



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
October 29, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7674 4171

Mr. Lawrence E. Culleen  
Arnold & Porter LLP  
555 Tweth St., NW  
Washington, D.C. 20004-1206

Consent Agreement and Final Order In the Matter of  
The TJX Companies, Inc. Docket No. FIFRA-05-2015-0006

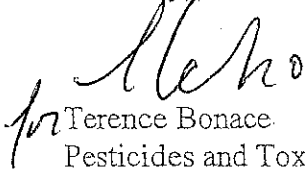
Dear Mr. Culleen:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on October 29, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$299,000 is to be paid in the manner described in paragraphs 41 and 42. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by November 28, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

  
for Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

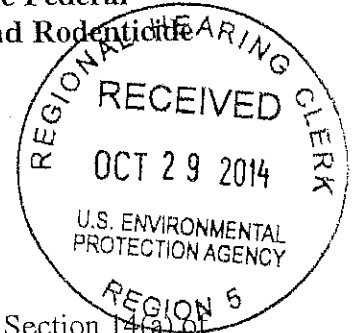
In the Matter of: )

The TJX Companies, Inc. )  
Framingham, Massachusetts, )

Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2015-0006

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 1361(a)



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. § 1361(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, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is The TJX Companies, Inc. (TJX), a corporation doing business in the State of Massachusetts.
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 and legal conclusions 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 currently complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

### **Statutory and Regulatory Background**

10. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states 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.

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

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A) states that a pesticide is misbranded if “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.”

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

15. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” 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.” Also see 40 C.F.R. §152.3.

16. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

17. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines the term “pest” as “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 the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

18. 40 C.F.R. § 152.15(a) states, in pertinent part, that no person may distribute or sell any pesticide product that is not registered under FIFRA. It further 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 implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

19. The Administrator of the 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**

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

21. TJX is headquartered at 770 Cochituate Road, Framingham, Massachusetts, 01701.

22. TJX operates a number of retail chains throughout the United States, including T.J. Maxx, Marshalls and HomeGoods.

23. On or about May 2, 2014, an inspector with the Wisconsin Department of Agriculture, Trade and Consumer Protection (WDATCP) who is an authorized representative of the EPA inspected a TJX retail store, T.J. Maxx, at 1260 Commons Circle, Plover, Wisconsin 54467.

24. During that inspection, the inspector collected a physical sample of **Wags & Wiggles debug Flea & Tick Shampoo**.

25. The label on the bottle of **Wags & Wiggles debug Flea & Tick Shampoo** states:

**FLEA AND TICK SHAMPOO**

This lemony-fresh shampoo repels and kills existing fleas and ticks as well [as] breaks the flea life cycle by killing flea eggs. Your dog will smell fresh and clean and be bug free!

26. The label on the bottle of **Wags & Wiggles debug Flea & Tick Shampoo** lists the active ingredients as: (S)-methoprene 10%, pyrethrins 15% and piperonyl butoxide 0.5%.

27. (S)-methoprene, pyrethrins and piperonyl butoxide are all known insecticides/pesticides.

28. On or about June 19, 2014, the WDATCP Bureau of Laboratory Services located at 2601 Agricultural Drive, Suite 150, Madison, Wisconsin 53707-7883, completed a pesticide formulation analysis for the contents of the bottle of **Wags & Wiggles debug Flea & Tick Shampoo** that was collected on May 2, 2014.

29. The formulation analysis shows that the bottle of **Wags & Wiggles debug Flea & Tick Shampoo** that was collected on May 2, 2014 did not contain 10% (S) methoprene, 15% pyrethrins and 0.5% piperonyl butoxide as claimed on the label of the bottle.

30. **Wags & Wiggles debug Flea & Tick Shampoo**, is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15 because the label of **Wags & Wiggles debug Flea**

**& Tick Shampoo** claims that the product contains known pesticides and prevents, destroys, repels or mitigates a pest.

31. **Wags & Wiggles debug Flea & Tick Shampoo** is not registered as a pesticide, as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

32. **Wags & Wiggles debug Flea & Tick Shampoo** is also misbranded because the bottle sampled on or about June 19, 2014, did not contain the active ingredients which were claimed on the label of the bottle.

