

**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 INITIAL POST-
) HEARING BRIEF**
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) **Docket No. FIFRA-07-2013-0135**

TABLE OF CONTENTS

<u>INTRODUCTION</u>	4
<u>SUMMARY OF ARGUMENT</u>	4
<u>STATEMENT OF CASE</u>	6
I. STATUTORY AND REGULATORY FRAMEWORK	6
II. PROCEDURAL BACKGROUND	9
III. BURDEN OF PROOF	10
<u>ARGUMENT</u>	11
I. RESPONDENT DISTRIBUTED OR SOLD UNREGISTERED PESTICIDES	11
A. Rodenticide Block Repackaging (Counts 1-4)	11
B. Throw Pack Repackaging (Counts 5-7)	13
II. RESPONDENT REFUSED TO ALLOW AN INSPECTION OF THE WOODSON FACILITY	16
A. The Woodson Facility Held Pesticides for Distribution or Sale (Count 17)	16
III. THE PRESIDING OFFICER SHOULD ASSESS THE FULL PROPOSED PENALTY OF \$149,659.	18
A. Distribution or Sale of Unregistered Rodenticide Blocks (Counts 1-4)	20
B. Distribution or Sale of Unregistered Throw Packs (Counts 5-7)	23
C. Distribution or Sale of Unregistered Liquid Pesticides (Counts 8-10)	25
D. Misbranding of Rodenticide Blocks (Counts 11-14)	27
E. Misbranding of Throw Packs (Counts 15-17)	28
F. Misbranding of Liquid Pesticides (Counts 18-20)	29

G. Refusal to Allow an Inspection (Count 21)	31
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<u>CONCLUSION</u>	32
--------------------------	-----------

Table of Authorities

Cases

<i>Doe v. Veneman</i> , 380 F.3d 807, 816 (5th Cir. 2004) (citation omitted).....	6
<i>In re City of Marshall</i> , 10 E.A.D. 173, 180 (EAB 2001).....	10
<i>In re Bullen Companies, Inc.</i> , 9 E.A.D. 620, 624 (EAB 2001).....	10
<i>In re Ocean State Asbestos Removal, Inc.</i> , 7 E.A.D. 522, 530 (EAB 1998).....	10
<i>Atlantic States Legal Foundation v. Tyson Foods</i> , 897 F.2d 1128, 1142 (11th Cir. 1990).....	18
<i>Chesapeake Bay Foundation v. Gwaltney of Smithfield</i> , 890 F.2d 690 (4th Cir. 1989).....	18
<i>In re Pleasant Hills Authority</i> , Docket No. CWA-III-210 (ALJ McGuire Nov. 19, 1999).....	19
<i>Kelly v. EPA</i> , 203 F.3d 519 (7th Cir. 2000).....	19

Statutes

7 U.S.C. § 136.....	6-9, 12, 18-20, 23, 24-25, 27-28, 30
28 U.S.C. § 2461.....	19

Regulations

40 C.F.R. § 22.....	4, 10
40 C.F.R. § 165.70.....	5, 8, 12-14, 16
40 C.F.R. § 167.3.....	7
40 C.F.R. § 152.15.....	6
40 C.F.R. Part 19.....	19, 23
40 C.F.R. § 165.3.....	12

Other Authority

Black's Law Dictionary 1201 (7th ed. 1999).....	10
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INTRODUCTION

Pursuant to 40 C.F.R. § 22.26 and the Presiding Officer's April 1, 2025 Order Scheduling Post-Hearing Submissions, the U.S. Environmental Protection Agency Region 7 ("EPA") submits the following Initial Post-Hearing Brief. In its Order on Complainant's Motion for Accelerated Decision as to Liability ("Order on AD"), the Court granted accelerated decision as to liability in favor of Complainant for Counts 8-20 of the Amended Complaint, but denied the motion as to Counts 1-7 and 21. For the reasons set out below, and based upon the evidence in the record and the testimony presented at hearing, the Court should find Respondent Timothy Wilson, d/b/a Wilson's Pest Control ("Respondent") liable for: (1) the sale or distribution of unregistered pesticides on Counts 1-7; and (2) refusing to allow an EPA inspection of Respondent's Woodson Facility on Count 21. Further, EPA proposes that a total penalty of \$149,659 be assessed against Respondent for Counts 1-21.

SUMMARY OF ARGUMENT

To prevail on liability for Counts 1-7, Complainant must demonstrate by a preponderance of evidence that (1) Respondent is a "person" within the meaning of FIFRA. (2) Respondent "distributed or sold" the products at issue; (3) the products at issue were "pesticides" within the meaning of the Act; and (4) the products at issue were not "registered" at the time of distribution or sale. In its Order on AD, the Court stated that there was no genuine dispute of material fact and that Complainant had met its burden, as to elements 1, 2, and 3. Order on AD at 12-15. Regarding element 4, as set forth in more detail below, the evidence demonstrates beyond a preponderance that Respondent distributed or sold unregistered rodenticide blocks and throw packs at his facility. The evidence shows that Respondent, as a part of his regular business practices, bought bulk containers of pesticides and then illegally repackaged the individual

pesticides into clear resealable plastic bags for sale to his customers. Respondent had neither obtained a registration for the repackaged pesticides nor complied with the requirements of 40 C.F.R. § 165.70(b) to sell the repackaged pesticides under the registrant's existing registration. As a result, Respondent sold unregistered pesticides in violation of FIFRA.

To prevail on liability for Count 21, Complainant must demonstrate by a preponderance of evidence that (1) Respondent's Woodson Facility held pesticides or devices for distribution or sale; (2) EPA officers or employees entered the Woodson Facility at a reasonable time for the purpose of inspecting and obtaining samples of those pesticides or devices; and (3) Respondent refused to allow the inspection. In its Order on AD, the Court stated that there was no dispute of material fact, and that Complainant had met its burden, as to elements 2 and 3. Order on AD at 20-22. Regarding element 1, as set forth in more detail below, the evidence demonstrates beyond a preponderance that Respondent held pesticides or devices for distribution or sale at the Woodson Facility. Respondent operated the Woodson Facility as a storefront open to the public as evidenced by the open door, "OPEN" sign in the front of the store, and pesticides on the shelves of the store with associated price tags. As stated in his testimony at hearing, Respondent did not want the EPA to inspect the Woodson Facility after the EPA inspected the North Grand Facility and observed violations. Respondent subsequently refused the attempted inspection by the EPA.

