & Wags  
Grooming at Live Oak  
Parkway Pet Grooming  
Keenon Grooming  
Pet Safari  
Designer Pet Products  
Marie's Grooming Salon  
Shady Grove Kennels  
Adorable Pets  
Shear Perfection  
Hillcrest Animal Hospital  
Tail Waggers  
Paws for Grooming

13. It is a violation of Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii), for any person "to refuse to . . . allow any entry, inspection, copying of records, or sampling authorized by this Act."

14. An March 17, 1992, May 28, 1992 and May 29, 1992, inspectors from FLDACS and/or EPA were denied access to the Safe & Sure Products, Inc., Derek Way facility by Respondent Safe & Sure and were prevented from copying records.

15. Respondent Safe & Sure violated Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii) on two separate occasions during the March 17, 1992 and the May 28-29, 1992, inspections.

16. It is a violation of Section 12(a)(2)(B)(I) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(I) for any person "to refuse to . . . prepare, maintain or submit any records required by or under sections 5,7,8,11 or 19 [of FIFRA] . . ."

17. Respondent Safe & Sure violated Section 12(a)(2)(B)(I) of FIFRA on two separate occasions during the March 17, 1992 and the May 28-29, 1992, inspections.

#### Discussion

The parties agree that Respondent Safe & Sure has violated the Sections of FIFRA alleged in the complaint. Respondent states:

Respondent is currently charged by Complainant, the Environmental Protection Agency (EPA), with multiple violations of Section 2(q)(1)(A) [of] FIFRA, 7 U.S.C. § 136(q)(1)(A), for the sale or distribution of misbranded products, and with multiple violations of [Section 3(a) of FIFRA], 7 U.S.C. § 136j(a)(1)(A) for the sale or distribution of unregistered pesticides. Respondent, acknowledging the misbranding of products sold under the Safe & Sure label and the failure to register the products as well, does not dispute these charges.

Respondent's Post Hearing Brief at 1. (Emphasis supplied).<sup>(2)</sup>

In addition to providing the undersigned Administrative Law Judge with a thorough Joint Proposed Findings of Fact and Conclusions of Law, the parties have also submitted briefs outlining their respective positions on the remaining issues for my consideration: (1) Can Mr. Workman be held personally liable for the violations under either a piercing of the corporate veil theory or as a "person" under FIFRA, and (2) what is the appropriate penalty for the Respondents, jointly and severally?



Whether Lester Workman should be personally liable for the admitted violations despite the existence of the corporate entity of Sure Products?

The first issue is whether sufficient evidence exists to extend liability to Respondent Lester J. Workman personally, in spite of the existence of a corporate entity (Safe & Sure Products, Inc.) which has already admitted liability for the violations alleged in the Complaint. EPA asserts that Mr. Workman is the "alter ego" of Safe & Sure Products, Inc. and that as such, the corporate veil should be pierced, extending liability to Mr. Workman personally. Alternatively, EPA asserts that, apart from any corporate veil issue, Mr. Workman, as one of the named Respondents, should be found individually liable as a "person," as defined under Section 2(s) of FIFRA, and accordingly within the ambit of Section 12's unlawful acts. Respondent maintains that Mr. Workman's disregard for "corporate formalities" does not rise to the level necessary to justify the imposition of personal liability in this matter.

Safe & Sure, in its various manifestations, has existed since at least 1985 when it was conducted as an unincorporated sole proprietorship by Respondent Lester Workman. (Respondent's Post Hearing Brief ("Respondent's Brief") at 6; Complainant's Proposed Findings of Fact and Conclusions of Law and Brief in Support Thereof ("Complainant's Brief") at 5). The current Safe & Sure Products, Inc. is the latest manifestation of the Safe & Sure name. Previous related unincorporated enterprises operated by Mr. Workman include "Sure Pest-Kill Company" and "Sure Pesticide Company". (Complainant's Brief at 5; Government's Exhibits 1,3,22,26-29). All of these past endeavors have been similar, if not identical enterprises in which the various "De-Flea" products have been manufactured and sold or distributed to retail level pet supply and service businesses. (Government's Exhibits 37,43,45,47,48).

