



2. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

## **II. THE PARTIES**

4. Rosemarie A. Kelley, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized, by lawful delegation, to institute and settle civil administrative actions brought pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
5. Respondent is Wal-Mart Stores, Inc. (“Walmart” or “Respondent”), a Delaware corporation doing business in the State of Arkansas, as well as any subsidiaries or affiliated companies of Walmart in all 50 states.

## **III. PRELIMINARY STATEMENTS**

6. The terms of this CAFO constitute a full and final settlement between the parties for all claims for civil penalties and injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 14(a) of FIFRA, for the alleged violations of RCRA and FIFRA specified in Section XI of this CAFO. Except as provided in paragraph 111, compliance with this CAFO shall not be a defense to any other action arising out of Walmart’s future conduct and commenced pursuant to federal, state, and local environmental laws and it is the responsibility of the Respondent to comply with all applicable provisions of RCRA, FIFRA, and any other

***In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056***

federal, state, or local laws and regulations. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.

7. Respondent admits the Stipulated Facts in Section VII of this CAFO. 40 C.F.R. § 22.18(b).
8. Respondent agrees to pay the civil penalties specified in Section XIII as full and final settlement for all civil claims specified in this CAFO. 40 C.F.R. § 22.18(b).
9. Each party to this CAFO shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

**IV. JURISDICTION AND WAIVER OF RIGHT TO HEARING**

10. This CAFO is entered into pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 14(a) of FIFRA, 7 U.S.C. § 136l(a); and the Consolidated Rules, 40 C.F.R. Part 22.
11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of the EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program, when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e), or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.
12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Affected States have been authorized to administer the base RCRA hazardous waste program (requirements imposed by the Solid Waste Disposal Act prior to the Hazardous and Solid Waste Amendments of 1984) in lieu of the federal government's program.
13. The violations of RCRA described herein are alleged to have occurred in all Affected States and this compliance agreement covers Walmart Retail Facilities, Return Centers, and Distribution Centers in all Affected States, so citations to federal RCRA regulations are used for the parties' convenience. Respondent agrees that the terms of this compliance agreement govern its actions

but that States may impose requirements broader in scope than the federal regulations and this CAFO.

14. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) the Administrator may issue an order assessing a civil penalty for any past or current violation and require compliance immediately or within a specified time period.
15. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce federally-authorized hazardous waste programs for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023e, 42 U.S.C. §§ 6921-6939e.
16. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
17. EPA has provided notice of commencement of this action to all authorized states pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).
18. For the purpose of the CAFO, Respondent admits the jurisdictional allegations set out in this consent agreement and waives any defenses it might have to venue and jurisdiction. Solely for the purpose of the approval of this CAFO by the Environmental Appeals Board (“EAB”), Respondent agrees not to assert before the EAB any statute of limitations affirmative defense it might have for the RCRA and FIFRA violations alleged in Section XI.
19. Except as provided in paragraphs 7 and 18, above, Respondent neither admits nor denies the factual allegations and legal conclusions set out in this CAFO.
20. Respondent waives any right it may have to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement for purposes of this CAFO only.

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

21. Respondent waives any right it may have to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.
22. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions, with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO so long as the EPA Officials provide Respondent with notice and, if written, a copy of such memorandum or communication from any third party.

**V. PARTIES BOUND**

23. This CAFO applies to and is binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or part, directly or indirectly, by Respondent. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent.
24. Each Party certifies that at least one of its undersigned representatives is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the CAFO, to execute it on behalf of that Party, and to legally bind the Party on whose behalf he or she signs this CAFO.

**VI. DEFINITIONS**

25. Unless otherwise expressly provided herein, terms used in the CAFO that are defined in RCRA, 42 U.S.C. §§ 6902-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-270, or in a state's authorized hazardous waste program, shall have the same meaning assigned to them in RCRA or in such regulations or applicable authorized state hazardous waste program. Terms used in this CAFO that are defined in FIFRA, 7 U.S.C. §§ 136-136y, or in regulations

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

promulgated under FIFRA at 40 C.F.R. Parts 152-169, shall have the same meaning assigned to them in FIFRA or in such regulations.

26. Whenever terms listed below are used in this CAFO, the following definitions shall apply:
- a. "Affected State" shall mean a state in which a Walmart Retail Facility is located as specified in Appendix C of this CAFO.
  - b. "Business Day" means any day other than Saturday, Sunday, or a federal or legal holiday.
  - c. "Claims Supervisor" means a Walmart Retail Facility Associate as described in Paragraph 94(d) and assigned the title claims supervisor (or similar title) for Stores. Claims Supervisors' job responsibilities will include accountability for hazardous waste management issues.
  - d. "Conditionally Exempt Small Quantity Generator" means a facility that generates less than 100 kg of hazardous waste in a calendar month.
  - e. "Consent Agreement and Final Order" or "CAFO" shall mean this Consent Agreement and attached Final Order and all Attachments hereto. In the event of conflict between this Consent Agreement and any Attachment, this Consent Agreement shall control.
  - f. "Consumer Products" shall mean products sold in consumer product packaging which are transported as part of the Reverse Distribution Process.
  - g. "Clubs" means the members-only retail facilities operated by Wal-Mart Stores, Inc. under the name Sam's Club, or any future such facility.
  - h. "Distribution Center" means a distribution center facility, or any future such facility, operated by Walmart for the distribution of new products from vendors to Walmart's Retail Facilities.
  - i. "EPA" means the U.S. Environmental Protection Agency.
  - j. "Establishment" means "any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale," 7 U.S.C. § 136(dd).

