



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

JUN 19 2009

REPLY TO THE ATTENTION OF:

L-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 5028

Mr. Mike Webster  
President  
PMCo L.L.C.  
1500 Kemper Meadow Drive  
Cincinnati, Ohio 45240

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

Dear Mr. Webster:

I have enclosed the Complaint filed by the U.S. Environmental Protection Agency, Region 5, against PMCo L.L.C. under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).

As provided in the Complaint, if you wish to request a hearing, you must do so in your answer to the Complaint. Please note that if you do not file an answer with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604 within 30 days of your receipt of this Complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference or if you have any questions about this matter, please contact me, or Susan Perdomo, Associate Regional Counsel, at (312) 886-0557.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret M. Guerriero".

*for* Margaret M. Guerriero  
Director  
Land and Chemicals Division

Enclosures

**RECEIVED**  
JUN 19 2009  
REGIONAL HEARING CLERK  
USEPA  
REGION 5

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

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

**Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a).
2. The Complainant is, by lawful delegation, the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. The Respondent is PMCo L.L.C, a corporation doing business in the State of Ohio.

**Statutory and Regulatory Background**

4. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15, state that no person in any state may distribute or sell to any person any pesticide that is not registered under the Act, except in certain circumstances which are not relevant to this case.
5. 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.
6. 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).
7. 40 C.F.R. § 168.22(a) states: "FIFRA Sections 12(a)(1)(A) and (B) make it unlawful

for any person to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claims made for it as part of the statement required in connection with its registration under FIFRA Section 3. EPA interprets these provisions as extending to advertisements in any advertising medium to which pesticide users or the general public have access.”

8. 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.”

9. 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.” 7 U.S.C. § 136(gg).

10. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest [or] [any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant]. 7 U.S.C. § 136(u).

11. A “pest” is 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

12. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 through 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

13. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
14. Respondent is a wholesaler, dealer, retailer, or other distributor.
15. Respondent owned or operated a place of business located at 1500 Kemper Meadow Drive, Cincinnati, Ohio during the calendar year 2007.
16. On June 26, 2007, an inspector employed by Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Cincinnati, Ohio.
17. During the June 26, 2007 inspection, the inspector collected physical samples and advertising materials for a) Antimicrobial Counter Pen (Product No. 05062), b) Antimicrobial Counter Pen (Product No. 05057), c) Antimicrobial Counter Pen (Product No. 05059), d) Antimicrobial Snap-On Refill Pen (Product No. 05058), e) Antimicrobial Ergonomic Coil Pen (Product No. 05069), f) Antimicrobial Snap-On Refill Pen (Product No. 05064), g) Antimicrobial Necklace Pen (Product No. 05081), h) Antimicrobial Ergonomic Counter Pen (Product No. 05071), i) Antimicrobial Ballpoint Pens-black ink (Product No. 05091), j) Antimicrobial Ballpoint Pens-blue ink (Product No. 05093), k) Antimicrobial 4-Color Multifunction Pens (Product No. 05085), l) Antimicrobial Stick Pens-black ink (Product No. 05097), m) Antimicrobial Stick Pens-blue ink (Product No. 05099), n) Antimicrobial Automatic Mechanical Pencils (Product No. 05089), o) Antimicrobial 4-Color Multifunction Pen Assorted Refills (Product No. 05009), p) Antimicrobial 4-Color Multifunction 4-Color Pen Blue Refills (Product No. 05007), q) Antimicrobial 4-Color Multifunction 4-Color Pen Red Refills (Product No. 05005), r) Antimicrobial 4-Color Multifunction 4-Color Pen Black Refills (Product No. 05008), s) Antimicrobial 4-Color Multifunction Pen Green Refills (Product No. 05006),

t) Antimicrobial Clipboard (Product No. 04951) and u) Klipboard Keeper Antimicrobial Clipboard and Pen (Product No. 04950), which Respondent was holding for distribution or sale.