There is a presumption under American law that a corporation is a separate and distinct entity from its stockholders, shareholders, directors and officers. El Salto. S.A. v. PSG Co., 444 F. 2d 477 (9th Cir. 1971); Thomas v. Peacock, 39 F. 3d 493, 499 (4th Cir. 1994). Respondent correctly points out that great caution must be utilized in any attempt to pierce the corporate veil because corporations exist to encourage individuals to engage in commercial enterprises on a scale that they might be reluctant to attempt (due to liability concerns) as an individual. Pardo v. Wilson Line of Washington Inc., 414 F.2d 1145 (D.C. Cir. 1969).

While it is true that Courts are reluctant to disregard the corporate entity, they will do so to prevent fraud or unfairness. Thus, under the equitable doctrine of piercing the corporate veil, individual shareholders and officers can be held liable for the acts of the corporation. An individual "sought to be charged personally with corporate liability must have shared in the moral culpability or injustice ...[as the doctrine] is not applied to eliminate the consequences of corporate operations, but to avoid inequitable results; ...[and for that reason] the fraud or inequity sought to be eliminated must be that of the party against whom the doctrine is invoked and such party must have been an actor in the course of conduct constituting the abuse of privilege ...[and not] an innocent third party." N.L.R.B. v. Greater Kansas City Roofing, 2 F.3d 1047, 1053 (10th Cir. 1993).

Misuse of the corporate form can occur at the time of forming the corporation, but post incorporation misuse can also form the basis for concluding that a corporate shell is being used to perpetuate a fraud. Board of Trustees v. Valley Cabinet, 877 F.2d 769 (9th Cir. 1989) A two part test has been identified which inquires:

- (1) Are the personalities and assets of the corporation and the individual indistinct, as evidenced by such unity of interest and lack of respect given to the separate identity of the corporation by its shareholders?

(2) Would adherence to the corporate fiction sanction a fraud, promote injustice, or lead to an evasion of legal obligations?

N.L.R.B. v. Greater Kansas City Roofing, 2 F.3d 1047, 1052 (10th Cir. 1993), First National City Bank v. Banco Para el Comercio Exterior de Cuba, 462 U.S. 611, 629, 77 L.Ed. 2d 46, 103 S.Ct. 2591 (1983).

The burden of proof falls on the party seeking to pierce the corporate veil. To meet the burden the proponent must establish that the "corporate form was so ignored, controlled or manipulated that it was merely the instrumentality of another and that [allowing its use] would constitute a fraud or promote injustice." National Soffit v. Superior Systems, 98 F.3d 262, 265 (7th Cir. 1996).

In determining whether this burden has been met, the trial court engages in a "highly fact-sensitive inquiry," examining whether the plaintiff has introduced, in any of the following ways, evidence showing: (1) absence of corporate assets and undercapitalization; (2) failure to maintain, or the absence of, adequate corporate records or minutes; (3) fraudulent representation by the corporation's shareholders or directors; (4) use of the corporation to promote fraud, injustice, or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of funds and other assets or affairs and the diversion of corporate funds or assets to noncorporate uses; (7) failure to observe required formalities; (8) the nature of the corporation's ownership and control; (9) use of a corporation as a mere shell, instrumentality or conduit of an individual; (10) disregard of legal formalities and the failure to maintain an arms-length relationship among related entities; (11) other shareholder acts or conduct ignoring, controlling or manipulating the corporate form." Id. See also: N.L.R.B. v. Greater Kansas City Roofing, 2 F.3d 1047, 1052 (10th Cir. 1993). These considerations shed light on whether there was a substantial disregard for the separate corporate identity, and compelling equitable reasons to justify personal liability, such as fraud, injustice, or evasion of legal obligations. Id. at 1054.

