

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.
)	
Waxman Industries, Inc.)	Proceeding to Assess a Civil Penalty
Bedford Heights, Ohio)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
)	Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.)	
)	

Consent Agreement and Final Order

Preliminary Statement

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 Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Waxman Industries, Inc., a corporation doing business in the State of Ohio.

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

11. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

12. The term “active ingredient” is defined at Section 2(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), in the case of a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer, as “an ingredient which will prevent, destroy, repel, or mitigate any pest.”

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

14. The term “pesticide” is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

15. The term “pest” is defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t), in pertinent part, as any form of “virus, bacteria, or other micro-organism.” See also 40 C.F.R. § 152.5(d).

16. The term “distribute or sell” is defined in Section 2(gg), 7 U.S.C. § 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

17. The term “label” is defined in Section 2(p)(1), 7 U.S.C. 136(p)(1) as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

18. The term “labeling” is defined in Section 2(p)(2), 7 U.S.C. § 136(p)(2), as “all labels and all 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.”

19. The term “importer” is defined at 19 C.F.R. § 101.1 as “the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf.” The importer may be, among other things, the importer of record.

20. 40 C.F.R. § 152.15(a)(1) states that 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 otherwise implies that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.”

21. 40 C.F.R. § 152.15(b) further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if “the substance consists of or contains one or more active ingredients and has no significant commercially

valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), or (2) use for manufacture of a pesticide.”

22. The importation of pesticides into the United States (U.S.) is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12. *See also* 19 C.F.R. § 12.1(b).

23. 19 C.F.R. § 12.112(a) states, in pertinent part, that an importer desiring to import devices into the U.S. shall submit to the EPA, prior to the arrival of the shipment in the U.S., a Notice of Arrival of Pesticides or Devices (NOA) on U.S. EPA Form 3540-1.

24. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, importer, or other distributor who violates any provision of FIFRA of up to \$21,805 for each offense occurring after November 2, 2015, and assessed after January 12, 2022, pursuant to Section 14(a)(1), 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

25. Respondent is, and was at all times relevant to this CAFO, a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

26. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 24460 Aurora Road, Bedford Heights, Ohio (the Facility).

27. Respondent is, and was at all times relevant to this CAFO, an “importer” as that term is defined in 19 C.F.R. § 101.1.

28. On or about October 21, 2020, a referral was submitted to EPA Region 5 regarding the sale and distribution of a potential unregistered pesticide, **Kleen Freak Disinfecting Wipes**, found offered for sale in a retail store.

29. Photos of the **Kleen Freak Disinfecting Wipes** labels provided to EPA included the following claims or statements:

- a. “Kills 99.9% of Germs,”
- b. “Fast, one-step cleaning and disinfecting,”
- c. “Perfect for fast, one-step cleaning and disinfecting,”
- d. “Kills 99.9% of viruses and bacteria,”
- e. “Gets rid of dirt and germs quickly,”
- f. “Waxman Kleen Freak™ disinfecting wipes kill 99.9% of harmful viruses and bacteria,”
- g. “Our wipes are designed to hold moisture longer, and disinfect while they clean away dirt, dust, and germs – making clean-ups easier and faster at home, work, school or anywhere messes occur,”
- h. “These wipes are perfect for fast, one-step cleaning with a disinfecting formula that is tough on harmful bacteria, but gentle on skin,”
- i. “To help reduce viruses and bacteria,”
- j. “Wipe surfaces with product and allow to dry.”

30. The label references the Waxman Industries location in Bedford, Ohio.

31. The **Kleen Freak Disinfecting Wipes** label list Benzalkonium Chloride and Didecylidimonium Chloride as the active ingredients with antibacterial purposes.

32. On November 17, 2020, and November 30, 2020, an inspector employed by the Ohio Department of Agriculture (ODA) and authorized to conduct inspections under FIFRA conducted an inspection at the Facility (the Inspection).

33. During the Inspection, ODA collected promotional information, recall records, inventory records, a statement from the Respondent pertaining to **Kleen Freak Disinfecting**

Wipes, and photos of a **Kleen Freak Disinfecting Wipes** product label which does not bear pesticidal surface claims.

34. On April 8, 2021, as a follow up to the Inspection, EPA requested additional information from Respondent regarding Respondent's national recall of **Kleen Freak Disinfecting Wipes**.

35. On or around July 8, 2021, Respondent provided shipping documentation, bin labels, a bin label statement, national recall information, label revisions, inventory records, and import records pertaining to **Kleen Freak Disinfecting Wipes**.