***In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056***

- k. “FIFRA” means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*
- l. “Large Quantity Generator” means a facility that generates 1000 kg or more of hazardous waste in a calendar month.
- m. “Notify” and “Submit” and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the U.S. mail or dispatch by express courier not later than the day that such transmission or communication is required by this CAFO. If that day is not a business day then the delivery, deposit, or dispatch shall be made the next business day.
- n. “Paragraph” shall mean a portion of this CAFO identified by an arabic numeral and, in some cases, an associated lower case letter.
- o. “Parties” shall mean U.S. EPA and Respondent.
- p. “Pesticidal product” means “a pesticide, active ingredient, or device.” 40 C.F.R. § 167.3.
- q. “Pesticide” means, in relevant part, “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer ... .” 7 U.S.C. § 136(u).
- r. “Pesticide product” means, in relevant part, “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. ...” 40 C.F.R. § 152.3.
- s. This paragraph intentionally left blank.
  
- t. “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

- u. “Respondent” shall mean Wal-Mart Stores, Inc. and its successors and assigns, as well as any subsidiaries or affiliated companies of Walmart.
- v. “Responsible Official” means an official of Walmart who is in charge of a principal business function, or any other person who performs similar policy or decision-making functions for Walmart.
- w. “Return Center” means the six reverse distribution facilities operated by Walmart or on Walmart’s behalf and located in Bentonville, Arkansas; Las Vegas, Nevada; Waco, Texas; Spartanburg, South Carolina; Indianapolis, Indiana; and Johnstown, New York; the facility previously located in Macon, Georgia, and any future such facility utilized as part of the Reverse Distribution Process or any new location for an above identified facility.
- x. “Reverse Distribution Process” or “Reverse Distribution System” means a process for consolidating returned, recalled or other items in centralized Return Centers from Retail Facilities and Distribution Centers, one of the purposes of which is waste minimization through bulk resale of items, donation of items, return to manufacturer, or proper handling as waste. The items transported to a Return Center may have first been transported through a Distribution Center and consolidated prior to transfer to the Return Center.
- y. “Retail Facility Associate” means a Walmart Retail Facility employee.
- z. “Section” shall mean a portion of this CAFO identified by a roman numeral.
- aa. “Small Quantity Generator” means a facility who generates more than 100 kg and less than 1000 kg of hazardous waste in a calendar month.
- bb. “Solid Waste” shall mean any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31. For purposes of this CAFO with specific respect to Walmart Retail Facilities, discarded material means all Consumer Products under Respondent’s control that cannot be sold at a Walmart Retail Facility or used by Walmart, and for which Respondent does not have a contractual



*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

agreement or general practice providing for the return of that material to the manufacturer (readily confirmed by a written agreement with the manufacturer or business records maintained by the Respondent documenting routine returns of the material to the manufacturer), or the material otherwise cannot be donated, resold, reused, or recycled in a manner that does not constitute discard pursuant to 40 C.F.R. § 261.2 or applicable state law, or which the donation, resale, reuse, or recycling is prohibited under other applicable federal or state law.

cc. “Stores” means Walmart Discount Stores and Supercenters, or any future such Walmart Retail Facility (but not including Clubs as defined above).

dd. “United States” means the United States of America, and all of its departments, agencies, and instrumentalities.

ee. “Walmart Retail Facility” or “Retail Facility” means the Walmart owned retail facilities in the United States (including Puerto Rico and other U.S. territories), which includes Walmart Discount Stores, Supercenters, Neighborhood Markets, Sam’s Clubs, and Marketside Stores or any future such facility. However, Walmart Retail Facility does not include any small format Walmart owned retail facility opened after January 1, 2011, that totals less than 30,000 sq. ft. in retail space. Nothing in this CAFO relieves Respondent from its obligation to comply with all applicable federal, state, and local statutes and regulations for all such small format Walmart owned retail facilities.

**VII. STIPULATED FACTS**

27. Complainant is the Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, U.S. EPA.

28. Respondent is Wal-Mart Stores, Inc. (Walmart). Walmart’s corporate office is located at 702 SW 8th Street, Bentonville, AR 72716-8611. Walmart operates approximately 4000 retail facilities throughout all fifty (50) states in the United States.

### VIII. RCRA LEGAL BACKGROUND

29. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. §§ 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270, 273, and 279.
30. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are “solid wastes,” and of these solid wastes, what wastes are regulated as “hazardous wastes.” These regulations and definitions are set forth at 40 C.F.R. Part 261.
31. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded by regulation or variance.
32. Regulations governing the identification of hazardous wastes are found in 40 C.F.R. Part 261. These regulations contain two (2) categories of hazardous wastes, “listed” and “characteristic.” Those wastes that have been determined to be hazardous by definition have been assigned certain identification numbers and are referred to as “listed wastes.” “Characteristic hazardous wastes” are solid wastes that exhibit one or more of the following characteristics: ignitability, reactivity, corrosivity or toxicity.
33. Section 3002 of RCRA, 42 U.S.C. § 6938, requires EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and include requirements for determining whether a waste is hazardous, managing waste in proper containers, labeling and dating containers, inspecting waste storage areas, training, planning for emergencies, and procedures and requirements related to shipping wastes off-site for treatment, storage, or disposal.

## **IX. FIFRA LEGAL BACKGROUND**

34. FIFRA grants the Agency authority to regulate the production, distribution, sale, labeling, and application of pesticides. Pursuant to 7 U.S.C. § 136j(a)(2)(L), no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). Pursuant to 7 U.S.C. § 136j(a)(1)(E) and (C), respectively, with certain exceptions not applicable to this CAFO, it is unlawful for any person to distribute or sell, *inter alia*: a) any pesticide which is adulterated or misbranded; and b) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under 7 U.S.C. § 136a. It is unlawful for any person to detach, alter, deface, or destroy any labeling required under FIFRA. 7 U.S.C. § 136j(a)(2)(A).