33. The label on the bottle of **Wags & Wiggles debug Flea & Tick Shampoo** that was collected on May 2, 2014 is representative of the label on all the bottles of **Wags & Wiggles debug Flea & Tick Shampoo** distributed or sold by TJX in May 2014.

34. From on or about May 21, 2014 through on or about May 29, 2014, TJX distributed or sold **Wags & Wiggles debug Flea & Tick Shampoo**, from its distribution centers in the United States to its HomeGoods retail stores in the United States on 198 separate occasions.

#### Legal Conclusions Counts 1 – 198

35. Complainant incorporates paragraphs 1 through 34 of this CAFO, as if set forth in this paragraph.

36. From on or about May 21, 2014 through May 29, 2014, Respondent distributed or sold the unregistered pesticide, **Wags & Wiggles debug Flea & Tick Shampoo** to its HomeGoods retail stores in the United States on 198 separate occasions.

37. Respondent's distribution or sale of the unregistered pesticide, **Wags & Wiggles debug Flea & Tick Shampoo**, on 198 separate occasions, constitutes 198 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

38. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A)

on 198 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a) for each of the 198 separate violations of FIFRA.

**Civil Penalty and Other Relief**

39. 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 civil penalty under FIFRA.

40. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's *Enforcement Response Policy, Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009, Complainant has determined the appropriate civil penalty to settle this action is \$299,000.

41. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a \$299,000 civil penalty in order to settle and resolve the alleged FIFRA violations. Respondent agrees to pay the civil 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

Respondent agrees that the check will note "In the Matter of The TJX Companies, Inc.," and the docket number of this CAFO.

42. Respondent agrees that a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number will accompany the payment.

Respondent agrees that it will send a copy of the check and transmittal letter to:

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

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

44. 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. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

45. Pursuant to 31 C.F.R. § 901.9, Respondent agrees to 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 pursuant to applicable law. Respondent agrees to pay a \$15 handling charge each month that any portion of the civil penalty is more than 30 days past due. In addition, Respondent agrees to pay a 6 percent per year civil penalty on any principal amount 90 days past due.

#### **General Provisions**

46. This CAFO resolves only Respondent's alleged liability for federal civil penalties



for the violations and facts alleged in this CAFO.

47. 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.

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

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

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

51. Each person signing this CAFO 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.

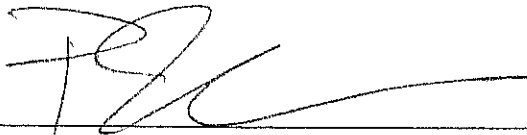
52. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of:  
The TJX Companies, Inc.

The TJX Companies, Inc.,  
Respondent

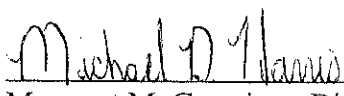
9/30/14  
Date

  
Paul Kangas  
Senior Vice President and  
Chief Compliance Officer

In the Matter of:  
The TJX Companies, Inc.

United States Environmental Protection Agency, Complainant

10/17/2014  
Date

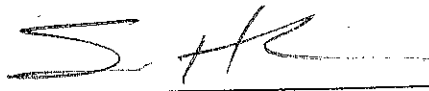
*In M.G.*  
  
Margaret M. Guerriero, Director  
Land and Chemicals Division

In the Matter of:  
The TJX Companies, Inc.  
Docket No. FIFRA-05-2015-0006

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.

10/24/2014  
Date

  
\_\_\_\_\_  
Susan Hedmam  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

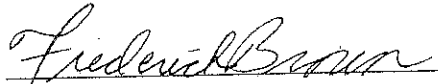
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving The TJX Companies, Inc., was filed on October 29, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 4171, a copy of the original to the Respondent:

Mr. Lawrence E. Cullen  
Arnold & Porter LLP  
555 Tweth St., NW  
Washington. D.C. 20004-1206

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2015-0006