



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
May 19, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 4939

Mr. Michael Elam  
Barnes & Thornburg, LLP  
One North Wacker Drive, Suite 4400  
Chicago, Illinois 60602-2833

Consent Agreement and Final Order In the Matter of  
Meijer, Inc. Docket No. FIFRA-05-2014-0015

Dear Mr. Elam:

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 May 19, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$165,000 is to be paid in the manner described in paragraphs 48 and 49. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by June 18, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

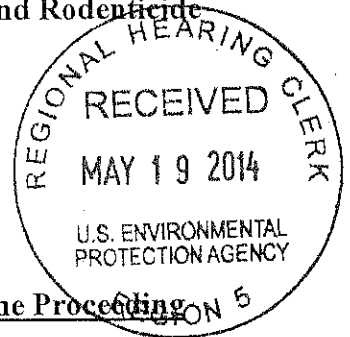
Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Meijer, Inc., )  
Meijer Great Lakes Limited Partnership, )  
Meijer Distribution, Inc., and )  
MeijerEcom, Inc., )  
Grand Rapids, Michigan )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2014-0015  
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 Commencing and Concluding the Proceeding

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 Meijer, Inc., is a corporation doing business in the State of Michigan.
4. Respondents Meijer Great Lakes Limited Partnership, Meijer Distribution, Inc., and MeijerEcom, Inc., are each an association, corporation, or any organized group of persons whether incorporated or not, doing business in the State of Michigan.
5. Respondents Meijer Great Lakes Limited Partnership, Meijer Distribution, Inc.,

and MeijerEcom, Inc., are each a subsidiary or affiliate of Respondent Meijer, Inc.

6. 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).

7. 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.

8. Respondents consent 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**

9. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

10. Respondents waive their 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 their right to appeal this CAFO.

11. Respondents certify that based upon inquiry of their employees or agents who manage Respondents' FIFRA compliance systems, or those Respondent employees directly responsible for Respondents' FIFRA compliance, to the best of Respondents' knowledge and belief the Respondents are complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

#### **Statutory and Regulatory Background**

12. 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 of FIFRA, 7 U.S.C. § 136a.

13. Pursuant to FIFRA, the term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not. Section

2(s) of FIFRA, 7 U.S.C. § 136(s).

14. The term “distribute or sell” means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg); and 40 C.F.R. § 152.3.

15. The term “pesticide” means 1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and 2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. Section 2(u) of FIFRA, 7 U.S.C. § 136(u); and 40 C.F.R. § 152.3.

16. The term “pest” means 1) any insect, rodent, nematode, fungus, weed, or 2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which EPA declares to be a pest under Section 25(c)(1) of FIFRA. Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

17. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

18. The Administrator of EPA may assess a civil penalty against any 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. § 136(a)(1), and 40 C.F.R. Part 19.

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

19. At all times relevant to this Complaint, each Respondent was a “person” as defined

at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. At all times relevant to this Complaint, Respondent Meijer, Inc., owned or operated a place of business at 3883 East Grand River, Howell, Michigan.

21. On or about November 8, 2012, an inspector employed by Michigan Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Meijer, Inc., 3883 East Grand River, Howell, Michigan.

22. During the November 8, 2012 inspection, the inspector collected a physical sample of the product Original All Purpose Cleaner with Bleach that Respondent Meijer, Inc., was offering for distribution or sale.

23. On or about March 4, 2013, EPA issued a Stop Sale, Use, or Removal Order to Respondent Meijer, Inc., pursuant to Section 13 of FIFRA, 7 U.S.C. § 136k.

24. The March 4, 2013 Order prohibited the sale, use or removal for disposal of the product Vent Mate Antibacterial Air Vent Filters.

25. On or about May 3, 2013, EPA issued a Request for Information to Respondent Meijer, Inc., pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.

26. The May 3, 2013 Request for Information requested distribution records for the products Original All Purpose Cleaner with Bleach and Vent Mate Antibacterial Air Vent Filters.

27. On or about May 23, 2013, Respondent Meijer, Inc., provided EPA with distribution records in response to the May 3, 2013 Request for Information.

**Counts 1-43**  
**Unlawful Distributions or Sales of Unregistered Pesticide**  
**All Purpose Cleaner with Bleach**

28. Complainant incorporates by reference the allegations contained in paragraphs 1 through 27 of this CAFO.

29. Respondents' labeling for Original All Purpose Cleaner with Bleach collected on November 8, 2012, states, "disinfects."

30. The labeling on all quantities of Original All Purpose Cleaner with Bleach that Respondents distributed or sold in calendar year 2012 stated, "disinfects."

31. At all times relevant to this Complaint, Original All Purpose Cleaner with Bleach was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

32. During calendar year 2012, Original All Purpose Cleaner with Bleach was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

33. On at least 43 occasions in calendar year 2012, Respondents distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Original All Purpose Cleaner with Bleach.

34. On at least 43 occasions in calendar year 2012, Respondents distributed or sold to persons a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

35. Each of the at least 43 distributions or sales set forth at paragraphs 33-34, above, was an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Counts 44-55**

**Unlawful Distributions or Sales of Unregistered Pesticide**  
**Vent Mate Antibacterial Air Vent Filters**

36. Complainant incorporates by reference the allegations contained in paragraphs 1 through 27 of this Complaint.

37. The labeling on all quantities of Vent Mate Antibacterial Air Vent Filters that Respondents distributed or sold in January and February 2013 stated, "ANTIBACTERIAL".

