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FILED

MAY 28 2013

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. WAL-MART STORES, INC., Defendant.	Case No. 13-CR-334 (N.D.Cal.) Case No. 13-CR-00333 (C.D.Cal.) RULE 11(c)(1)(C) SPECIFIED SENTENCE PLEA AGREEMENT FOR DEFENDANT WAL-MART STORES, INC.

1. This constitutes the plea agreement between Wal-Mart Stores, Inc. ("defendant") and the United States Attorneys' Offices for the Northern and Central Districts of California ("the USAOs") in the above-captioned cases. Except as expressly set forth in paragraph 21(b) below, this agreement is limited to the USAOs and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative or regulatory authorities.

2. The parties understand and agree that this Agreement is entered into and is to be controlled by Federal Rule of Criminal Procedure 11(c)(1)(C). Accordingly, the parties understand and agree that: (a) if the Court accepts this Agreement, the parties are bound by the terms of this Agreement; and (b) if the Court does not accept this Agreement, then (i) any party may withdraw from the Agreement and that withdrawal will render this Agreement null and void, (ii) defendant may elect to withdraw any guilty pleas previously entered pursuant to this Agreement, and (iii) should defendant elect such withdrawal, the parties shall be restored to their respective claims and defenses prior to entry of such guilty pleas. The parties, having waived a pre-sentence report, request that the Court accept this Agreement and sentence defendant at the time of defendant's entry of its guilty pleas.

PLEA TO INFORMATION

3. Defendant agrees to plead guilty to six counts of Negligent Discharge of Pollutants Into a Publicly-Owned Treatment Works, as alleged in two separate criminal informations filed by the USAOs. Defendant expressly and

unequivocally admits that, by and through its employees acting on behalf of and for the benefit of defendant, it is in fact guilty of the charged offenses. By entering these guilty pleas, defendant hereby waives all objections to the form of the charging documents and admits that the Factual Basis set forth in Attachment A to this Agreement is an accurate statement of its criminal conduct. Upon the filing of the informations in the Central and Northern Districts of California, the parties agree that the USAO for the Central District of California shall seek the transfer of the information filed in its District, pursuant to the provisions of Rule 20 of the Federal Rules of Criminal Procedure, to the Northern District of California for simultaneous entry of the guilty pleas and for sentencing in that District.

CORPORATE AUTHORIZATION AND AFFIRMATION

4. Defendant represents that it is authorized to enter into this Agreement. On or before the date of defendant's signature on this Agreement, defendant shall have provided to the USAOs notarized legal documents certifying that defendant corporation is authorized to enter into and comply with all of the provisions of this Agreement, that defendant's authorized corporate representative is authorized to execute this Agreement and enter guilty pleas pursuant to this Agreement on behalf of defendant, and that all corporate formalities for such authorizations have been observed. The documents provided by defendant are attached as Attachment B.

5. Defendant confirms that its decision to enter guilty pleas is made knowing the charges that have been brought against

it, any possible defenses, and possible detriments of proceeding to trial. Defendant acknowledges that it has entered into this Agreement freely and voluntarily and that it has been fully advised by counsel, and that no threats or promises were made to induce it to enter into this Agreement and enter the guilty pleas called for by this Agreement.

ORGANIZATIONAL CHANGES AND APPLICABILITY

6. This Agreement shall bind defendant, subsidiaries, affiliated entities, assignees, and its successor corporation if any, and any other person or entity that assumes the obligations contained herein ("successors-in-interest"). No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change of legal status, sale or purchase of assets, divestiture of assets, or similar action shall alter defendant's obligations under this Agreement. Defendant shall not engage in any action to seek to avoid the obligations set forth in this Agreement.

NATURE OF THE OFFENSE

7. The parties stipulate and agree that defendant is liable for the actions of its agents and employees acting within the scope of their employment or acting on behalf of or for the benefit of defendant.

8. In order for defendant to be guilty of Negligent Discharge of Pollutants Into a Publicly-Owned Treatment Works as charged in each information, in violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A), the following must be true: defendant, by and through the actions of its agents and employees acting on behalf or for the benefit of

defendant, did negligently discharge pollutants, namely, hazardous liquids derived from household and pool cleaning products, from various retail store locations in both the Central and Northern Districts of California, into a sewer connected to a publicly-owned treatment works operated and maintained by a local sanitation district, in violation of a federally-approved pretreatment standard. Defendant admits that it is, in fact, guilty of this offense as charged in Counts One, Two, and Three of each information.

PENALTIES

9. The statutory maximum sentence, pursuant to Title 18, United States Code, Section 3571, that the Court can impose against a corporate defendant for each violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(1)(A), is: a five-year period of probation; a fine of $200,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of $125 per violation.

10. The United States contends that had this case gone to trial, the United States would have presented evidence to prove that the gain derived from or the loss resulting from the charged offense is sufficient to justify the recommended sentence set forth in Paragraph 15, pursuant to Title 18, United States Code, Section 3571(d). For purposes of this Agreement and sentencing only, the defendant waives its rights to contest this calculation.

COLLATERAL CONSEQUENCES

11. Defendant understands that its convictions may subject it to various collateral consequences, including but not limited to the suspension or revocation of any regulatory licenses or permits defendant holds and suspension or debarment of defendant from contracting with the United States or with any office, agency, or department thereof. By this Agreement, the USAOs make no representation or promise concerning suspension or revocation of any regulatory licenses or permits or suspension or debarment. In particular, suspension and debarment of organizations convicted under various federal environmental protection and criminal statutes is a discretionary administrative action solely within the authority of federal contracting agencies. Defendant understands that unanticipated collateral consequences will not serve as grounds to withdraw defendant's guilty pleas.