18. At the time of the inspection, Respondent's web site at [www.pmcompany.com](http://www.pmcompany.com), made the following claims regarding the products listed in paragraph 16: "Did you know...80% of adults are extremely worried about bacteria. The average desk harbors 100 times more bacteria than a kitchen table and 400 times more bacteria than the average toilet. Pens in offices, banks and public places are shared by hundred of people and can spread bacteria on contact, potentially causing unnecessary illness. Bacteria cannot grow on Preventa pens because they are manufactured using the world's most advanced inorganic natural compound-AgIon®. What is AgIon® Antimicrobial and how does it work: AgIon® antimicrobial is a silver ion delivery system that prevents the growth and migration of damaging bacteria, yeasts, molds, and fungi on a product's surface. Silver is a naturally occurring antimicrobial material in its ionic form (i.e. silver nitrate for newborn eye treatment)." (Attachment 1)

19. At the time of the inspection, Respondent's advertising brochure/catalog, that included photos or descriptions of all the products mentioned in paragraph 16, above, made the following claims regarding the products listed in paragraph 16:

"Did you know...80% of adults are extremely worried about bacteria. The average desk harbors 100 times more bacteria than a kitchen table and 400 times more bacteria than the average toilet. Pens in offices, banks and public places are shared by hundreds of people and can spread bacteria on contact, potentially causing unnecessary illness. Bacteria cannot grow on Preventa pens because they are manufactured using the world's most advanced inorganic natural compound-AgIon® Antimicrobial.

What is AgIon® Antimicrobial and how does it work: AgIon® antimicrobial is a silver ion delivery system that prevents the growth and migration of damaging bacteria, yeasts, molds, and fungi on a product's surface. Silver is a naturally occurring antimicrobial material in its ionic form (i.e. silver nitrate for newborn eye treatment). The patented antimicrobial compound is suspended or mixed right into manufacturing materials, such as plastic and foam. Moisture in the air causes a controlled release of silver ions at a slow and steady rate to provide continuous protection against hundreds of strains of dangerous bacteria, all molds and yeasts, as well as many other microbes.

AgIon® Technology is...The safest, most effective and longest lasting antimicrobial protection available. Used by doctors and hospitals, homes and offices nationwide. EPA Registered and FDA-recognized. Used in other products, including medical devices (catheters, heart valves), water filtering systems, food services systems. Safe for human and animals.

Preventa Antimicrobial Pens with AgIon® Technology Built In.

- Effective against dangerous bacteria and other microbes
- Prevents the growth of bacteria, yeasts, molds, and fungi
- EPA-registered and FDA-recognized" (Attachment 2)

20. Respondent's antimicrobial pens and clipboards collected during the June 26, 2007 inspection and listed in paragraph 17 above are "pesticides" as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

#### **Count I-Product 05062**

21. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

22. Respondent distributed or sold Antimicrobial Counter Pen (Product No. 05062) on at least one occasion between June 5, 2007 and July 10, 2007.

23. Antimicrobial Counter Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

24. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Counter Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count II-Product 05057**

25. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

26. Respondent distributed or sold Antimicrobial Counter Pen (Product No. 05057) on at least one occasion between June 5, 2007 and July 10, 2007.

27. Antimicrobial Counter Pen, Product No. 05057, is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

28. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Counter Pen, Product No. 05057, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count III-Product No. 05059**

29. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

30. Respondent distributed or sold Antimicrobial Counter Pen (Product No. 05059) on at least one occasion between June 5, 2007 and July 10, 2007.

31. Antimicrobial Counter Pen, Product No. 05059, is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

32. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Counter Pen, Product No. 05059, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count IV-Product No. 05058**

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

34. Respondent distributed or sold Antimicrobial Snap-On Refill Pen (05058) on at least one occasion between June 5, 2007 and July 10, 2007.

35. Antimicrobial Snap-On Refill Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

36. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Snap-On Refill Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count V-Product No. 05069**

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

38. Respondent distributed or sold Antimicrobial Ergonomic Coil Pen (Product No. 05069) on at least one occasion between June 5, 2007 and July 10, 2007.

39. Antimicrobial Ergonomic Coil Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

40. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Ergonomic Coil Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count VI-Product No. 05064**

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

42. Respondent distributed or sold Antimicrobial Snap-On Refill Pen (Product No. 05064) on at least one occasion between June 5, 2007 and July 10, 2007.

43. Antimicrobial Snap-On Refill Pen are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

44. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Snap-On Refill Pen constitutes an unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count VII-Product No. 05081**

45. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

46. Respondent distributed or sold Antimicrobial Necklace Pen (05081) on at least one occasion between June 5, 2007 and July 10, 2007.

