



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 5**

**77 WEST JACKSON BOULEVARD**

**CHICAGO, IL 60604-3590**

**February 17, 2021**

VIA EMAIL ONLY

Mr. Harry Moyle  
Registered Agent and President  
Aurora Specialty Chemistries Corporation  
1520 Lake Lansing Road  
Lansing, Michigan 48912

[hmoyle@auroraspchm.com](mailto:hmoyle@auroraspchm.com)

Consent Agreement and Final Order  
In the Matter of Aurora Specialty Chemistries Corporation  
Docket Number FIFRA-05-2021-0006

Mr. Moyle:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on February 17, 2021 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,000 is to be paid in the manner described in paragraphs 78-79 of the CAFO. The first payment of \$2,500 is due by within 30 calendar days of the filing date. The remaining payments are due in accordance to paragraph 78 of the CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

**CLAUDIA  
NIESS**

Digitally signed by  
CLAUDIA NIESS  
Date: 2021.02.02 08:22:20  
-06'00'

Claudia Niess  
Enforcement Officer  
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b> FIFRA-05-2021-0006
	)	
<b>Aurora Specialty Chemistries Corporation</b>	)	
<b>Lansing, Michigan,</b>	)	<b>Proceeding to Assess a Civil Penalty Under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136l(a)</b>
<b>Respondent.</b>	)	
<hr style="border: 1px solid black;"/>	)	

**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 Aurora Specialty Chemistries Corporation (Aurora), a corporation doing business in the State of Michigan.

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 to 136y.

**Statutory and Regulatory Background**

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, in pertinent part, that it is unlawful for any person in any state to distribute or sell to any person any pesticide whose registration has been canceled.

11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

12. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), states that 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 other requirements imposed under Section 3(d) of FIFRA, is adequate to protect health and the environment. See also 40 C.F.R. § 156.10(a)(1)(vii).

13. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states it is unlawful for any person to refuse to prepare, maintain, or submit any records required by Section 8 of FIFRA.

14. 40 C.F.R. § 169.2(a) states, in pertinent part, that all producers of pesticides shall maintain records showing the product name, EPA Registration Number, amounts per batch and batch identification of all pesticides produced.

15. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if all of the following conditions are met: (a) The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product, (b) The distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product, (c) The distributor product is not repackaged (remains in the producer's unopened containers), (d) The label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary, and (e) Voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

16. 40 C.F.R. § 152.132 also specifies that a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

17. The term "person" means "any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not." 7 U.S.C. § 136(s).

18. 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).

19. 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).

20. 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 U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136(t).

21. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), states that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$7,500 for each offense that occurred after January 12, 2009 through November 2, 2015. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$20,528 for each offense occurring after November 2, 2015 and assessed after December 23, 2020. See 85 Fed. Reg. 247 (December 23, 2020).

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

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

23. Respondent is a distributor in accordance with 40 C.F.R. § 152.132 and is therefore an agent of the “registrant,” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

24. At all times relevant to this Complaint, Respondent owned or operated a place of business located at 1520 Lake Lansing Road, Lansing, Michigan 48912 (facility).

25. On or about August 6 and 7, 2018, an inspector employed by the Michigan Department of Agriculture and Rural Development and authorized to conduct inspections under FIFRA conducted inspections at Aurora’s facility.

**SM-116P, EPA Reg. No. 10324-43-47091**

26. On or about November 16, 1987, EPA registered a pesticide product, **Maquat MC1412-10-W** to registrant, Mason Chemical Company (Mason).
27. EPA assigned **Maquat MC1412-10-W**, EPA Registration Number (Reg. No.) 10324-43.
28. On or about July 21, 2008, Mason and Aurora submitted a Notice of Supplemental Distribution of a Registered Pesticide Product (Notice of Supplemental Distribution) to the EPA for **Maquat MC1412-10-W**, EPA Reg. No. 10324-43.
29. The Notice of Supplemental Distribution identified Aurora as the distributor of **Maquat MC1412-10-W**, EPA Reg. No. 10324-43.
30. The Notice of Supplemental Distribution identified the distributor product name for **Maquat MC1412-10-W**, EPA Reg. No. 10324-43 as **SM-116P**.
31. **SM-116P** is assigned EPA Reg. No. 10324-43-47091.
32. **SM-116P**, EPA Reg. No. 10324-43-47091, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.
33. The distributor, Aurora, is an agent of the registrant, Mason, for all intents and purposes under 40 C.F.R. § 152.132 with respect to the distributor pesticide product, **SM-116P**, EPA Reg. No. 10324-43-47091.
34. On or about April 18, 2016, upon the request of Mason, EPA canceled the distributor product, **SM-116P**, EPA Reg. No. 10324-43-47091.
35. During the 2018 inspections, the inspector collected, among other things, shipping records, a bin label and an affidavit for the pesticide product **SM-116P**, EPA Reg. No. 10324-43-47091.