FACTUAL BASIS

12. Defendant and the USAOs agree and stipulate to the statement of facts set forth in Attachment A. It is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

WAIVER OF CONSTITUTIONAL RIGHTS

13. By pleading guilty, defendant gives up the following rights:

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of legal counsel at trial. (In this regard, defendant understands that, despite its plea of guilty, it retains the right to be represented by counsel at every other stage of the proceeding.)

d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against defendant.

f) The right, if defendant wished, to present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

APPLICABILITY OF THE SENTENCING GUIDELINES

14. Defendant and the USAOs agree and stipulate that, pursuant to United States Sentencing Guidelines ("U.S.S.G.") §§8C2.1 and 8C2.10, the sentencing guidelines are not applicable in determining the fine for an organization violating statutes relating to the environment, including violations of the federal Clean Water Act, but that all other sections of Chapter 8 of the U.S.S.G. are applicable in this case, including the provisions regarding probation and community service. Defendant understands that the Court is required to consider the factors set forth in Title 18, United States Code, Section 3553(a)(1)-(7), including the kinds of sentence and sentencing range established under the Sentencing Guidelines.

SENTENCING AGREEMENT

15. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure and Title 18, United States Code, Section

3571, the USAOs and defendant agree that a total monetary assessment and penalty package (including fines and community service payments) of Sixty Million Dollars ($60,000,000.00) is both reasonable and legally appropriate in this case. Pursuant to U.S.S.G. §§8D1.1 and 8D1.2 and the factors set forth in Title 18, United States Code, Section 3553(a), including the nature and circumstances of the offense and the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to criminal conduct, the parties agree that defendant shall be sentenced as follows:

a. Criminal Fine: Defendant shall pay a criminal fine of Forty Million Dollars ($40,000,000.00) as to the six counts of conviction. The criminal fine shall be paid within seven days of the entry of judgment by wire transfer to the Clerk of the United States District Court in accordance with instructions to be provided by the USAOs.

b. Community Service Payments: Defendant shall make organizational community service payments in the amount of Twenty Million Dollars ($20,000,000.00) pursuant to §8B1.3 of the Federal Sentencing Guidelines and in furtherance of the sentencing principles set forth in Title 18, United States Code, Section 3553(a). Defendant and the government agree that the organizational community service payments of $20,000,000.00 shall be made and distributed as set forth in paragraph 19 below. The defendant agrees that because these payments are community service payments by an organization, it will not seek

any reduction in its tax obligations as a result of these community service payments. The defendant further agrees that because these payments shall be made pursuant to this Agreement, it will not characterize, publicize, or refer to these payments as anything other than community service payments made as required by this plea agreement.

c. Mandatory Special Assessment: Defendant agrees to pay to the Clerk of the United States District Court on the date of sentencing (or as soon as the Court is able to accept the payment) the mandatory special assessment of $750.00 pursuant to Title 18, United States Code, Section 3013(a)(1)(B)(iii).

d. Probation: Defendant shall be sentenced to two (2) years of unsupervised probation under the following terms and conditions:

1) Payment in full of the monetary amounts set forth herein, including all special assessments, fines, and community service payments.

2) As provided by U.S.S.G. §8B2.1, as a condition of probation, the defendant will comply with the requirements of a Consent Agreement and Final Order ("CAFO") with the EPA, which is attached as Exhibit A and incorporated into this Plea Agreement. The CAFO provides for the establishment, implementation and operation of an enhanced environmental compliance program designed to promote the safe handling and transportation of pesticides, hazardous materials, and hazardous waste ("Compliance Program"). The CAFO is for a term of five (5) years from the date of entry of the CAFO and includes civil penalties against defendant. The Compliance

Program will include specific operation, safety, and training procedures, to ensure that pesticides, hazardous materials, and hazardous waste are properly handled, transported, and managed pursuant to regulations promulgated under federal and state law. The implementation and operation of the Compliance Program, as well as defendant's continued compliance with environmental laws, will be overseen by the EPA. In the event that the USAOs conclude that a violation of probation has occurred, the USAOs will provide defendant with written notice detailing the basis for the alleged violation. Defendant shall be given ten (10) business days to correct the alleged violation and provide a written response to the USAOs. After evaluation of Defendant's response, the USAOs will determine, in its sole discretion, whether or not the alleged violation should be noticed to the District Court.

16. The parties further agree that the sentence set forth herein is also appropriate in light of the additional penalties that have been or will be paid by defendant in connection with similar investigations conducted by the United States Attorney's Office for the Western District of Missouri, the United States Environmental Protection Agency, the State of California and the State of Missouri. The government understands that defendant intends to resolve the allegations made by the United States Attorney's Office for the Western District of Missouri by entering into a plea agreement and paying a monetary assessment of Fourteen Million Dollars ($14,000,000.00), which includes criminal penalty of Eleven Million Dollars ($11,000,000.00) and Three Million Dollars ($3,000,000.00) for community service

projects. In addition, the government understands that defendant intends to resolve the allegations made by the United States Environmental Protection Agency by entering into a Consent Agreement and Final Order, which is incorporated into this plea agreement and attached as Exhibit A, and paying a civil penalty of Seven Million Six Hundred Thousand Dollars ($7,600,000.00), inclusive of costs. Moreover, the government understands that defendant resolved allegations contained in the State of California investigation by payment of a civil penalty of approximately Twenty-Eight Million Dollars ($28,000,000.00), inclusive of costs and supplemental environmental projects and supplemental compliance measures. The government also understands that defendant resolved the allegations contained in the State of Missouri investigation by agreement to payment of a civil penalty of One Million One Hundred Thousand Dollars ($1,100,000.00), inclusive of costs and supplemental environmental projects.

17. Pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), the parties request that the Court waive the preparation of a pre-sentence report in this matter. The parties further request that the Court sentence defendant at the time its guilty pleas are entered pursuant to this Agreement. The Court's decision to require a pre-sentence report or to defer sentencing to a later time will not serve as grounds to withdraw defendant's guilty pleas.

18. In the event that the Court requires preparation of a pre-sentence report and defers acceptance or rejection of this Agreement until it has reviewed the pre-sentence report,

pursuant to Federal Rule of Criminal Procedure 11(c)(3)(A), both defendant and the USAOs are free to: (a) supplement the facts stipulated to in this Agreement by supplying relevant information to the United States Probation Offices and the Court, and (b) correct any and all factual misstatements relating to the calculation of the sentence.

COMMUNITY SERVICE PAYMENTS

19. The parties agree that defendant shall pay Twenty Million Dollars ($20,000,000.00) as set forth in Paragraph 15 for the explicit purpose of defendant performing community service pursuant to §8B1.3 of the Federal Sentencing Guidelines and in furtherance of the sentencing principles provided for under Title 18, United States Code, Section 3553(a). The explicit goal of defendant's required community service is to fund environmental projects, enforcement efforts, and initiatives designed for the enforcement of environmental and public safety regulations, and the benefit, preservation, and restoration of the environment and ecosystems in the Central and Northern Districts of California, and communities throughout the United States of America. These projects and initiatives are to include, but are not limited to, the following: monitoring, study, restoration, and preservation of fish, wildlife, and plant resources; monitoring, study, clean up, remediation, sampling, and analysis of pollution and other threats to the environment and ecosystem; research, study, training, planning, repair, maintenance, education, and public outreach relating to the environment and ecosystem; training and education of the retail industry regarding compliance with environmental

regulations; and enforcement of environmental, public safety, and wildlife protection laws, including the training of local, state, and federal investigators, inspectors, and other personnel engaged in such efforts. Accordingly, defendant agrees that within fourteen days of the entry of judgment, defendant shall pay a total of $20,000,000.00 as follows:

a. Six Million Dollars ($6,000,000.00) payable to an escrow account, administered by the National Fish and Wildlife Foundation, to be distributed as required during the term of probation to fund the creation and operation of the Retail Compliance Assistance Center ("RCAC") for a period of five years. The purpose of this community service project is to establish and support a RCAC to offer practical, useful, and timely compliance assistance to all retailers through a web-based program and other resources. This assistance will be available and applicable to all retailers, both large and small, and will be directed at providing guidance to assist in ensuring day-to-day environmental compliance as well as promoting best management practices with regard to recycling and other sustainable uses for retail items. A detailed discussion of the requirements, parameters, budget, schedules, goals, and objectives, of the RCAC community service project are set forth in Appendix 1, and fully incorporated herein.

b. One Million Five Hundred Thousand Dollars ($1,500,000.00) to be paid directly to the United States' four Regional Environmental Enforcement Associations ("Regional Associations"). The Regional Associations are alliances of regulatory and law enforcement agencies from 46 States, two

United States Territories and four Canadian Provinces. The Regional Associations promote the effective enforcement of state and local environmental statutes and regulations, with a strong emphasis on criminal enforcement. Members include state environmental regulatory agencies, attorneys general offices, law enforcement agencies and local prosecutor organizations. The Regional Associations provide state and local environmental enforcement professionals with a forum for training and networking, and with formal mechanisms for the exchange of information. These community service payments shall be paid in the following amounts and for the stated purpose:

1) Western States Project: within fourteen days of entry of judgment, defendant shall provide Three Hundred Seventy-Five Thousand Dollars ($375,000.00) to the Western States Project ("WSP"). This community service payment shall be utilized by the WSP to further its programmatic missions during the next five to ten years, including, but not limited to, the funding of scholarships for its annual training courses, such as the Basic Environmental Investigation Course that focuses upon the investigation and detection of violations of the federal Clean Water Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, and their state analogs or equivalents. Scholarships include such expenses as conference registration, travel, food and lodging, and incidentals. The payment shall be made payable to the "Western States Project Training Fund," taxpayer identification number 86-1044559, with a notation of the court docket number herein. The payment shall be delivered to Lynn Cassidy, Executive

Director, Western States Project, 1110 W. Washington, Ste. 367, Phoenix, AZ 85007.

2) Midwest Environmental Enforcement Association: within fourteen days of entry of judgment, defendant shall provide Three Hundred Seventy-Five Thousand Dollars ($375,000.00) to the Midwest Environmental Enforcement Association ("MEEA"). This community service payment shall be utilized by MEEA to further its programmatic missions during the next five to ten years, including, but not limited to, the funding of scholarships for its annual training courses, such as the Basic Environmental Investigation Course that focuses upon the investigation and detection of violations of the federal Clean Water Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, and their state analogs or equivalents. Scholarships include such expenses as: conference registration, travel, food and lodging, and incidentals. The payment shall be made payable to the "Midwest Environmental Enforcement Association," taxpayer identification number 36-3696349, with a notation of the court docket number herein. The payment shall be delivered to Jim Triner, Executive Director, Midwest Environmental Enforcement Association, 525 S. Tyler Rd, Unit N-1B, St. Charles, IL 60174.