## **X. EPA ALLEGATIONS AND DETERMINATIONS**

35. Respondent, Wal-Mart Stores, Inc. is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and 40 C.F.R. § 260.10;
36. Respondent operates retail grocery and department stores in various formats across the United States at which Walmart sells commonly used consumer products.
37. Respondent sells common consumer products, some of which may be considered hazardous waste (when discarded) under federal or state law, including but not limited to, bleaches, pool chlorine and acids, pesticides, fertilizers, paints and varnishes, lamp oil and other ignitable liquids, aerosol products, oven cleaners and various other cleaning agents, automotive products and solvents, and other flammable and corrosive materials. Most of these consumer products are sold to the public in the ordinary course of business.
38. If these common consumer products are spilled or leaking or in a condition such that they cannot be used for their intended purpose, sold, or recycled, some of these products may be considered hazardous waste under federal or state law. Prior to 2006, some of these hazardous wastes were

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

then sent by the Retail Facilities to one (1) of six (6) Walmart Return Centers to determine final disposition.

39. Respondent is the owner and operator of approximately 4000 Walmart Retail Facilities and Distribution Centers, of which, on a monthly basis, a very large majority may be Conditionally Exempt Small Quantity Generators (“CESQG”) of hazardous waste, pursuant to 40 C.F.R. § 261.5.
40. Prior to 2006, Walmart Retail Facilities that generated more than 100 kg of hazardous waste per month did not systematically determine if Solid Wastes were hazardous waste as required by 40 C.F.R. § 262.11, and where such waste was hazardous, did not systematically handle the hazardous waste in accordance with the requirements of 40 C.F.R. Part 262.
41. Prior to 2006, Respondent did not prepare manifests for shipment of these wastes to the Return Centers.
42. Prior to 2006, some of the returned or damaged products Walmart shipped to its Return Centers on Walmart trucks were hazardous waste. Walmart trucks are not authorized to transport hazardous waste, as defined in 40 C.F.R. Part 263.
43. Walmart’s Return Centers are not designated hazardous waste treatment, storage or disposal facilities under RCRA and are not authorized to accept hazardous waste.  
  
Prior to 2006, Respondent did not have a proper employee training plan in place at the Retail Facilities, as required by 40 C.F.R. Part 262 nor did Respondent have emergency procedures in place.
44. This paragraph intentionally left blank.

45. A majority of the Respondent's Retail Facilities typically generate less than 100 kg of hazardous waste per month, and therefore, are subject only to the RCRA regulatory requirements applicable to Conditionally Exempt Small Quantity Generators ("CESQGs") at 40 C.F.R. § 261.5.
46. Walmart sells, at Wal-Mart Retail Facilities, among other things, a variety of pesticides and fertilizer-pesticide mixtures that are regulated under FIFRA.
47. On October 9, 2006, Walmart entered into a written agreement with an entity that became known as Greenleaf LLC, to receive, re-package and otherwise prepare certain household products, including regulated pesticides for reuse and re-sale.
48. On at least 70 days between, approximately, July 2006 and February 2008, Walmart sent truckloads of household products, including charcoal, kitty litter, and approximately two million pounds of solid and liquid pesticides from Walmart Return Centers destined for and delivered to Greenleaf's facility in Neosho, Missouri ("the Greenleaf facility"). At least nine pesticide products (see Appendix B) were included in the shipments described above. Respondent avers that the shipments to Greenleaf were intended for the purpose of re-packaging and re-sale in order to allow the useable products to be used for their intended purposes, thereby reducing waste.
49. Greenleaf did not, at the time of the violations alleged herein, have appropriate EPA FIFRA registrations, required pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, to mix, repackage, and relabel some of the pesticides that Walmart sent to the Greenleaf facility.
50. Walmart subsequently removed and disposed of all materials, including pesticides, from the Greenleaf facility under the supervision of the Missouri Department of Natural Resources.
51. In 2006, Respondent began to implement an enhanced environmental management program in all of its Retail Facilities which seeks to provide for the proper management of hazardous wastes

at all Walmart Retail Facilities and in many respects goes beyond mere compliance with environmental laws. This program is more fully described in Paragraph 93 of this CAFO.

52. Under the Respondent's current environmental management program, hazardous waste determinations are made at all Walmart Retail Facilities and hazardous wastes are picked up by licensed hazardous waste haulers and transported under a RCRA hazardous waste manifest to a hazardous waste treatment, storage, or disposal facility.
53. Respondent currently operates all Walmart Retail Facilities generally in compliance with the Small Quantity Generator requirements of 40 C.F.R. Part 262, even if the facility does not generate more than 100 kg of hazardous waste per month.
54. Respondent continues to operate a Reverse Distribution System for products that cannot, for various reasons, be sold in Walmart Retail Facilities. The Parties agree that the use of reverse distribution for the management of retail consumer products (wherein items are centralized for determining the most efficient use, re-use, or other disposition of the item), is an effective means of ensuring re-use, recycling, and waste minimization. The Parties acknowledge that for some Consumer Products sent to Return Centers a decision as to whether those products will be discarded can only be made at the Return Center, as reflected in the terms of this CAFO. This means that Return Centers do generate certain hazardous wastes. This agreement attempts to facilitate the effective use of the reverse distribution process while ensuring that those Consumer Products that clearly constitute hazardous wastes are managed in accordance with RCRA at Walmart's Retail Facilities.