Applying these factors to the instant case, I note first there is no evidence that, apart from the corporation's tax returns, Safe & Sure's corporate records were properly maintained. Other than the Articles of Incorporation establishing Safe & Sure Products, Inc., no other corporate records were produced. Thus, there is no indication that there was ever an annual meeting, or shareholders report, nor that the corporation ever held meetings and, consequently, no corporate minutes were produced either. There is also no evidence that the corporation ever distributed dividends. Further, Respondents' witnesses were unable to name the corporate officers or identify shareholders with any certainty. (Tr. 259-261). Ms. Carolyn Doyle, who has worked for Safe & Sure for the past seven years, (Tr.266) could not name any other corporate officers beyond Mr. Workman. (Tr. 267). Even Mr. Heller, Respondent's grandson, was not sure whether or not he was a corporate officer of Safe & Sure. (Tr. 7)

Second, there is substantial evidence that the identities and assets of Mr. Workman and Safe & Sure were blurred. Mr. Workman's automobile, a 1992 Honda, while registered to him personally, was listed and depreciated as a corporate asset on Safe & Sure's tax returns from 1992 through 1996. (Gov. Ex. 62, Tr. 187-188). In addition, payments of large sums (totaling \$20,505.00) were made to Mr. Workman's daughter and his former wife out of the corporate checkbook. (Tr.182). Neither individual was listed as an employee of Safe & Sure. (Tr. 218) While Mr. Workman suggested that such payments were rendered for their maintaining the Safe & Sure books, this assertion lacks credibility as his daughter and former wife lived outside of Florida at the time the payments were made. Mr. Workman conceded that neither of these individuals took an active role in running the company. (Tr.261) Respondents' witness, Carolyn Doyle, identified as the person who "runs" Safe & Sure's office, (Tr. 251), testified that the company had a Certified Public Accountant "doing" the books (Tr.276) and no corporate records were produced to verify that this was the reason for the payments to the daughter and former wife. Also, home and pool repairs, restaurant bills, and auto repairs were paid using the Safe & Sure credit card. (Tr.182).

Indeed, Mr. Workman concedes that there was commingling of corporate and private funds, at least for a period of time in 1992. Even when asked by his grandson/representative on direct examination about his practice of "writing checks that don't seem to be related to the business," Mr. Workman did not deny this, effectively conceding that he continues to do this by responding "could be" when the question was posed. (Tr. 257) In addition, EPA's financial expert, Mr. Willard Waisner, upon reviewing the available financial information, was unable to determine where one entity ended and the other began. (Tr.202-203)

Third, the evidence presented by EPA, which was not countered by Respondents, suggests inadequate corporate assets and undercapitalization for Safe & Sure. EPA notes that in 1991, Safe & Sure's cost of goods sold was \$204,965.00. Yet the corporation's only identified working capital was a \$26,000.00 loan from Mr. Workman. (Tr. 252,261, Gov. Ex. 61) Obviously the corporation could not have functioned solely on the \$26,000.00 loan. This lends credence to EPA's assertion that the corporation was a shell, grossly undercapitalized.

I conclude, for the reasons set forth above,<sup>(3)</sup> that EPA has met its burden of proof on this issue and consequently that the corporate veil should be pierced, resulting in Mr. Workman's personal liability for the violations. The failure to maintain adequate corporate records or minutes, the payment by the corporation of individual obligations, the commingling of funds and affairs and their diversion to noncorporate uses, the disregard of legal formalities, the failure to maintain an arms-length relationship among related entities, and Mr. Workman's overall conduct in ignoring the corporate form, each independently support this conclusion. In this regard, I note that Respondent concedes the commingling of corporate assets during 1992, as evidenced by check registers and credit card receipts. While this admission does not involve other years, the Respondent can hardly be justified in asserting that there is a lack of evidence of asset commingling for other years, when it is the Respondent who has failed to provide this other financial information to EPA, despite being requested to do so. While a hallmark of incorporation is to limit liability, it is not enough to simply have the requisite papers for incorporation drawn up and filed. The entity must then function as a corporation in fact. Although the burden is initially on the Complainant to show that corporation does not actually function as an independent entity, once such evidence is adduced, the Respondent has a duty to rebut the inferences formed from the evidence of record. Respondent Workman has not done so. Stated otherwise, once the proponent has provided sufficient evidence to justify piercing the corporate veil, one cannot continue to merely assert that the burden of proof lies with the EPA when the financial records remain in Respondent's possession, available to exculpate or inculpate.