36. The bin label collected during the inspection was a true and accurate representation of the product and the associated labels that were released for shipment on or about August 3, 2016 through September 19, 2017.

37. On or about August 3, 2016, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

38. On or about August 12, 2016, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

39. On or about June 20, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

40. On or about June 28, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

41. On or about July 18, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

42. On or about September 19, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers.

**Predator 5050, EPA Reg. No. 6836-214-47091**

43. On or about June 2, 1994, EPA registered a pesticide product, **Barquat Molluscicide 50**, to registrant Lonza Inc. (Lonza).

44. EPA assigned **Barquat Molluscicide 50**, EPA Registration Number (Reg. No.) 6836-214.

45. On or about November 19, 2012, the EPA accepted a label for **Barquat Molluscicide 50**, EPA Reg. No. 6836-214.

46. On or about February 16, 2017, Lonza and Aurora submitted a Notice of Supplemental Distribution to the EPA for **Barquat Molluscicide 50**, EPA Reg. No. 6836-214.

47. The Notice of Supplemental Distribution identified Aurora as the distributor of **Barquat Molluscicide 50**, EPA Reg. No. 6836-214.

48. The Notice of Supplemental Distribution identified the distributor product name for **Barquat Molluscicide 50**, EPA Reg. No. 6836-214 as **Predator 5050**.

49. **Predator 5050** is assigned EPA Reg. No. 6836-214-47091.

50. **Predator 5050**, EPA Reg. No. 6836-214-47091, is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

51. The distributor, Aurora, is an agent of the registrant, Lonza, for all intents and purposes under 40 C.F.R. § 152.132 with respect to the distributor pesticide product, **Predator 5050**, EPA Reg. No. 6836-214-47091.

52. During the 2018 inspections, the inspector collected, among other things, shipping records, a bin label and an affidavit for the pesticide product **Predator 5050**, EPA Reg. No. 6836-214-47091.

53. The bin label collected during the inspection was a true and accurate representation of the product and the associated labels that were released for shipment on or about October 6, 2017 and June 12, 2018.

54. The bin label for **Predator 5050**, EPA Reg. No. 6836-214-47091, collected during the inspection did not match the label language on the accepted label, dated November 19, 2012 in that the bin label did not include required language entitled “Environmental Hazards” and “Physical or Chemical Hazards.”

55. On or about October 6, 2017, Aurora distributed or sold **Predator 5050**, EPA Reg. No. 6836-214-47091, to one of its customers.

56. On or about June 12, 2018, Aurora distributed or sold **Predator 5050**, EPA Reg. No. 6836-214-47091, to one of its customers.

## **Records of Pesticide Production**

57. During the 2018 inspections, the inspector also collected production records for the following pesticides produced at Aurora:

- **SM-116P**, EPA Reg. No. 10324-43-47091;
- **Predator 510**, EPA Reg. No. 6836-58-47091;
- **Predator 5050**, EPA Reg. No. 6836-214-47091;
- **Predator 1020**, EPA Reg. No. 47091-13;
- **CW-1740**, EPA Reg. No. 88714-3-47091;
- **SM-215P**, EPA Reg. No. 33753-30-47091; and
- **SM-50P**, EPA Reg. Nos. 74712-9-47091 and 33753-31-47091.

58. Each production record did not include the EPA Registration Number for the pesticide product.

### **Counts 1 through 6** **SM-116P, EPA Reg. No. 10324-43-47091**

59. The preceding paragraphs are incorporated by reference.

60. On or about August 3, 2016, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers, that was canceled.

61. On or about August 12, 2016, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers, that was canceled.

62. On or about June 20, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers, that was canceled.

63. On or about July 18, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers, that was canceled.

64. On or about September 19, 2017, Aurora distributed or sold **SM-116P**, EPA Reg. No. 10324-43-47091, to one of its customers, that was canceled.

65. Aurora's distribution or sales of **SM-116P**, EPA Reg. No. 10324-43-47091, on six separate occasions constitutes six unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

66. Aurora's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Aurora to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

**Counts 7 through 8**  
**Predator 5050, EPA Reg. No. 6836-214-47091**

67. The preceding paragraphs are incorporated by reference.

68. On or about October 6, 2017, Aurora distributed or **Predator 5050**, EPA Reg. No. 10324-43-47091, to one of its customers, that was misbranded as that term is defined at Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), because the label on the container did not include required language entitled "Environmental Hazards" and "Physical or Chemical Hazards."

69. On or about June 12, 2018, Aurora distributed or sold **Predator 5050**, EPA Reg. No. 6836-214-47091, to one of its customers, that was misbranded as that term is defined at Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), because the label on the container did not include required language entitled "Environmental Hazards" and "Physical or Chemical Hazards."

