



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

January 27, 2015

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No. 7011 1150 0000 2643 8227

Ms. Eileen B. Salathe<sup>3</sup> Gernhard  
Dow AgroSciences LLC  
9330 Zionsville Rd.  
Indianapolis, Indiana 46268

Consent Agreement and Final Order In the Matter of  
Dow AgroSciences LLC, Docket No. **FIFRA-05-2015-0023**

Dear Ms. Gernhard,

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 January 27, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$137,280 is to be paid in the manner described in paragraph 125. Please be certain that the docket number is written on both the transmittal letters and on the check. Payment is due by February 26, 2015 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence Bonace".

for Terence Bonace  
Pesticides and Toxics Compliance Section

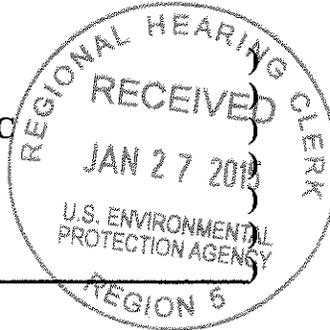
Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Dow AgroSciences LLC  
Indianapolis, Indiana,

Respondent.



Docket No.

FIFRA-05-2015-0023

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**

**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 Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.

3. Respondent is Dow AgroSciences LLC, a limited liability company doing business in the State of Indiana.

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 alleged violations 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 to the best of its knowledge and belief after reasonable inquiry it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. Section 3(c)(2)(A) of FIFRA, 7 U.S.C. § 136a(c)(2)(A), provides that the Administrator of EPA shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time.

11. Section 3(c)(1)(C), 7 U.S.C. § 136a(c)(1)(C), provides that each applicant for registration of a pesticide shall file with the Administrator of EPA a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

12. Section 3(c)(5)(A) of FIFRA, 7 U.S.C. § 136a(c)(5)(A), provides that the Administrator of EPA shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d), its composition is such as to warrant the proposed claims for it.

13. Section 3(c)(5)(B) of FIFRA, 7 U.S.C. § 136a(c)(5)(B), provides that the Administrator of EPA shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d), its labeling and other material required to be submitted comply with the requirements of FIFRA.

14. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as part of the statement required in connection with its registration under Section 3 of FIFRA.

15. 40 C.F.R. § 152.112 provides that EPA will approve an application for registration of a pesticide under the criteria of FIFRA Section 3(c)(5) only if, among other things, the Agency has determined that the product is not misbranded as that term is defined in FIFRA Section 2(q) and 40 C.F.R. Part 156, and its labeling and packaging comply with the applicable requirements of the Act and 40 C.F.R. Parts 152, 156 and 157.

16. 40 C.F.R. § 152.132 provides that a registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed "supplemental distribution" and the product is referred to as a "distributor product."

17. 40 C.F.R. § 152.132 provides 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.

18. 40 C.F.R. § 152.132 provides that supplemental distribution is permitted upon notification to EPA if all of the following conditions are met: (a) The registrant has submitted to EPA 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: (1) the product name of the distributor product may be different (but may not be misleading), (2) the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) 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.

19. The term "distribute or sell" as defined in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), 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."

20. The term "label" as defined in Section 2(p) of FIFRA, 7 U.S.C. § 136(p), means "the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers."

21. The term "labeling" as defined in Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), means "all labels and all other 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” with exceptions not relevant here.

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

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

24. The term “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), means 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.

25. The term “registrant” as defined in Section 2(y) of FIFRA, 7 U.S.C. § 136(y), means “a person who has registered any pesticide pursuant to the provisions of FIFRA.”

26. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor 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**

27. Respondent is a Delaware limited liability company, and is therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

28. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 9330 Zionsville Road, Indianapolis, Indiana.

29. Eau Claire Cooperative Oil Company (Eau Claire) is a corporation with a place of business located at 4970 Kane Road, Eau Claire, Wisconsin.

30. Eau Claire is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

31. An inspector employed by Wisconsin Department of Agriculture, Trade and Consumer Protection and authorized to conduct inspections under FIFRA conducted an inspection at Eau Claire's place of business at 4970 Kane Road, Eau Claire, Wisconsin on the following dates in 2010: May 20 and 27; July 14, 27, 28, 29; August 2, 6, 9, 10, 12, 13, 16, 17, 18, 19, 20, 23 through 27, 30, 31; September 1, 2, 7 through 10, 13 through 16, 21, 22, 23, 24, and 27 (the "inspection").

32. On or about March 24, 2003, Respondent registered its pesticide product Dimension 0.125% FG/Crab-Buster 0.125% FG with EPA.

33. EPA assigned EPA Registration Number (EPA Reg. No.) 62719-483 to Respondent's pesticide product Dimension 0.125% FG/Crab-Buster 0.125%.

