UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 19 2018

REPLY TO THE ATTENTION OF
LC-17J

FIRST CLASS, CERTIFIED MAIL
RETURN-RECEIPT:

Terri Babcock, President
David E. Easterday & Co., Inc.
d/b/a Woodwright Finishing
1225-C U.S. Route 62
Wilmot, Ohio 44689

Re: Complaint against David E. Easterday & Co., Inc., doing business as Woodwright Finishing Docket number: **FIFRA-05-2019-0005**

Dear Ms. Babcock:

After several months of the EPA case team attempting to discuss this matter with you, I have enclosed an administrative Complaint filed by the U.S. Environmental Protection Agency against David E. Easterday & Co., Inc., doing business as Woodwright Finishing, under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*(a). Enclosed please also find a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits at 40 C.F.R. part 22 (Consolidated Rules), and a copy of the FIFRA penalty policy. On November 14, 2017 and on several occasions thereafter, EPA provided you with opportunities to discuss any relevant information regarding the alleged FIFRA violations, and to provide financial information relevant to your ability to pay a penalty in this matter. You did not submit any financial information to EPA for review and analysis.

As provided in the Complaint, if you would like to request a hearing, you must file an answer to the Complaint in which you specifically request a hearing. Please note that if you do not file an answer with the Regional Hearing Clerk (E-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 within 30 days after receiving the Complaint, EPA may seek a default order pursuant to 40 C.F.R. § 22.17. If you choose to file an answer, you also must mail a copy of it to Robert S. Guenther, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Whether or not you request a hearing, you may request an informal settlement conference. If you would like to request a conference, or if you have any questions about this matter, please contact Mr. Guenther at (312) 886-0566.

Sincerely,

Tinka G. Hyde
Director
Land and Chemicals Division

Enclosures

cc: Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5

Robert L. Brubaker
Christopher R. Schraff
Porter Wright Morris & Arthur LLP
41 South High Street
Suites 2600-3200
Columbus, Ohio 43215-6194

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	
DAVID E. EASTERDAY & CO., INC., d/b/a WOODWRIGHT FINISHING, WILMOT, OHIO,	**Docket No.: FIFRA-05-2019-0005**
RESPONDENT.	**Proceeding to Assess a Civil Penalty Under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136*l*(a)**

COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*(a).

2. Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is David E. Easterday & Co., Inc., a corporation doing business in the State of Ohio as Woodwright Finishing.

Statutory and Regulatory Background

4. According 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 section 3 of FIFRA, 7 U.S.C. § 136a.

5. According to section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for any person who is a producer to violate any provision of section 7 of FIFRA, 7 U.S.C. § 136e.

6. According to section 7(a) of FIFRA, 7 U.S.C. § 136e(a), no person may produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the U.S. EPA.

7. According to section 2(u) of FIFRA, 7 U.S.C. § 136(u), a "pesticide" is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. According to section 2(t) of FIFRA, 7 U.S.C. § 136(t), a "pest" is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of U.S. EPA declares to be a pest under section 25(c)(1) of FIFRA.

9. According to 40 C.F.R. § 152.5(d), an organism is declared to be a pest under circumstances that make it deleterious to man or the environment, if it is any fungus, bacterium, virus, prion, or other microorganism.

10. According to 40 C.F.R. § 152.15(a)(1), a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide 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 as a pesticide.

11. According to section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "distribute or sell" means "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."

12. According to section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), "labeling" means all labels and other written, printed or graphic matter accompanying the pesticide at any time or to which reference is made on the label or in literature accompanying the pesticide.

13. According to section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), an "establishment" is any place where a pesticide or active ingredient used in producing a pesticide is produced for distribution or sale.

14. According to section 2(w) of FIFRA, 7 U.S.C. § 136(w), "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or active ingredient used in producing a pesticide.

15. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer or other distributer who violates any provision of up to $7,500 for each offense that occurred after January 12, 2009, through November 2, 2015, pursuant to section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1), and 40 C.F.R. part 19.

General Allegations

16. Respondent owned or operated a place of business located at 1225-C U.S. Route 62, Wilmot, Ohio (the "facility") at all times relevant to this Complaint.

17. Respondent is a "person" as that term is defined at section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. Respondent is a "producer" as defined at section 2(w) of FIFRA, 7 U.S.C. § 136(w).

19. On or about October 1, 2014, an inspector employed by the Ohio Department of Agriculture (ODA) and authorized to conduct inspections under FIFRA inspected Respondent's facility for compliance with FIFRA.

20. During the October 1, 2014 inspection, the ODA inspector collected records of Respondent's sales of the products identified in paragraphs 24 through 53 ("distribution records").

