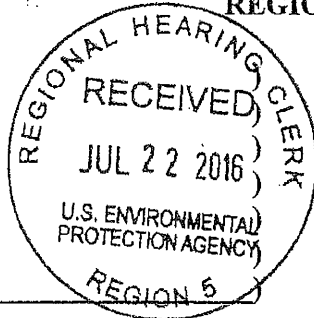


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Walgreen Co.  
Deerfield, Illinois,

Respondent.



Docket No. FIFRA-05-2016-0013

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Commencing and Concluding a Proceeding

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Walgreen Co., a corporation doing business in the State of Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this

CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

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

11. The term “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A “person” means any individual, partnership, association, corporation, or any organized group or persons whether incorporated or not. 7 U.S.C. § 136(s).

15. A “registrant” is a person who has registered any pesticide pursuant to the provisions of FIFRA. 7 U.S.C. § 136(y).

16. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide 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.  
40 C.F.R. § 152.15(a)(1).

17. 40 C.F.R. § 152.132 states, in part, that supplemental distribution of a registered pesticide is permitted upon notification to the Agency.

18. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

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

20. Respondent is a retailer.

21. Respondent owned or operated a place of business located at 100 Wilmot Road, Deerfield, Illinois during the calendar year 2014.

22. On June 25, 2014, an inspector employed by the Illinois Department of Public Health and authorized to conduct inspections under FIFRA conducted an inspection at a Walgreen retail establishment located at 28W104 Warrenville, Illinois

23. During the June 25, 2014 inspection, the inspector collected a physical sample of the product Walgreen's Stop Lice which Respondent was holding for distribution or sale.

24. Respondent's label for Walgreen's Stop Lice collected on June 25, 2014 states:

A. "Stop Lice"

B. "EPA Reg. No. 10900-86-43428"

C. "Not for use on humans"

25. Walgreen's Stop Lice is a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

26. On or about August 3, 2015, the registrant for 887 Multi-use Insecticide Spray, EPA Reg. No. 10900-86, submitted to EPA a Notice of Supplemental Distribution for Walgreen's Stop Lice, EPA Registration Number 10900-86-43428.

27. Respondent distributed or sold Walgreen's Stop Lice on June 25, 2014.

28. Respondent's distribution or sale of Walgreen's Stop Lice was a violation of Section 12(a) of FIFRA, 7 U.S.C. Section 136(a)(1)(A).

#### Civil Penalty

29. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$3,750. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, the gravity of the alleged violation, along with other case specific factors. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act*, dated December 2009.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a \$3,750 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check must note "In the Matter of Walgreen Co." and the docket number of this CAFO.

31. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment.

Respondent must send a copy of the transmittal letter to the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Richard Nagle (C-13J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

32. This civil penalty is not deductible for federal tax purposes.

33. If Respondent does not pay timely the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

34. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past

due.

### General Provisions

35. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

36. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

37. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

38. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

39. The terms of this CAFO bind Respondent, its successors and assigns.

40. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

41. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: nagle.richard@epa.gov (for Complainant), and andrew.marks@walgreens.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

42. Each party agrees to bear its own costs and attorney's fees, in this action.

43. This CAFO constitutes the entire agreement between the parties.

**Walgreen Co., Respondent**

June 13, 2016  
Date

Helayna Minsk

Helayna Minsk  
Group Vice President  
Walgreen Co.

**United States Environmental Protection Agency, Complainant**

7/15/2016  
Date

Michael D. Harris <sup>for M.G.</sup>

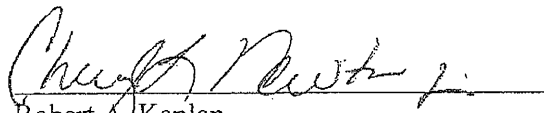
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Walgreen Co.  
Docket No. FIFRA-05-2016-0013

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7/20/16  
Date

  
Robert A. Kaplan  
Acting Regional Administrator  
United States Environmental Protection Agency  
Region 5



Consent Agreement and Final Order  
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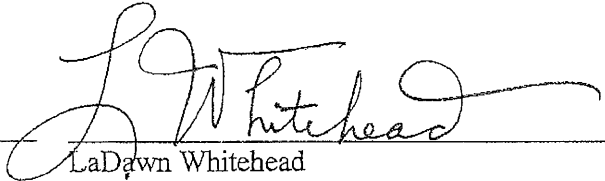
CERTIFICATE OF SERVICE

I certify that on July 22, 2016 I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2016-0013, in the following manner to the following addressees:

Copy by E-mail to                                 Andrew Marks  
Attorney for Respondent:                     andrew.marks@walgreens.com

Copy by E-mail to                                 Richard Nagle  
Attorney for Complainant:                   nagle.richard@epa.gov

Copy by E-mail to                                 Ann Coyle  
Regional Judicial Officer:                   coyle.ann@epa.gov

Dated: July 22, 2016   
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5