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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

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U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of:

Safeway Inc.

Respondent.

) Docket No.

) CONSENT AGREEMENT

) and

) FINAL ORDER PURSUANT TO

) SECTIONS 22.13 AND 22.18

FIFRA-09-2007-0013

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region 9, ("EPA") and Respondent Safeway Inc. (hereafter "Safeway" or "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. APPLICABLE STATUTES AND REGULATIONS

1. This administrative proceeding is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.* (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

B. AUTHORITY AND PARTIES

2. Safeway is a Delaware corporation. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136 l(a), is vested in the Administrator of EPA ("Administrator"). By EPA Delegation Order Number 5-14, dated May 11, 1994, the Administrator delegated to the Regional Administrator of EPA Region

IX the authority to commence administrative proceedings under Section 14 of FIFRA and to sign consent agreements memorializing settlements in such proceedings. By EPA Regional Order Number 1255.08 dated June 9, 2005, the Regional Administrator of EPA Region IX redelegated this authority to the Director of the Communities and Ecosystems Division. The Director of the Communities and Ecosystems Division has the authority to commence and settle an enforcement action in this matter.

4. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it shall be unlawful for any person to distribute or sell to any person any pesticide that is not registered under section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under FIFRA. Section 2(gg), of FIFRA, 7 U.S.C. § 136(gg), states that "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.

5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), states that the term "pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), states that the term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under FIFRA section 25(c)(1). The term "fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals. 7

U.S.C. §136(k).

6. Deodorizers, bleaches, and cleaning agents are products or articles that are not considered to be pesticides unless a pesticidal claim is made on their labeling or in connection with their sale and distribution. See 40 C.F.R. §152.10.

7. Pesticides are required to have the statement "It is a violation of Federal law to use this product in a manner inconsistent with its labeling." immediately below the statement of use classification. See 40 C.F.R. § 156.10(i)(2)(ii).

C. COMPLAINANT'S ALLEGATIONS

8. At the times relevant to this CAFO, Respondent contracted with a third party to manufacture and label Safeway Heavy Duty Liquid Toilet Bowl Cleaner and Respondent was distributing and selling Safeway Heavy Duty Liquid Toilet Bowl Cleaner.

9. At the times relevant to this CAFO, the labeling of Safeway Heavy Duty Liquid Toilet Bowl Cleaner contained pesticidal claims. This cleaning agent was a product that would not be considered to be a pesticide requiring registration unless a pesticidal claim were made on its labeling or in connection with its sale and distribution. Safeway switched suppliers and at that time removed pesticidal claims from the front label. However, the back label of the Safeway Heavy Duty Liquid Toilet Bowl Cleaner product still included the statements "Directions for Household Use: It is a violation of Federal Law to use this product in a manner inconsistent with its label.....To Disinfect: Remove water from bowl. Cover bowl surface with cleaner, let stand for at least 10 minutes, brush thoroughly and flush. Do not use or place on toilet lids, sinks, vanities, bathtubs, countertops, etc. ...For use in homes, schools, hospitals."

10. Safeway Heavy Duty Liquid Toilet Bowl Cleaner is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Safeway Heavy Duty Liquid Toilet Bowl Cleaner is not a registered pesticide. In 2005, Respondent distributed or sold Safeway Heavy Duty Liquid

Toilet Bowl Cleaner, as the term "to distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to various persons. In 2005, Respondent distributed or sold Safeway Heavy Duty Liquid Toilet Bowl Cleaner from 258 stores in Hawaii and California. Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

11. Safeway owns The Vons Companies, Inc. On September 19, 2006, at the Vons in Grover Beach, California, Respondent was offering for sale Safeway Liquid Cleanser with Bleach with the pesticidal claim "removes...mold, mildew..." Safeway Liquid Cleanser with Bleach is a "pesticide" as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u). Safeway Liquid Cleanser with Bleach is not a registered pesticide. On September 19, 2006, Respondent distributed or sold or distributed Safeway Liquid Cleanser with Bleach, as the term "to distribute or sell" is defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg). Respondent violated section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling an unregistered pesticide.

D. RESPONDENT'S ADMISSIONS

12. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty under Section I.E. of this CAFO; (v) waives any right to contest the allegations contained in Section I.C. of this CAFO; and (vi) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

13. Respondent consents to the assessment of a penalty in the amount of **SIX**

HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$675,000) as final

settlement and complete satisfaction of the civil claims against Respondent arising from the facts alleged in Section I.C. of the CAFO and under the Act, as alleged in Section I.C. of the CAFO.

14. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO.

15. The civil penalty shall be paid by certified or cashier's check, payable to "Treasurer, United States of America," and sent by certified mail, return receipt requested, to:

U.S. Environmental Protection Agency
Region 9
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

The check should note the case title and docket number, and a transmittal letter, indicating Respondent's name, and this case docket number, must accompany the payment. When payment is mailed to the above address, Respondent shall send a copy of the check and transmittal letter to:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105
- b) Bill Lee
Pesticides Program
Communities and Ecosystems Division (CED-5)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, California 94105

16. In the event that Respondent fails to pay the civil administrative penalty assessed above by its due date, Respondent shall pay to Complainant an additional stipulated penalty in the amount of **FIVE HUNDRED DOLLARS (\$500)** for each day that payment is late. Upon Complainant's written demand, payment shall immediately become due and payable.

17. Respondent's failure to pay in full the civil administrative penalty by its due date also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds; (iii) convert the method of payment under a grant or contract from an advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-of-credit. 40 C.F.R. §§ 13.17.

F. CERTIFICATION OF COMPLIANCE

18. In executing this CAFO, Respondent certifies that (1) it is no longer distributing or selling Safeway Heavy Duty Liquid Toilet Bowl Cleaner with pesticidal claims, (2) it is no longer distributing or selling Safeway Liquid Cleanser with Bleach with pesticidal claims, and (3) it has complied with all other FIFRA requirements at all facilities under its control.

G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

19. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision

of federal law not specifically settled by this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of the Act and other Federal, state or local laws or statutes.

20. The provisions of this CAFO shall be binding on Respondent and on Respondent's officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

21. Except as set forth in Paragraph 17 above, each party shall bear its own costs, fees, and disbursements in this action.

22. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.

23. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This Consent Agreement and Final Order is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this Consent Agreement and the Final Order shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C. of this CAFO.

24. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

25. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind

that party to it.

SAFEWAY INC.:

Date: June 4, 2007 By:



VALERIE D. LEWIS
Assistant Vice President
Assistant Secretary
Safeway Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: July 3, 2007 By:



ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall pay a civil administrative penalty in the amount of **SIX HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$675,000)**, in accordance with the terms set forth in the Consent Agreement. This Final Order, once signed, shall be effective immediately upon it being filed with the Regional Hearing Clerk.

Date: _____

7.3.07



Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA~~09~~-2007-0013 has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7001 0320 0002 4541 2155), return receipt requested, to:

Ms. Valerie D. Lewis, Esq.
Assistant Vice President & Assistant Secretary
Safeway, Inc.
5918 Stoneridge Mall Road
Pleasanton, CA 94588

7-3-07

DATE

Danielle E. Carr

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105