34. Respondent's March 24, 2003 registered pesticide product included a sub-label intended for professional or commercial use using the brand name Dimension 0.125% FG.

35. Respondent's March 24, 2003 registered pesticide product included a sub-label intended for residential use under the brand name Crab-Buster 0.125% FG.

36. Dimension 0.125% FG/Crab-Buster 0.125% FG is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a "pesticide" as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

37. Respondent registered a pesticide pursuant to the provisions of FIFRA, and is therefore a "registrant" as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

38. At all times relevant to this CAFO, Dimension 0.125% FG/Crab-Buster 0.125% FG, EPA Reg. No. 62719-483 was a registered pesticide with EPA accepted labels, including but not limited to EPA accepted labels dated March 24, 2003, July 18, 2005, March 12, 2009 and March 20, 2009.

39. The accepted labels for Dimension 0.125% FG/Crab-Buster 0.125% FG, EPA Reg. No. 62719-483, include approved claims that may be made for it as part of its distribution or sale.

40. EPA's Office of Pesticide Programs Information Network (OPPIN) database provides that on or about March 9, 2004, Respondent and Eau Claire submitted a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) to EPA for the pesticide product Dimension 0.125% FG/Crab-Buster 0.125% FG.

41. During the inspection, the inspector collected a copy of a "Notice of Supplemental Distribution of a Registered Pesticide Product" (EPA Form 8570-5) signed by Respondent on September 23, 2008 for the pesticide product Dimension 0.125% FG/Crab-Buster 0.125% FG.

42. The March 9, 2004 and September 23, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product listed Eau Claire as a distributor of Dimension 0.125% FG/Crab-Buster 0.125%, EPA Reg. No. 62719-483.

43. The distributor company number assigned to Eau Claire is 57131.

44. The March 9, 2004 and September 23, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product listed the distributor product name as "Menards Premium Crabgrass Preventer 26-2-3."

45. The EPA Registration Number for the distributor product Menards Premium Crabgrass Preventer 26-2-3 is 62719-483-57131. The March 9, 2004 and September 23, 2008 Notices of Supplemental Distribution of a Registered Pesticide Product allowed Eau Claire to distribute Crab-Buster 0.125% FG, EPA Reg. No. 62719-483, under the brand name Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, subject to the requirements of FIFRA.

46. Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131 is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests, and is therefore a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

47. Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, is intended for residential use.

48. Under 40 C.F.R. § 152.132, Eau Claire is considered an agent of Respondent for all intents and purposes under FIFRA, and Respondent may be held liable for violations pertaining to the distributor product Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131.

49. During the inspection, the inspector collected an empty container with the preprinted label and sales and/or distribution records for the product Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131.

50. Eau Claire’s label for Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131 contained a number of claims that had not been accepted as claims for Crab Buster 0.125%FG, EPA Reg. No. 62719-483, including but limited to the claim: “Methylene urea is a proven controlled-release homogenous technology. It releases nitrogen

gradually through hydrolysis and microbial action in the soil for a safe, sustained feeding” in bold letters on the back of the label.

51. On or about March 30, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

52. On or about March 31, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

53. On or about April 1, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards -Fishers (3171)” located in Indianapolis, Indiana.

54. On or about April 1, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Fort Wayne FTWW 3166)” located in Fort Wayne, Indiana.

55. On or about April 1, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Indy South” located in Indianapolis, Indiana.

56. On or about April 1, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards – (3156)” located in Lafayette, Indiana.

57. On or about April 2, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Shelby DC” located in Shelby, Iowa.

58. On or about April 2, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Bolingbrook” located in Bolingbrook, Illinois.

59. On or about April 2, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

60. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Tipp City (3240)” located in Tipp City, Ohio.

61. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Saginaw 3223” located in Saginaw, Michigan.

62. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Bloomington (Blom 3174)” located in Bloomington, Indiana.

63. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Clio (3241)” located in Clio, Michigan.

64. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Fort Wayne South (3208)” located in Fort Wayne, Indiana.

65. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards (KOKO 3146)”

located in Kokomo, Indiana.

66. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Lima” located in Lima, Ohio.

67. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Avon” located in Avon, Indiana.

68. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards- Carpentersville (3148)” located in Carpentersville, Illinois.

69. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Crystal Lake” located in Crystal Lake, Illinois.

70. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Davenport” located in Davenport, Iowa.

71. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Fort Dodge” located in Fort Dodge, Iowa.

72. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards-Lansing (3157)” located in Lansing, Michigan.

73. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Mason City” located in Mason City, Iowa.

74. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Moline” located in Moline, Illinois.

75. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Morris (3215)” located in Morris, Illinois.

76. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Pekin” located in Pekin, Illinois.

77. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Peoria” located in Peoria, Illinois.

78. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Washington (3237)” located in Washington, Illinois.

79. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards West Lafayette (3511)” located in West Lafayette, Indiana.

80. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Portage Indiana”

located in Portage, Indiana.

81. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Bradley” located in Bradley, Illinois.

82. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Sioux Falls East (3192)” located in Sioux Falls, South Dakota.

83. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Crestwood” located in Crestwood, Illinois.

84. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Dolton” located in Dolton, Illinois.

85. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Homewood” located in Homewood, Illinois.

86. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards – (Lans 3158)” located in Lansing, Michigan.

87. On or about April 5, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards – MT Prospect” located in Mt. Prospect, Illinois.

88. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Clive” located in Clive, Iowa.

89. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Akeny (ANKE 3090)” located in Ankeny, Iowa.

90. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Bismark” located in Bismark, North Dakota.

91. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

92. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards – (3161)” located in Jackson, Michigan.

93. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Joliet” located in Joliet, Illinois.

94. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Comstock Park” located in Comstock Park, Michigan.

95. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Iowa City” located in

Iowa City, Iowa.

96. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards- Kalamazoo (KALA 3150)” located in Kalamazoo, Michigan.

97. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Long Grove (3254)” located in Long Grove, Illinois.

98. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards” located in Marion, Iowa.

99. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards –Wyoming” located in Wyoming, Michigan.

100. On or about April 6, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Traverse City #3197” located in Traverse City, Michigan.

101. On or about April 12, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Shelby DC” located in Shelby, Iowa.

102. On or about April 13, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

103. On or about April 14, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Shelby DC” located in Shelby, Iowa.

104. On or about April 19, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Shelby DC” located in Shelby, Iowa.

105. On or about April 21, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Saginaw” located in Saginaw, Michigan.

106. On or about April 21, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Grand Island” located in Grand Island, Nebraska.

107. On or about April 22, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards DC BLDG# 221” located in Plano, Illinois.

108. On or about April 22, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Clio” located in Clio, Michigan.

109. On or about April 27, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to Menards located in Plano, Illinois.

110. On or about April 27, 2010, Eau Claire distributed or sold Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, to “Menards Shelby DC” located

in Shelby, Iowa.

111. Each of the sixty sales and/or distributions by Eau Claire of Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, described in paragraphs 51 through 110 above, constitutes a distribution and/or sale of a pesticide with claims that substantially differ from claims made for it as part of the statement required in connection with its registration under Section 136a of FIFRA, in violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

112. As provided in 40 C.F.R. § 152.132, Respondent, as the registrant of the distributor product, is liable for each of the sixty sales and/or distributions that made claims which substantially differed from claims made in connection with the registration of Menards Premium Crabgrass Preventer 26-2-3, EPA Reg. No. 62719-483-57131, as described in paragraphs 51 through 110 above.

#### Civil Penalty

113. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136f(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$137,280. 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, and the gravity of the violation. Complainant also considered EPA's Enforcement Response Policy, dated December 2009.

125. Within 30 days after the effective date of this CAFO, Respondent must pay a \$137,280 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

126. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at 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

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

Kasey Barton (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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

128. 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.

129. 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**

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

131. 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.

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

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

134. Respondent agrees to take and/or has taken the following actions:

- (a) Develop an expanded internal database/spreadsheet of active supplemental distributor products;
- (b) Continue to require review/approval of distributor product labels before distribution;
- (c) Increase frequency of label review to ensure all supplemental distributor labels are checked on a yearly basis;
- (d) Strengthen the process for ensuring EPA or Dow AgroSciences driven label amendments are communicated to supplemental distributors along with clear actions and timelines for implementation; and

(e) Develop an enhanced and more frequent in-person inspection program to further confirm compliance in label implementation.

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

136. 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.

137. Each party agrees to bear its own costs and attorney fees in this action.

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

**Dow AgroSciences LLC, Respondent**

9 December 2014  
Date

  
  
Kenneth D. Isley  
Vice President, General Counsel & Secretary  
Dow AgroSciences LLC

**United States Environmental Protection Agency, Complainant**

1/21/2015  
Date

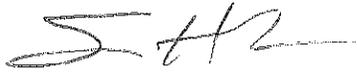
  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:  
Dow AgroSciences LLC  
Docket No. FIFRA-05-2015-0023**

**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.

11/26/2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States 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 Dow AgroSciences LLC, was filed on January 27, 2015, 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. 7011 1150 0000 2643 8227, a copy of the original to the Respondent:

Ms. Eileen B. Salathe' Gernhard  
Dow AgroSciences LLC  
9330 Zionsville Rd.  
Indianapolis, Indiana 46268

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Kasey Barton, Assistant Regional Counsel, 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-05-2015-0023