



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

May 7, 2015

REPLY TO THE ATTENTION OF:

LC-8J

**CERTIFIED MAIL: No. 7011 1150 0000 2643 8487**  
**RETURN RECEIPT REQUESTED**

Mr. Michael Boucher  
McKenna Long & Aldridge LLP  
1900 K Street NW  
Washington, D.C. 20006

Consent Agreement and Final Order In the Matter of  
Wisconsin Pharmacal Company, LLC. Docket No. **FIFRA-05-2015-0037**


Mr. Boucher:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on May 7, 2015, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 46 through 48. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

Sincerely,

  
for Claudia Niess  
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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In the Matter of:	)	Docket No. FIFRA-05-2015-0037
	)	
Wisconsin Pharmacal Company, LLC	)	Proceeding to Assess a Civil Penalty
Jackson, Wisconsin	)	Under Section 14(a) of the Federal
	)	Insecticide, Fungicide, and Rodenticide
	)	Act, 7 U.S.C. § 136l(a)
Respondent.	)	
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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 (EPA), Region 5.

3. Respondent is Wisconsin Pharmacal Company, LLC, a limited liability corporation doing business in the State of Wisconsin.

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.

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**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states, in pertinent part, that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA Form 3540-1), prior to the arrival of the shipment in the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

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

14. 40 C.F.R. § 152.15 states no person may distribute or sell any pesticide product

that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and

152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

- (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

15. 40 C.F.R. § 152.25(f) exempts minimum risk pesticides from the requirements of FIFRA provided that all criteria of 40 C.F.R. § 152.25(f) are met as follows:

- (a) The product only contains active ingredients that are listed under FIFRA,
- (b) The product only contains inert ingredients that are listed under FIFRA,
- (c) Each product bears a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient,

(d) The product does not bear claims either to control or mitigate

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microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease, and

(e) The product does not include any false and misleading labeling statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii).

16. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3, 7 U.S.C. § 136a(a)

17. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean 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.

18. The term “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

19. 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.”

20. The Administrator 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.

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**Factual Allegations and Alleged Violations**

21. Respondent is, and was at all times relevant to this CAFO, a corporation and therefore, a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. At all times relative to this CAFO, Respondent owned and operated a place of business located at 1 Pharmacal Way, Jackson, Wisconsin 53037.

23. At all times relative to this CAFO, Quality Global Logistics, located at 4464 S. Whitnall Avenue, St. Francis, Wisconsin 53235, (QGL) acted as Respondent’s broker/agent.

24. On or about March 10, 2015, QGL submitted an NOA to EPA for the import shipment of “Coleman Scented Citronella Candle,” item number 7721, under Entry Number D68-0071516-4.

25. The import shipment associated with Entry Number D68-0071516-4 arrived in the United States on or about March 16, 2015.

26. On or about March 13, 2015, QGL submitted an NOA to EPA for the import shipment of “Coleman Scented Citronella Candle,” item number 7721, under Entry Number D68-0071618-8.

27. The shipment associated with Entry Number D68-0071618-8 arrived in the United States on or about March 7, 2015.

28. The label of “Coleman Citronella Scented Candle,” item number 7721, did not bear the percentage (by weight) of each active ingredient and the name of each inert ingredient.

29. Respondent was the importer of record for the shipments associated with Entry Numbers D68-0071516-4 and D68-0071618-8.

30. On March 12, 2015, an EPA inspector authorized to conduct inspections under FIFRA observed “Coleman Scented Citronella Candle,” item number 7721, described on Respondent’s website at [www.colemanrepellants.com](http://www.colemanrepellants.com) as an “area repellent.”

31. The EPA inspector observed the following claims made for Respondent’s “area and gear repellants” on [www.colemanrepellants.com](http://www.colemanrepellants.com) on March 12, 2015:

- a. “Coleman Repellants, DEET, DEET-FREE, Natural and Area Bug Repellant”
- b. “Give yourself a second line of defense against biting insects with Coleman area and gear repellants, including the Yard & Camp Fogger, Clothing & Gear Treatment aerosol, and the 50 hour Citronella Lantern.”
- c. “[www.colemanrepellants.com](http://www.colemanrepellants.com)”

32. On March 13, 2015, the EPA inspector observed “Coleman Scented Citronella Candle” being offered for distribution or sale at Respondent’s website [www.shop.pharmaceuticalway.com](http://www.shop.pharmaceuticalway.com) under the heading “Coleman Repellants.”

33. On March 13, 2015, the EPA inspector observed the following claims on [www.shop.pharmaceuticalway.com](http://www.shop.pharmaceuticalway.com):

- a. “Coleman Repellants”
- b. “Our products have long been at the center of family fun, and with the addition of our insect repellants you family can enjoy being outside together.”

34. Respondent’s product failed to qualify for the minimum risk exemption under 40 C.F.R. § 152.25(f) because the product failed to bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient as required by 40 C.F.R. § 152.25(f)(3)(i).

35. “Coleman Scented Citronella Candle,” item number 7721, finish good number 1409072, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § and 152.15.

36. “Coleman Scented Citronella Candle,” item number 7721, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

37. On or about March 16, 2015, Respondent was distributing or selling “Coleman Scented Citronella Candle,” item number 7721, as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

### **Specific Allegations**

#### **Count 1**

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 37 of this Complaint.

39. Respondent distributed or sold “Coleman Scented Citronella Candle,” item number 7721, on or about March 16, 2015 in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

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

#### **Count 2**

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 37 of this Complaint.

42. Respondent distributed or sold “Coleman Scented Citronella Candle,” item number 7721, on or about March 7, 2015 in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C.



§ 136j(a)(1)(A).

43. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C.

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

**Civil Penalty**

44. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the Administrator to consider the appropriateness of a penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when determining the amount of the penalty for violations of FIFRA.

45. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated a civil penalty against Respondent in the amount of \$15,000.

46. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

47. The check must note "In the Matter of Wisconsin Pharmacal" and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent's name 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 Blvd.  
Chicago, IL 60604

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

Susan Prout (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

51. 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**

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

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

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

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

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

57. 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.

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

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

In the Matter of:

Wisconsin Pharmacal Company, LLC,

Docket No. FIFRA-05-2015-0037

Wisconsin Pharmacal Company, LLC, Respondent

04/13/2015

Date



Jeffrey C. Potts  
Chief Operating & Financial Officer  
Wisconsin Pharmacal Company, LLC

United States Environmental Protection Agency, Complainant

5/1/2015

Date



Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:

Wisconsin Pharmacal

Docket No. FIFRA-05-2015-0037

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.

4 May 2015  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

In the matter of: Wisconsin Pharmacal Company, LLC  
Docket Number: FIFRA-05-2015-0037

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on May 7, 2015, in the following manner to the addressees:

Copy by Certified Mail  
Return-receipt:

Mr. Michael Boucher  
McKenna Long & Aldridge LLP  
1900 K Street NW  
Washington, D.C. 20006

Copy by E-mail to  
Attorney for Complainant:

Susan Prout  
[Prout.susan@epa.gov](mailto:Prout.susan@epa.gov)

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

Dated:

May 7, 2015



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8487