47. Antimicrobial Necklace Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

48. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Necklace Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count VIII-Product No. 05071**

49. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

50. Respondent distributed or sold Antimicrobial Ergonomic Counter Pen (Product No. 05071) on at least one occasion between June 5, 2007 and July 10, 2007.

51. Antimicrobial Ergonomic Counter Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

52. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Ergonomic Counter Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count IX-Product No. 05091**

53. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

54. Respondent distributed or sold Antimicrobial Ballpoint Pens-black ink (Product No. 05091) on at least one occasion between June 5, 2007 and July 10, 2007.

55. Antimicrobial Ballpoint Pen-black ink are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

56. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Ballpoint Pens-black ink constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count X-Product No. 05093**

57. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

58. Respondent distributed or sold Antimicrobial Ballpoint Pens-blue ink (Product No. 05093) on at least one occasion between June 5, 2007 and July 10, 2007.

59. Antimicrobial Ballpoint Pens-blue ink are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

60. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Ballpoint Pens-blue ink constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XI-Product No. 05085**

61. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

62. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen (Product No. 05085) on at least one occasion between June 5, 2007 and July 10, 2007.

63. Antimicrobial 4-Color Multifunction Pen is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

64. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XII-Product No. 05097**

65. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

66. Respondent distributed or sold Antimicrobial Stick Pens-black ink (Product No. 05097) on at least one occasion between June 5, 2007 and July 10, 2007.

67. Antimicrobial Stick Pens-black ink are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

68. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Stick Pens-black ink constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XIII-Product No. 05099**

69. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

70. Respondent distributed or sold Antimicrobial Stick Pens-blue ink (Product No. 05099) on at least one occasion between June 5, 2007 and July 10, 2007.

71. Antimicrobial Stick Pens-blue ink are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

72. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Stick Pens-blue ink constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XIV-Product No. 05089**

73. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

74. Respondent distributed or sold Antimicrobial Automatic Mechanical Pencils (Product No. 05089) on at least one occasion between June 5, 2007 and July 10, 2007.

75. Antimicrobial Automatic Mechanical Pencils are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

76. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Automatic Mechanical Pencils constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XV Product No. 05009**

77. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

78. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen Assorted Refills (Product No. 05009) on at least one occasion between June 5, 2007 and July 10, 2007.

79. Antimicrobial 4-Color Multifunction Pen Assorted Refills are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

80. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen Assorted Refills constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XVI-Product No. 05007**

81. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

82. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen Blue Refills (Product No. 05007) on at least one occasion between June 5, 2007 and July 10, 2007.

83. Antimicrobial 4-Color Multifunction Pen Blue Refills are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

84. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen Blue Refills constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XVII Product No. 05005**

85. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

86. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen Red Refills (Product No. 05005) on at least one occasion between June 5, 2007 and July 10, 2007.

87. Antimicrobial 4-Color Multifunction Pen Red Refills are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

88. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen Red Refills constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XVIII-Product No. 05008**

89. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

90. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen Black Refills (Product No. 05008) on at least one occasion between June 5, 2007 and July 10, 2007.

91. Antimicrobial 4-Color Multifunction Pen Black Refills are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

92. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen Black Refills constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XIX-Product 05006**

93. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

94. Respondent distributed or sold Antimicrobial 4-Color Multifunction Pen Green Refills (Product No. 05006) on at least one occasion between June 5, 2007 and July 10, 2007.

95. Antimicrobial 4-Color Multifunction Pen Green Refills are not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

96. Respondent's distribution or sale of the unregistered pesticide Antimicrobial 4-Color Multifunction Pen Green Refills constitute an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XX-Product No. 04950**

97. Complainant incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

98. Respondent distributed or sold Klipboard Keeper Antimicrobial Clipboard (Product No. 04950) on at least one occasion between June 5, 2007 and July 10, 2007.

99. Klipboard Keeper Antimicrobial Clipboard is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

100. Respondent's distribution or sale of the unregistered pesticide Klipboard Keeper Antimicrobial Clipboard constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Count XXI-Product No. 04951**

101. Complainant incorporates by reference the allegations contained in paragraphs 1 through 30 of this Complaint.

102. Respondent distributed or sold Antimicrobial Clipboard (Product No. 04951) on at least one occasion between June 5, 2007 and July 10, 2007.

