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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
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75 HAWTHORNE STREET  
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In the Matter of:	)	Docket No. FIFRA-09-2009- <u>0015</u>
	)	
VF Outdoor, Inc.,	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent	)	
	)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against VF Outdoor, Inc. for the sale and distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator

of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is VF Outdoor, Inc. ("Respondent").

#### GENERAL ALLEGATIONS

1. Respondent, a California corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Respondent manufactures and distributes or sells apparel, shoes, and sporting goods under the trade name of "The North Face."
3. The term "to distribute or sell" means "to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver." See FIFRA § 2(gg), 7 U.S.C. § 136(gg).
4. From on or about January 1, 2008 through March 12, 2008, Respondent distributed or sold the following shoe products at its store located at 180 Post Street, San Francisco, CA 94108 (the "Facility"): (1) Product A; (2) Product B; (3) Product C; (4) Product D; (5) Product E; (6) Product F; (7) Product G; (8) Product H; (9) Product I; (10) Product J; (11) Product K; (12) Product L; (13) Product M; (14) Product N; (15) Product O; (16) Product P; (17) Product Q; (18) Product R; (19) Product S; (20) Product T; (21) Product U; (22) Product V; (23) Product W; (24) Product X; (25) Product Y; (26) Product Z; (27) Product AA and (28) Product BB.

5. From on or about January 1, 2008 through March 12, 2008, Respondent distributed or sold the following shoe products to various retailers throughout the United States: (1) Adrenaline Mid (youth); (2) AMP Boa (men); (3) Arctic Pull-On (men); (4) Arnuva 50 (men); (5) Arnuva 50 (women); (6) Arnuva 50 Boa (men); (7) Arnuva 50 Boa (women); (8) Arnuva 100 TR (men); (9) Arnuva 100 TR (women); (10) Baltoro 400 (men); (11) Baltoro 1000 (men); (12) Banshee 200 (men); (13) Bella Alta (girls); (14) Bella Alta (women); (15) Boundary 200 (men); (16) Boundary 200 (women); (17) Cedar Mesa (men); (18) Cedar Mesa (women); (19) Chilkats (men); (20) Chilkats (women); (21) Chilkats Lace (youth); (22) El Hermano (men); (23) El Porto Convertible (boys); (24) El Porto Convertible (men); (25) El Porto Convertible (women); (26) Endurus XCR Boa (men); (27) Endurus XCR (women); (28) Fortress Peak GTX (men); (29) Fortress Peak GTX (women); (30) Fury Gore-Tex XCR (men); (31) Fury Gore-Tex XCR (women); (32) Futaleufu (boys); (33) Futaleufu (girls); (34) Futaleufu (men); (35) Futaleufu (women); (36) Greenland Zip (girls); (37) Greenland Zip (women); (38) Hedgehog WP (boys); (39) Hedgehog WP (girls); (40) Hedgehog XCR (men); (41) Hedgehog XCR (women); (42) Jasper Canyon GTX (men); (43) McMurdo Boot (men); (44) McMurdo Boot (women); (45) Momentum (men); (46) Nuptse Bootie (men); (47) Nuptse Bootie (women); (48) Off-Chute (men); (49) Off Chute (women); (50) Off Chute Clog (men); (51) Pinyon XCR Mid (women); (52) Plasma X-C Boa (men); (53) Plasma X-C Boa (women); (54) Plasma XCR Boa (men); (55) Prophecy (men); (56) Prophecy (women); (57) Radial (men); (58) Snow Plough Pull-On (boys); (59) Snow Plough Pull-on (girls); (60) Ultra 103 (men); (61) Ultra 103 X-C (men); (62) Ultra 103 X-C (women); (63) Ultra 103 XCR (men); (64) Ultra 103 XCR (women); (65) Venture (men); (66) Venture (women); (67)

Venture Mid (men); and (68) Venture Mid (women).