21. The distribution records are identified in the inspection report as "Sample Number 141001-10217-08 Sales Records- 20 pages."

22. The distribution records cover the period October 1, 2013 through October 1, 2014.

23. On November 14, 2017, Complainant sent to Respondent a letter informing it that EPA intended to seek a penalty for the violations alleged in this Compliant. That letter requested, among other things, financial information from Respondent for EPA to review if Respondent believed that it had an inability to pay a penalty. Respondent has not submitted any financial information to EPA for review and analysis.

Pesticide Product #1 – Spotless Concentrate (32 oz.)

24. At its facility, Respondent manufactured "Spotless Hospitality Furniture & Glass Concentrate (32 fluid oz.)."

25. During the October 1, 2014 inspection, the ODA inspector collected a label for "Spotless Hospitality Furniture & Glass Concentrate (32 fluid oz.)."

26. Respondent's distribution records refer to the product described in paragraphs 24 and 25 as "Spotless Hospitality Furniture & Glass Cleanser Concentrate 1 Quart." (hereinafter referred to as "Spotless Concentrate (32 oz.)").

27. Respondent's label for Spotless Concentrate (32 oz.) prominently displayed the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

28. Spotless Concentrate (32 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Pesticide Product #2 – Heirloom Essentials Concentrate (16 oz.)

29. At its facility, Respondent manufactured "Heirloom Essentials Fine Furniture Cleanser Concentrate (16 oz.)."

30 During the October 1, 2014 inspection, the ODA inspector collected a label for "Heirloom Essentials Fine Furniture & Glass Cleanser Concentrate (16 fluid oz.)."

31. Respondent's distribution records refer to the product described in paragraphs 29 and 30 as "Heirloom Essentials Furniture & Glass Cleanser Concentrate 16 oz" (hereinafter referred to as "Heirloom Essentials Concentrate (16 oz.)").

32. The label for Heirloom Essentials Concentrate (16 oz.) prominently displayed the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

33. Heirloom Essentials Concentrate (16 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Pesticide Product #3 – Heirloom Essentials Cleanser (8 oz.)

34. At its facility, Respondent manufactured "Heirloom Essentials Fine Furniture and Glass Cleanser (8 fluid oz.)."

35. During the October 1, 2014 inspection, the ODA inspector collected a label for "Heirloom Essentials Fine Furniture and Glass Cleanser (8 fluid oz.)."

36. Respondent's distribution records refer to the product described in paragraphs 34 and 35 as "Heirloom Essentials Spotless Cleanser (8 fluid oz.)" (hereinafter referred to as "Heirloom Essentials Cleanser (8 oz.)").

37. The label for Heirloom Essentials Cleanser (8 oz.) prominently displayed the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

38. Heirloom Essentials Cleanser (8 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Pesticide Product #4 – Heirloom Essentials Cleanser (1 oz.)

39. At its facility, Respondent manufactured "Heirloom Essentials Fine Furniture & Glass Cleanser (1 oz.)."

40. During the October 1, 2014 inspection, the ODA inspector collected a label for "Heirloom Essentials Fine Furniture & Glass Cleanser (1 fluid oz.)."

41. Respondent's distribution records refer to the product described in paragraphs 39 and 40 as "Heirloom Essentials Spotless Cleanser 1 oz" (hereinafter referred to as "Heirloom Essentials Cleanser (1 oz.)").

42. The label for Heirloom Essentials Cleanser (1 oz.) prominently displays the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

43. Heirloom Essentials Cleanser (1 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Pesticide Product #5 – Spotless Concentrate (128 oz.)

44. At its facility, Respondent manufactured "Spotless Hospitality Furniture & Glass Concentrate (128 oz.)."

45. During the October 1, 2014 inspection, the ODA inspector took a photograph of a product bearing a label for "Spotless Hospitality Furniture & Glass Concentrate (128 fluid oz.)."

46. Respondent's distribution records refer to the product described in paragraphs 44 and 45 as "Spotless Hospitality Furniture & Glass Cleanser Concentrate 1 Gallon" (hereinafter referred to as "Spotless Concentrate (128 oz.)").

47. The label for Spotless Concentrate (128 oz.) prominently displayed the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

48. Spotless Concentrate (128 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Pesticide Product #6 – Spotless Cleanser (32 oz.)

49. At its facility, Respondent manufactured "Spotless Hospitality Furniture & Glass Cleanser (32 oz.)."

50. During the October 1, 2014 inspection, the ODA inspector collected a label for "Spotless Hospitality Furniture & Glass (32 fluid oz.)."

