

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20460

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BEFORE THE ADMINISTRATOR

In the Matter of:)

Douglas Products and Packaging)
Company, LLC,)

Respondent.)
_____)

Docket No. FIFRA-HQ-2019-5002

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

I. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Rules of Practice”), 40 C.F.R. Part 22, for the assessment of a civil administrative penalty against Douglas Products and Packaging Company, LLC (“Respondent”) for the distribution and sale of misbranded pesticides in violation of section 12(a)(1)(E) of FIFRA.

2. Complainant is Gregory Sullivan, Director of the Waste and Chemical Enforcement Division, Office of Civil Enforcement and Compliance Assurance, U.S. Environmental Protection Agency (EPA), Washington, D.C., who has been duly delegated to issue this Complaint.¹

¹ See EPA Administrator Delegation 5-14 (May 11, 1994); OECA Redelelegation 5-14 (September

3. Respondent is Douglas Products and Packaging Company, LLC, a corporation incorporated in Missouri and located at 1550 Old State Highway 210, Liberty, Missouri, 64068. Respondent manufactures and sells specialty chemical products for pest management and other applications.

II. STATUTORY AND REGULATORY BACKGROUND

4. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

5. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title.”

6. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” in relevant part as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

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

8. Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1), states, inter alia, that a pesticide is misbranded if:

a. Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular (7 U.S.C. § 136(q)(1)(A));

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

c. The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment (7 U.S.C. § 136(q)(1)(F)); or

d. The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, are adequate to protect health and the environment (7 U.S.C. § 136(q)(1)(G)).

9. Section 2(q)(2)(D) of FIFRA, 7 U.S.C. § 136(q)(2)(D), further states that a pesticide is misbranded if the pesticide contains any substance or substances in quantities highly toxic to man, unless the label contains, in addition to any other matter required by FIFRA:

a. The skull and crossbones (7 U.S.C. § 136(q)(2)(D)(i));

b. The word "poison" prominently in red on a background of distinctly contrasting color (7 U.S.C. § 136(q)(2)(D)(ii)); and

c. A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide (7 U.S.C. § 136(q)(2)(D)(iii)).

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

11. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” as the “written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

12. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter— (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device”

13. FIFRA’s implementing regulations (“FIFRA’s regulations”) at 40 C.F.R. § 156.64(a)(1) require that the label for every Category I Toxicity pesticide contain the signal word “DANGER,” and if the pesticide is assigned to Category I on the basis of its oral, inhalation, or dermal toxicity, the word “Poison” must appear in red on a background of distinctly contrasting color and the skull and crossbones symbol must appear in immediate proximity to the word “Poison.”

14. FIFRA’s regulations at 40 C.F.R. § 156.10(a) require that every pesticide product must bear a label containing information specified under FIFRA and its implementing regulations.

15. FIFRA's regulations at 40 C.F.R. § 156.10(a)(4) require that the label appear on or be securely attached to the immediate container of the pesticide product.

16. FIFRA's regulations at 40 C.F.R. § 156.10(a)(1)(viii) require that every pesticide product label shall contain directions for use as prescribed by 40 C.F.R. § 156.10(i).

17. FIFRA's regulations at 40 C.F.R. § 156.10(i)(1)(ii) provide that directions for use may appear on any portion of the label provided they are conspicuous enough to be easily read by the user of the pesticide product. Directions for use may appear on printed or graphic matter which accompanies the pesticide provided that:

a. If required by the Agency, such printed or graphic matter is securely attached to each package of the pesticide, or placed within the outside wrapper or bag;

b. The label bears a reference to the directions for use in accompanying leaflets or circulars, such as "See directions in the enclosed circular;" and

c. The Administrator determines that it is not necessary for such directions to appear on the label.

18. FIFRA's regulations at 40 C.F.R. § 156.10(a)(1)(vii) require that every pesticide product bear a label that has "[h]azard and precautionary statements as prescribed in subpart D of this part for human and domestic animal hazards and Subpart E of this part for environmental hazards."

19. FIFRA's regulations at 40 C.F.R. § 156.60 (Subpart D) require that each product label is required to bear hazard and precautionary statements for humans and domestic animals (if applicable) as prescribed in Subpart D.