70. Aurora's distribution or sales of **Predator 5050**, EPA Reg. No. 6836-214-47091, on two separate occasions constitutes two unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

71. Aurora's violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Aurora to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

**Count 9**  
**Records of Pesticide Production**

72. The preceding paragraphs are incorporated by reference.

73. The production records collected during the 2018 inspections for the following pesticides produced at Aurora: **SM-116P**, EPA Reg. No. 10324-43-47091; **Predator 510**, EPA Reg. No. 6836-58-47091; **Predator 5050**, EPA Reg. No. 6836-214-47091; **Predator 1020**, EPA Reg. No. 47091-13; **CW-1740**, EPA Reg. No. 88714-3-47091; **SM-215P**, EPA Reg. No. 33753-30-47091; and **SM-50P**, EPA Reg. Nos. 74712-9-47091 and 33753-31-47091, failed to include the EPA Registration Number as required by 40 C.F.R. § 169.2(a).

74. Aurora's failure to include the EPA Registration Numbers in its production records constitutes an unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

75. Aurora's violation of Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), subjects Aurora to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty and Other Relief**

76. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

77. Based on an evaluation of the facts alleged in this CAFO, the Respondent’s ability to continue in business and the factors in Section 14(a)(4) of FIFRA and EPA’s Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$10,000.

78. Respondent agrees to pay a \$10,000 civil penalty in four installments, with interest, to resolve this matter as follows:

<b>Payment Number</b>	<b>Due Date</b>	<b>Principal Due</b>	<b>Interest</b>	<b>Payment Amount Due</b>
<b>Payment 1</b>	Within 30 days of the effective date of the CAFO	\$2,500.00	None	\$2,500.00
<b>Payment 2</b>	Within 140 days of the effective date of the CAFO	\$2,500.00	\$29.17	\$2,529.17
<b>Payment 3</b>	Within 250 days of the effective date of the CAFO	\$2,500.00	\$15.28	\$2,515.28
<b>Payment 4</b>	Within 360 days of the effective date of the CAFO	\$2,500.00	\$7.64	\$2,507.64
<b>Total</b>		<b>\$10,000.00</b>	<b>\$52.08</b>	<b>\$10,052.08</b>

Respondent must pay the four payments on-line as follows: go to [www.pay.gov](http://www.pay.gov), enter “SFO 1.1” in the search box and follow instructions to make payments.

79. Respondent must send a notice of each payment, which includes Respondent’s name and the case docket number, to EPA at the following electronic addresses:

Regional Hearing Clerk  
[whitehead.ladawn@epa.gov](mailto:whitehead.ladawn@epa.gov)

Claudia Niess  
[niess.claudia@epa.gov](mailto:niess.claudia@epa.gov)

Nidhi K. O'Meara  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

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

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

82. 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**

83. 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 for their respective representatives: Nidhi O'Meara at [omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov) (attorney for Complainant), and Harry Moyle at [hmoyle@auroraspcdm.com](mailto:hmoyle@auroraspcdm.com) (representative for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

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

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

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

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

89. 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.

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

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

**In the Matter of:  
Aurora Specialty Chemistries Corporation**

**Aurora Specialty Chemistries Corporation, Respondent**

**Harry J  
Moyle**

Digitally signed by Harry  
J Moyle  
Date: 2021.02.01  
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Date

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Harry J. Moyle, President  
Aurora Specialty Chemistries Corporation

**In the Matter of:  
Aurora Specialty Chemistries Corporation**

**United States Environmental Protection Agency, Complainant**

February 4, 2021

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Date

**MICHAEL**  
**HARRIS**

Digitally signed by  
MICHAEL HARRIS  
Date: 2021.02.04  
13:41:01 -06'00'

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Michael D. Harris, Director  
Enforcement & Compliance Assurance Division

**In the Matter of:**  
**Aurora Specialty Chemistries Corporation**  
**Docket No.** FIFRA-05-2021-0006

**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.

**ANN COYLE** Digitally signed by ANN  
COYLE  
Date: 2021.02.17  
13:52:44 -06'00'

\_\_\_\_\_  
Date

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

Consent Agreement and Final Order  
In the Matter of: Aurora Specialty Chemistries Corporation  
Docket Number: **FIFRA-05-2021-0006**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2021-0006**, which was filed on **February 17, 2021**, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Complainant: Ms. Nidhi K. O'Meara  
[omeara.nidhi@epa.gov](mailto:omeara.nidhi@epa.gov)

Copy by E-mail to  
Respondent: Mr. Harry Moyle  
[hmoyle@auroraspchm.com](mailto:hmoyle@auroraspchm.com)

Copy by E-mail to  
Regional Judicial Officer: Ms. Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated: \_\_\_\_\_  
LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5