## **XI. VIOLATIONS**

### **Count 1: Failure to Make a Hazardous Waste Determination**

55. Paragraphs 1 through 54 above are incorporated herein by reference as if they were set forth in their entirety.

56. 40 C.F.R. § 262.11 requires a person who generates a Solid Waste to determine if that waste is a hazardous waste.

57. Solid Waste is generated at Walmart Retail Facilities. From January 1, 2005 until January 1, 2006, Respondent, before shipping Solid Wastes to Return Centers, failed to make hazardous waste determinations at any of its Walmart Retail Facilities.

58. By failing to determine whether the Solid Waste generated at Walmart Retail Facilities was a hazardous waste, Respondent violated 40 C.F.R. § 262.11.

**Count 2: Failure to Prepare a Hazardous Waste Manifest**

59. Paragraphs 1 through 58 above are incorporated herein by reference as if they were set forth in their entirety.

60. 40 C.F.R. § 262.20 requires any generator who generates more than 100 kg of hazardous waste per month and who transports or offers for transport hazardous waste to prepare a manifest.

61. From January 1, 2005 until January 1, 2006, Respondent failed to prepare a manifest for each shipment of hazardous waste requiring such a manifest from Walmart Retail Facilities to its Return Centers.

62. By failing to prepare a manifest for each shipment of hazardous waste requiring such a manifest from Walmart Retail Facilities, Respondent violated 40 C.F.R. § 262.20.

**Count 3: Offering Hazardous Waste to Un-permitted Treatment, Storage, or Disposal Facility**

63. Paragraphs 1 through 62 above are incorporated herein by reference as if they were set forth in their entirety.

64. From January 1, 2005 until January 1, 2006, Respondent transported hazardous waste from its Retail Facilities to its Return Centers.

65. From January 1, 2005 until January 1, 2006, the transporter did not have an EPA identification number and the Return Centers were not authorized hazardous waste treatment, storage, or disposal facilities with valid EPA identification numbers.

66. By offering its hazardous waste to transporters and hazardous waste treatment, storage or disposal facilities that did not have valid EPA identification numbers, Respondent violated 40 C.F.R. § 262.12.

**Count 4: Failure to Meet Hazardous Waste Handling, Storage, and Emergency Response Requirements**

67. Paragraphs 1 through 66 above are incorporated herein by reference as if they were set forth in their entirety.

68. From January 1, 2005 until January 1, 2006, Respondent accumulated hazardous waste at its Retail Facilities in unmarked and undated containers.

69. From January 1, 2005 until January 1, 2006, Walmart Retail Facilities did not comply with the emergency planning procedures and training requirements pursuant to 40 C.F.R. § 262.34(d).

70. By accumulating hazardous waste in unmarked and undated containers and failing to have implemented the required emergency planning procedures and employee training, Respondent did not meet the conditions for an exemption from permit requirements under 40 C.F.R. § 262.34. Therefore, Respondent failed to qualify for an exemption from the permit requirements and violated RCRA § 3005(a) and 40 C.F.R. § 270.1 by storing containers of hazardous wastes without a permit to store such waste, or interim status.

**Count 5: Detachment and/or alteration of pesticide labels in violation of FIFRA Section 12(a)(2)(A)**

71. Paragraphs 1 through 70 above are incorporated herein by reference as if they were set forth in their entirety.



72. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), provides that it shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under FIFRA.

73. Respondent repackaged or otherwise changed the FIFRA-required labeling of at least two pesticide products, which were handled at its Return Centers and shipped to or destined for the Greenleaf facility on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraph 48 above.

74. As a result of damage to certain containers and Respondent's changes to the packaging or labeling of pesticide products as alleged in paragraph 73, the labeling, required under FIFRA and 40 C.F.R. § 156.10(a), on one or more containers of at least two pesticides, which were shipped to or destined for the Greenleaf facility in Neosho, Missouri from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, was, in whole or in part, detached, altered, or obscured by opaque outer wrappers or containers that Respondent placed over some of the damaged containers.

75. By covering, detaching, altering, or otherwise changing, in whole or in part, the labeling on the containers of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraphs 73 and 74, above, Respondent violated Section 12(a)(2)(A) of FIFRA, for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Count 6: Distribution of misbranded pesticidal products in violation of Section 12(a)(1)(E) of FIFRA**

76. Paragraphs 1 through 75 above are incorporated herein by reference as if they were set forth in their entirety.

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

77. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.
78. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is “misbranded” if, *inter alia*, any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
79. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), provides, in relevant part, a pesticide is “misbranded” if, *inter alia*, the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read), which is presented or displayed under customary conditions of purchase.
80. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), provides, in relevant part, a pesticide is “misbranded” if, *inter alia*, there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the information enumerated in that paragraph.
81. Pursuant to 40 C.F.R. § 156.10(a)(1), pesticide products must bear labels containing the information specified by FIFRA and its implementing regulations. The contents of the label must show clearly and prominently, *inter alia*, the name, brand, or trademark under which the product is sold; the name and address of the producer, registrant, or person for whom produced; the net contents expressed in the units specified in 40 C.F.R. § 156.10(d); the product registration number; the pesticide producing establishment number; the ingredient statement (with the active ingredients identified by name and designated as “active ingredients” with their total percentage

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

by weight identified and inert ingredients designated collectively as “inert ingredients” with their total percentage by weight identified); a hazard and precautionary statement; directions for use of the pesticide; and use classification. The label must appear on or be securely attached to the immediate container of the pesticide product. 40 C.F.R. § 156.10(a)(4)(i).