3) Southern Environmental Enforcement Network: within fourteen days of entry of judgment, defendant shall provide Three Hundred Seventy-Five Thousand Dollars ($375,000.00) to the Southern Environmental Enforcement Network ("SEEN"). This community service payment shall be utilized by SEEN to further its programmatic missions during the next five

to ten years, including, but not limited to, the funding of scholarships for its annual training courses, such as the Basic Environmental Investigation Course that focuses upon the investigation and detection of violations of the federal Clean Water Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, and their state analogs or equivalents. Scholarships include such expenses as conference registration, travel, food and lodging, and incidentals. The payment shall be made payable to the "Southern Environmental Enforcement Training Fund, Inc." taxpayer identification number 20-8281893, with a notation of the court docket number herein. The payment shall be delivered to Geary Allen, Executive Director, Southern Environmental Enforcement Network, 5330 Stadium Trace Parkway, Ste. 240, Birmingham, AL 35209.

4) Northeast Environmental Enforcement Project: within fourteen days of entry of judgment, defendant shall provide Three Hundred Seventy-Five Thousand Dollars ($375,000.00) to the Northeast Environmental Enforcement Project ("NEEP"). This community service payment shall be utilized by NEEP to further its programmatic missions during the next five to ten years, including, but not limited to, the funding of scholarships for its annual training courses, such as the Basic Environmental Investigation Course that focuses upon the investigation and detection of violations of the federal Clean Water Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, and their state analogs or equivalents. Scholarships include such expenses as conference registration, travel, food and lodging, and incidentals. The

payment shall be made payable to the "Northeast Environmental Enforcement Project" taxpayer identification number 21-6000928, with a notation of the court docket number herein. The payment shall be delivered to Connie Morder, Northeast Environmental Enforcement Project, 25 Market Street, 5th Floor West Wing, P.O. Box 101, Trenton, NJ 08625.

c. Three Million Five Hundred Thousand Dollars ($3,500,000.00) to be paid to the National Fish and Wildlife Foundation ("NFWF") to develop, fund, and provide scholarships for three to six Advanced Environmental Crimes Training Program ("AECTP") courses per year until the funds are depleted. NFWF is a charitable and nonprofit corporation established pursuant to 20 U.S.C. § 5509. The AECTP course shall be developed and administered by the United States four Regional Environmental Enforcement Associations ("Regional Associations") to provide classroom and practical instruction to state and local environmental enforcement inspectors and investigators throughout the United States for advanced investigation strategies and techniques for application in the investigation of environmental crimes, including violations of the federal Clean Air Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, Clean Water Act, Federal Insecticide, Fungicide and Rodenticide Act, and equivalent delegated state enforcement programs. A detailed discussion of the requirements, parameters, budget, schedules, goals, and objectives, of the AECTP community service project are set forth in Appendix 2, and fully incorporated herein. The payment shall be made payable to the "National Fish and Wildlife Foundation,"

taxpayer identification number 52 138 4139, with a notation of the court docket number herein. The payment shall be delivered to NFWF's headquarters' office at 1133 15th Street, N.W., Suite 1100, Washington, D.C. 20005 to the attention of the Chief Financial Officer. If the payment is to be deposited with NFWF via electronic funds transfer, the defendant shall be remit the payment in accordance with wiring instructions provided in writing by NFWF prior to the transfer.

d. Four Million Five Hundred Thousand Dollars ($4,500,000.00) to be paid to the National Fish and Wildlife Foundation ("NFWF") for the explicit goal of funding environmental projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in the Central District of California. The funds shall be managed as an endowment or a quasi-endowment designed to provide long-term funding for projects, initiatives, and activities as set forth above. The payment shall be made by way of cashier's check, or equivalent, and made payable to the NFWF. The payment shall be made payable to the "National Fish and Wildlife Foundation," taxpayer identification number 52 138 4139, with a notation of the court docket number herein. The payment shall be delivered to NFWF's headquarters' office at 1133 15th Street, N.W., Suite 1100, Washington, D.C. 20005 to the attention of the Chief Financial Officer. If the payment is to be deposited with NFWF via electronic funds transfer, the defendant shall be remit the payment in accordance with wiring instructions provided in writing by NFWF prior to the transfer.

e. Four Million Five Hundred Thousand Dollars ($4,500,000.00) to be paid to the National Fish and Wildlife Foundation ("NFWF") for the explicit goal of funding environmental projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in the Northern District of California. The funds shall be managed as an endowment or a quasi-endowment designed to provide long-term funding for projects, initiatives, and activities as set forth above. The payment shall be made by way of cashier's check, or equivalent, and made payable to the NFWF. The payment shall be made payable to the "National Fish and Wildlife Foundation," taxpayer identification number 52 138 4139, with a notation of the court docket number herein. The payment shall be delivered to NFWF's headquarters' office at 1133 15th Street, N.W., Suite 1100, Washington, D.C. 20005 to the attention of the Chief Financial Officer. If the payment is to be deposited with NFWF via electronic funds transfer, the defendant shall be remit the payment in accordance with wiring instructions provided in writing by NFWF prior to the transfer.

DEFENDANT'S OBLIGATIONS

20. Defendant agrees:

a. To plead guilty as set forth in this Agreement.

b. To abide by all stipulations and promises contained in this Agreement, including the stipulation that the reasonable and appropriate sentence in this case should be as set forth in paragraph 15 above.

c. To appear as ordered for all court appearances and obey any other ongoing court order in this matter.

d. To be truthful at all times with Pretrial Services, the U.S. Probation Offices, the government, and the Court.

e. To pay the applicable special assessments at or before the time of sentencing.

THE USAOS' OBLIGATIONS

21. If defendant complies fully with all defendant's obligations under this Agreement, the USAOs agree:

a. To abide by all stipulations and promises contained in this Agreement, including the stipulation that the reasonable and appropriate sentence in this case should be as set forth in paragraph 15 above.

b. Not to further prosecute defendant or any of its current or former employees, officers, directors, agents, attorneys, or any of its subsidiaries, or affiliated entities, or assignees for any violations of federal criminal law arising out of the conduct described in Attachment A hereto or within the scope of the Informations referenced in Paragraph 3 of this Agreement, and occurring prior to the execution of this Agreement. This provision is binding on the USAOs, the other 91 United States Attorney's Offices (the "other USAOs"), and the United States Department of Justice, Environmental Crimes Section ("ECS"). Defendant understands and agrees that the USAOs, the other USAOs, and ECS are free to prosecute defendant or any of the aforementioned persons or entities for any other unlawful past conduct not specifically exempted by this

agreement or any illegal conduct that occurs after the date of this agreement.