Finally, as set for in more detail below, Complainant assert that a total penalty of \$149,659 should be assessed against Respondent for Counts 1-21.

STATEMENT OF CASE

I. STATUTORY AND REGULATORY FRAMEWORK

Congress enacted the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et seq.*, in 1947 and later amended it in 1972. FIFRA is a federal statute that regulates the manufacture, sale, distribution, and use of pesticides. “FIFRA establishes a comprehensive scheme for registering and regulating pesticides in order ‘to provide for the protection of’ humans and their environment.” *Doe v. Veneman*, 380 F.3d 807, 816 (5th Cir. 2004) (citation omitted). FIFRA grants enforcement authority to the EPA, including the authority to register pesticides and ensure that any registered pesticides comply with FIFRA’s mandates. *See* 7 U.S.C. § 136a.

A. Definitions

Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. The regulations at 40 C.F.R. §§ 152.15(a)(1) and (b) further define the term “pesticide” as any substance intended for a pesticidal purpose, and thus requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide; or the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than use for pesticidal purpose.

Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “produce” to mean manufacture,

prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “produce” to mean manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device. Section 2(w) of FIFRA, 7 U.S.C. § 136(w) defines “producer” to mean the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide. 40 C.F.R. § 167.3 further defines “producer” to mean any person who packages, repackages, labels, or relabels any pesticide, active ingredient, or device. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines “registrant” to mean a person who has registered any pesticide pursuant to FIFRA.

Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines “label” to mean the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” to mean all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except any current official publications of a variety of state or federal institutions or agencies.

B. Registration of Pesticides & Repackaging

Section 3 of FIFRA, 7 U.S.C. § 136a, requires a person to register a pesticide by filing an application with the EPA before distributing or selling the pesticide to another person. EPA then approves or disapproves of the application to register a pesticide. 7 U.S.C. § 136a(c)(3). Section

12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

Generally, if a person repackages a pesticide, they must obtain a new registration for the new pesticide product. 40 C.F.R. § 165.70(c) states that repackaging a pesticide product without either obtaining a new registration for the pesticide or meeting all the conditions in 40 C.F.R. § 165.70(b) is a violation of Section 12 of FIFRA. Pursuant to 40 C.F.R. § 165.70(b), a person may repackage a registrant's pesticide product into refillable containers and distribute or sell such repackaged product under the registrant's existing registration if all the following conditions in 40 C.F.R. § 165.70(b) are satisfied:

- (1) The repackaging results in no change to the pesticide formulation.
- (2) One of the following conditions regarding a registered refilling establishment is satisfied:
 - (i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.
 - (ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.
- (3) The registrant has entered into a written contract with the repackager to repackage the pesticide product and to use the label of the registrant's pesticide product.
- (4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.
- (5) The pesticide product is labeled with the product's label with no changes except the refiller's EPA establishment number.

C. FIFRA-Authorized Inspections

Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g(a)(1), officers or employees of EPA are authorized to enter at reasonable times any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

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

II. PROCEDURAL BACKGROUND

On February 8, 2024, the EPA filed an administrative Complaint against Respondent alleging (1) the sale of unregistered and/or illegally package pesticides (Counts 1-10), (2) misbranding of pesticides (Counts 11-20), and (3) refusal to allow inspection (Count 21). Respondents filed an Answer to the first Complaint on March 9, 2024. The EPA filed an Amended Complaint on September 5, 2024. Respondent did not file an additional Answer.

On May 3, 2024, the EPA filed its Initial Prehearing Exchange. Respondent filed its Initial Prehearing Exchange on May 24, 2024. The EPA filed a Motion for Additional Discovery, or in the Alternative, Motion in Limine on June 21, 2024 seeking additional information about the Respondent's ability to pay the penalty in this matter. On July 10, 2024 the Court issued an order requiring the Respondent to submit the ability to pay material within thirty days and that if the Respondent did not, the Respondent waives his right to contest the EPA's penalty based on an alleged inability to pay. To date, the Respondent did not provide the ability to pay information. The EPA filed its Rebuttal Prehearing Exchange on June 4, 2024 and supplements

to its Prehearing Exchange on January 28, 2025. The EPA filed a Motion for Accelerated Decision on October 31, 2024, and this Court issued its Order on AD, dated January 17, 2025.

The hearing in this matter was held on February 25, 2025. Following the hearing, the Presiding Officer established a schedule for the parties to submit their initial and reply briefs, beginning with Complainant's Post-Hearing Brief to be submitted by May 16, 2025.

III. BURDEN OF PROOF

Under the Consolidated Rules of Practice, the EPA has the burden of establishing that the violation occurred as set forth in the Complaint and that the relief sought is appropriate. 40 C.F.R. § 22.4(a). Once the EPA establishes a prima facie case, the burden shifts to respondent to present affirmative defenses or additional evidence with respect to the appropriate relief. *In re City of Marshall*, 10 E.A.D. 173, 180 (EAB 2001). Under 40 C.F.R. § 22.24(b), each relevant fact must be decided by the Presiding Officer based upon a preponderance of the evidence. The phrase "preponderance of the evidence" means "the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." Black's Law Dictionary 1201 (7th ed. 1999); *see also In re Bullen Companies, Inc.*, 9 E.A.D. 620, 624 (EAB 2001). The Board has found on several occasions that "the preponderance of the evidence standard means that a fact finder should believe that his factual conclusion is more likely than not." *In re Ocean State Asbestos Removal, Inc.*, 7 E.A.D. 522, 530 (EAB 1998) (citing *In re Great Lakes Div. of Nat'l Steel Corp.*, 5 E.A.D. 355, 363 n.20 (EAB 1994) (preponderance of the evidence means that a fact is more probably true than untrue).