82. As a result of damage to certain containers, and Respondent’s changes to the packaging or labeling of pesticide products as alleged in paragraph 73, above, the labels on one or more containers of each of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent’s Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraph 48, above, did not clearly display all of the information required by FIFRA and 40 C.F.R. § 156.10(a) or such labels could not be read because they were obscured by opaque outer wrappers or containers.
83. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), provides 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.
84. Some of the containers of pesticides or pesticide products that Respondent shipped to Greenleaf’s facility in Neosho, Missouri on at least 70 occasions between January 1, 2007 and January 30, 2008, as alleged in paragraph 48, above, contained quantities of pesticides that differed significantly from the quantities listed on the container labels.
85. For the reasons described in paragraphs 82 and 84, above, one or more containers of each of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent’s Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, were “misbranded” as that term is defined in FIFRA § 2(q)(1)(A) and (E) and 2(q)(2)(A) and (C).
86. Respondent’s distributions of at least two misbranded pesticides on at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraphs 48, 82, and 84, above, were unlawful acts

under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which a penalty may be assessed pursuant to Section 14(a) of FIFRA.

## **XII. RCRA COMPLIANCE AGREEMENT**

Based on the foregoing Preliminary Statements, Allegations and Determinations, the Parties agree to the following:

87. Although a majority of Walmart Retail Facilities may qualify as CESQGs in any given month (pursuant to 40 C.F.R. § 261.5), the hazardous waste management program implemented by Respondent at Walmart Retail Facilities, as referenced in Paragraphs 87-95, generally seeks to satisfy RCRA Small Quantity Generator requirements. To the extent Consumer Products continue to be subject to RCRA hazardous waste requirements when discarded, Walmart agrees to:

- a. As applicable, Respondent shall ensure that all Walmart Retail Facilities have an EPA identification number, pursuant to 40 C.F.R. § 262.12.
- b. At all Walmart Retail Facilities, Respondent will properly segregate and store all hazardous wastes for no more than 180 days (270 days if the waste must be shipped more than 200 miles to a treatment, storage, or disposal facility) and comply with all other requirements applicable to Small Quantity Generators at 40 C.F.R. § 262.34.
- c. Respondent shall properly package, label, mark, and placard all hazardous waste shipments from Walmart Retail Facilities pursuant to 40 C.F.R. §§ 262.30 – 262.33.
- d. Respondent shall comply with all manifest and related requirements for hazardous wastes shipped from Walmart Retail Facilities pursuant to 40 C.F.R. §§ 262.20 – 262.27.
- e. Respondent shall only use transporters that have an EPA identification number to transport hazardous wastes from Walmart Retail Facilities.
- f. Respondent shall send all hazardous wastes generated at Walmart Retail Facilities to treatment, storage, or disposal facilities that have an EPA identification number.

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

- g. Respondent shall maintain required records and submit required reports pursuant to 40 C.F.R. §§ 262.40 – 262.44.
88. If at any time a Walmart Retail Facility generates 1000 kg or more of hazardous waste in a calendar month or accumulates more than 6000 kg of hazardous waste, Respondent shall comply with all Large Quantity Generator requirements in 40 C.F.R. Part 262 with respect to that Walmart Retail Facility.
89. Respondent shall manage all hazardous wastes generated at Walmart Retail Facilities (as determined pursuant to Paragraph 91) as hazardous waste and will not send hazardous waste to its Distribution and Return Centers.
90. Respondent shall submit to EPA within sixty (60) days of the filing of this CAFO a current list of all Consumer Products that Respondent currently manages as hazardous waste at its Retail Facilities if those products are spilled, leaking, and cannot be used for their intended purpose in Walmart Retail Facilities (“RCRA Hazardous Item List”). This list shall be marked as and considered Confidential Business Information.
91. Respondent shall make hazardous waste determinations for all Solid Wastes, pursuant to 40 C.F.R. § 262.11. As a means of compliance with this requirement and for purposes of this CAFO only, Respondent shall implement a program to continuously monitor the management of hazardous waste at Walmart Retail Facilities. This program will address Consumer Product items sent to the Return Centers in quantities greater than 1000 items (by Walmart Item ID number), on an annual and nationwide basis. If this program identifies Consumer Product(s) managed as a hazardous waste more than 85% of the time at all Return Centers in the previous calendar year and Walmart has not identified an alternative method of management for those products, then those products will be managed as hazardous wastes at the Retail Facilities pursuant to this CAFO only. Respondent shall submit to EPA on January 31, 2014, and annually thereafter for the duration of this CAFO, a description of all products that as a result of this

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

review, Respondent will manage as hazardous waste in accordance with this CAFO. Respondent shall submit this report on January 31 of each calendar year for as long as this CAFO is in effect, with a reference to the RCRA docket number for this agreement, to the following person:

Rosemarie A. Kelley  
Director, Waste and Chemical Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W. (MC 2249A)  
Washington, DC 20460

92. At each Retail Facility, Respondent shall maintain a current database of all Consumer Products that should be managed as hazardous waste pursuant to this agreement and shall make the information available to any EPA or State official conducting a RCRA compliance inspection at that Retail Facility. This database shall be the same or similar as the handheld terminal-type system described in Paragraph 93(a).

93. As of the date of filing of this CAFO, Walmart has already taken steps to improve its environmental compliance program to address the allegations in this CAFO and to ensure compliance with all applicable environmental laws related to Walmart's Reverse Distribution Processes and hazardous waste management. Generally, these steps include an improved hazardous waste management system at Walmart Retail Facilities, development of enhanced hazardous waste training programs for Walmart Retail Facility Associates, and the development of various standardized operating procedures. Specifically, Walmart agrees to the following programs that have been implemented in response to the allegations of the United States:

a. Implementation of Improved Hazardous Waste Management System at Retail Facilities.