6. The following shoe products claim that they kill or control growth of bacteria: (1) Adrenaline Mid (youth); (2) AMP Boa (men); (3) Arctic Pull-On (men); (4) Arnuva 50 (men); (5) Arnuva 50 (women); (6) Arnuva 50 Boa (men); (7) Arnuva 50 Boa (women); (8) Arnuva 100 TR (men); (9) Arnuva 100 TR (women); (10) Baltoro 400 (men); (11) Baltoro 1000 (men); (12) Banshee 200 (men); (13) Bella Alta (girls); (14) Bella Alta (women); (15) Boundary 200 (men); (16) Boundary 200 (women); (17) Cedar Mesa (men); (18) Cedar Mesa (women); (19) Chilkats (men); (20) Chilkats (women); (21) Chilkats Lace (youth); (22) El Hermano (men); (23) El Porto Convertible (boys); (24) El Porto Convertible (men); (25) El Porto Convertible (women); (26) Endurus XCR Boa (men); (27) Endurus XCR (women); (28) Fortress Peak GTX (men); (29) Fortress Peak GTX (women); (30) Fury Gore-Tex XCR (men); (31) Fury Gore-Tex XCR (women); (32) Futaleufu (boys); (33) Futaleufu (girls); (34) Futaleufu (men); (35) Futaleufu (women); (36) Greenland Zip (girls); (37) Greenland Zip (women); (38) Hedgehog WP (boys); (39) Hedgehog WP (girls); (40) Hedgehog XCR (men); (41) Hedgehog XCR (women); (42) Jasper Canyon GTX (men); (43) McMurdo Boot (men); (44) McMurdo Boot (women); (45) Momentum (men); (46) Nuptse Bootie (men); (47) Nuptse Bootie (women); (48) Off-Chute (men); (49) Off Chute (women); (50) Off Chute Clog (men); (51) Pinyon XCR Mid (women); (52) Plasma X-C Boa (men); (53) Plasma X-C Boa (women); (54) Plasma XCR Boa (men); (55) Prophecy (men); (56) Prophecy (women); (57) Radial (men); (58) Snow Plough Pull-On (boys); (59) Snow Plough Pull-on (girls); (60) Ultra 103 (men); (61) Ultra 103 X-C (men); (62) Ultra 103 X-C (women); (63) Ultra 103 XCR (men); (64) Ultra 103 XCR (women); (65) Venture (men); (66) Venture (women); (67)

Venture Mid (men); (68) Venture Mid (women); (69) Product A; (70) Product B; (71) Product C; (72) Product D; (73) Product E; (74) Product F; (75) Product G; (76) Product H; (77) Product I; (78) Product J; (79) Product K; (80) Product L; (81) Product M; (82) Product N; (83) Product O; (84) Product P; (85) Product Q; (86) Product R; (87) Product S; (88) Product T; (89) Product U; (90) Product V; (91) Product W; (92) Product X; (93) Product Y; (94) Product Z; (95) Product AA and (96) Product BB.

7. Bacteria are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
8. A “pesticide” means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s).
9. The following shoe products are “pesticides” as defined in Paragraph 5 in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating “pests”: (1) Adrenaline Mid (youth); (2) AMP Boa (men); (3) Arctic Pull-On (men); (4) Arnuva 50 (men); (5) Arnuva 50 (women); (6) Arnuva 50 Boa (men); (7) Arnuva 50 Boa (women); (8) Arnuva 100 TR (men); (9) Arnuva 100 TR (women); (10) Baltoro 400 (men); (11) Baltoro 1000 (men); (12) Banshee 200 (men); (13) Bella Alta (girls); (14) Bella Alta (women); (15) Boundary 200 (men); (16) Boundary 200 (women); (17) Cedar Mesa (men); (18) Cedar Mesa (women); (19) Chilkats (men); (20) Chilkats (women); (21) Chilkats Lace (youth); (22) El Hermano (men); (23) El Porto Convertible (boys); (24) El Porto Convertible (men); (25) El Porto Convertible (women); (26) Endurus XCR Boa (men); (27) Endurus XCR (women); (28) Fortress Peak GTX (men); (29) Fortress Peak GTX (women); (30) Fury Gore-Tex XCR (men); (31) Fury Gore-Tex XCR (women); (32) Futaleufu (boys); (33) Futaleufu (girls); (34) Futaleufu (men); (35) Futaleufu (women); (36) Greenland Zip

