



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 29 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0191 0578

Mr. Brian Babb
Keating Muething & Klekamp PLL
One East Fourth St., Suite 1400
Cincinnati, Ohio 45202

Consent Agreement and Final Order Docket No. FIFRA-05-2009-0016

Dear Mr. Babb:

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 October 29, 2009 with the Regional Hearing Clerk.

The civil penalty in the amount of \$54,600 is to be paid in the manner described in paragraphs 9 and 10. Please be certain that the number **BD 2751065P003** and the docket number are written on both the transmittal letter and on the check. Payments are due according to the payment schedule lined (spelled) out in paragraph 9.

Thank you for your cooperation in resolving this matter.

Sincerely,

for 
Terry Bonace
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2009-0016
)	
PMCo L.L.C.)	Proceeding to Assess a Civil Penalty
Cincinnati, Ohio,)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

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REGION 5

Consent Agreement and Final Order

Preliminary Statement

1. Complainant, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

2. On June 19, 2009, EPA filed the Complaint in this action against Respondent, PMCo L.L.C.. The Complaint alleges that Respondent sold or distributed 21 unregistered antimicrobial products from its Cincinnati, Ohio facility in violation of Section 3 of FIFRA, 7 U.S.C. § 136a, which constitute unlawful violations of Section 12 (a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Stipulations

3. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

4. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

5. Respondent certifies that it eliminated all pesticidal claims made on the labels of the

21 products identified in paragraph 17 of the Complaint and has revised the packaging on all new orders for such products, as well as modified the packaging on all remaining product in inventory, in a manner deemed acceptable to EPA at the time of its review.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

7. The parties agree that settling this action without further litigation, upon the terms of this CAFO, is in the public interest.

Civil Penalty

8. 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 \$54,600. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *Enforcement Response Policy for FIFRA Section 7(c)*, dated June 2007.

9. Respondent shall pay the \$54,600 civil penalty in six installments as follows:

<u>Payment</u>	<u>Due to the United States</u>	<u>Amount</u>
One	Within 30 days of effective date of CAFO	\$9,100.00
Two	Within 60 days of effective date of CAFO	\$9,212.19
Three	Within 90 days of effective date of CAFO	\$9,189.75
Four	Within 120 days of effective date of CAFO	\$9,167.32
Five	Within 150 days of effective date of CAFO	\$9,144.88
Six	Within 180 days of effective date of CAFO	\$9,122.44

Respondent shall pay each installment 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, Missouri 63197-9000

Each check must state the case title, the docket number of this CAFO and the billing document number.

10. A transmittal letter stating Respondent's name, complete address, the case docket number and the billing document number must accompany each payment. Respondent must send a copy of each 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

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

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

12. If Respondent does not pay the civil penalty timely, EPA may refer this 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).

13. 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 overdue amount 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

14. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

15. Except as set forth herein, 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 violation of law, and except those rights it has expressly waived under paragraph 4 of this CAFO, Respondent reserves all rights it may have under federal, state or local statute, regulation or common law.

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

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

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

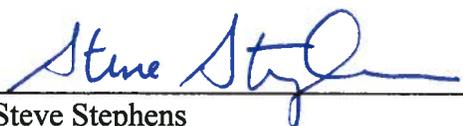
19. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

20. Each party agrees to bear its own costs and attorneys' fees in this action.

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

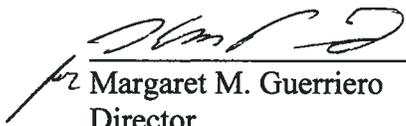
PMCo L.L.C., Respondent

10/13/09
Date


Steve Stephens
Secretary
PMCo L.L.C.

United States Environmental Protection Agency, Complainant

10.27.09
Date


for Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
PMCo L.L.C.
Docket No. FIFRA-05-2009-0016

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.

10/28/09
Date

Walter W. Kovalich
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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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 PMCo, L.L.C., was filed on October 29, 2009, 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. 7001 0320 0006 0191 0578, a copy of the original to the Respondents:

Mr. Brian Babb
Keating Muething & Klekamp PLL
One East Fourth St., Suite 1400
Cincinnati, Ohio 45202

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD


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

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