Walmart has engaged a third-party consultant to review the Consumer Products to be sold at a Retail Facility and determine if those products, if discarded by Walmart, would be considered hazardous waste pursuant to RCRA ("RCRA Items"). Once the RCRA Items are identified, either through the third-party consultant or by the supplier(s) of the RCRA Item, that information is then loaded into the Retail Facilities' handheld terminal (or

equivalent) and the RCRA Items are identified as being potentially flammable, toxic/corrosive, reactive, or listed pursuant to RCRA, in the Retail Facilities' handheld terminal and on the product's shelf label (each category designated by color). To the extent these RCRA Items become a waste (as the result of spills or damage at the Retail Facility), Walmart has implemented a system that conforms with the provisions of RCRA – commonly and currently known as the “bucket system.” The bucket system provides training and color-coded buckets for the management of items that become hazardous waste at the Retail Facility. At Retail Facilities, Walmart will continue operation of its “RCRA item file” and “bucket system” (or equivalent file or systems) to ensure proper management of RCRA Items once they become Solid Waste during the term of this CAFO, to the extent the law continues to identify these items as subject to the hazardous waste requirements of RCRA.

b. Development and Implementation of Enhanced Hazardous Waste Training at Retail

Facilities. Walmart has developed and implemented hazardous waste management and hazardous waste and spill cleanup training, as well as hazard communication training, that is provided to all Retail Facility Associates within sixty (60) days of hire and on an annual basis.

c. Development of Standard Operating Procedures Relating to Environmental Compliance.

In order to assist its Retail Facilities in the management of various types of hazardous and universal waste, Walmart has developed and implemented standard operating procedures for use by Retail Facility Associates. These standard operating procedures are available and accessible to Retail Facility Associates through Walmart's intranet system.

Appendix A contains the current list of hazardous material and hazardous waste related standard operating procedures implemented at the Stores and Clubs.

- d. Corporate Compliance Structure. In addition to existing Walmart personnel with environmental compliance responsibilities within a particular home office department, Walmart has created a home office vice president position responsible for environmental compliance. Walmart has, when needed, increased the staffing resources of the Vice President of Environmental Compliance in order to oversee proper implementation of the above programs.

94. In addition to requiring continued operation of its hazardous waste management programs, a purpose of this CAFO is to require Walmart to implement an Environmental Management System (EMS) in all of its Retail Facilities located in the United States. This EMS will not only advance compliance with environmental regulatory requirements, including Walmart's management of hazardous materials and hazardous waste and reduction of waste generated from its Retail Facilities, but will also achieve enhanced compliance at Return Centers, and Distribution Centers. To that end, Walmart has agreed to implement enhanced EMS procedures. These enhanced procedures, detailed further in Appendix A, include the following:

- a. Reorganization of Walmart's Home Office Environmental Compliance Organization. In order to provide increased resources and support structure to Walmart Retail Facilities, Walmart will reorganize its Home Office Environmental Compliance organization in order to ensure a uniform reporting structure under the Vice President of Environmental Health and Safety Compliance. The net effect of the reorganization will be a more uniform environmental command structure and improved environmental communications, resulting in a more robust organization available to address environmental compliance issues.
- b. Addition of Resources Outside of Home Office for Stores. Walmart will implement resources outside of Home Office to assist Stores in compliance with hazardous waste and hazardous materials laws and regulations. These resources will be responsible for



*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

executing, training, and overseeing the company's hazardous waste and hazardous materials policies at the store, market, and regional level of the Stores' business operations.

- c. Job Descriptions. In order to improve accountability, Walmart will add an explicit environmental compliance requirement to certain Walmart Retail Facility staff personnel job descriptions.
- d. Claims Supervisor for Stores. Walmart will assign a new claims supervisor (Claims Supervisor) position at each Store whose job responsibilities will include responsibility and accountability for hazardous waste management issues.
- e. Club-Level Manager for Sam's Clubs. Walmart will also create a new Manager position at each Club whose job responsibilities will include responsibility and accountability for hazardous waste management issues.
- f. Advanced Training for Certain Retail Associates. Walmart will develop and implement additional/advanced training requirements for Store Claims Supervisors and Club Compliance Managers.
- g. Tracking of Environmental Training at Stores and Clubs. Walmart will implement an improved information technology system to enable tracking of Core Environmental Training (as described in Paragraph 93(b) and Appendix A) and the Advanced Training for Certain Retail Associates (as described in Paragraph 94(f) and Appendix A) by the Home Office Environmental Compliance Organization.
- h. Environmental Compliance Information Systems. Walmart will contract with an independent third party (or use in-house resources) to develop environmental compliance information systems to be used to track environmental obligations at Retail Facilities.
- i. Development and Implementation of Return Center Hazardous Waste EMS and Distribution Center Hazardous Waste EMS. Walmart will contract with a third-party

environmental compliance consultant for the development and implementation of a Return Center specific Hazardous Waste EMS. In addition, Walmart will contract with a third-party environmental compliance consultant for the development and implementation of a Distribution Center specific Hazardous Waste EMS.

95. Walmart will perform the EMS procedures as set forth in Paragraph 94 in accordance with the specifications and schedules set forth in Appendix A.