(girls); (37) Greenland Zip (women); (38) Hedgehog WP (boys); (39) Hedgehog WP (girls); (40) Hedgehog XCR (men); (41) Hedgehog XCR (women); (42) Jasper Canyon GTX (men); (43) McMurdo Boot (men); (44) McMurdo Boot (women); (45) Momentum (men); (46) Nuptse Bootie (men); (47) Nuptse Bootie (women); (48) Off-Chute (men); (49) Off Chute (women); (50) Off Chute Clog (men); (51) Pinyon XCR Mid (women); (52) Plasma X-C Boa (men); (53) Plasma X-C Boa (women); (54) Plasma XCR Boa (men); (55) Prophecy (men); (56) Prophecy (women); (57) Radial (men); (58) Snow Plough Pull-On (boys); (59) Snow Plough Pull-on (girls); (60) Ultra 103 (men); (61) Ultra 103 X-C (men); (62) Ultra 103 X-C (women); (63) Ultra 103 XCR (men); (64) Ultra 103 XCR (women); (65) Venture (men); (66) Venture (women); (67) Venture Mid (men); (68) Venture Mid (women); (69) Product A; (70) Product B; (71) Product C; (72) Product D; (73) Product E; (74) Product F; (75) Product G; (76) Product H; (77) Product I; (78) Product J; (79) Product K; (80) Product L; (81) Product M; (82) Product N; (83) Product O; (84) Product P; (85) Product Q; (86) Product R; (87) Product S; (88) Product T; (89) Product U; (90) Product V; (91) Product W; (92) Product X; (93) Product Y; (94) Product Z; (95) Product AA and (96) Product BB.

10. At all times relevant to this action, the following shoe products were not registered with EPA pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a: (1) Adrenaline Mid (youth); (2) AMP Boa (men); (3) Arctic Pull-On (men); (4) Arnuva 50 (men); (5) Arnuva 50 (women); (6) Arnuva 50 Boa (men); (7) Arnuva 50 Boa (women); (8) Arnuva 100 TR (men); (9) Arnuva 100 TR (women); (10) Baltoro 400 (men); (11) Baltoro 1000 (men); (12) Banshee 200 (men); (13) Bella Alta (girls); (14) Bella Alta (women); (15) Boundary 200 (men); (16) Boundary 200 (women); (17) Cedar Mesa (men); (18) Cedar Mesa (women); (19) Chilkats (men); (20)

Chilkats (women); (21) Chilkats Lace (youth); (22) El Hermano (men); (23) El Porto Convertible (boys); (24) El Porto Convertible (men); (25) El Porto Convertible (women); (26) Endurus XCR Boa (men); (27) Endurus XCR (women); (28) Fortress Peak GTX (men); (29) Fortress Peak GTX (women); (30) Fury Gore-Tex XCR (men); (31) Fury Gore-Tex XCR (women); (32) Futaleufu (boys); (33) Futaleufu (girls); (34) Futaleufu (men); (35) Futaleufu (women); (36) Greenland Zip (girls); (37) Greenland Zip (women); (38) Hedgehog WP (boys); (39) Hedgehog WP (girls); (40) Hedgehog XCR (men); (41) Hedgehog XCR (women); (42) Jasper Canyon GTX (men); (43) McMurdo Boot (men); (44) McMurdo Boot (women); (45) Momentum (men); (46) Nuptse Bootie (men); (47) Nuptse Bootie (women); (48) Off-Chute (men); (49) Off Chute (women); (50) Off Chute Clog (men); (51) Pinyon XCR Mid (women); (52) Plasma X-C Boa (men); (53) Plasma X-C Boa (women); (54) Plasma XCR Boa (men); (55) Prophecy (men); (56) Prophecy (women); (57) Radial (men); (58) Snow Plough Pull-On (boys); (59) Snow Plough Pull-on (girls); (60) Ultra 103 (men); (61) Ultra 103 X-C (men); (62) Ultra 103 X-C (women); (63) Ultra 103 XCR (men); (64) Ultra 103 XCR (women); (65) Venture (men); (66) Venture (women); (67) Venture Mid (men); (68) Venture Mid (women); (69) Product A; (70) Product B; (71) Product C; (72) Product D; (73) Product E; (74) Product F; (75) Product G; (76) Product H; (77) Product I; (78) Product J; (79) Product K; (80) Product L; (81) Product M; (82) Product N; (83) Product O; (84) Product P; (85) Product Q; (86) Product R; (87) Product S; (88) Product T; (89) Product U; (90) Product V; (91) Product W; (92) Product X; (93) Product Y; (94) Product Z; (95) Product AA and (96) Product BB.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person

to distribute or sell to any person any unregistered pesticide.