20. Hazard and precautionary statements include a "Note to Physician Statement" and "Physical or Chemical Hazards Statement." 40 C.F.R. § 156.60(a)(2).

21. FIFRA's regulations in subpart D for Precautionary Statements for Physical or Chemical Hazards require warning statements on labels on the flammability or explosive characteristics of the pesticide product if a product meets the criteria in 40 C.F.R. § 156.78. Warning statements pertaining to other physical/chemical hazards (e.g., oxidizing potential, conductivity, chemical reactions leading to production of toxic substances) may be required on a case-by-case basis. 40 C.F.R. § 156.78(a).

22. FIFRA's regulations in subpart H for Container Labeling require that a batch code, lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold be placed on each pesticide product label or container. 40 C.F.R. § 156.140(a)(4).

23. FIFRA's regulations at 40 C.F.R. § 152.44 provide that, subject to certain exceptions not relevant here, any modification in the labeling of a registered product must be submitted to the EPA with an application for amended registration and that amendment must be approved by the Agency before the product, as modified, may legally be distributed or sold.

24. The Administrator is authorized under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA.

25. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines "registrant" as a person who has registered any pesticide pursuant to the provisions of FIFRA.

26. Section 17(c), 7 U.S.C. § 136o(c), and its implementing regulations at 19 C.F.R. § 12.112 require that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment in the United States.

III. GENERAL ALLEGATIONS

27. At all times relevant to the allegations in this Complaint, Respondent was a corporation doing business in the state of Missouri, and therefore a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

28. At all times relevant to the allegations in this Complaint, Respondent was the registrant of PH3 Aluminum Phosphide Fumigant Pellets, EPA Reg. No. 1015-74, and PH3 Aluminum Phosphide Fumigant Tablets, EPA Reg. No. 1015-76 (collectively referred to as “PH3 Products”).

29. The PH3 Products are pesticides as defined by section 2(u) of FIFRA, 7 U.S.C. § 136(u).

30. The PH3 Products were first respectively registered on February 18, 1992 and August 4, 1992 (to a different registrant, Phos-Fume Chemical Co.). By April 28, 2011, Douglas Products had acquired those two product registrations.²

31. The FIFRA master labels applicable to both products during the violations identified below were accepted by EPA on January 8, 2013 (“accepted labels”). The accepted labels for the two PH3 Products are almost identical to one another³ and contain the same violative deficiencies as described below.

32. The active ingredient in the PH3 Products is aluminum phosphide, CAS No. 20859-73-8. Aluminum phosphide products are classified as restricted use pesticides because they present an “inhalation hazard to humans.” 40 C.F.R. § 152.175.

² On April 27 and 28, 2011, Douglas Products submitted a Notifications of Alternate Brand Name and Change in Company Contact Information for these two products. EPA approved those notifications on May 2 and 9, 2011.

³ The accepted labels have the same language but with different product names and product registration numbers. The applicator’s manual is identical for both products.

33. Aluminum phosphide is “a highly toxic fumigant with the potential to cause serious poisoning and death if mishandled.” Reregistration Eligibility Document (RED), AL and MG Phosphide, December 1998 p. 190.

34. The PH3 Products operate by producing phosphine gas upon exposure to atmospheric moisture. As noted on the PH3 accepted labels, phosphine gas is highly toxic to humans, insects, burrowing pests, and other forms of animal life.⁴ It is also flammable and can ignite spontaneously in air at concentrations above its lower flammable limit.⁵

35. The PH3 Products are classified as Toxicity Category I pesticides, the most toxic category, and as such, any front panel of a FIFRA label for those products must bear the word “DANGER.” Because of phosphine gas’s inhalation toxicity, the label must also bear the term “Poison” and a skull and crossbones symbol. 40 C.F.R. § 156.64(a)(1).

36. The accepted labels for the PH3 Products each consist of (1) an attached container label (“accepted container label”) and (2) a separate applicator’s manual. The applicator’s manual contains additional directions for use that are not found on the accepted container label. As described in Paragraph 38 below, each cylinder was required to be distributed with an accompanying applicator’s manual.