BREACH OF AGREEMENT

22. If defendant, at any time between the execution of this Agreement and defendant's sentencing knowingly and willfully violates or fails to perform any of defendant's obligations under this Agreement ("a breach"), the USAOs may declare this Agreement breached. Before seeking a judicial finding of breach, the USAOs will notify the defendant in writing of the breach and allow the defendant a period of thirty days from receipt of such written notice to cure the breach. If within thirty days of receipt of such written notice, defendant cures the breach to the satisfaction of the USAOs, as decided by the USAOs in their sole and exclusive discretion, the USAOs will not seek a judicial finding of breach. If the USAOs declare this Agreement breached, and the Court finds such a breach to have occurred by a preponderance of the evidence as to which the USAOs shall have both the burden of production, and persuasion, defendant will not be able to withdraw defendant's guilty pleas, and the USAOs, the other USAOs, and ECS will be relieved of all of their obligations under this Agreement.

23. Following the defendant's knowing and willful breach, as defined in Paragraph 22 of this Agreement, should the USAOs, the other USAOs, or ECS elect to pursue any charge that was not filed as a result of this Agreement, then:

a. Defendant agrees that the applicable statute of limitations is tolled between the date of defendant's signing of

this Agreement and the commencement of any such prosecution or action.

b. Defendant gives up all defenses based on the statute of limitations during the tolling period as set forth in subparagraph (a), any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of defendant's signing of this Agreement.

c. Defendant agrees that: (i) any statements made by defendant's representative, under oath, at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the stipulated factual basis statement in this Agreement; and (iii) any evidence lawfully derived from such statements, are admissible against defendant in any such prosecution of or action against defendant, and defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence lawfully derived from any statements should be suppressed or are inadmissible.

SCOPE OF AGREEMENT

24. This Agreement has no effect on any present or future proceedings not expressly mentioned herein.

COURT NOT A PARTY

25. The Court is not a party to this Agreement. The USAOs and defendant understand and agree that: (a) if the Court accepts this Agreement, the parties are bound by the terms of this Agreement; and (b) if the Court does not accept this

Agreement, then (i) any party may withdraw from the Agreement and that withdrawal will render this Agreement null and void, (ii) defendant may elect to withdraw any guilty pleas previously entered pursuant to this Agreement, and (iii) should defendant elect such withdrawal, the parties shall be restored to their respective claims and defenses prior to entry of such guilty pleas.

NO ADDITIONAL AGREEMENTS

26. Except as set forth herein, there are no promises, understandings or agreements between the USAOs and defendant or defendant's counsel. Nor may any additional agreement, understanding or condition be entered into unless in a writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

27. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if the entire Agreement had been read into the record of the proceeding.

This Agreement is effective upon signature by defendant and an Assistant United States Attorney for the Northern District of California and the Central District of California.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MELINDA HAAG
United States Attorney

STACEY GEIS — Date: 5/28/13
Assistant United States Attorney

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANDRÉ BIROTTE, JR.
United States Attorney

JOSEPH O. JOHNS — Date: 5/28/13
Assistant United States Attorney
Chief, Environmental Crimes Section

As an authorized representative of defendant Wal-Mart Stores, Inc. ("defendant"), I have read this Agreement and carefully discussed every part of it with defendant's attorney. I understand the terms of this Agreement, I am authorized to

agree to these terms on behalf of defendant, and I voluntarily agree to those terms on behalf of defendant. Defendant's attorney has advised me of defendant's rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made to me or defendant other than those contained in this Agreement. No one has threatened or forced me or defendant in any way to enter into this Agreement. Finally, I am satisfied with the representation provided by defendant's attorney in this matter.

Phyllis P. Harris
Senior Vice President
Chief Compliance Officer
Wal-Mart Stores, Inc.

5/28/13
Date

I am defendant's attorney. I have carefully discussed every part of this Agreement with the authorized representative of defendant who has executed this Agreement on behalf of defendant. Further, I have fully advised the authorized representative of defendant's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of defendant and its authorized representative to enter into this Agreement is an informed and voluntary one, and defendant has validly authorized the authorized representative to execute this Agreement on behalf of defendant.

Raymond B. Ludwiszewski
Counsel for Defendant
Wal-Mart Stores, Inc.

5/28/13
Date

ATTACHMENT A

COMBINED FACTUAL BASIS IN SUPPORT OF PLEA AGREEMENT AND STATEMENT OF RELEVANT AND NON-PROSECUTION CONDUCT

United States v. Wal-Mart Stores, Inc.

Wal-Mart Stores, Inc. (hereinafter "defendant") stipulates and agrees that the following statement of facts is true and accurate and shall serve as a factual basis in support of the plea agreement and a statement of relevant conduct and non-prosecution conduct for the purposes of sentencing and the non-prosecution provision within Paragraph 21(b) of the plea agreement.