96. Respondent shall certify compliance to EPA with the appropriate documentation to certify that Respondent is complying with the requirements set forth in Paragraphs 87-95 above, within ninety (90) calendar days of the schedule provided for completion in Appendix A. The certification and supporting documentation should be provided to:

KC Schefski, Associate Director  
Waste and Chemical Enforcement Division  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. (2249A)  
Washington, DC 20460

97. Respondents shall be liable for stipulated penalties to the EPA, as specified below, for failure to comply with the requirements of this CAFO, unless excused by EPA in its sole discretion. Compliance by Respondent shall include the timely completion and submittal of all plans and reports required by this agreement or any subsequent modification. Respondent shall pay stipulated penalties in the following amounts for the following obligations in the amounts set forth below:

- a. for failure to timely submit reports, plans, notifications, or other submittals required in this CAFO or its Appendices;
- b. for failure to timely meet any deadlines set forth in the Resources, Systems, and Accountability Work Plan to be submitted pursuant to Appendix A;

***In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056***

- c. for failure to develop a Retail Facility Associate training program that requires that Retail Facility Associates are trained on Walmart’s hazardous waste management policies as provided in Paragraphs 4(a) and (b) of Appendix A;
- d. for failure to timely implement the standard operating procedure for store-level hazardous waste management as provided by Paragraph 6 of Appendix A; or
- e. for failure to select and retain an independent third party to develop a Return Center specific Hazardous Waste Environmental Management System as provided by Paragraphs 8-9 of Appendix A.
- f. for failure to select and retain an independent third party to develop a Distribution Center specific Hazardous Waste Environmental Management System as provided by Paragraphs 10-11 of Appendix A.

<b>Period of Failure to Comply</b>	<b>Penalty Per Violation Per Day</b>
1st through 7th day	\$100.00
8th through 21st day	\$250.00
22nd through 30th day	\$500.00
Greater than 30 days	\$1,000

98. Respondent’s failure to timely comply with any requirement of this CAFO may subject Respondent to a civil action pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), to collect penalties for noncompliance with this CAFO.

99. Payment of stipulated penalties will not alter in any way Walmart’s obligation to comply with the requirements of this CAFO.

100. Nothing in this CAFO relieves Respondent from its obligation to comply with all applicable federal, state, and local statutes and regulations, including Subtitle C requirements at 40 C.F.R. Parts 260 through 279, and authorized state programs, at all its facilities.

101. Nothing in this CAFO will require Respondent to meet more stringent requirements contained in this CAFO in the event that the applicable law becomes less stringent. Within 60 days of Walmart providing notice to EPA that applicable requirements have been modified by issuance of any new EPA final regulation (as promulgated in the Federal Register); policy or guidance governing hazardous waste management; upon EPA approval or promulgation of new or revised waste management standards; or upon the issuance of a permit that contains new requirements pertaining to Walmart's operations, Walmart may conform its practices to the less stringent obligations contained in the applicable new regulation, policy, new or revised standard or permit.

### **XIII. PAYMENT OF CIVIL PENALTY**

102. Respondent agrees to pay a civil penalty in the sum of \$6,116,000 within thirty (30) calendar days of the effective date of this CAFO to resolve the RCRA violations alleged herein.

103. Respondent agrees to pay a civil penalty in the sum of \$1,512,000 within thirty (30) calendar days of the effective date of this CAFO to resolve the FIFRA violations alleged herein.

104. The parties agree that the payment of the civil penalties specified in Paragraphs 102-103 resolves the civil penalty liability for the violations alleged herein.

105. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. EPA's Employer ID Number is 52-0852695.

The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered via the U.S. Postal Service to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent shall submit a copy of the payment to the following addresses:

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

Ann Stephanos, Attorney-Adviser  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W. (MC 2249A)  
Washington, DC 20460

Alternatively, Respondent shall pay by wire transfer with a notation of “Wal-Mart Stores, Inc, Civil Penalty Docket Nos. RCRA-HQ-2013-4001, FIFRA-HQ-2013-”, using the following information:

Federal Reserve Bank of New York  
ABA Routing Number: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read: “D 6810727 Environmental Protection Agency”

106. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this CAFO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

- (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.
- (c) Non-payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b). Penalties paid pursuant to this CAFO are not deductible for federal purposes under 28 U.S.C. § 162(f).

107. Each Party will pay its own costs and attorneys' fees.

#### **XIV. RESERVATION OF RIGHTS AND RELEASE**

108. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other applicable statutory authority, to address conditions that may present an imminent and substantial endangerment to human health or the environment.
109. Except as provided in Paragraph 111, Complainant reserves the right to take enforcement action against Respondent to enforce the terms and conditions of this CAFO.
110. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the release of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from its facilities.
111. Subject to the conditions in paragraph 112, EPA agrees not to sue or take administrative action against Walmart pursuant to RCRA and FIFRA for civil violations or alleged civil violations of the conditions, limitations and requirements of RCRA and FIFRA based on the following categories of violations committed prior to the execution of this Consent Agreement:

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

- a. any alleged violation of RCRA generator, transporter, or treatment, storage, or disposal facility requirements for the management of hazardous waste at Walmart Retail Facilities and the transportation of hazardous waste from Walmart Retail Facilities and Distribution Centers to Walmart Return Centers; and
- b. any alleged violation involving the transportation, management, and disposal of FIFRA-regulated products shipped from any Return Center to Greenleaf.

112. EPA's agreement not to sue or take administrative action against Walmart as described in paragraph 111 is conditional upon the accuracy of Respondent's representations to EPA related to the EPA Allegations and Determinations set forth in Section X of this CAFO, including the following:

- a. That, outside of California and Missouri, on average fewer than 300 of its stores episodically generated more than 100 kg of potentially RCRA "hazardous waste" in any given month during the time period of the alleged violations;
- b. that unmanifested hazardous waste as part of the Reverse Distribution Process shipped from Walmart's Retail Facilities were not sent to destinations other than Walmart Distribution Centers, Walmart Return Centers, or Greenleaf;
- c. that all pesticides shipped by Walmart to Greenleaf have since been removed from Greenleaf's facilities and disposed of in accordance with all applicable laws; and

113. Unless specifically allowed under the terms of this CAFO, this CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

114. Walmart may alter the organizational requirements or implementation structure described in this Consent Agreement, Appendix A and any Work Plan in response to future business needs. In the event that any of the positions outlined in this Consent Agreement, Appendix A or any Work Plan cease to exist in the Walmart organization or are otherwise substantially modified, the responsibilities of the position eliminated will be added to the responsibilities of the remaining

*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

positions or to those of an equivalent position under a new title or to a third party. Within 30 Days after a significant change has taken effect, Walmart will send EPA notice of the reorganization and the title and general job description of the person(s) to whom the responsibilities have been given.