ARGUMENT

I. RESPONDENT DISTRIBUTED OR SOLD UNREGISTERED PESTICIDES

A. Rodenticide Blocks Repackaging (Counts 1-4)

The Court laid out four elements in the Order on AD for a Respondent to be found liable for the distribution and/or sale of an unregistered pesticide: (1) Respondent is a “person” within the meaning of FIFRA; (2) Respondent “distributed or sold” the products at issue; (3) the products at issue were “pesticides” within the meaning of the Act; and (4) the products at issue were “not registered” at the time of distribution or sale. Order on AD at 13. The Court found that Complainant had already proven elements (1)-(3) but stated that “there remains a factual dispute as to whether Respondent repackaged the Green, Red, Blue, and Brown Rodenticide Blocks into the plastic, resealable bags in which they were found...” Order on AD at 17. The Court stated that the Complainant still needed to identify “how the blocks were originally packaged or that Respondent ever acknowledged repackaging the blocks into the plastic bags himself...” Order on AD at 16.

First, Complainant offers a clarification: Complainant is not aware of any affirmative requirement in the regulations that a distributor or seller of pesticides must do the repackaging themselves to be liable for the subsequent distribution or sale of the unregistered pesticide. The EPA’s Candace Bednar¹ testified that based on her experience and knowledge of FIFRA regulations, the repackager of the pesticide is not necessarily the same person who sells the

¹ Ms. Bednar testified about her background and qualifications. Ms. Bednar is the Chemical Branch Chief in EPA Region 7. TR10: 17-18. Ms. Bednar directs inspections and enforcement for the Resource Conservation and Recovery Act, Toxic Substance Control Act, Clean Water Act Section 311, and Federal Insecticide, and Fungicide, Rodenticide Act. TR10: 23-25, TR11: 1-2. Ms. Bednar is a FIFRA credentialed inspector and has worked on hundreds of FIFRA cases. TR11: 10-17, TR12: 3-8. Ms. Bednar has worked with FIFRA for the EPA for over eleven years. TR12: 5-8.

pesticide. TR16: 20-23. Rather, it only matters that the pesticides were illegally repackaged, and therefore not registered, at the time of the distribution or sale. 7 U.S.C. § 136a. *See also* 40 C.F.R. § 165.70(c). A pesticide becomes unregistered when it is repackaged unless the Respondent registers the repackaged pesticide, or it meets the requirements found in 40 C.F.R. § 165.70(b). 40 C.F.R. § 165.70(c). Repackaging is defined as “to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.” 40 C.F.R. § 165.3.

There can be no dispute that the rodenticide blocks were repackaged. The blocks were transferred into clear resealable plastic bags. CX1 at 7; CX2 at 46, 47, 48, 49, 50, 51, 52, 53, 54, 76-78, 88, 89, 90. The clear resealable plastic bags are not the containers in which the rodenticide blocks were initially placed.² Ms. Bednar testified that Mr. Wilson told her that he sold the block rodenticide during the EPA’s inspection of Wilson’s Pest Control. TR35: 8-13. While Mr. Wilson did not explicitly say that he was the one who repackaged the rodenticide blocks into clear resealable plastic bags, the inspection report and evidence show that Respondent or its employees likely repackaged the blocks into clear resealable plastic bags. For example, Ms. Bednar read a portion from the inspection report where Mr. Wilson asked if he could repackage the blocks into a plastic container rather than the clear resealable plastic bags, thus indicating that he personally repackages pesticides. TR35: 21-25, TR36: 1-4. Further, it is undisputed that Mr. Wilson illegally repackaged other pesticides at his North Grand Facility.

² Ms. Bednar testified extensively regarding the four master labels for the rodenticide blocks (CX5, CX30, CX31, CX32). The labels describe what the proper container would be for the blocks. TR36: 22-25. TR37: 1-4, 11-15. TR38: 25. TR39: 1-8, 15-17, 24-25. TR41: 6-10. TR42: 22-25. TR43: 1-6, 9-25. TR44: 16-21. This testimony shows the product manufacturer, and registrant packaged the rodenticide blocks into properly labeled containers that could not be easily accessed. Further, TR43: 9-25 describes CX2 at 76 which shows the rodenticide blocks in their original packaging which was an eighteen-pound sturdy plastic container with complete labeling and a lid in the back of Mr. Wilson’s facility.

Order on AD at 15-17. *See also* TR20: 13-22. The Order on AD even stated that “It seems reasonable to believe that Respondent did repackage the rodenticide blocks as it is unlikely the original registrant would have packaged the blocks as they were found by the inspectors; the blocks were in plastic, zip-lock bags with no labeling of any kind.” Order on AD at 16. However, as discussed below, even if Respondent had not been the one to personally repackage the rodenticide blocks into the clear resealable plastic bags, Respondent would still be liable for the sale of an unregistered pesticide.

It is undisputed that the rodenticide blocks – or any other pesticide sold or offered for sale by Respondent – were not registered by Respondent. Order on AD at 15. It is also undisputed that Respondent did not meet the “refillers who are not registrants” requirements found in 40 C.F.R. § 165.70(b). Respondent admitted he had not entered into repackaging agreements with any of the companies that held the original registrations for the rodenticide blocks. 40 C.F.R. § 165.70(b)(3). CX1 at 8. *See also* Order on AD at 10. Further, the blocks were not labelled with the original label as required by 40 C.F.R. § 165.70(b)(5). Order on AD at 18-21. Finally, it is undisputed that Respondent sold the rodenticide blocks at his facility. Order on AD at 13-14. Therefore, the rodenticide blocks were not registered at the time of distribution or sale and Respondent is liable for the sale of an unregistered pesticide.