Accordingly, on this record it is found that Mr. Lester J. Workman is personally liable for each of the Counts in this matter on the basis that it is appropriate to pierce the corporate veil.

Whether, independent of any corporate veil theory, Lester Workman should be liable for his actions as a person under FIFRA?

Although it has been determined that piercing the corporate veil is appropriate in this instance, EPA also asserts that individual liability against Lester Workman can be independently established for his actions regarding the FIFRA violations involved here<sup>(4)</sup>.

EPA notes that the parties have stipulated that Mr. Workman is a "person" as that term is defined under Section 2(s) of FIFRA. Joint Proposed Findings of Fact and Conclusions of Law, Finding 3. Section 12 of FIFRA makes it unlawful for any person to distribute or sell any misbranded or unregistered pesticide. As a person under FIFRA, Respondent Workman stipulated that he failed to submit an Annual Establishment Pesticide Production Report for 1989, and failed to update this information from 1986 through 1991. Joint Finding 18. The bulk of the remaining violations involve either misbranded or unregistered pesticides, but four counts stem from two incidents (March 17 and March 28, 1992) when Respondent Workman refused to allow EPA and FLDACS inspectors to enter Safe & Sure Inc.'s

establishment.

EPA points, by analogy, to U.S. v. Conservation Chemical Company of Illinois, 660 F.Supp. 1236 (N.D.Ind. 1987) for the proposition that personal liability should attach to those individuals actually culpable for violations of the Resource Conservation and Recovery Act (RCRA). There, the president and principal stockholder was found personally liable for the violations, the Court noting that the officer was a "person" under that Act, and that liability of those corporate officers who actually make the decisions in issue is "consonant with Congressional intent." Id. at 1246.

Precedent also exists under FIFRA for holding corporate officers liable. In the Matter of Roger Antkiewicz and Pest Elimination Products of America, Inc., Docket No. I.F. & R.-V-002-95, 1997 FIFRA LEXIS 35, September 25, 1997, Administrative Law Judge Andrew S. Pearlstein found Mr. Antkiewicz, as President of Pest Elimination Products Inc., (PEPA), personally liable for selling an unregistered pesticide in violation of FIFRA § 12(a)(1)(A). Judge Pearlstein found Mr. Antkiewicz to be " the person with the greatest responsibilities in the conduct of PEPA's business." Id. at \*5. The Judge noted that the Count in issue made it unlawful for any person to distribute or sell an unregistered pesticide and that Mr. Antkiewicz "as the president of PEPA, did participate fully in the violation of selling an unregistered pesticide," and accordingly was liable for the violation. Id. at \*12, 13.

As the Government's Exhibits demonstrate beyond any doubt, it is clear that Lester J. Workman is, effectively, Safe & Sure, in the sense that he is its controlling figure. As the principal stockholder and the only functioning corporate officer, Mr. Workman, and no one else, is the person who has always made the decisions for Safe & Sure. Among others, Government Exhibits 13, 20, 21, 23-29, 33-35, 61-62 and Transcript Pages 57-59, 70, 72, 81-83, 85-86, 114, 118, 134 amply demonstrate this. These Exhibits also reveal recalcitrance and dissemination of misleading information by Mr. Workman to state and federal environmental enforcement authorities as well as longstanding efforts by these enforcement authorities, as far back as 1985, to get Mr. Workman to comply with EPA pesticide registration requirements. Accordingly, it is also found that Mr. Workman is clearly liable for his actions as a "person" under FIFRA.

#### Determination of an Appropriate Penalty

The remaining issue is the appropriate amount of penalty to be assessed against Safe & Sure and Lester Workman for the violations of FIFRA found against them. At the hearing, EPA witness Cheryn Jones provided testimony concerning the calculation of the penalty in this matter. Based upon Ms. Jones' recalculation of the size of Respondent's business and all of the gravity adjustment factors, the proposed penalty was reduced at the hearing from \$423,000 to \$229,800. (Tr. 161-162).

Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4) sets forth the penalty criteria to be taken into account in assessing a civil penalty. Section 14(a)(4) in part provides:

In determining the amount of the penalty, the Administrator shall consider [1] the appropriateness of such penalty to the size of the business of the person charged, [2] the effect on the person's ability to continue in business, and [3] the gravity of the violation. (7 U.S.C. § 1361 (a)(4)).

Complainant also called Willard Waisner, a financial analyst for the EPA, who testified that a penalty in the range of \$30,000 would allow the Respondent's to continue in business. When questioned by the undersigned as to whether EPA was making a further reduction in the amount of the penalty being sought, EPA counsel indicated that they were not, that they were merely having their witness express

his expert opinion as to the amount of penalty that the Respondents could jointly and severally afford to pay and still continue the operation of their business. (Tr. 202-205).

Also testifying was Mr. Carlton Layne, EPA's Chief of the Pesticide Section, Atlanta, Georgia. Mr. Layne, in his years with EPA, has been involved in thousands of FIFRA investigations. (Tr. 225). He was qualified as an expert in the area of FIFRA enforcement and pesticide regulation and he makes the ultimate decision on which cases are prosecuted. (Tr. 226-227). Mr. Layne felt, when asked about the appropriateness of the size of the penalty, that it was "unusually large." (Tr. 234). Although he originally felt it was appropriate, he acknowledged that "the company and the individual were worth quite a bit more than it ended up being." (Tr. 235).

The Court inquired of Mr. Layne, as the Chief of the Pesticide Division and consequently, the individual who signs off on proposed penalties, whether EPA was now seeking a penalty of \$229,800 or \$30,000. After recounting the protracted enforcement history of the case and the extensive settlement efforts, Mr. Layne ultimately concluded that Mr. Waisner's evaluation "is probably accurate," and that he would have accepted that amount as an appropriate penalty considering the statutory factors. (Tr. 237-238).

By applying the factors listed in the July 2, 1990, Environmental Response Policy for FIFRA (Government Exhibit 56), Ms. Jones' review of the calculation of the penalty at the hearing (Tr. 140-160) and EPA witnesses Willard Waisner and Carlton Layne's testimony, it has been indicated that when considering the Respondent's ability to continue in business, that the penalty should be reduced to "about the \$30,000 range". (Tr. 196/25). Given Mr. Layne's final authority in the realm of setting the penalty amount sought by EPA in pesticide cases, it is clear from his testimony that EPA has, *de facto*, amended the penalty amount it is seeking in this matter to \$30,000.00.<sup>(5)</sup>

This determination was made by Mr. Waisner based upon the limited information available to EPA in this case. Mr. Workman did not provide any individual income tax information or other financial documentation to support an inability to pay defense.<sup>(6)</sup> Income tax information was available from the corporate entity, Safe & Sure, for the years 1991 through 1996 (Government Exhibit's 61 and 62) and this information was duly considered by Mr. Waisner. In addition, Mr. Waisner conducted an audit of the financial records of Safe & Sure in June of 1994 at which limited information concerning the financial condition of Safe & Sure was available for review. (Tr. 189). Therefore, based upon the testimony provided by EPA witnesses Carlton Layne and Willard Waisner in this matter and the lack of any evidence to the contrary concerning the Respondent Workman's financial condition and the financial information available concerning Safe & Sure's financial condition, EPA's *de facto* amendment of the penalty amount it is seeking in this matter, and my consideration of the statutory factors, I find that the proper amount of penalty in this matter to be \$30,000.00.

One last comment is in order. The record demonstrates that Mr. Workman has shown a long-standing disregard for the requirements of FIFRA. Indeed, his representative has conceded that Mr. Workman has "been unsuccessful in complying with numerous statutory requirements for the past ten years," and "continues to try and not be in compliance." (Tr. 157, Gov. Ex. 58) I also agree that Mr. Workman's January 8, 1998 letter to the Court evinces an continuing unrepentant attitude toward compliance, as does his failure to submit Safe & Sure's 1995 Annual Report of Production in a timely manner. (Gov. Ex. 58). Therefore, Mr. Workman is specifically advised that the determination of the gravity for any future violations will take into account the violations upheld here. As the penalty imposed in this matter could have been much greater, Mr. Workman would be wise to abandon any recalcitrant attitude and cooperatively adhere to the law.