37. For each of the import shipments identified below, the PH3 Products were packed in cases containing either 21 metal cylinders each with 2.2 pounds of product or 14 metal cylinders each with 3.3 pounds of product. Each case contained a single type of PH3 Product (tablets or pellets). Each case and each metal cylinder were required to have a label attached to it (“product container label”) that was identical to accepted container label. The applicator’s

⁴ Applicator’s manual, Section 4.

⁵ *Id.*

manuals were required to be placed inside the case to accompany each cylinder of the PH3 product. As described in Paragraph 38 below, each cylinder was required to have its own accompanying applicator's manual.

38. The accepted container label for each product features the following statement on the front panel: "THE COMPLETE LABEL FOR THIS PRODUCT CONSISTS OF THE CONTAINER LABEL AND THE APPLICATOR'S MANUAL WHICH MUST ACCOMPANY THE PRODUCT. READ AND REVIEW THE ENTIRE LABEL WHICH INCLUDES THE CONTAINER LABEL AND THE APPLICATOR'S MANUAL."

39. The front panels of the accepted container labels contain the signal words "DANGER" and "POISON" and the skull and crossbones symbol as required for Category I Toxicity Pesticides pursuant to 40 C.F.R. § 156.64(a).

40. The accepted container labels contain directions for use that include Storage and Disposal Provisions, prescribed pursuant to 40 C.F.R. §§ 156.10(a)(1)(viii) and 156.10(i).

41. The accepted container labels contain a Precautionary Statement for Physical or Chemical Hazards and a Note to Physician. These precautionary statements are prescribed pursuant to 40 C.F.R. §§ 156.10(a)(vii), 156.60, and 156.78(a).

42. Between February 24, 2016 and July 11, 2016, Held & Associates, located at 1120 Erie Street, Kansas City, MO 64116, was a broker/agent for Respondent.

43. Between February 24, 2016, and July 11, 2016, Held & Associates submitted fourteen NOAs to EPA, Region VII, for import shipments of PH3 Products from China under the entry numbers provided in Tables 1 and 2 below.

44. Each NOA identified Douglas Products & Packaging of Liberty, Missouri, as the importer of record for the shipments of PH3 Products.

Table 1
PH3 Aluminum Phosphide Fumigant Pellets
(EPA. Reg. No. 1015-74)

Anticipated Entry Date on Notice of Arrival (NOA)	Import Entry Number	Shipment Quantity (cases)	Total Net Weight (lbs)
February 24, 2016	568-06141554	630	29,167
February 24, 2016	568-06141547	576	26,667
March 11, 2016	568-06142743	600	27,778
March 30, 2016	568-06143097	576	26,667
March 30, 2016	568-06143089	576	26,667
June 8, 2016	568-06147585	600	27,778
June 16, 2016	568-06147999	600	27,778
July 11, 2016	568-00001002	630	29,167

Table 2
PH3 Aluminum Phosphide Fumigant Tablets
(EPA. Reg. No. 1015-76)

Anticipated Entry Date on Notice of Arrival (NOA)	Import Entry Number	Shipment Quantity (cases)	Total Net Weight (lbs)
March 11, 2016	568-06142743	600	27,778
March 30, 2016	568-06143097	576	26,667
March 30, 2016	568-06143089	576	26,667
June 8, 2016	568-06147585	600	27,778
June 16, 2016	568-06147999	600	27,778
July 11, 2016	568-00001002	576	26,667

45. For each of the import shipments identified above, the PH3 Products were packed in cases containing either 21 metal cylinders each with 2.2 pounds of product or 14 metal cylinders each with 3.3 pounds of product. Each case contained a single type of PH3 Product (tablets or pellets). Each case and each metal cylinder were required to have a label attached to it (“product container label”) that was identical to accepted container label. The applicator’s manuals were required to be placed inside the case to accompany each cylinder of the PH3 product.

46. On March 25 and April 12, 2016, an inspector from the Missouri Department of Agriculture, authorized to conduct inspections under FIFRA, and acting on behalf of EPA Region VII, conducted federal for-cause import inspections of the shipments arriving on February 24, March 11, and March 30, 2016 at Kansas City Piggyback, Inc., Kansas City, MO. The for-cause inspections were conducted because the PH3 Products were believed to be misbranded. Upon review of the inspection documentation and product labeling, EPA determined the PH3 Products were misbranded because the product container labels deviated from the accepted container labels and the cartons did not have the required number of applicator manuals.