At all times relevant and material to the charges and plea agreement in this matter, defendant owned and operated over 4,000 retail stores nationwide. Defendant also owned and operated over 100 forward logistics distribution centers and six regional reverse logistics return centers. The six return centers were located in Las Vegas, Nevada; Indianapolis, Indiana; Bentonville, Arkansas; Waco, Texas; Macon, Georgia; and Johnstown, New York. As of September 2009, defendant no longer operates a return center in Macon, Georgia. A return center is now located in Spartanburg, South Carolina. Defendant was incorporated in Delaware with headquarters located in Bentonville, Arkansas. Defendant operated at least twenty-six (26) retail stores doing business in the Northern District of California and ninety-four (94) retail stores in the Central District of California. As part of its retail operations, defendant handled the disposition and disposal of products that had been damaged, destroyed, spilled, or were otherwise returned

by a customer at each retail store in the United States. The Claims Department of each particular store would handle the disposition and disposal of the damaged, destroyed, spilled, or otherwise returned products.

As a large volume retailer, defendant sold thousands of different types of products which are flammable, corrosive, reactive, and toxic under federal law. Such products included pesticides, solvents, detergents, paints, aerosols, and cleaners. These products are considered hazardous waste once discarded pursuant to the Resources Conservation Recovery Act.

Defendant negotiated Vendor Agreements for each of its product's suppliers. Defendant's employees who worked in the Claims Department would be instructed on how to manage damaged or returned products through the use of a computerized program, based upon the mandate of each Vendor Agreement. For a small percentage of these products, including products that would be considered hazardous waste if discarded, the Wal-Mart employees would be instructed to "destroy" the product at the store level.

From a date unknown to the government, until approximately January 2006, defendant failed to adequately train its employees on proper hazardous waste management and disposal practices at the store level. Further, defendant did not have a system in place at the store level to identify and manage hazardous waste generated at the store level. As a result, from a time unknown to the government, until approximately January 2004, certain of defendant's employees discarded damaged, destroyed, spilled, or returned products, including products that are considered hazardous waste when discarded, by either discarding the

products in nearby trash cans or municipal dumpsters at each store, or, if they were liquid-based, by pouring the product down the maintenance drain at each store, which connected to the local sewer system of the local publicly-owned treatment plant or works.

In January 2004, defendant developed a new computer-based information system to provide Claims Associates with knowledge about the hazardous characteristics of each product. The new computer-based information system included a warning message that products containing hazardous substances should not be discarded in the trash. This new system led to a decrease in the improper disposal of products containing hazardous substances in the store level trash and an increase in the transfer of those products, including destroyed or spilled products, to the return centers for disposition.

Between January 2005 and September 2006, damaged, destroyed, spilled, or returned products were transferred from the retail stores to the return centers for disposition or disposal. Before February 2006, defendant's retail stores were responsible for the costs of managing, storing, or disposing of hazardous waste, from the store's revenues. Damaged, defective, or customer returned hazardous materials products, including spill clean-up residues, were routinely shipped to the return centers, often co-mingled with other incompatible hazardous materials products, for disposition. To the extent these products could be considered hazardous waste at the time of transportation, none of these products were accompanied by a uniform hazardous waste manifest properly describing the name,

quantity, and hazardous characteristics of the products, as required by law. None of defendant's six return centers were licensed or permitted to receive or store hazardous waste of any kind. Hazardous waste transported from defendant's retail stores to its return centers were stored for up to 90 days at the return centers and then legally transported to a properly licensed hazardous waste facility for disposal as hazardous waste. Certain employees at each return center were instructed how to manage each hazardous material by reference to a matrix entitled, "Return Center Master List of Waste Streams," which was posted in the hazardous waste sorting and storage area of each return center. This matrix was created by defendant's employees at the Bentonville headquarters for the purpose of determining the disposition of each hazardous material transported from a retail store to a return center, to the extent the vendor agreement for that product did not provide for return of the product to the manufacturer, donation, or re-sale. With a few exceptions, the matrix instructed certain return center employees to manage each of these hazardous materials as a hazardous waste.

As a result of defendant's improper management of hazardous waste and materials in violation of state and federal regulations and laws, defendant, from a date unknown to approximately September 2006, avoided significant compliance costs and fees.

Between January 1, 2003, through November 2, 2005, in Los Angeles, Riverside, Orange, Ventura, San Bernardino, Santa Barbara, and San Luis Obispo Counties, within the Central

District of California, defendant, by and through its employees operating within the scope of their employment, did on multiple occasions negligently discharge pollutants, namely, corrosive and hazardous liquid wastes, from the premises of multiple retail stores located within Los Angeles, Riverside, Orange, Ventura, Santa Barbara, and San Luis Obispo Counties, California, into drains connected to publicly-owned treatment works operated and maintained by local sanitation districts, in violation of a federally-approved pretreatment standard.

Between January 1, 2003, through December 31, 2005, in Alameda, Contra Costa, Del Norte, Lake, Mendocino, Monterey, Napa, Sonoma, and Santa Clara Counties, within the Northern District of California, defendant, by and through its employees operating within the scope of their employment, did on multiple occasions negligently discharge pollutants, namely, corrosive and hazardous liquid wastes, from the premises of multiple retail stores located within Alameda, Contra Costa, Del Norte, Lake, Mendocino, Monterey, Napa, Sonoma, and Santa Clara Counties, California, into drains connected to publicly-owned treatment works operated and maintained by local, sanitation districts, in violation of a federally-approved pretreatment standard.

The USAOs' investigation in the Northern and Central Districts of California did not reveal any violations that formed the basis of the allegations in the criminal informations which occurred after January 2006 when defendant's changes to its hazardous waste practices were implemented. Moreover, the investigation did not uncover sufficient facts to prove or

otherwise support the prosecution of individuals with the requisite knowledge and decision-making authority.