ALLEGED VIOLATIONS

COUNTS 1-162: Sale or Distribution of an Unregistered Pesticide, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 1- 28

12. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
13. From on or about January 1, 2008 through March 12, 2008, Respondent “distributed or sold” the following shoe products at the Facility, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Product A; (2) Product B; (3) Product C; (4) Product D; (5) Product E; (6) Product F; (7) Product G; (8) Product H; (9) Product I; (10) Product J; (11) Product K; (12) Product L; (13) Product M; (14) Product N; (15) Product O; (16) Product P; (17) Product Q; (18) Product R; (19) Product S; (20) Product T; (21) Product U; (22) Product V; (23) Product W; (24) Product X; (25) Product Y; (26) Product Z; (27) Product AA and (28) Product BB.
14. Respondent’s sale or distribution of the shoe products listed in Paragraph 12 at the Facility constitute 28 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 29-78

15. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
16. From on or about January 1, 2008 through March 12, 2008, Respondent “distributed or sold” the following shoe products to Vendor A, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for

sale, offered to deliver in commerce or some combination thereof these shoe products: (1) AMP Boa (men); (2) Arctic Pull-On (men); (3) Arnuva 50 (women); (4) Arnuva 50 Boa (men); (5) Arnuva 50 Boa (women); (6) Arnuva 100 TR (men); (7) Arnuva 100 TR (women); (8) Banshee 200 (men); (9) Bella Alta (girls); (10) Bella Alta (women); (11) Boundary 200 (men); (12) Boundary 200 (women); (13) Cedar Mesa (men); (14) Cedar Mesa (women); (15) Chilkats (men); (16) Chilkats (women); (17) El Porto Convertible (men); (18) El Porto Convertible (women); (19) Endurus XCR Boa (men); (20) Endurus XCR Boa (women); (21) Fortress Peak GTX (men); (22) Fortress Peak GTX (women); (23) Fury Gore-Tex XCR (men); (24) Fury Gore-Tex XCR (women); (25) Futaleufu (men); (26) Futaleufu (women); (27) Greenland Zip (girls); (28) Greenland Zip (women); (29) Hedgehog XCR (men); (30) Hedgehog XCR (women); (31) Jasper Canyon GTX (men); (32) McMurdo Boot (men); (33) McMurdo Boot (women); (34) Momentum (men); (35) Nuptse Bootie (men); (36) Nuptse Bootie (women); (37) Off-Chute (men); (38) Off Chute (women); (39) Off Chute Clog (men); (40) Pinyon XCR Mid (women); (41) Plasma XCR Boa (men); (42) Prophecy (men); (43) Prophecy (women); (44) Radial (men); (45) Snow Plough Pull-on (girls); (46) Ultra 103 XCR (men); (47) Ultra 103 XCR (women); (48) Venture (men); (49) Venture Mid (men); and (50) Venture Mid (women).

17. Respondent's sale or distribution of the shoe products listed in Paragraph 16 constitute 50 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 79-93

18. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
19. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or

sold” the following shoe products to Vendor B, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Arctic Pull-On (men); (2) Baltoro 1000 (men); (3) Bella Alta (women); (4) Chilkats (men); (5) Fortress Peak GTX (men); (6) Fortress Peak GTX (women); (7) Greenland Zip (women); (8) Hedgehog XCR (men); (9) Hedgehog XCR (women); (10) Nuptse Bootie (men); (11) Nuptse Bootie (women); (12) Off-Chute (men); (13) Plasma XCR Boa (men); (14) Prophecy (men); and (15) Ultra 103 XCR (men).

20. Respondent’s sale or distribution of the shoe products listed in Paragraph 19 constitute 15 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 94-115

21. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
22. From on or about January 1, 2008 through March 12, 2008, Respondent “distributed or sold” the following shoe products to Vendor C, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Baltoro 400 (men); (2) Bella Alta (women); (3) Chilkats Lace (youth); (4) El Hermano (men); (5) El Porto Convertible (boys); (6) El Porto Convertible (men); (7) El Porto Convertible (women); (8) Fortress Peak GTX (men); (9) Futaleufu (boys); (10) Futaleufu (girls); (11) Futaleufu (men); (12) Futaleufu (women); (13) Greenland Zip (women); (14) Hedgehog XCR (men); (15) Nuptse Bootie (men); (16) Off-Chute (men); (17) Plasma XCR Boa (men); (18) Prophecy (men); (19) Venture (men); (20) Venture (women); (21)

Venture Mid (men); and (22) Venture Mid (women).

