UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
AIR, WASTE AND TOXICS

CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Michael Thrasher
Corporate Environmental Manager
Gardner-Fields, Inc.
4161 east 7th Avenue
Tampa, Florida 33605

Joe Ignatoski
President
IBC Manufacturing Co.
416 E. Brooks Road
Memphis, Tennessee 38109

Re: In the Matter of Gardner-Fields, Inc. and IBC Manufacturing Co.
Docket No: FIFRA10-2012-0208

Dear Messers. Thrasher and Ignatoski:

I have enclosed an Administrative Complaint filed against Gardner-Fields, Inc.(Gardner) and IBC Manufacturing Co. (IBC), under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136*l*. The Complaint alleges that Gardner and IBC violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

As provided in the Complaint, if Gardner or IBC would like to request a hearing, it must do so in its Answer to the Complaint. Failure to file an Answer with the Regional Hearing Clerk within 30 days of receipt of this Complaint is considered an admission of all facts alleged in the Complaint and waives Respondents' rights to contest such factual allegations. Failure to file an Answer also could result in a Default Order assessing the full penalty proposed in the Complaint.

Whether or not Gardner or IBC requests a hearing, it may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Mercer St. Peter, Assistant Regional Counsel, at (206) 553-0240.

Sincerely,

Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

Enclosures

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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	Docket No. FIFRA-10-2012-0208
GARDNER-FIELDS, INC., and IBC MANUFACTURING CO.	)	**COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING**
Respondents.	)	

I. AUTHORITIES

1.1 This civil administrative complaint ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or "Act"), 7 U.S.C. § 136*l*. The Administrator has delegated this authority to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement in Region 10.

1.2 Pursuant to Section 16(a) of the Act, 15 U.S.C. § 2615(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), Complainant hereby seeks the assessment of a civil administrative penalty against Gardner- Fields, Inc. ("GFI") and IBC

Manufacturing Company ("IBC"), hereinafter "Respondents," for violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

II. STATUTORY AND REGULATORY FRAMEWORK

2.1 Under Section 2(s) of FIFRA, 7 U.S.C. § 136(s), the term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not."

2.2 Under Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term "pesticide" means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

2.3 Under Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term "distribute or sell" means "distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, or receive and (having so received) deliver or offer to deliver."

2.4 Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is misbranded.

2.5 Under Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if "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 this Act, are adequate to protect health and the environment."

2.6 Under Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), a pesticide is misbranded if "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 this Act, is adequate to protect health and the environment."

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

2.8 Under 40 C.F.R. § 152.5, a "pesticide product" means a pesticide in the particular form in which the pesticide is, or is intended to be, distributed or sold.

2.9 Under 40 C.F.R. § 152.130, a registrant may distribute or sell his registered pesticide product with labeling approved by EPA.

2.10 Under 40 C.F.R. § 152.132, a registrant "may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own" provided that all the conditions in 40 C.F.R. § 152.132 are met by both the registrant and the other party, called the "distributor." Under this provision, such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product." Also under this provision, "[t]he distributor is considered an agent of the registrant for all intents and purposes under the Act, and both registrant and distributor may be held liable for violations pertaining to the distributor product."

2.11 Under 40 C.F.R. § 152.132(d), the label of the distributor product must be the same as that of the registered product, except that: (1) the product name of the distributor product may be different; (2) the name and address of the distributor may appear instead of that

of the registrant; (3) the pesticide registration number must be followed by a dash, followed by the distributor's company number; (4) the establishment number must be that of the final establishment at which the product was produced; and (5) specific claims may be deleted, provided that no other changes are necessary.

III. ALLEGATIONS

3.1 Respondent IBC is headquartered at 416 E. Brooks Road, Memphis, Tennessee 38109.

3.2 Respondent IBC is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.3 Respondent IBC registered the following pesticide with EPA: *PQ-15RTU Clear Wood Preservative* (EPA Reg. No. 1022-491), and therefore is the registrant of this pesticide.

3.4 Respondent IBC registered the following pesticide with EPA: *Cunapsol-1* (EPA Reg. No. 1022-518), and therefore is the registrant of this pesticide.

3.5 Respondent IBC registered the following pesticide with EPA: *Cunapsol-5* (EPA Reg. No. 1022-522), and therefore is the registrant of this pesticide.

3.6 Respondent GFI, a subsidiary of Gardner-Gibson, owns and operates the Gardner-Fields facility located at 2240 Taylor Way, Tacoma, Washington 98421 and also does business as American Tar Company (ATCO).

3.7 Respondent GFI is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.8 On or about June 29, 1995, Respondent IBC submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) allowing Respondent GFI (as American Tar Company) to distribute and sell Respondent IBC's registered pesticide *PQ-15RTU Clear Wood Preservative* (EPA Reg. No. 1022-491) under Respondent GFI's brand name *ATCO Woodlast 1420 Clear* (EPA Reg. No. 1022-491-3486).

3.9 On or about June 29, 1995, Respondent IBC submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) allowing Respondent GFI (as American Tar Company) to distribute and sell Respondent IBC's registered pesticide *Cunapsol-1* (EPA Reg. No. 1022-518) under Respondent GFI's brand name *ATCO Woodlast 2* (EPA Reg. No. 1022-518-3486).