47. On April 5, 2016, EPA Region VII issued a Stop Sale, Use, or Removal Order (“Region VII SSURO”), pursuant to section 13(a) of FIFRA, 7 U.S.C. 136k(a), to Respondent regarding the products in the February 24 and March 11 shipments. Pursuant to the Region VII SSURO, the subject PH3 Products could not be distributed or sold, but they could be moved and consolidated at Douglas Product’s production establishment located at 1550 E. Old Highway 210, Liberty MO 60468 (EPA Est. No. 1015-MO-1). That SSURO was subsequently amended to govern sale and distribution of the March 30 shipments.

48. In response to EPA Region VII’s enforcement activities, Respondent submitted applications for amended registrations of PH3 Products on March 13, 2016.⁶ EPA approved those amendments on April 27, 2016 and required that all newly produced PH3 Products and any existing inventory be labeled or relabeled with the April 27, 2016 accepted label and labeling.

49. On May 10, 2016, EPA Headquarters issued a separate SSURO (“HQ SSURO”)

⁶ In those label amendments, Respondent revised its container labels by abbreviating them so that they could be affixed to the containers with all of the provisions that had been omitted before. The omitted language is discussed in Paragraph 54.

against all PH3 Products under Douglas Products' ownership, control, or custody. The HQ SSURO was broader in scope than the Region VII SSURO which had applied to the PH3 Products in the February 24, March 11, and March 30 shipments. The HQ SSURO superseded the Region VII SSURO and prohibited the movement, distribution, sale or use of all PH3 Products under Douglas Products' ownership, control, or custody unless approved in writing by EPA.

50. On June 14, 2016, an inspector from the Missouri Department of Agriculture, acting on behalf of the EPA Region VII, conducted a federal for-cause import inspection of shipments arriving under entry number 568-06147585 at Kansas City Piggyback, Inc., Kansas City, MO. The for-cause import inspection was conducted to facilitate a compliance check following the issuance of the May 10, 2016 SSURO. Upon review of inspection documentation and product labeling, EPA determined the PH3 Products were misbranded because the cylinders were missing batch numbers.

51. On June 24, 2016, Respondent notified and formally attested to EPA that four (4) shipments of PH3 Products arriving under entry numbers 568-06147999 and 568-00001002 were identical to the shipments – and thus missing batch numbers -- arriving under entry number 568-06147585 in Paragraph 50. Based on review of the inspection documentation and product labeling for entry number 568-06147585, EPA determined the PH3 Products arriving under entry numbers 568-06147999 and 568-00001002 were misbranded.

52. Each import shipment identified above constitutes a “distribution or sale” as defined under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3 of FIFRA's regulations.

IV. SPECIFIC ALLEGATIONS – VIOLATIONS

Violations 1 – 8: Distribution or Sale of Misbranded Pesticides

53. Complainant incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

54. During February and March of 2016, Respondent distributed or sold eight (8) shipments of PH3 Products with product container labels that deviated from the accepted container labels because the product container labels:

- a. Omitted the signal words “DANGER” and “POISON,” and the skull and crossbones symbol;
- b. Omitted required language in the storage and disposal provisions;
- c. Omitted required language in the Note to Physician, including language regarding treatment for severe poisoning; and
- d. Omitted the Precautionary Statement for Physical or Chemical Hazards.

55. Cases in these shipments did not have an applicator’s manual for every PH3 Product cylinder contained within.

56. Respondent’s failure to include the signal words “DANGER” and “Poison,” and the skull and crossbones symbol on the product labels, as required by 40 C.F.R § 156.64(a)(1), resulted in those products being misbranded as defined in sections 2(q)(1)(E), (F), (G), and 2(q)(2)(D) of FIFRA, 7 U.S.C. §§ 136(q)(1)(E), (F), (G), and 136(q)(2)(D).

57. Respondent’s failure to provide complete storage and disposal provisions on the product labels also resulted in those products being misbranded as defined in section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

58. Respondent's failure to have a complete Note to Physician Statement on the product labels further resulted in those products being misbranded as defined in sections 2(q)(1)(A), (E), (G), and (2)(D)(iii) of FIFRA; 7 U.S.C. §§ 136(q)(1)(A), (E), (G), and (2)(D)(iii).