**XV. DISPUTE RESOLUTION**

115. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this CAFO.
116. If Respondent disagrees, in whole or in part, with any decision by EPA under this CAFO, Respondent shall notify EPA through the Chief of the Waste Enforcement Branch, and the Parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion relating to this CAFO.
117. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, Respondent may pursue the matter by submitting its objection to the Chief of the Waste Enforcement Branch of EPA in writing. Respondent's written objections must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.
118. EPA and Respondent shall have thirty (30) days from receipt of Respondent's written objections to attempt to resolve the dispute through formal discussions.
119. Within sixty (60) days of EPA's receipt of Respondent's written objections, EPA, through the Chief of the Waste Enforcement Branch of EPA, will provide to Respondent in writing EPA's decision on the pending dispute.
120. If the Respondent disagrees with the written decision, the Respondent may, within thirty (30) days of receipt of the written decision, appeal to the Director, Waste and Chemical Enforcement Division. Respondent's appeal must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.



*In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056*

Within thirty (30) days of receipt of the appeal, the Director, Waste and Chemical Enforcement Division will issue a written decision.

121. If Respondent disagrees with the written decision of the Director, Waste and Chemical Enforcement Division, within sixty (60) days of receipt of the Director's decision, Respondent may file an appeal of that decision with the Environmental Appeals Board ("EAB").
122. The Parties may, by mutual written agreement, extend any of the time periods provided for in the dispute resolution process.

**XVI. FORCE MAJEURE**

123. A "Force Majeure event" is any event beyond the control of Walmart, its contractors, or any entity controlled by Walmart that delays the performance of any obligation under this CAFO despite Walmart's reasonable efforts to fulfill the obligation. "Reasonable efforts" includes anticipating any potential Force Majeure event and addressing the effects of any such event: (1) as it is occurring, and (2) after it has occurred, such that the delay is minimized to the greatest extent reasonably possible.
124. Walmart agrees to notify the United States by written notice as soon as possible, but not later than 72 hours after the time Walmart first knew of any event which might constitute a Force Majeure event. The written notice Walmart submits pursuant to this Paragraph will indicate whether Walmart claims that the delay should be excused due to a Force Majeure event. The notice will describe the basis for Walmart's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Walmart agrees to adopt all reasonable measures to avoid or minimize such delay.
125. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, the United States agrees to extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties will not be due for

such a period. In proceedings on any dispute regarding a delay in performance, Walmart will have the burden of proving, by a preponderance of the evidence, that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

126. An extension of one compliance date based on a particular event will not automatically extend any other compliance date. Walmart will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

#### **XVII. OTHER APPLICABLE LAWS**

127. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

#### **XVIII. PARTIES BOUND**

128. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

129. No change in ownership, partnership, corporate, or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

130. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to this CAFO.

#### **XIX. SEVERABILITY**

131. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such

provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.


**XX. EFFECTIVE DATE**

132. This CAFO is effective upon the filing of the Final Order. 40 C.F.R. § 22.31(b).

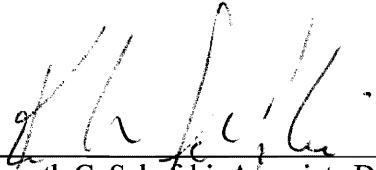
133. The terms of this Consent Agreement will be effective for a period of five (5) years from the filing of the Final Order. After five (5) years from the effective date, this Consent Agreement terminates, provided Walmart has complied with the payment requirements set forth in Section XIII. This Consent Agreement may also be terminated at an earlier date upon agreement of Walmart and the EPA.

**AGREED AND CONSENTED TO:**

FOR COMPLAINANT:

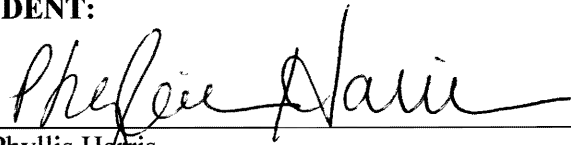
  
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Rosemarie A. Kelley, Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

Date: 5/14/13

  
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Kenneth C. Schefski, Associate Director (Counsel for Complainant)  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

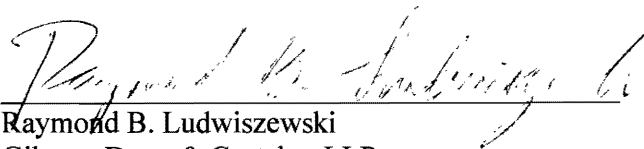
Date: 5/14/2013

**FOR RESPONDENT:**



Phyllis Harris  
Wal-Mart Stores, Inc.  
Senior Vice President,  
Chief Compliance Officer  
Wal-Mart Stores, Inc.

Date: 4/03/2013



Raymond B. Ludwiszewski  
Gibson, Dunn & Crutcher LLP  
Washington Square  
1050 Connecticut Ave NW  
Washington, DC 20036

Date: 4/4/13

Attorney for Wal-Mart Stores, Inc.

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