3.10 On or about June 29, 1995, Respondent IBC submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) allowing Respondent GFI (as American Tar Company) to distribute and sell Respondent IBC's registered pesticide *Cunapsol-1* (EPA Reg. No. 1022-518) under Respondent GFI's brand name *ATCO Shakelast 1441* (EPA Reg. No. 1022-518-3486).

3.11 On or about June 29, 1995, Respondent IBC submitted to EPA a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) allowing Respondent GFI (as American Tar Company) to distribute and sell Respondent IBC's

registered pesticide *Cunapsol-5* (EPA Reg. No. 1022-522) under Respondent GFI's brand name *ATCO Woodlast 2C* (EPA Reg. No. 1022-522-3486).

3.12 Respondent GFI distributed and sold *PQ-15RTU Clear Wood Preservative* (EPA Reg. No. 1022-491) as *ATCO Woodlast 1420* (EPA Reg. No. 1022-491-3486) on at least 25 occasions between October 2007 and September 2008.

3.13 Respondent GFI distributed and sold *Cunapsol-1* (EPA Reg. No. 1022-518) as *ATCO Woodlast 2 RTU 1422* (EPA Reg. No. 1022-518-3486) on at least 38 occasions between October 2007 and September 2008.

3.14 Respondent GFI distributed and sold *Cunapsol-1* (EPA Reg. No. 1022-518) as *ATCO Shakelast 1441* (EPA Reg. No. 1022-518-3486) on at least 72 occasions between October 2007 and September 2008.

3.15 Respondent GFI distributed and sold *Cunapsol-5* (EPA Reg. No. 1022-522) as *ATCO Woodlast 2c 1423* (EPA Reg. No. 1022-522-3486) on at least 18 occasions between October 2007 and September 2008.

3.16 The labels on the 153 pesticides referenced in paragraphs 3.12 through 3.15 did not have the currently approved label as required by 40 C.F.R. § 152.130, including directions for use, and warning or caution statements, adequate to protect health and the environment, and therefore were misbranded.

3.17 Pursuant to 40 C.F.R. § 152.132, Respondents GFI and IBC are liable for the distribution and sale of misbranded pesticide products pursuant to supplemental distribution agreements.

3.18 By distributing and selling pesticides that were misbranded, Respondents GFI and IBC violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.19 According to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty.

IV. PROPOSED PENALTY ORDER

4.1 Section 14 (a)(1) of FIFRA, 7 U.S.C. § 136*l* (a)(1), authorizes a civil administrative penalty of up to $5,000 for each violation of FIFRA. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the statutory maximum penalty for each violation occurring before January 12, 2009, has been raised to $6,500 per violation.

4.2 Complainant requests an assessment of penalties for violations of the requirements cited in Section IV of this Complaint, as provided by FIFRA Section 14(a)(1), 7 U.S.C. § 136*l*(a)(1), in an amount of $482,300 (four hundred and eighty-two thousand, three-hundred dollars).

4.3 Complainant's proposed penalty amount was determined in accordance with the penalty assessment criteria identified in FIFRA Section 14(a)(4), 7 U.S.C. § 1316*l(a)*(4), including the appropriateness of such penalty to the size of the business of the person charged, the effect of the person's ability to continue in business, and the gravity of the violations.

V. OPPORTUNITY TO REQUEST A HEARING

5.1 As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136*l*(a)(3), and 40 C.F.R. § 22.15, Respondents have the right to request a formal hearing to contest any material fact set forth in this Complaint or the appropriateness of the penalty proposed herein. Any hearing requested will be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of the Consolidated Rules of Practice is enclosed with this Complaint.

5.2 Respondents' Answers, including any request for hearing, must be in writing and must be filed with:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 900 (Mail Stop ORC-158)
Seattle, Washington 98101

VI. FAILURE TO FILE AN ANSWER

6.1 To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondents must file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint.

6.2 In accordance with 40 C.F.R. § 22.15, Respondents' Answers must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondent has any knowledge. Respondents' Answers must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2)

the facts which the Respondents intend to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained herein constitutes an admission of the allegation.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1 Whether or not Respondents request a hearing, Respondents may request an informal settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of settling this matter. To request such a settlement conference, Respondents should contact:

Mercer St. Peter, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue
Suite 900 (Mail Stop ORC-158)
Seattle, Washington 98101
(206) 553-0240

7.2 Note that a request for an informal settlement conference does not extend the thirty (30) day period for filing a written Answer to this Complaint, nor does it waive Respondents' right to request a hearing.

7.3 Respondents are advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related proceedings with the Administrator, the Environmental Appeals Board or its members, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on this case.

VIII. RESERVATIONS

8.1 Neither assessment nor payment of a civil penalty pursuant to this Complaint shall affect Respondents' continuing obligations to comply with FIFRA and all other environmental statutes and regulations.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 9/27/2012

Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Mary (Mercer) St. Peter, Assistant Regional Counsel
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-0240

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT** in: **In the Matter of**: **Gardner-Fields, Inc. and IBC Manufacturing Co., Docket No. FIFRA-10-2012-0208,** was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct copy of the document was hand delivered to:

Mercer St. Peter
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Michael Thrasher
Corporate Environmental Manager
Gardner-Fields, Inc.
416 East 7th Avenue
Tampa, Florida 33605

Joe Ignatoski
President
IBC Manufacturing Co.
416 E. Brooks Road
Memphis, Tennessee 38109

27 Sep 2012
Dated

EPA Region 10