51. Respondent's distribution records refer to the product described in paragraphs 49 and 50 as "Spotless Hospitality Furniture & Glass Cleanser 32 oz" (hereinafter referred to as "Spotless Cleanser (32 oz.)").

52. The label for Spotless Cleanser (32 oz.) prominently displayed the word "antibacterial" and stated that it "[r]emoves 99.9% of bacteria."

53. Spotless Cleanser (32 oz.) is a "pesticide" pursuant to 40 C.F.R. § 152.15(a)(1) and section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Counts 1-4 –Distribution or Sale of an Unregistered Pesticide
Spotless Concentrate (32 oz.)

54. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

55. Respondent distributed or sold Spotless Concentrate (32 oz.) on or about the following dates:

a) September 8, 2014 (to Tomah Warehouse);
b) September 11, 2014 (to Premier Furnishings);
c) September 15, 2014 (a counter sale); and

d) September 26, 2014 (to Hostetler Woodcraft).

56. The labeling for Spotless Concentrate (32 oz.) contained pesticidal claims.

57. At no time prior to October 1, 2014 was Spotless Concentrate (32 oz.) registered with U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

58. Respondent's distribution or sale of Spotless Concentrate (32 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

59. Respondent's distribution or sale of an unregistered pesticide on the four separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes four unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 5-7 – Distribution or Sale of an Unregistered Pesticide
Heirloom Essentials Concentrate (16 oz.)

60. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

61. Respondent distributed or sold Heirloom Essentials Concentrate (16 oz.) on or about the following dates:

a) September 22, 2014 (to Amish Oak);
b) September 25, 2014 (to Oakwood Furniture); and
c) September 29, 2014 (to Commemorative Rockers & More).

62. The labeling for Heirloom Essentials Concentrate (16 oz.) contained pesticidal claims.

63. At no time prior to October 1, 2014 was Heirloom Essentials Concentrate (16 oz.) registered with U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

64. Respondent's distribution or sale of Heirloom Essentials Concentrate (16 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

65. Respondent's distribution or sale of an unregistered pesticide on the three separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes three unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 8-18 – Distribution or Sale of an Unregistered Pesticide
Heirloom Essentials Cleanser (8 oz.)

66. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

67. Respondent distributed or sold Heirloom Essentials Cleanser (8 oz.) on or about the following dates:

a) September 3, 2014 (to Greenfield Finishing);
b) September 4, 2014 (to Amish County Furnishings);
c) September 5, 2014 (to Decker's Furniture);
d) September 5, 2014 (to Pleasant View Furniture);
e) September 15, 2014 (to Amish Merchant);
f) September 15, 2014 (a counter sale);
g) September 16, 2014 (to Greenfield Finishing);
h) September 18, 2014 (to Granny Annie's Amish Furniture);
i) September 15, 2014 (to Andreas Furniture);
j) September 15, 2014 (to Oakwood Furniture); and
k) September 15, 2014 (a counter sale).

68. The labeling for Heirloom Essentials Cleanser (8 oz.) contained pesticidal claims.

69. At no time prior to October 1, 2014 was Heirloom Essentials Cleanser (8 oz.) registered with the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

70. Respondent's distribution or sale of Heirloom Essentials Cleanser (8 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

71. Respondent's distribution or sale of an unregistered pesticide on the 11 separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes 11 unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 19-23 – Distribution or Sale of an Unregistered Pesticide
Heirloom Essentials Cleanser (1 oz.)

72. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

73. Respondent distributed or sold Heirloom Essentials Cleanser (1 oz.) on or about the following dates:

a) September 2, 2014 (to Weinberger's Furniture);
b) September 12, 2014 (to Greenfield Finishing);
c) September 16, 2014 (to Byler's Furniture Shop);
d) September 18, 2014 (to Forever Oak); and
e) September 18, 2014 (to P.J. Refinishing).

74. The label for Heirloom Essentials Cleanser (1 oz.) contained pesticidal claims.

75. At no time prior to October 1, 2014 was Heirloom Essentials Cleanser (1 oz.) registered with the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

76. Respondent's distribution or sale of Heirloom Essentials Cleanser (1 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

77. Respondent's distribution or sale of an unregistered pesticide on the five separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes five unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 24-26 – Distribution and Sale of an Unregistered Pesticide
Spotless Concentrate (128 oz.)

78. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

79. Respondent distributed or sold Spotless Concentrate (128 oz.) on or about the following dates:

a) September 2, 2014 (to Southside Furniture);
b) September 15, 2014 (to Green Prairie Woodworks); and
c) September 29, 2014 (to Amish Furniture of Ohio).