59. Respondent's failure to provide the Precautionary Statement for Physical and Chemical Hazards on the product labels further resulted in those products being misbranded as defined in sections 2(q)(1)(E) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(E) and (G).

60. Respondent's failure to provide an applicator's manual with each product cylinder further resulted in those products being misbranded pursuant to section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

61. By distributing these misbranded pesticide products on eight (8) occasions in February and March 2016, Respondent committed eight violations of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

Violations 9 – 14: Distributed or Sold Misbranded Pesticides (Missing Batch Codes)

62. Complainant incorporates by reference the allegations contained in all preceding paragraphs of this Complaint.

63. During June and July of 2016, Respondent distributed or sold six (6) shipments of PH3 Products that did not have batch codes on the product cylinder.

64. Respondent's failure to place batch codes on the PH3 Pesticide Products imported into the U.S. in June and July 2016 resulted in those pesticides being misbranded as defined by section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

65. By distributing these PH3 pesticide products on six (6) occasions in June and July 2016, Respondent committed six violations of section 12(a)(1)(E) of FIFRA, 7 U.S.C. §

136(q)(1)(E).

V. RELIEF SOUGHT

66. As referenced above in Paragraphs 27 - 65, Respondent distributed or sold misbranded PH3 Pesticide Products on fourteen (14) separate occasions between February and July 2016 in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties pursuant to section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

67. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(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 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act, 28 U.S.C. § 2461 note, Pub L. 114-74, Congress established revised penalty amounts which EPA promulgated at 40 C.F.R. Part 19 in the 2019 Civil Penalty Inflation Adjustment Rule, 84 Fed. Reg. 2058 (Feb. 6, 2019). The maximum statutory civil penalty for FIFRA violations occurring after November 2, 2015, and assessed on or after January 15, 2019, is \$19,936 per violation. *Id.*

68. Pursuant to the requirement in the Rules of Practice at 40 C.F.R. § 22.14(a)(4)(i), EPA below sets forth the amount of the civil penalty proposed to be assessed, and a brief explanation of the proposed penalty.

Proposed Civil Penalty

69. When determining an appropriate civil penalty, section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider 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 violation. To determine the appropriate penalty to be assessed in this matter, Complainant considered the facts

of this matter against those statutory factors, the factors in the December 2009 FIFRA Enforcement Response Policy (including pesticide toxicity, harm to human health, environmental harm, compliance history, economic benefit or savings (if any) resulting from the violations, and culpability), and the memorandum dated January 11, 2018, titled Amendments to the EPA's Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule. As a result, Complainant proposes that Respondent be assessed a penalty of one hundred and forty-three thousand and five hundred dollars (\$143,500).

VI. APPLICABILITY OF PART 22 AND NOTICE OF OPPORTUNITY FOR HEARING

70. The Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Rules of Practice accompanies the copy of this Complaint that was provided to the Respondent.

Procedures for Quick Resolution under 40 C.F.R. § 22.18(a)

71. Part 22 contemplates the quick resolution of administrative enforcement in exchange for payment in full of the proposed penalty. A respondent wishing to terminate a proceeding may do so by paying the penalty proposed in the administrative complaint within 30 days after receiving the complaint. In such case, payment would be made as follows: Respondent shall either:

a. Dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of \$143,500, and bearing the notation, "Douglas Products and Packaging Company, LLC Civil Penalty Docket No. FIFRA-HQ-2019-5002" to the following address:

(1) For standard mail delivery:

U.S. Environmental Protection Agency
Fines and Penalties

Docket No. FIFRA-HQ-2019-5002
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- (2) For FedEx, DHL, UPS, USPS certified or registered mail, etc.:

U.S. Environmental Protection Agency
Fines and Penalties
Docket No. FIFRA-HQ-2019-5002
Cincinnati Finance Center Box 979077
SL-MO-C2-GL
St. Louis, MO 63101,

OR

b. Make an electronic payment by wire transfer (Fedwire) in the amount of \$143,500 with the notation, "Douglas Products and Packaging Company, LLC Civil Penalty Docket No. FIFRA-HQ-2019-5002," through the Federal Reserve Bank of New York by using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: US Environmental Protection Agency
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency."