B. Rodenticide Throw Pack Repackaging (Counts 5-7)

Regarding Counts 5-7, the Court found that Complainant had already proven elements (1)-(3) above, but stated, “I am unable to say at this time that it is undisputed that Respondent repackaged the pesticides into the throw packs as alleged in the Amended Complaint.” Order on AD at 17. The Court stated there remained a factual dispute as to whether “Respondent repackaged Final Rodenticide Ready-To-Use Place Pacs, Talon G Rodenticide Bait Pack Mini-

Pellets, and Contrac Rodenticide Ready-To-Use Place Pacs into the throw packs in violation of 40 C.F.R. § 165.70(c).” Order on AD at 17. The Court further stated that Complainant’s Amended Complaint “does not specifically allege that Respondent repackaged these three pesticides by transferring the throw packs from their original container into a zip-top bags.” Order on AD at 17.

The EPA alleges that Respondent repackaged the throw packs by taking them out of the original fully labeled container and placing them into the clear resealable plastic bags. Again, Complainant is not aware of any affirmative requirement in the regulations that a distributor or seller of pesticides must do the repackaging themselves to be liable for the subsequent distribution or sale of the unregistered pesticide. A pesticide becomes unregistered when it is repackaged unless the Respondent registers the repackaged pesticide, or it meets the requirements found in 40 C.F.R. § 165.70(b).

There can be no dispute that the throw packs were repackaged. The throw packs were transferred into clear resealable plastic bags. CX2 at 30-44. The clear resealable plastic bags were not the original container that the throw packs were packaged in.³ While Mr. Wilson did not explicitly say that he was the one who repackaged the throw packs into clear resealable plastic bags, the inspection report and evidence show that repackaging the throw packs into clear resealable plastic bags were likely done by Respondent or employees of Wilson Pest Control. It

³ Ms. Bednar again testified extensively about the three master labels for the throw packs (CX3, CX4, CX6). The labels describe what the proper container would be for the throw packs. TR24: 10-25, TR25: 1-3, TR26: 9-11, 23-25, TR27: 1, 8-11, TR28: 7-11, 24-25, TR29: 12-14, TR30: 3-5, TR31: 13-17, TR32: 8-14, 17-19, TR33: 2-6, TR33: 25, TR34: 1-3, 7-25, TR35: 1-3. This testimony shows the product manufacturer, and registrant packaged the throw packs into properly labeled containers that could not be easily accessed. Further, Ms. Bednar testified that the throw packs would not have come from the registrant in clear resealable plastic bags based upon her experience as a credentialed FIFRA Inspector. TR24: 5-9. The EPA’s Kash Kruep also testified the original packaging included a container with a solid snap-lock style lid. TR123: 17-20.

is undisputed that Mr. Wilson illegally repackaged other pesticides at his North Grand Facility. Order on AD at 15-17. *See also* TR20: 13-22.

In a footnote in the Order on AD the Court stated “Respondent clearly would have repackaged the pesticides by opening the throw packs and transferring the contents into the plastic bags. It is less clear whether the same result holds because Respondent transferred the throw packs, along with the pesticides within them, from their original container into another. That might require a more expansive reading of the definition of transfer, and Complainant has not provided an argument for adopting such a definition as of yet.” Order on AD at 17, FN 10. Complainant asserts that transferring just the throw packs, and not the actual pesticide in the throw packs, into another container does not require a more expansive reading of the definition of transfer and thus repackaging. The throw packs are filled with pesticide formulations and were transferred from their original container to another container, the clear resealable plastic bags. If the definition of “repackaging” was read to exclude what occurred in this case, it would create a regulatory loophole for distributors or sellers to sell unregistered pesticides without the proper labeling. It is undisputed that the individual throw packs themselves were not properly labeled and therefore misbranded. Order on AD at 18-20.

All the packaging on the throw packs at issue in this case had the words “INDIVIDUAL SALE IS PROHIBITED BY LAW.” CX2 at 34, 38, 43. As the Court determined in the Order on AD, the throw packs cannot legally be sold outside of their original container that displays the complete labeling. At 18-20. Additionally, a user would not remove the pesticides from the throw pack to use them. Ms. Bednar testified that the throw packs are made to be placed on the ground where the pest will eat through the packaging to access the pesticide. TR21: 7-10. The packaging of the throw pack is part of how the pesticide is delivered to the pest. Complainant

asserts that removing the throw packs from their original container to clear resealable plastic bags constitutes a repackaging under the plain meaning of the regulation. Again, even if Respondent had not been the one to repackage the throw packs into the clear resealable plastic bags Respondent would still be liable for the sale of an unregistered pesticide.

It is undisputed that the throw packs were not registered by the Respondent. Respondent did not register any pesticides himself at issue in this case. Order on AD at 15. It is also undisputed that Respondent did not meet the “refillers who are not registrants” requirements found in 40 C.F.R. § 165.70(b). Respondent admitted he had not entered into repackaging agreements with any of the companies that held the original registrations for the throw packs. 40 C.F.R. § 165.70(b)(3). CX1 at 8. *See also* Order on AD at 10. Further, the throw packs were not labelled with the complete original label as required by 40 C.F.R. § 165.70(b)(5). Order on AD at 18-21. Finally, it is undisputed that Respondent sold the throw packs at his facility. Order on AD at 13-14. *See also* Answer ¶ 8; compare Compl. ¶ 33 with Am. Compl. ¶ 32. Therefore, the throw packs were not registered at the time of distribution or sale and Respondent is liable for the sale of an unregistered pesticide.

II. RESPONDENT REFUSED TO ALLOW AN INSPECTION OF THE WOODSON FACILITY

A. The Woodson Facility Held Pesticides for Distribution or Sale (Count 21)

The Court laid out three elements in the Order on AD for a Respondent to be found liable for the refusal to allow an inspection: (1) the Woodson Facility held pesticides or devices for distribution or sale; (2) EPA officers or employees entered the Woodson Facility at a reasonable time for the purpose of inspecting and obtaining samples of those pesticides or devices; and (3) Respondent refused to allow the inspection. The Court found that Complainant had already

proven elements (2)-(3) but stated the Complainant “has not shown that there is no genuine issue as to whether the Woodson Facility held pesticides for distribution or sale. Order on AD at 21.