23. Respondent's sale or distribution of the shoe products listed in Paragraph 22 constitute 22 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 116-123

24. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
25. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or sold" the following shoe products to Vendor D, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) El Porto Convertible (men); (2) El Porto Convertible (women); (3) Futaleufu (men); (4) Futaleufu (women); (5) Plasma XCR Boa (men); (6) Venture (men); (7) Venture (women); and (8) Venture Mid (men).
26. Respondent's sale or distribution of the shoe products listed in Paragraph 25 constitute 8 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 124-140

27. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
28. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or sold" the following shoe products to Vendor E, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Adrenaline Mid (youth); (2) Arctic Pull-On (men); (3) Arnuva 50 (men); (4) Arnuva 50 Boa (men); (5) Arnuva 100 TR (men); (6) Baltoro 400 (men); (7) Bella Alta (women); (8)

Boundary 200 (women); (9) Chilkats (men); (10) Hedgehog XCR (women); (11) McMurdo Boot (men); (12) Nuptse Bootie (men); (13) Nuptse Bootie (women); (14) Snow Plough Pull-On (boys); (15) Ultra 103 (men); (16) Ultra 103 XCR (men); and (17) Ultra 103 XCR (women).

29. Respondent's sale or distribution of the shoe products listed in Paragraph 28 constitute 17 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 141-153

30. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
31. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or sold" the following shoe products to Vendor F, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Bella Alta (women); (2) Chilkats (women); (3) Fortress Peak GTX (men); (4) Futaleufu (boys); (5) Futaleufu (girls); (6) Greenland Zip (girls); (7) Greenland Zip (women); (8) McMurdo Boot (men); (9) McMurdo Boot (women); (10) Plasma X-C Boa (men); (11) Prophecy (men); (12) Ultra 103 XCR (men); and (13) Ultra 103 XCR (women).
32. Respondent's sale or distribution of the shoe products listed in Paragraph 31 constitute 13 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 154-159

33. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
34. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or sold" the following shoe products to Vendor G, as that term is defined in Section 2(gg) of

FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Hedgehog WP (boys) ; (2) Hedgehog WP (girls); (3) Plasma X-C Boa (men); (4) Plasma X-C Boa (women); (5) Ultra 103 X-C (men); and (6) Ultra 103 X-C (women).

35. Respondent's sale or distribution of the shoe products listed in Paragraph 34 constitute 6 violations of Section 12(a)(1)(A) of FIFRA.

COUNTS 160-162

36. Paragraphs 1 through 11 are realleged and incorporated herein by reference.
37. From on or about January 1, 2008 through March 12, 2008, Respondent "distributed or sold" the following shoe products to Vendor H, as that term is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), in that Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof these shoe products: (1) Bella Alta (women); (2) Greenland Zip (women); and (3) Ultra 103 X-C (men).
38. Respondent's sale or distribution of the shoe products listed in Paragraph 37 constitute 3 violations of Section 12(a)(1)(A) of FIFRA.

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (December 31, 1996), 62 Fed. Reg. 13513 (March 20, 1997) and 69 Fed. Reg. 7121 (February 13, 2004)), authorizes the assessment of a civil administrative penalty of up to \$6,500 for each violation of FIFRA after March 15, 2004 but on or before January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of

FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$6,500 for each violation of the Act set forth above.

### NOTICE OF OPPORTUNITY FOR HEARING

#### Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to 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, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

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 Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

#### Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

David H. Kim  
Assistant Regional Counsel (ORC-3)

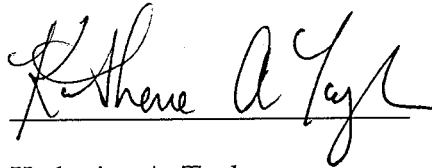
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

His telephone number is (415) 972-3882.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Kim to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 21<sup>st</sup> day of September, 2009.

A handwritten signature in cursive script, reading "Katherine A. Taylor", written over a horizontal line.

Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
USEPA, Region IX

CERTIFICATE OF SERVICE

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

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Rafferty Jackson, Esq.  
VF Outdoor, Inc.  
2011 Farallon Drive  
San Leandro, CA 94577

Michael Boucher, Esq.  
McKenna Long & Aldridge L.L.P.  
1900 K Street, N.W.  
Washington, D.C. 20006

Dated: 9/21/09

By: 

Ekho Lim  
U.S. Environmental Protection Agency, Region IX