72. Respondent would then file a copy of the check, or other instrument of payment, with the Hearing Clerk for EPA's Office of Administrative Law Judges.⁷ Proof of payment can be delivered to the Hearing Clerk as follows:

⁷ While section 22.18(a) refers to "Regional Hearing Clerks," 40 C.F.R. § 22.3 provides that for cases initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk of the Office of Administrative Law Judges.

a. By United States Postal Service to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Attention: Hearing Clerk
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20004

b. By UPS, FedEx, DHL or other courier, or personal delivery to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Attention: Hearing Clerk
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004

73. If Respondent pays the proposed penalty in full within 30 days after receiving the Complaint, then no answer need be filed. If Respondent wishes to resolve this proceeding by paying the proposed penalty but needs additional time to pay the penalty, Respondent may file a written statement with the Hearing Clerk within 30 days after receiving the Complaint stating that the Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). The written statement need not contain any response to, or admission of, the allegations in the Complaint. Within 60 days after receiving the Complaint, the Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

74. Upon receipt of payment in full, the Environmental Appeals Board shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

75. Full payment of the penalty proposed in this Complaint shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this

Complaint. 40 C.F.R. § 22.18(c).

Answering the Complaint and Requesting a Hearing

76. Under the Rules of Practice, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed in an answer to this Complaint with the Hearing Clerk, U.S. Environmental Protection Agency, Office of Administrative Law Judges within thirty (30) days of service of this Complaint.

a. If filing by UPS, FedEx, DHL or other courier, or personal delivery, please address the materials to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington, DC 20004.

b. If filing by the United States Postal Service, please address the materials to:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R,
1200 Pennsylvania Ave., NW
Washington, DC 20460.

77. You may request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law. A copy of your answer should be served on Complainant through his counsel at the following address:

Thomas J. Charlton
Attorney-Advisor
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave N.W. (MC: 2249A)
Washington, D.C. 20460

78. Mr. Charlton is the attorney assigned to represent EPA in this matter. He can be contacted at Charlton.Tom@epa.gov and (202) 564-6960.

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

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

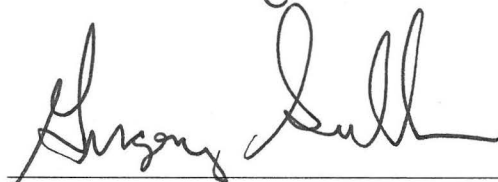
81. After the issuance of this Complaint, the Rules of Practice at 40 C.F.R. § 22.8 prohibit ex parte (unilateral) discussion of the merits of the proceeding with the EPA Administrator, the presiding Administrative Law Judge, any member of the U.S. EPA Environmental Appeals Board, or any other person likely to advise these officials on any decision in this proceeding.

Informal Conferences

82. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal conferences. Therefore, regardless of whether you

request a hearing, you are invited to confer informally with Complainant through Tom Charlton, the EPA attorney assigned to this case, concerning the alleged violations, the facts of this matter, and the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. An informal conference does not, however, affect your obligation to file an answer to this Complaint should you desire a hearing. If a settlement is reached between EPA and Respondent, it shall be memorialized by the parties' issuance of a written Consent Agreement, which shall be effective upon issuance of a Final Order by the U.S. EPA Environmental Appeals Board.

Signed in Washington, DC on this 21st day of May 2019.

A handwritten signature in black ink, appearing to read "Gregory Sullivan", written over a horizontal line.

Gregory Sullivan, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

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

Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Avenue, NW
Washington, DC 20460 U.S.

And that a true and correct copy of the Complaint and Notice of Opportunity for Hearing and the Rules of Practice at 40 C.F.R. Part 22 were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Lisa M. Campbell, Esquire
Burgess and Campbell PC
2200 Pennsylvania Avenue, NW
Suite 100W
Washington, DC 20037-1701

Mr. Wes Long
Chief Executive Officer
Douglas Products and Packaging Company, LLC
1550 E. Old Highway 210
Liberty, Missouri 64068

CERTIFIED MAIL NUMBER: 7017 2680 0000 3760 1709

5/21/2019
Date

By: Thomas J. Chalk
Waste and Chemical Enforcement Division
U.S. EPA, Washington, DC