There is ample evidence to conclude that Respondent held pesticides or devices for distribution or sale at the Woodson Facility. When EPA inspectors arrived at the Woodson Facility, they noted bins full of throw packs and rodenticide blocks packaged like they were at the North Grand Facility marked with a label indicating the names of the pesticides and their prices. CX17 at 1; CX28 at 1-2.⁴ The front door to the Woodson Facility was propped open with an “OPEN” sign indicating that the store was open to the public for business. CX17 at 1.

When the EPA’s inspectors arrived at the Woodson Facility an employee told the EPA that Respondent kept the rodenticides at the Woodson Facility for their technicians to take. CX28 at 2. Respondent’s own testimony shows that applying pesticides was not a significant part of Respondent’s business. Respondent stated that Respondent had “eased away from the actual service part” and that the sale of pesticides was “mainly what we did...” TR183: 2-7. By Respondent’s own admission, the Woodson Facility was operated as a retail sales store when it was opened and that the business at the store was mainly retail sales. TR188: 22-25, TR189: 1-4. Respondent also admitted to selling the same pesticides at the Woodson Facility that were sold at the North Grand Facility before the EPA inspection at the North Grand Facility. TR183: 18-20. Respondent’s lack of applicator business is confirmed by the testimony of the EPA’s Kash Kruep, who testified that Wilson’s Pest Control only has one applicator registered with the state of Missouri, the Respondent himself. TR107: 1-8. The totality of this evidence shows that Respondent was still holding pesticides or devices for distribution or sale at the Woodson

⁴ Ms. Bednar testified at length regarding her observations of the Woodson Facility. TR49: 6-25, TR50: 1, TR64: 17-24, TR93: 11-14, 15-24, TR94: 5-10. It was Ms. Bednar’s conclusion that pesticides were for sale at the Woodson Facility based on her experience as a credentialed FIFRA inspector.

Facility at the time of the attempted EPA inspection. Respondent operated the Woodson Facility as a retail store and continued to do so after the EPA inspection of the North Grand Facility.

A footnote in the Order on AD stated “FIFRA requires EPA officers and employees to “present . . . appropriate credentials and a written statement as to the reason for the inspection” before undertaking an inspection. 7 U.S.C. § 136g(a)(2).” Order on AD at 20. The footnote went on to say, “there is no proposed evidence yet in the record that this notice was ever presented by the inspector along with her credentials.” Order on AD at 20.

Ms. Bednar testified about her presentation of the Notice of Inspection and her credentials to the employee at the Woodson Facility. Ms. Bednar stated, “We told her we wanted to do an inspection, presented our federal credentials and a Notice of Inspection.” TR46: 20-25, TR47: 1. This is corroborated by the FIFRA Site Memo where Ms. Bednar wrote that she showed the employee at the Woodson Facility her EPA Inspection Credential. CX17 at 1. Ms. Bednar confirmed again when questioned by Judge Wright that she provided a Notice of Inspection to the employee at the Woodson Facility. TR97: 12-15. Ms. Bednar also stated that the employee would not accept the Notice of Inspection when Ms. Bednar attempted to give it to employee. TR96: 23-25. The evidence presented by the EPA shows that by a preponderance of evidence that pesticides were held or offered for sale and or distribution at the Woodson Road facility.

III. THE PRESIDING OFFICER SHOULD ASSESS THE FULL PROPOSED PENALTY OF \$149,659.

Once liability is established, the Presiding Officer is obligated to assess a penalty for the unauthorized activity. *See Atlantic States Legal Foundation v. Tyson Foods*, 897 F.2d 1128, 1142 (11th Cir. 1990); *Chesapeake Bay Foundation v. Gwaltney of Smithfield*, 890 F.2d 690, 697 (4th Cir. 1989). As discussed above, EPA has met its burden for establishing liability in the present

case. Therefore, for the reasons set out below, the Presiding Officer should assess the full proposed penalty of \$149,659.

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum daily penalties to \$24,255 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023. The penalty proposed above was calculated after careful consideration of the statutory factors set forth in Section 14 of FIFRA, 7 U.S.C. § 136l. “The Administrator shall consider the appropriateness of such 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 violation.” 7 U.S.C. § 136l. 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). In determining the appropriate penalty amount, the presiding officer must depend on the specific facts of the case. *See In re Pleasant Hills Authority* at § 4, Docket No. CWA-III-210 (ALJ McGuire Nov. 19, 1999).

The EPA’s Kash Kruep testified that the EPA uses the FIFRA Enforcement Response Policy (“ERP”) to incorporate these statutory factors and ensure consistency in the assessment of civil penalties. TR108: 4-14. The ERP contains appendices with tables that incorporate the statutory factors to guide the EPA in calculating civil penalties. CX20 at 4. Appendix A related to FIFRA violations and Gravity Levels. Appendix B relates to Gravity Adjustment Criteria. Appendix C is a summary of tables, and Appendix D is the penalty calculation worksheet.

A. Distribution or Sale of Unregistered Rodenticide Blocks (Counts 1-4)

CX21A is the penalty calculation sheet for Counts 1-4, the distribution and/or sale of the unregistered Green, Red, Blue, and Brown Rodenticide Blocks. These products/counts were grouped together for the purposes of assessing a penalty because they were all repackaged in the same way and are products with similar active ingredients. TR116: 8-11.

Appendix A of the ERP (Gravity Levels)-Counts 1-4

The first part of the penalty for Counts 1-4 is the statutory violation. The violation is Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), that states it is unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended. The next part of the penalty is the FTTS Code. The EPA uses the FIFRA/TSCA Tracking System (“FTTS”) code to translate the statutory violation to the specific violation level. In this instance, the FTTS code is 1AA which again corresponds to 7 U.S.C. § 136j(a)(1)(A). The next part of the penalty is the violation level. Mr. Kruep testified that the more serious the violation is, the lower the violation number is. TR109: 4-8. The violation level for these counts was assessed as a one. The sale of an unregistered pesticide is one of the most serious FIFRA violations because of the harm that can result from the sale of an unregistered product. Registered products go through a stringent registration process to ensure that the pesticides are effective and have appropriate labels with the necessary information. TR12: 20-25, TR13: 1-6. This is used in tandem with the next section of the penalty policy.

