

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF

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

Respondent.

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) **COMPLAINANT'S REPLY POST-
) HEARING BRIEF**
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) **Docket No. FIFRA-07-2013-0135**

I. Introduction

Pursuant to 40 C.F.R. § 22.26 and the Presiding Officer's July 14, 2025 Order Scheduling Post-Hearing Submissions, the U.S. Environmental Protection Agency Region 7 ("EPA") submits the following Reply Post-Hearing Brief. For the reasons set forth below, Respondent has not demonstrated in their Initial Post-Hearing Brief that the penalty should be lowered from \$149,659. Further, Respondent should be held liable for denying the EPA inspection at the Woodson Facility.

II. Respondent's Penalty Arguments

A. Principles of Law

In the Complainant's Initial Post-Hearing Brief, Complainant states one of the main intents of imposing civil penalties is "to punish culpable individuals and deter future violations, not just to extract compensation or restore the status quo." *Kelly v. EPA*, 203 F.3d 519, 523 (7th Cir. 2000). Respondent counters in his Initial Post-Hearing Brief that EPA's proposed penalty is overly punitive and states that civil penalties under FIFRA 'are intended to deter through

regulation, not reprimand through punishment.” Respondent’s Post-Hearing Brief at 5-6, citing *In re Johnson Pac., Inc.*, 5 E.A.D. 696, 707. *In re Johnson Pac., Inc* cites to *In the Matter of S. Coast Chem., Inc.*, 2 E.A.D. 139.

In the footnotes of *In the Matter of S. Coast Chem., Inc.* the court states that “punishment” for knowing or willful violations of FIFRA is accomplished through the criminal provisions found at 7 U.S.C. 136l(b)(1)(A). However, the court also noted that “[T]he term ‘penal’ is used in different contexts to mean different things.” *Smith v. No. 2 Galesburg Crown Finance Corp.*, 615 F.2d 407, 414 (7th Cir. 1980). “Penal” is defined as “of, relating to, or involving punishment, penalties, or punitive institutions.” Webster’s New College Dictionary (1977). Respondent states that Complainant is attempting to punish Respondent through the assessment of a civil penalty as “punish” is defined in *In re Johnson Pac., Inc.* This is not the case. In using the quote from *Kelly*, Complainant used the term “punish” in its plain meaning and its relation to the words “penal” and “penalty” given that Complainant assessed a civil penalty in this matter. Certainly, there was no attempt by Complainant to encroach on the punishment authority found in the criminal provisions of FIFRA.

The authority to deter through civil penalties has been affirmed in previous ALJ rulings. *See, e.g., Johnson Pacific, Inc.*, 5 E.A.D. 696, 707; *Sav-Mart, Inc.*, 5 E.A.D. 732, 738-39. Further, as Administrative Law Judge Biro ruled in a 2005 FIFRA case, it is proper for the EPA to consider the deterrent effect a penalty will have on the regulated community when assessing a penalty against an individual Respondent. *In the Matter of Martex Farms, Inc.*, 2005 EPA ALJ LEXIS 54. Complainant’s calculation of the civil penalty was measured and well within the civil enforcement authority granted to the EPA. Thus, the Court should find for Complainant with respect to its penalty calculation here.

B. Complainant never alleged that Respondent's actions were willful, knowing or intentional in calculating the penalty

In his Initial Post-Hearing Brief, Respondent argues that his actions in the present matter were not “willful, knowing, or intentional” and that his “first encounter with EPA regulators” was during the June 2022 EPA inspection. Respondent's Post-Hearing Brief at 7-8. In contravention to these arguments, Complainant contends that Respondent's annual submittal of the EPA Form 3540-16 to EPA shows a familiarity with the legal requirements of FIFRA and at least some interaction with the Agency. However, Complainant asserts that it did not allege at any point in these proceedings that Respondent acted in a willful, knowing or intentional way.

For all counts assessed against the Respondent in this matter, Complainant assessed a culpability value of two. CX21A-F. The FIFRA Enforcement Response Policy states a culpability value of two is defined as “culpability unknown or resulting from negligence.” CX20 at 34. Complainant did not choose to assess a culpability value of four which is defined as “knowing or willful violation of the statute. Knowledge of the general hazardousness of the activity.” *Id.* The penalty against the Respondent did not incorporate in any way a finding or assertion that the Respondent acted in a willful, knowing or intentional way and thus, the Court should find for Complainant with respect to its penalty calculation here.

C. Complainant's calculation of the harm in this case followed the FIFRA Enforcement Response Policy

Respondent states that there was no evidence of actual harm to human health and the environment caused by the violations in this matter and that Complainant is only able to point to potential harm. Complainant agrees with this assertion but contends that the proposed penalty adequately reflects this. As Candace Bednar testified at hearing, anonymous poisoning reporting,

lack of public knowledge about reporting procedures, and HIPAA restrictions make it difficult for the EPA to find evidence of actual harm. TR87-88: 16-25, 1-3. Second, the FIFRA ERP structures itself to account for these realities. Complainant assessed a value of either a one or a three across all counts in the penalty. A value of one is defined as “minor potential or actual harm to the environment.” CX20 at 34. A value of three is defined as “unknown or potential serious or widespread harm.” *Id.* Complainant did not assess a value of five which is assessed as actual serious or widespread harm” for any of the counts in the penalty. *Id.* Complainant’s assessment of a one or three in this penalty is supported by the evidence presented at hearing. Complainant appropriately assessed the potential harm that can result from the sale of unregistered and mislabeled pesticides to the public and thus, the Court should find for Complainant with respect to its penalty calculation here.

III. Respondent’s Denial of Inspection Argument

A. Complainant’s inspection was denied at the Woodson Facility

Complainant was not able to conduct an inspection of the Woodson Facility. Respondent stated that he wanted prior notice of the inspection and that he wanted his attorney present during the inspection. TR 190: 7-12. Prior notice is not required to conduct an EPA inspection. Ms. Bednar testified that typically the EPA does not give prior notice to get a better idea of compliance at the inspected facility. TR47: 4-9. Further, there is no right to have an attorney present during an EPA inspection. Complainant’s Pre-Hearing Exchange at 18. When EPA did not cede to Respondent’s conditions, he did not allow the inspection to continue.

Respondent argues that the EPA did inspect the facility but that the inspection was “cut short.” This is false. The EPA inspectors were not able to conduct a complete inspection and instead were only able to make a few observations in their limited time in the store. TR46, 47:

20-25, 1-3. *See also* CX17. Thus, EPA's assertion that it was denied an inspection is accurate and the Court should find for Complainant in this matter.

CONCLUSION

As established through Complainant's evidence and briefing, Respondent failed to disrupt any of the prima facie elements in the present case and failed to provide any bases to mitigate the penalty sought by the Complainant. Thus, the Court should find for the Complainant and assess the proposed penalty.

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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Reply Post-Hearing Brief, Docket No. FIFRA-07-2023-0135, has been submitted electronically using the OALJ E-Filing System.

A copy was sent by email to:

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Date: July 21, 2025

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