36. On August 3, 2021, EPA requested follow-up information regarding the response provided by Respondent on or around July 8, 2021.

37. On or around August 23, 2021, Respondent provided additional information regarding shipping, recall activities, and inventory records of **Kleen Freak Disinfecting Wipes**.

38. Respondent provided information regarding three different label versions affixed to **Kleen Freak Disinfecting Wipes** sold by Respondent between June 22, 2020, and November 30, 2020.

39. All three versions of the label affixed to Kleen Freak Disinfecting Wipes sold by Respondent between June 22, 2020, and November 30, 2020, contained the claims or statements listed in paragraph 29, above.

40. All three versions of the label affixed to Kleen Freak Disinfecting Wipes sold by Respondent between June 22, 2020, and November 30, 2020, listed Benzalkonium Chloride and Didecyltrimonium Chloride as the active ingredients with an antibacterial purpose.

41. Respondent provided a signed statement that the bin labels for **Kleen Freak Disinfecting Wipes** submitted to EPA on July 2, 2021, are true and accurate representations of

the labels affixed to the pesticide product released for shipment between November 1, 2019, and November 30, 2020.

42. **Kleen Freak Disinfecting Wipes**, bearing versions one through three of the label, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

43. **Kleen Freak Disinfecting Wipes** were not, at any time relevant to this CAFO, registered under Section 3 of FIFRA.

44. Respondent distributed or sold **Kleen Freak Disinfecting Wipes** bearing label versions one through three on at least 407 separate occasions on or about the dates set forth in Table 1, attached.

45. Respondent imported **Kleen Freak Disinfecting Wipes** bearing label versions one through three into the U.S. on 28 separate occasions on or about the dates set forth in Table 2, attached.

46. Respondent did not submit NOAs on U.S. EPA Form 3540-1 for the shipments identified in Table 2.

Counts 1-407

Sale of Unregistered Pesticide Kleen Freak Disinfecting Wipes

47. Complainant incorporates paragraphs 1 through 44 of this CAFO as though set forth in this paragraph.

48. Between June 22, 2020, and September 18, 2020, Respondent distributed or sold **Kleen Freak Disinfecting Wipes**, a pesticide, as that term is defined in paragraph 14, that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, on at least 407 occasions as set forth in Table 1, attached.

49. Respondent’s distribution or sale of an unregistered pesticide constitutes 407 separate unlawful acts, pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

50. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Counts 408-434

Failure to File NOAs for Unregistered Pesticide Kleen Freak Disinfecting Wipes

51. Complainant incorporates paragraphs 1 through 42 and paragraphs 45 through 46 of this CAFO as though set forth in this paragraph.

52. Between June 30, 2020, and September 15, 2020, Respondent failed to file NOAs for shipments containing an unregistered pesticide, **Kleen Freak Disinfecting Wipes**, on at least 27 occasions as set forth in Table 2, attached.

53. Respondent's failure to file NOAs for shipments containing a pesticide constitutes 27 separate violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N).

54. Respondent's violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty and Other Relief

55. 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 **\$10,000**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

56. Within 30 days after the effective date of this CAFO, Respondent shall pay a **\$10,000** civil penalty for the FIFRA violations by ACH electronic funds transfer, payable to “Treasurer, United States of America,” and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state “Waxman Industries, Inc.” and the docket number of this CAFO.

57. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Juliane Grange
Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov
and
R5lecab@epa.gov

Sophie Grueterich (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
grueterich.sophie@epa.gov

Jacqueline Clark (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
clark.jacqueline@epa.gov

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

59. If Respondent does not pay timely the civil penalty, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

60. 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

61. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grueterich.sophie@epa.gov and clark.jacqueline@epa.gov (for Complainant), and lwaxman@waxman.com (for Respondent).

62. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

63. 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.

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

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

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

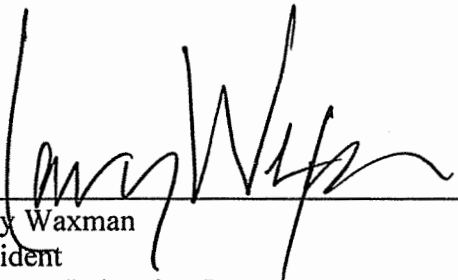
67. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Waxman Industries, Inc., Respondent

1/15/23
Date



Larry Waxman
President
Waxman Industries, Inc.

United States Environmental Protection Agency, Complainant

Michael D. Harris, Director
Enforcement & Compliance Assurance Division

**In the Matter of:
Waxman Industries, Inc.
Docket No.**

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.

Date

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5