APPENDIX 1

Retail Compliance Assistance Center Project

The intent of this community service project is to establish and support a Retail Compliance Assistance Center (RCAC) to offer practical, useful, and timely compliance assistance to all retailers through a web-based program and potentially through other information resources. This assistance will be available and applicable to all retailers, large and small, and will be directed at providing guidance to assist in ensuring day-to-day environmental compliance as well as promoting best management practices with regard to recycling and other sustainable uses for retail items.

Six Million Dollars ($6,000,000.00) will be placed into an escrow account within fourteen (14) days after sentencing. The escrow account shall be managed by the National Fish and Wildlife Foundation ("NFWF"). NFWF will receive an annual fee for its services and the management of the escrow account of $49,500 for the first year and adjusted annually for inflation (for a total amount of $268,000 for five years) payable from the funds in the escrow account. The timeline for the requirements, parameters, budget, schedules, goals, and objectives for the expenditure of said monies is set forth in Attachment A of Appendix 1.

APPENDIX 1

ATTACHMENT A

A. DISTRIBUTION OF FUNDS FOR DEVELOPMENT OF RCAC

The funds provided in the escrow account described in Appendix 1 shall be dispersed to the following sources in support of the development and implementation of the Retail Compliance Assistance Center.

1. RILA Project Manager Responsible for Coordinating Development and Implementation of RCAC

First, the escrow account will fund the creation of a RCAC Project Manager position at the Retail Industry Leaders Association (RILA) for purposes of coordinating the efforts of this project over the five-year term of the project. This funding will provide the salary for the Project Manager as well as any administrative support required in support of this position. RILA will on an annual or semi-annual basis, submit a request for the annual funding for the coming year and, at the same time provide a full and complete accounting for the use of the prior year's funds which were provided to RILA. These shall be submitted to the escrow administrator with a copy to Wal-Mart Stores, Inc.

The Project Manager will work with retailers to select the best proposal for the development of the web-based RCAC. In addition, the Project Manager will also work with retailers and consultants to prepare a Request for Proposal (RFP) and select proposals for research on best management practices (BMPs) and the development of environmental compliance training to be included on the RCAC. This project anticipates selection of a

university or non-profit-based program to support the development of training and BMPs to promote environmental compliance in the retail sector.

2. RCAC Web Site and Platform

The escrow account will fund the development and presentation of the RCAC web site and platform. Once the entity responsible for developing the web site is selected ("web site development entity"), the RILA Project Manager and the web site development entity will submit a request for funding for the first year of the web site development. Thereafter, on an annual or semi-annual basis, the RILA Project Manager and the web site development entity will submit a request for annual funding for the coming year and, at the same time provide a full and complete accounting for the use of the prior year's funds. These shall be submitted to the escrow administrator with a copy to Wal-Mart Stores, Inc.

3. Development of Retail Best Management Practices and Environmental Compliance Training

Additionally, the escrow account will fund the development of retail best management practices and environmental compliance training by a third-party non-profit or educational institution with expertise in both environmental compliance and retail operations. Once the entity responsible for developing the best management practices and environmental compliance training is selected ("training entity"), the RILA Project Manager and the training entity will submit a request for funding for the first year of the web-based best practices and training development. Thereafter, on an annual or semi-annual basis, the RILA Project

Manager and the training entity will submit a request for annual funding and provide a full and complete accounting for the use of the prior year's funds to the escrow administrator. These shall be submitted to the escrow administrator with a copy to Wal-Mart Stores, Inc.

4. Completion of Retail Product Item File

Finally, the escrow account may also provide funding as necessary to complete and/or assess the completeness and accuracy of a comprehensive item file of Department of Transportation ("DOT") hazardous items and items considered hazardous waste under federal and state law, upon request from the RILA Project Manager.

B. RCAC PROJECT GOALS AND OBJECTIVES

Recognizing that the specific elements of the RCAC may evolve based on input from members of the retail community, the following are the annual goals for this project, to be fulfilled by the Project Manager or the consultants/organizations receiving funding for this Project:

Year 1:

- Retail Industry Leaders Association (RILA) to hire Project Manager to work with other retail entities and third parties to select proposal for development of web-based RCAC and manage development of website.
- Project Manager to prepare an RFP for development of comprehensive Retail Compliance Assistance Center (RCAC) Website.
- Select entity to develop comprehensive RCAC website.

- Initial version of RCAC on-line by end of Year 1 which will include centralized resource of regulatory guidance, newsroom with updates for retail sector regulatory programs, state resource locator fact sheets.
- Project Manager to identify and retain third-party consultants with knowledge of retail sector to help gather, format and review website content.
- Conduct an initial needs assessment and prepare an RFP for educational program to develop web-based environmental compliance training and best management practices for retailers.
- Project Manager to work with other retail entities to select best proposal(s) for research and development.
- Project Manager and RILA to participate in and review progress of Global Data Synchronization Network ("GDSN") item file project.
- Determine best method to support completion of comprehensive item file of DOT hazardous items and items considered hazardous waste under federal and state law.
- Support promotion of supplier participation in GDSN or similar item file project.
- Project Manager to evaluate and support distribution of funding support to GDSN project for Information Technology ("IT") infrastructure and item-level review.

Year 2:

- Website developer to develop web-based Virtual Retail Store with links to regulatory requirements for each area of a retail store.

- Website to include guidance on federal best management practices and model Environmental Management System (EMS).
- Website to include sample environmental compliance training.
- Website to include sustainability guidance, such as package reduction and green chemistry initiatives.
- Develop initial environmental compliance training outlines and curriculum developed and make available on RCAC website.
- Develop initial federal best management practices outline made available on RCAC website.
- Develop model EMS recommendations for inclusion on RCAC website.