Appendix C of the ERP (Tables 1 & 2) Counts 1-4

The next part of the penalty is the violator category, which is either 14(a)(1) for any pesticide registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor, or

14(a)(2) for a private applicator. For these counts, 14(a)(1) was selected because Respondent is a commercial applicator, wholesaler, dealer, or retailer. TR117: 1-3.⁵ The next part of the penalty is the size of business category, which is split into three categories: businesses making less than one million dollars, businesses making between one million and ten million dollars, and businesses making over ten million dollars. In this case, based on the OneStop report for Respondent's business, the EPA selected the making less than one-million-dollar category. TR117: 4-8. *See also* CX18.⁶ The size of business category is used in conjunction with the violation level to form a matrix table that determines the penalty per count. *See* CX20 at 19. In this case, the violation level of one and the size of business category equates to a base penalty of \$7,150 for each of Counts 1-4.

Appendix B of the ERP (Gravity Adjustments)-Counts 1-4

The gravity adjustment factors are broken down into five categories: (1) pesticide toxicity, (2) human harm, (3) environmental harm, (4) compliance history, and (5) culpability.⁷ For pesticide toxicity, the less toxic the pesticide is, the lower the number assigned. Here, a pesticide toxicity value of one was assigned because the rodenticide blocks were assigned the signal word "caution" by the EPA when the pesticide was registered. Pesticide manufacturers must register pesticides with the EPA. TR112: 7-16. When a pesticide goes through the registration process the EPA will determine the appropriate signal word. TR112: 7-16. The signal word is directly based on the toxicity of the pesticide. TR112: 7-16, TR117: 22-25, TR118: 1-6.

⁵ The violator category of 14(a)(1) applies equally to, and remains the same for, the penalty calculation for each of Counts 1-21.

⁶ The size of business category applies equally to, and remains the same for, the penalty calculation for each of Counts 1-21.

⁷ *See* CX20 at 34 for an explanation of all the potential values and the explanation of those values in the ERP for all five gravity factors.

For potential human harm, the EPA assessed a value of three. Mr. Kruep testified that a three was selected because the blocks are inherently dangerous because they are a poison. The blocks are an anticoagulant and may cause uncontrolled bleeding. If ingested, the blocks would be especially harmful to children or anyone that had a smaller body size. TR149: 1-11. As Mr. Kruep testified, the blocks also look like candy and were repackaged into clear resealable plastic bags that could be easily accessed by children. TR118: 12-18. Additionally, there was no labeling on the clear resealable plastic bags which increases the potential for human harm because the first aid instructions could not be easily accessed by a user in an emergency. TR118: 24-25. TR119: 1-5. Ms. Bednar testified about the harm that can occur when unregistered pesticides are sold, stating that the label allows the individual using the pesticide to know how to properly use it, the active ingredients, safety data, and the required protective equipment. Ms. Bednar also testified that there are many incidents of pesticide poisoning adults, children, and animals. TR13: 11-25, TR14: 1-3.23. Ms. Bednar also stated that in her eleven years as a credentialed FIFRA inspector, she had never seen rodenticide blocks sold in clear resealable plastic bags. TR36: 5-7.

For environmental harm, the EPA assessed a value of three. Mr. Kruep testified that these pesticides would be just as dangerous if ingested by a non-pest species because of the anticoagulation properties of the rodenticide blocks. TR119: 10-14. For compliance history of Respondent, because there had been no formal enforcement actions by the state of Missouri or EPA against Respondent in the last five years, the EPA assessed this value as a zero. TR119: 18-20.⁸ For culpability, the EPA selected a value of two. Mr. Kruep testified that Respondent had operated his business for over thirty years. TR119: 21-25. Mr. Kruep also testified that the

⁸ The compliance history value of zero applies equally to, and remains the same for, the penalty calculation for each of Counts 1-21.

violations were more than likely resulting from negligence rather than a knowing or willful violation., TR120: 1-11.⁹ The EPA then added all these values for a total gravity adjustment value of nine.

Appendix C of the ERP (Table 3)-Counts 1-4

The EPA takes the total gravity adjustment value and determines if any additional adjustments to the base penalty are warranted. If the total gravity adjustment value is lower than nine, then the base penalty value is decreased. If the value is between a nine and eleven the base penalty value does not change. If the value is over eleven, it is increased. TR114: 16-20. For Counts 1-4, the total gravity adjustment value of nine does not necessitate a reduction or increase of the base penalty of \$7,150 for each of Counts 1-4.

The final step in the penalty calculation is to add the inflation multiplier. The EPA uses an inflation multiplier to keep penalty numbers consistent with the inflation that occurs over time. Mr. Kruep testified that the inflation multiplier for all violations/counts in this case is 1.42324 and can be found in the Federal Register. TR115: 16-22. *See also* 40 C.F.R. Part 19. After the inflation multiplier is applied, the final penalty for Counts 1-4 is \$40,705. CX21A at 1.

B. Distribution or Sale of Unregistered Throw Packs (Counts 5-7)

CX21B is the penalty calculation sheet for Counts 5-7, the distribution and/or sale of the three unregistered throw pack products. The products were grouped together for the purposes of assessing a penalty because they were all repackaged the same way and are all the same type of product. TR122: 3-6.

⁹ The culpability value of two applies equally to, and remains the same for, the penalty calculation for each of Counts 1-21.

Appendix A of the ERP (Gravity Levels)-Counts 5-7

The statutory violation for Counts 5-7 is Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), that states it is unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended. The FTTS code is 1AA which corresponds to 7 U.S.C. § 136j(a)(1)(A). The violation level for these counts was assessed as a one for the same rationale as described above for Counts 1-4.