103. Antimicrobial Clipboard is not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a.

104. Respondent's distribution or sale of the unregistered pesticide Antimicrobial Clipboard constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

**Proposed Civil Penalty**

105. Complainant proposes that the Administrator assess a civil penalty against Respondent for the FIFRA violations alleged in this Complaint as follows:

**Count I**

Distribution or sale of Antimicrobial Counter Pen (05062).....\$4,550

**Count II**

Distribution or sale of Antimicrobial Counter Pen (05057).....\$4,550

**Count III**

Distribution or sale of Antimicrobial Counter Pen (05059) .....\$4,550

**Count IV**

Distribution or sale of Antimicrobial Snap-On Refill Pen (05058).....\$4,550

**Count V**

Distribution or sale of Antimicrobial Ergonomic Coil Pen (05069).....\$4,550

**Count VI**

Distribution or sale of Antimicrobial Snap-On Refill Pen ((05064).....\$4,550

**Count VII**

Distribution or sale of Antimicrobial Necklace Pen (05081).....\$4,550

**Count VIII**

Distribution or sale of Antimicrobial Ergonomic Counter Pen (05071).....\$4,550

**Count IX**

Distribution or sale of Antimicrobial Ballpoint Pens-black ink (05091).....\$4,550

**Count X**

Distribution or sale of Antimicrobial Ballpoint Pens-blue ink (05093).....\$4,550

**Count XI**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen (05085).....\$4,550

**Count XII**

Distribution or sale of Antimicrobial Stick Pens-black ink (05097).....\$4,550

**Count XIII**

Distribution or sale of Antimicrobial Stick Pens-blue ink (05099).....\$4,550

**Count XIV**

Distribution or sale of Antimicrobial Automatic Mechanical Pencils (05089).....\$4,550

**Count XV**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen Assorted Refills (05009)..\$4,550

**Count XVI**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen Blue Refills (05007).....\$4,550

**Count XVII**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen Red Refills (05005).....\$4,550

**Count XVIII**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen Black Refills (05008).....\$4,550

**Count XIX**

Distribution or sale of Antimicrobial 4-Color Multifunction Pen Green Refills (05006).....\$4,550

**Count XX**

Distribution or sale of Klipboard Keeper Antimicrobial Clipboard (04950).....\$4,550

**Count XXI**

Distribution or sale of Antimicrobial Clipboard (04951).....\$4,550

**Total proposed civil penalty.....\$113,750**

Complainant determined the proposed civil penalty according to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). In determining the penalty amount, Complainant considered the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations. Complainant also considered EPA's *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990, a copy of which is enclosed with this Complaint.

**Rules Governing this Proceeding**

The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

**Filing and Service of Documents**

Respondent must file with the EPA Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan Perdomo to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Perdomo at (312) 886-0557. Her address is:

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

**Terms of Payment**

Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check, payable to "Treasurer, United States of America," to:

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

Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Perdomo at the addresses given above, and to:

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

### **Answer and Opportunity to Request a Hearing**

If Respondent contests any material fact upon which this Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted according to the Consolidated Rules.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the Answer on the other parties.

Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. The circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty; and

d. Whether Respondent requests a hearing.

**Settlement Conference**

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact Ms. Perdomo at (312) 886-0557.

Respondent's request for an informal settlement conference will not extend the 30-day period for filing a written Answer to this Complaint. Respondent may simultaneously pursue both an informal settlement conference and the adjudicatory hearing process. The Complainant encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through an informal conference. Complainant, however, will not reduce the proposed penalty because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

Payment of a civil penalty will not affect Respondent's continuing obligation to comply with FIFRA and any other applicable federal, state or local law.

6/18/09  
Date

*Margaret M. Guerriero*  
for Margaret M. Guerriero  
Director  
Land and Chemicals Division

**RECEIVED**  
JUN 19 2009  
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USEPA  
REGION 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Complaint in resolution of the civil administrative action involving PMCo L.L.C., was filed on June 20, 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 0189 5028, a copy of the original to the Respondents:

Mr. Mike Webster  
President  
PMCo L.L.C.  
1500 Kemper Meadow Drive  
Cincinnati, Ohio 45240

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J  
Susan Perdomo, Counsel for Complainant/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 60604-3590

Docket No. **FIFRA-05-2009-0016**

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