38. The labeling on all quantities of Vent Mate Antibacterial Air Vent Filters that

Respondents distributed or sold in January and February 2013 stated, "Flu & Cold Season".

39. The labeling on all quantities of Vent Mate Antibacterial Air Vent Filters that Respondents distributed or sold in January and February 2013 stated, "Captures & inhibits the growth of microbes on the filter media".

40. The labeling on all quantities of Vent Mate Antibacterial Air Vent Filters that Respondents distributed or sold in January and February 2013 stated, "Vent Mate Antibacterial filters trap odor-causing microscopic pollutants like bacteria, mold and mildew. Once captured, a special microbicide treatment inhibits their growth on the media".

41. The labeling on all quantities of Vent Mate Antibacterial Air Vent Filters that Respondents distributed or sold in January and February 2013 stated, "with Microbicide".

42. At all times relevant to this Complaint, Vent Mate Antibacterial Air Vent Filters was a "pesticide" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

43. During January and February 2013, Vent Mate Antibacterial Air Vent Filters was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

44. On at least 12 occasions in January and February 2013, Respondents distributed, sold, offered for sale, held for distribution, held for sale, held for shipment, shipped, delivered for shipment, released for shipment or received and (having so received) delivered or offered to deliver to persons Vent Mate Antibacterial Air Vent Filters.

45. On at least 12 occasions in January and February 2013, Respondents distributed or sold to persons a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

46. Each of the at least 12 distributions or sales set forth at paragraphs 44-45, above, was an unlawful act under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

### Civil Penalty

47. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$165,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondents' business, the effect on Respondents' ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *FIFRA Enforcement Response Policy*, dated December 2009.

48. Within 30 days after the effective date of this CAFO, Respondent Meijer, Inc. must pay a \$165,000 civil penalty for the FIFRA violations. While Respondent Meijer, Inc. intends to pay this penalty, Respondents are jointly and severally liable for this penalty. Respondent Meijer, Inc. must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. Postal Service mail]

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

[for checks sent by express mail]

U.S. Bank  
Government Lockbox 979077 U.S. EPA Fines and Penalties  
Contact: Natalie Pearson  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

The check must note the case title and the docket number of this CAFO. Alternatively, Respondent Meijer, Inc. may pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:



[for electronic funds transfer]

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Meijer, Inc., and the docket number of this CAFO.

49. A transmittal letter, stating Respondent Meijer, Inc.'s name, the case title, Respondent Meijer, Inc.'s complete address and the case docket number must accompany the payment. Respondent Meijer, Inc., must send a copy of the check and transmittal letter to:

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

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

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

51. If Respondent Meijer, Inc., does not pay the civil penalty timely, 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.

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

#### **General Provisions**

53. This CAFO resolves only Respondents' liability for federal civil penalties for the facts and violations alleged in the CAFO.

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

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

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

57. The terms of this CAFO bind Respondents, their successors, and assigns.

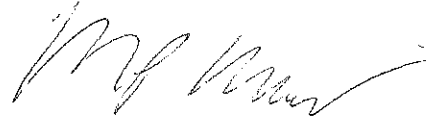
58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Meijer, Inc., Respondent

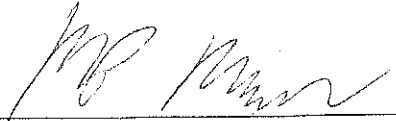
April 16, 2014  
Date



Michael P. Mullican  
Vice President and Assistant General Counsel  
Meijer, Inc.

Meijer Great Lakes Limited Partnership, Respondent

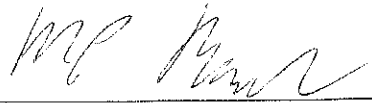
April 16, 2014  
Date



Michael P. Mullican  
Vice President and Assistant General Counsel  
Meijer, Inc.  
for Meijer Great Lakes Limited Partnership

Meijer Distribution, Inc., Respondent

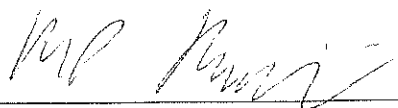
April 16, 2014  
Date



Michael P. Mullican  
Vice President and Assistant General Counsel  
Meijer, Inc.  
for Meijer Distribution, Inc.

MeijerEcom, Inc., Respondent

April 16, 2014  
Date



Michael P. Mullican  
Vice President and Assistant General Counsel  
Meijer, Inc.  
for MeijerEcom, Inc.

United States Environmental Protection Agency, Complainant

5/12/2014

Date



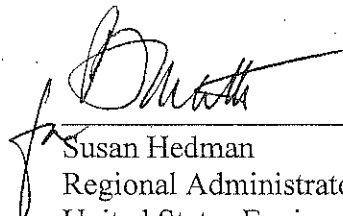
Margaret M. Guerriero  
Director  
Land and Chemicals Division

In the Matter of:  
Meijer, Inc., et al.  
Docket No. FIFRA-05-2014-0015

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.

5-14-14  
Date

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

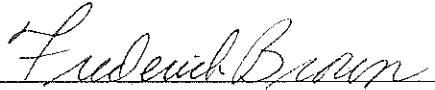
**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Meijer, Inc., was filed on May 19, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 4939 a copy of the original to the Respondents:

Mr. Michael Elam  
Barnes & Thornburg, LLP  
One North Wacker Drive, Suite 4400  
Chicago, Illinois 60602-2833

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Kris Vezner, Regional Judicial Officer, ORC/C-14J  
Eric Volek, 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-05-2014-0015