#### Order

The U.S. Environmental Protection Agency has established that Respondent Lester J.

Workman is individually responsible for Counts 1 through 85 of the Complaint in this matter. Respondents, jointly and severally, are assessed a civil penalty totaling \$30,000 for the violations of FIFRA.

Payment of the civil penalty shall be made within 60 days of the date of this Order. Respondent may mail or present a cashier's or certified check made payable to the Treasurer of the United States of America. The address is: Citizens and Southern National Bank, EPA Region IV (Regional Hearing Clerk), P.O. Box 100142, Atlanta, Georgia 30384. <sup>(7)</sup>

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William B. Moran  
Administrative Law Judge

Dated: \_\_\_\_\_

1. Unless otherwise stated, all Findings of Fact are derived from the Joint Proposed Findings of Fact and Conclusions of Law filed by the parties in this matter.

2. The parties stipulated that Lester Workman is liable for Count 1 of the Third Amended Complaint. EPA Brief at ftnt. 2, page 2. This Count addresses the violation of Section 12 (a)(2) of FIFRA which pertains to the failure to submit an annual establishment pesticide report for 1989 and the failure to update the information in these reports for the years 1986 through 1991. Joint Proposed Findings of Fact 18.

3. Though asserted by EPA as a consideration in support of its argument to justify piercing the corporate veil, I do not consider that Safe & Sure is presently a continuation of the same enterprise that Mr. Workman conducted earlier in an unincorporated form. Any individual may elect to later incorporate a business that was originally operated as a sole proprietorship or in partnership without suffering negative inferences. Similarly, in deciding the issue of whether the corporate veil should be pierced, the fact that Mr. Workman continued to hold the patents for his De Flea products, by itself, as a factor supporting the blurring between the corporation and the individual, nor do I consider that Mr. Workman would use the corporate credit card, on occasion, to take employees to lunch, nor that Sure paid Mr. Workman as a consultant, nor that Sure used corporate money to help finance Mr. Workman's "Health Friendly Foods" venture. Each of these are common and legal corporate activities. For example, EPA cites no authority that such consultant fees are per se illegal, nor is the assertion of "unusual expenditures" for professional fees and subcontracts viewed negatively, in the abstract.

4. Respondents' Post Hearing Brief does not address this issue, focusing instead only on the appropriateness of piercing the corporate veil and the appropriate penalty to be assessed.

5. I am aware that EPA counsel still requested a penalty of \$229,800.00 in Complainant's Post Hearing Brief. However, the brief acknowledges that Complainant's financial analyst concluded that a penalty in the "30,000-dollar range would be about what we could expect from a penalty amount." (Tr. 196-197). Significantly, EPA makes no mention in its brief of Mr. Layne's testimony in support of a \$30,000.00 penalty. Given Mr. Layne's authority on EPA's behalf on this issue, I view his opinion as controlling in terms of ascertaining EPA's position as to the appropriate penalty in this matter.

6. Mr. Workman has submitted a letter dated April 1, 1998 in which he makes some general assertions concerning the Respondents financial condition. Mr. Workman states, without any supporting documentation, that Safe & Sure "is in the precarious position of being forced into bankruptcy at any time." and with regards to his personal finances, he writes: "Neither is my financial condition good. It was proved when U.S. District Court authorizes [sic] a very thorough investigation of my finances to determine whether I could pay about \$16,000 in court costs. The

investigation found that I had no money, or worthwhile assets." (Emphasis in original).

7. This decision will become a final Order of the Environmental Appeals Board ("EAB") unless it is appealed to the EAB in accordance with 40 C.F.R. § 22.30, or unless the EAB elects to review this decision sua sponte. 40 C.F.R. § 22.27(c).

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