80. The label for Spotless Concentrate (128 oz.) contained pesticidal claims.

81. At no time prior to October 1, 2014 was Spotless Concentrate (128 oz.) registered with the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

82. Respondent's distribution or sale of Spotless Concentrate (128 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

83. Respondent's distribution or sale of an unregistered pesticide on the three separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes three unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Counts 27-34 – Distribution and Sale of an Unregistered Pesticide
Spotless Cleanser (32 oz.)

84. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

85. Respondent distributed or sold Spotless Cleanser (32 oz.) on or about the following dates:

a) September 4, 2014 (to Amish Country Furnishings);
b) September 9, 2014 (to Vander Berg Furniture);

c) September 11, 2014 (to Detweiler Coatings);
d) September 15, 2014 (a counter sale);
e) September 18, 2014 (to Granny Annie's Amish Furniture);
f) September 23, 2014 (to Byler's Furniture Shop);
g) September 26, 2014 (a counter sale); and
h) September 29, 2014 (to Amish Furniture of Ohio).

86. The label for Spotless Cleanser (32 oz.) contained pesticidal claims.

87. At no time prior to October 1, 2014 was Spotless Cleanser (32 oz.) registered with the U.S. EPA pursuant to section 3 of FIFRA, 7 U.S.C. § 136a.

88. Respondent's distribution or sale of Spotless Cleanser (32 oz.) without the required registration pursuant to section 3 of FIFRA, 7 U.S.C. § 136a, constitutes distribution or sale of an unregistered pesticide.

89. Respondent's distribution or sale of an unregistered pesticide on the eight separate occasions noted above violates section 3 of FIFRA, 7 U.S.C. § 136a, and constitutes eight unlawful acts under section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 35 – Pesticide Production in an Unregistered Establishment

90. Complainant incorporates by reference the allegations contained in paragraphs 1 through 53 of this Complaint.

91. During calendar year 2014, Respondent produced the pesticide products described in counts 1-34, above.

92. Respondent is a "producer" as defined at section 2(w) of FIFRA, 7 U.S.C. § 136(w).

93. At no time relevant to this Complaint was Respondent's facility registered with U.S. EPA as a pesticide producing establishment under section 7(a) of FIFRA, 7 U.S.C. § 136e(a).

94. Respondent's production of pesticides at an establishment which was not registered with the Administrator violates section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and constitutes an unlawful act under section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Proposed Civil Penalty

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than $5,000 for each offense. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R part 19 (Penalty Inflation Rule), violations of FIFRA which occur after January 12, 2009, are subject to a statutory maximum penalty of $7,500 per violation. *See* 78 Fed. Reg. 66643, 66647 (November 6, 2013).

Based on the FIFRA violations alleged above, Complainant has determined that Respondent is subject to penalties under section 14(a)(1) of FIFRA. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), Complainant is not proposing a specific penalty now, but will do so after an exchange of information has occurred.

For purposes of determining the amount of any penalty to be assessed, section 14(a)(4) of FIFRA, 7 U.S.C. § 136*l*(a)(4), requires EPA to consider the appropriateness of such a penalty to the size of the business of the person charged, the effect on the person's ability to continue in business and the gravity of the violations. Complainant will also take into account the particular facts and circumstances of the case with specific reference to EPA's December 2009 FIFRA Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA ERP), and EPA's December 6, 2013 Amendments to the U.S. Environmental Protection

Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013), copies of which are attached. Together, these policies seek to provide a rational, consistent and equitable methodology for applying the statutory penalty factors to particular cases.

As its basis for calculating a specific penalty after an exchange of information has occurred pursuant to 40 C.F.R. § 22.19(a)(4), Complainant may consider, among other factors, facts or circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued. Any proposed penalty may be adjusted further if Respondent produces information or documentation to demonstrate a genuine issue of its inability to pay a penalty or to establish other defenses relevant to the appropriate amount of a proposed penalty. It is Respondent's responsibility to come forward with specific evidence regarding any claimed inability to pay a penalty.

Pursuant to section 14(a)(1) and (4) of FIFRA, 7 U.S.C. § 136*l*(a)(1) & (4), the DCIA and Penalty Inflation Rule, Complainant may propose the assessment of a civil penalty of up to $7,500 against Respondent for each of the violations alleged in this Complaint. The penalty Complainant will propose does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), an explanation of the number and severity of the violations is provided below.

Initially, Complainant notes that Respondent's size of business is Category II under the FIFRA ERP based on information available to Complainant indicating Respondent's business generates between $1,000,000 and $10,000,000 a year in gross revenues from all revenue sources.