Appendix C of the ERP (Tables 1 & 2)-Counts 5-7

For Counts 5-7, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of one and the size of business category equates to a base penalty of \$7,150 for each of Counts 5-7.

Appendix B of the ERP (Gravity Adjustments)-Counts 5-7

The pesticide toxicity value for Counts 5-7 was assessed as a one for same rationale as described above for Counts 1-4. The potential human harm was assessed as a one. Mr. Kruep testified that a one was selected because the throw packs themselves had some minor labeling and that it was slightly harder to access the actual pesticide than it was to access the rodenticide blocks. TR123: 7-13. However, the throw pack pesticide is still an anticoagulant that results in uncontrolled bleeding and did not have the complete labels as required by law. TR123: 7-13. The potential environmental harm was assessed as a one. Mr. Kruep testified that a one was selected because the throw packs did have some minor labeling and additional packaging. However, the pesticide would still cause harm to non pest species due to the anticoagulant nature of the pesticides. TR123: 25, TR124: 1-4. The compliance history was assessed as a zero for the same

rationale as described above for Counts 1-4. The culpability was assessed as a two for the same rationale as described above for Counts 1-4. The EPA then added all these values for a total gravity adjustment value of five.

Appendix C of the ERP (Table 3)-Counts 5-7

Since the total gravity adjustment value was a five, a 40% downward adjustment of the \$7,150 base penalty per count was necessary. In this instance that equaled a downward dollar adjustment of \$2,860 per count. The EPA then took the new base penalty of \$4,290 per count and applied the inflation multiplier of 1.42324 to each of the three counts for a final penalty for Counts 5-7 of \$18,317. CX21B at 3.

C. Distribution or Sale of Unregistered Liquid Pesticides (Counts 8-10)

CX21C is the penalty calculation sheet for Counts 8-10, the distribution and/or sale of the three unregistered liquid pesticide products: Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control. The products were grouped together for the purposes of assessing a penalty because they were all repackaged the same way into plastic jugs. TR127: 2-4.

Appendix A of the ERP (Gravity Levels)-Counts 8-10

The statutory violation for Counts 8-10 is Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), that states it is unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended. The FTTS code is 1AA which corresponds to 7 U.S.C. § 136j(a)(1)(A). The violation level for these counts was assessed as a one for the same rationale as described above for Counts 1-4.

Appendix C of the ERP (Tables 1 & 2)-Counts 8-10

For Counts 8-10, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of one and the size of business category equates to a base penalty of \$7,150 for each of Counts 8-10.

Appendix B of the ERP (Gravity Adjustments)-Counts 8-10

The pesticide toxicity value for Counts 8-10 was assessed at a one for same rationale as described above for Counts 1-4. The potential human harm was assessed as a one. Mr. Kruep testified that a one was selected because the pesticides are still dangerous and are neurotoxins that could affect your eyes and nerves. There was also incomplete minor labeling on the jugs of pesticides. TR127: 23-25, TR128: 1-3. The potential environmental harm was assessed as a one. Mr. Kruep testified that the pesticides would harm non pest species because the pesticides are neurotoxins and would affect the nerves and eyes of wildlife if exposed. TR128: 4-10. The compliance history was assessed as a zero for the same rationale as described above for Counts 1-4. The culpability was assessed as a two for the same rationale as described above for Counts 1-4. The EPA then added all these values for a total gravity adjustment value of five.

Appendix C of the ERP (Table 3)-Counts 8-10

Since the total gravity adjustment value was a five, a 40% downward adjustment of the \$7,150 base penalty per count was required. In this instance that equaled a downward dollar adjustment of \$2,860 per count. The EPA then took the new base penalty of \$4,290 per count and applied the inflation multiplier of 1.42324 to each of the three counts for a final penalty for Counts 8-10 of \$18,317. CX21C at 5.

D. Misbranding of Rodenticide Blocks (Counts 11-14)

CX21D is the penalty calculation sheet for Counts 11-14, the misbranding of the unregistered Green, Red, Blue, and Brown Rodenticide Blocks. These products were grouped together for the purposes of assessing a penalty because they were all repackaged in the same way and are products with similar active ingredients. TR116: 8-11.

Appendix A of the ERP (Gravity Levels)-Counts 11-14

The statutory violation for Counts 11-14 is Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), that states it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. The FTTS code is 1EF which corresponds to 7 U.S.C. § 136j(a)(1)(E). The violation level for these counts was assessed as a one. The sale of a misbranded pesticide is one of the most serious FIFRA violations because of the harm that can result from the sale of a misbranded product. Registered products go through a stringent registration process to ensure that the pesticides are effective and have appropriate labels with the necessary information. TR12: 20-25, TR13: 1-6. Ms. Bednar testified that in FIFRA “the label is the law.” TR13: 7-9.

Appendix C of the ERP (Tables 1 & 2)-Counts 11-14

For Counts 11-14, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of one and the size of business category equates to a base penalty of \$7,150 for each of Counts 11-14.

Appendix B of the ERP (Gravity Adjustments)-Counts 11-14

The gravity factors for Counts 11-14 are the same as those described above for Counts 1-4. Mr. Kruep testified that this is because it involves the same pesticide products. Mr. Kruep

stated it is based off the pesticide's toxicity, harm, and the compliance history and it is all the same information and rationale as was presented for Counts 1-4. TR130: 3-15. This results in a total gravity adjustment value of nine.

Appendix C of the ERP (Table 3)-Counts 11-14

Since the total gravity adjustment value was nine, no adjustment of the \$7,150 base penalty per count was required. The EPA then took the base penalty of \$7,150 per count and applied the inflation multiplier of 1.42324 to each of the three counts for a final penalty for Counts 11-14 of \$40,705. CX21D at 7.

E. Misbranding of Throw Packs (Counts 15-17)

CX21D is the penalty calculation sheet for Counts 15-17, the distribution and/or sale of the three unregistered throw pack products. The products were grouped together for the purposes of assessing a penalty because they were all repackaged the same way and are all the same type of product. TR122: 3-6.

