



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

November 26, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

**CERTIFIED MAIL No.7011 1150 0000 2643 8104**  
**RETURN RECEIPT REQUESTED**

Mr. David Howell  
Bemis Manufacturing Company  
300 Mill Street, P.O. Box 901  
Sheboygan Falls, WI 53085-0901

Consent Agreement and Final Order In the Matter of  
Bemis Manufacturing Co., Docket No. FIFRA-05-2015-0013

Dear Mr. Howell:

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 November 26, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$268,000 is to be paid in the manner described in paragraphs 33 and 34. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by December 26, 2014 (within 30 calendar days of the filing date).

Thank you for your payment and cooperation in resolving this matter.

Sincerely,

*for Pamela Grace*

Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



**In the Matter of:** ) **Docket No.** FIFRA-05-2015-0013  
)  
**Bemis Manufacturing Company** )  
**Sheboygan Falls, Wisconsin,** )  
) **Proceeding to Assess a Civil Penalty**  
) **Under Section 14(a) of the Federal**  
) **Insecticide, Fungicide, and Rodenticide**  
**Respondent.** ) **Act, 7 U.S.C. § 136l(a)**  
)  
\_\_\_\_\_ )

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Bemis Manufacturing Company (Bemis), a 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 an Administrative Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations 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 to 136y.

### **Statutory and Regulatory Background**

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

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

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

13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) defines the term “distribute or sell” as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” *Also see* 40 C.F.R. § 152.3.

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

15. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines the term “pest” as “any insect,

rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. *Also see* 40 C.F.R. § 152.5.

16. 40 C.F.R. § 152.15(a) states, in pertinent part, no person may distribute or sell any pesticide product that is not registered under FIFRA. It further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

17. The Administrator of the 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. § 136l(a)(1), and 40 C.F.R. Part 19.

### General Allegations

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

19. Bemis is headquartered at 300 Mill Street, Sheboygan Falls, Wisconsin 53085-0901 (Bemis Facility).

20. On or about December 5, 2013, an authorized representative of the EPA inspected the Bemis Facility.

21. During that inspection, the inspector collected a physical sample of the **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000.

22. The label on the **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, collected during the December 5, 2013 inspection made the following claims:

- “Antimicrobial,”

- “Antibacterial,” and
- “**DuraGuard® Antimicrobial** – Properties built in to protect the seat from the growth of micro-organisms.”

23. On or about January 22, 2014, the inspector returned to the Bemis Facility to collect distribution and/or shipping records for the **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000.

24. The **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, is a pesticide as defined by Section 2(u) of FIFRA and 40 C.F.R. §152.15 because the label and labeling of the product both claim, state or imply that the **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, prevents, destroys, repels or mitigates a pest.

25. The **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, is not registered as a pesticide with the EPA.

26. From on or about December 5, 2013 through on or about December 27, 2013, Bemis distributed or sold the pesticide, **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, to numerous retail stores located in the United States on 129 separate occasions.

#### Counts 1 - 129

27. Complainant incorporates paragraphs 1 through 26 of this CAFO, as if set forth in this paragraph.

28. From on or about December 5, 2013 through December 27, 2013, Respondent distributed or sold the unregistered pesticide, **Mayfair DuraGuard® Antimicrobial** plastic toilet seat, SKU 7M288EC 000, to numerous retail stores located in the United States on 129 separate occasions.

29. Respondent’s distribution or sale of the unregistered pesticide, **Mayfair**

**DuraGuard® Antimicrobial plastic toilet seat**, SKU 7M288EC 000, on 129 separate occasions, constitutes 129 separate unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

30. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) on 129 separate occasions subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a) for each of the 129 separate violations of FIFRA.

#### **Civil Penalty and Other Relief**

31. Section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative civil penalty under FIFRA.

32. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's *Enforcement Response Policy, Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009, Complainant has determined the appropriate civil penalty to settle this action is \$268,000.

33. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a \$268,000 civil penalty in order to settle and resolve the alleged FIFRA violations. Respondent agrees to pay the civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

Respondent agrees that the check will note "In the Matter of Bemis Manufacturing Company," and the docket number of this CAFO.

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

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

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

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

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

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

36. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States District Court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Pursuant to 31 C.F.R. § 901.9, Respondent agrees to pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to applicable law. Respondent agrees to pay a \$15 handling charge each month that any portion of the civil

penalty is more than 30 days past due. In addition, Respondent agrees to pay a 6 percent per year civil penalty on any principal amount 90 days past due.

### **General Provisions**

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

39. 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.

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

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

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

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

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

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

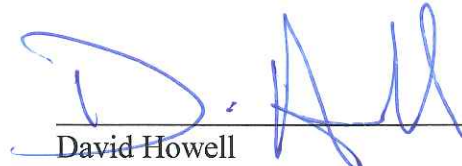


**In the Matter of:  
Bemis Manufacturing Company**

**Docket No.**


**Bemis Manufacturing Company,  
Respondent**

11-2-2014  
Date

  
\_\_\_\_\_  
David Howell  
General Counsel

**United States Environmental Protection Agency, Complainant**

11/19/14  
Date

 <sup>for M.G.</sup>  
\_\_\_\_\_  
Margaret M. Guerriero, Director  
Land and Chemicals Division

**In the Matter of:  
Bemis Manufacturing Company**

**Docket No. FIFRA-05-2015-0013**



**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11/24/2014  
Date

S. Hedman  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Bemis Manufacturing Co., was filed on November 26, 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 1150 0000 2643 8104, a copy of the original to the Respondent.

Mr. David Howell  
Bemis Manufacturing Company  
300 Mill Street, P.O. Box 901  
Sheboygan Falls, WI 53085-0901



and forwarded copies (intra-Agency) to:

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

Frederick Brown

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

Docket No. FIFRA-05-2015-0013