This Complaint alleges 34 discrete sales of unregistered pesticides in the month of September 2014. The claims on Respondent's unregistered products include claims that they

were antibacterial and would remove bacteria. These claims were primarily intended to induce retail consumers and other retailers to purchase Respondent's products. Respondent's unregistered products bore labels with claims that were not reviewed for efficacy and safety, depriving retail consumers and other retailers of information regarding the risks and safe use of those products necessary for them to make informed decisions about their purchases.

EPA considers Respondent's sale of unregistered pesticides to be very serious. According to the FIFRA ERP, the gravity of the violations of section 12(a)(1)(A), 7 U.S.C. § 136j(a)(1)(A), merits a Level 1, which together with Respondent's size of business, translates to a base penalty of $7,150 per violation. In proposing a penalty for the sale of unregistered pesticide violations, however, EPA will also consider the case specific factors discussed in the FIFRA ERP and make appropriate adjustments to the base penalty considering the pesticide's characteristics, potential harm to human health or the environment and Respondent's compliance history and culpability.

The Complaint also alleges one count of producing pesticides in an unregistered establishment in violation of section 7 of FIFRA, 7 U.S.C. § 136e. Complainant also views this violation as serious because a failure to register places a pesticide producing establishment outside the universe of facilities known to EPA so that EPA can effectively oversee pesticide production there as FIFRA contemplates. Consequently, EPA is unable to audit a facility's records or routinely inspect the facility's compliance with FIFRA because EPA is simply unaware of its existence. A producer's failure to register as a pesticide producing establishment leaves EPA completely in the dark regarding the extent of a facility's production and any of its product formulations. An unregistered establishment could manufacture and market *any* pesticide, leaving that pesticide's potency, efficacy, danger, or toxicity to human health and the

environment unevaluated under the FIFRA regulatory scheme. If it were not for an anonymous tip in this particular matter, EPA might still not know of Respondent's operations.

According to the FIFRA ERP, violations of section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), merit a Level 2 gravity, which together with Respondent's size of business, translates to a base penalty of $5,670 per violation. In proposing a penalty for the violation of the requirement to register a pesticide-producing establishment, EPA will again also consider the case specific factors discussed in the FIFRA ERP and make appropriate adjustments to the base penalty considering the pesticide's characteristics, potential harm to human health and the environment and Respondent's compliance history and culpability.

Rules Governing this Proceeding

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules), at 40 C.F.R. part 22, govern this proceeding to assess a civil penalty. A copy of the Consolidated Rules is enclosed with the Complaint served on Respondent.

Filing and Service of Documents

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to section 22.5 of the Consolidated Rules. Complainant has authorized Robert S. Guenther, Associate Regional Counsel, to receive any answer and subsequent legal documents

that Respondent serves in this proceeding. You may contact Mr. Guenther at (312) 886-0566 or by email at guenther.robert@epa.gov. His postal address is:

Robert S. Guenther (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Answer and Opportunity to Request a Hearing

If Respondent contests any material fact upon which this Complaint is based, contends that a penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the

allegation.

Respondent's answer must also state:

a. The circumstances or arguments which Respondent alleges constitute grounds of defense;

b. The facts that Respondent disputes;

c. The basis for opposing any penalty; and

d. Whether Respondent requests a hearing.

Settlement Conference

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Mr. Guenther at (312) 886-0566.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce any proposed penalty because the parties hold an informal settlement conference.

Continuing Obligation to Comply

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state or local law.

12-17-18
Date

Tinka G. Hyde
Division Director
Land and Chemicals Division

Administrative Complaint
In the matter of: David E. Easterday & Co., Inc. d/b/a Woodwright Finishing
Docket Number: **FIFRA-05-2019-0005**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Administrative Complaint**, docket number **FIFRA-05-2019-0005**, which was filed on 12/19/2018, in the following manner to the following addressees:

Copy by Certified Mail to Attorney for Respondent:	Mr. Robert L. Brubaker Mr. Christopher R. Schraff 41 South High Street, Suites 2800-3200 Columbus, Ohio 43215
Copy by Certified Mail to Respondent:	Ms. Terri Babcock, President David E. Easterday & Co. Inc d/b/a Woodwright Finishing 1225-C US Route 62 Wilmot, OH 44689
Copy by E-mail to Attorney for Complainant:	Robert Guenther guenther.robert@epa.gov Christopher Grubb grubb.christopher@epa.gov
Copy by E-mail to Complainant:	Abigail Wesley wesley.abigail@epa.gov
Copy by E-mail to Regional Judicial Officer:	Ann Coyle coyle.ann@epa.gov

Dated: 12/19/2018

Fredrick J. Brown
Administrative Assistant
U.S. Environmental Protection Agency, Region 5