Appendix A

The statutory violation for Counts 15-17 is Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), that states it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. The FTTS code is 1EE which corresponds to 7 U.S.C. § 136j(a)(1)(E). The violation level for these counts was assessed as a three. The sale of a misbranded pesticide is one of the most serious FIFRA violations because of the harm that can result from the sale of a misbranded product. Registered products go through a stringent registration process to ensure that the pesticides are effective and have appropriate labels with the necessary information. TR12: 20-25, TR13: 1-6. However, in this instance, the throw packs

did have some of the abbreviated labeling on them which lowers the violation level from one to a three.

Appendix C of the ERP (Tables 1 & 2)-Counts 15-17

For Counts 15-17, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of three and the size of business equates to a base penalty of \$2,830 for each of Counts 15-17.

Appendix B of the ERP (Gravity Adjustments)-Counts 15-17

The gravity factors for Counts 15-17 are the same as those described above for Counts 5-7. Mr. Kruep testified that this is because it involves the same pesticide products. Mr. Kruep stated it is because the products in Counts 15-17 are the same as the ones in Count 5-7 and that the factors will therefore not change. TR132: 1-2. This results in a total gravity adjustment value of five.

Appendix C of the ERP (Table 3)-Counts 15-17

Since the total gravity adjustment value was a five, a 40% downward adjustment of the \$2,830 base penalty per count was required. In this instance that equaled a downward dollar adjustment of \$1,132 per count. The EPA then took the new base penalty of \$1,698 per count and applied the inflation multiplier of 1.42324 to each of the three counts for a final penalty number for Counts 15-17 of \$7,250. CX21E at 9.

F. Misbranding of Liquid Pesticides (Counts 18-20)

CX21F is the penalty calculation sheet for Counts 18-20, the distribution and/or sale of the three unregistered liquid pesticide products: Professional Growth Regulator, Pest Control Concentrate, and Termite & Ant Control. The products were grouped together for the purposes

of assessing a penalty because they were all repackaged the same way into plastic jugs. TR127: 2-4.

Appendix A of the ERP (Gravity Levels)-Counts 18-20

The statutory violation for Counts 18-20 is Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), that states it is unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded. The FTTS code is 1EF which corresponds to 7 U.S.C. § 136j(a)(1)(E). The violation level for these counts was assessed as a one. The sale of a misbranded pesticide is one of the most serious FIFRA violations because of the harm that can result from the sale of a misbranded product. Registered products go through a stringent registration process to ensure that the pesticides are effective and have appropriate labels with the necessary information. TR12: 20-25, TR13: 1-6.

Appendix C of the ERP (Tables 1 & 2)-Counts 18-20

For Counts 18-20, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of one and the size of business category equates to a base penalty of \$7,150 for each of Counts 18-20.

Appendix B of the ERP (Gravity Adjustments)-Counts 18-20

The gravity factors for counts 18-20 are the same as those described above for Counts 8-10. Mr. Kruep testified that this is because it involves the same pesticide products. Mr. Kruep stated it is because the pesticide products in Counts 18-20 are the same as the ones in Count 8-10. This means that the factors discussing toxicity and potential harm will be the same. TR133: 17-23. This results in a total gravity adjustment value of five.

Appendix C of the ERP (Table 3)-Counts 18-20

Since the total gravity adjustment value was a five, a 40% downward adjustment of the \$7,150 base penalty per count was required. In this instance that equaled a downward dollar adjustment of \$2,860 per count. The EPA then took the new base penalty of \$4,290 per count and applied the inflation multiplier of 1.42324 to each of the three counts for a final penalty for Counts 18-20 of \$18,317.CX21F at 11.

G. Refusal to Allow an Inspection (Count 21)

CX21G is the penalty calculation sheet for Count 21, the refusal to allow an inspection.

Appendix A of the ERP (Gravity Levels)-Count 21

The statutory violation for Count 21 is Section 12(a)(2)(B)(iii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(iii) which states it is unlawful for any person to refuse to allow any entry, inspection, copying of records, or sampling authorized by this subchapter. The FTTS code is 2BD which corresponds to 7 U.S.C. § 136j(a)(2)(B)(iii). The violation level for these counts was assessed as a two. Ms. Bednar testified that when a Respondent refuses an inspection it prevents the EPA from ensuring the facility is complying with the requirements of FIFRA. TR50: 15-17. Further, it prevents the EPA from ensuring proper labeling is applied to the pesticide products. TR50: 15-18. Lastly, it prevents the EPA from providing compliance assistance to prevent the facility from committing the same violations in the future. TR50: 18-22.

Appendix C of the ERP (Tables 1 & 2)-Count 21

For Count 21, the violator category of 14(a)(1) was selected for the same rationale as described above for Counts 1-4. The size of business category remains unchanged at three. The violation level of two and the size of business equates to a base penalty of \$4,250 for Count 21. There was no further penalty information for this count because it was not a pesticide and

therefore the rest of the penalty calculation sheet was not applicable. TR135: 4-6. The EPA took the base penalty and applied inflation multiplier of 1.42324 for a final penalty of \$6,049 for Count 21. The table below summarizes the proposed penalty for Counts 1-21:

<u>Count</u>	<u>Proposed Penalty</u>
1-4	\$40,705
5-7	\$18,317
8-10	\$18,317
11-14	\$40,705
15-17	\$7,250
18-20	\$18,317
21	\$6,049
	TOTAL PENALTY: \$149,659

CONCLUSION

This Court has already found Respondent liable for the violations alleged in Counts 8-20 of the Amended Complaint. EPA proves herein by a preponderance of the evidence that Respondent illegally repackaged the rodenticide blocks and throw packs and therefore distributed and/or sold unregistered pesticides, as alleged in Counts 1-7, and that Respondent refused to allow an EPA inspection of a facility that held pesticides for distribution or sale, as alleged in Count 21. Respondent's failures to comply with FIFRA warrants an assessment of a total penalty of \$149,659.

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CERTIFICATE OF SERVICE

I certify that the foregoing Complainant's Initial 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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