Years 3-5:

- Continue adding state specific resources and update federal best management practices to RCAC website.
- Support continued maintenance, updating and enhancement of information on RCAC website.
- Continue research and development of environmental compliance training and potentially offer in-person training at educational institution or non-profit.
- Continue development and improvement of federal best management practices and model EMS.
- Research state-specific best environmental management practices for retailers.
- Support promotion of supplier participation in GDSN item file project.

- Provide funding support to GDSN project for IT infrastructure and item-level review.
- Provide access for retailers to hazardous item file information on RCAC.

APPENDIX 2

Advanced Environmental Crime Training Program

The intent of this community service project is to provide a viable, effective, and efficient plan for the delivery of an Advanced Environmental Crime Training Program ("AECTP") to state and local law enforcement officers and regulatory inspectors, nationwide. The AECTP will be designed to provide classroom and practical instruction for the advanced investigation strategies and techniques for application in the investigation of environmental crimes, including violations of the federal Clean Air Act, Resource Conservation and Recovery Act, Hazardous Materials Transportation Statute, Clean Water Act, Federal Insecticide, Fungicide, and Rodenticide Act, and equivalent delegated state enforcement programs. Such advanced strategies and techniques include a working knowledge of applicable state and federal environmental regulatory and enforcement schemes, preparation and execution of search warrants, and interview skills. Three Million Five Hundred Thousand Dollars ($3,500,000.00) shall be paid directly to the National Fish and Wildlife Foundation ("NFWF") for establishment of a trust fund or account from which monies shall be disbursed by NFWF trustees to the United States' four Regional Environmental Enforcement Associations (the Western States Project, the Midwest Environmental Enforcement Association, the Northeast Environmental Enforcement Project, and the Southern Environmental Enforcement Network) to develop, fund and provide travel/training scholarships for state and local personnel to attend the AECTP.

The monies shall be used to provide training scholarships to state and local personnel to attend 3-6 annual presentations of the AECTP until the funds are depleted. Each course shall be designed to accommodate between 26-28 students.

The Regional Associations will develop and oversee a program for the planning, administration and funding of the presentation of the AECTP. Costs associated with the presentation of the AECTP will include but not be limited to student travel/training scholarships, instructor travel, and manuals/materials. The Regional Associations shall develop specific criteria for the selection of state and local personnel who will attend the AECTP. The Regional Associations shall be responsible for the selection of the recipients who receive travel/training scholarships.

The Regional Associations, in coordination with training staff, shall determine the most efficient and effective method and location(s) for the delivery of the AECTP to state and local personnel, including but not limited to locations such as the USEPA Office of Criminal Enforcement, Forensics, and Training facilities located at the Federal Law Enforcement Training Center in Glynco, Georgia; the USEPA National Enforcement Training Institute-West facility in Denver, Colorado; the Pat Thomas Law Enforcement Academy in Tallahassee, Florida; the Northeast Project's advanced training site at Ft. Monmouth Army Base in New Jersey and other appropriate sites throughout the nation that are specifically equipped to deliver the AECTP and its practical exercises.

ATTACHMENT B

WAL-MART STORES, INC.

CERTIFICATE OF AUTHORIZATION

May 14, 2013

I, Jeffrey J. Gearhart, Executive Vice President and Corporate Secretary of Wal-Mart Stores, Inc., a Delaware corporation (the "Company"), do hereby certify in my capacity as an officer of the Company in connection with the Company entering into *United States of America v. Wal-Mart Stores, Inc.* Rule 11(c)(1)(C) Specified Sentence Plea Agreement in the United States District Court for the Northern District of California (the "Agreement") on or after the date hereof, as follows:

1. I am the duly appointed Executive Vice President and Corporate Secretary of the Company, and as such, I have access to the Company's records and am familiar with the matters therein contained and herein certified.

2. The Company is authorized to enter into the Agreement and to comply with all of the provisions of the Agreement applicable to the Company.

3. That Phyllis P. Harris, is authorized to sign the Agreement on behalf of the Company and to enter guilty pleas pursuant to the Agreement on behalf of the Company.

4. Any and all applicable corporate formalities for the foregoing authorizations have been observed by the Company.

IN WITNESS WHEREOF, I have hereunto set my hand as of the date first written above.

Jeffrey J. Gearhart
Executive Vice President and Corporate Secretary

STATE OF ARKANAS)
) SS
COUNTY OF BENTON)

On this day appeared before me, the undersigned, a Notary Public, within and for the County and State aforesaid, Jeffrey J. Gearhart, personally known to me to be the Executive Vice President and Corporate Secretary of Wal-Mart Stores, Inc., a Delaware corporation, who stated and acknowledged that he has signed the foregoing instrument in his authorized capacity and that the facts stated therein are true, and I so certify this 14 day of May, 2013.

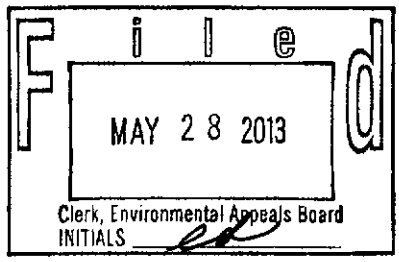
WITNESS my hand and official seal

Signature: Joyce E. Chunn

My Commission expires: 6-1-2016

OFFICIAL SEAL
JOYCE E. CHUNN
BENTON COUNTY
NOTARY PUBLIC - ARKANSAS
MY COMMISSION EXP. JUNE 1, 2016
COMMISSION# 12348434

EXHIBIT A



IN THE MATTER OF	)	EPA Docket Nos. RCRA-HQ-2013-4001 FIFRA-HQ-2013-5056
Wal-Mart Stores, Inc. 702 SW 8th Street, Bentonville, AR 72716-8611	)	Proceeding Under Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a); Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136*l*(a)
RESPONDENT	)	

CONFIDENTIAL BUSINESS INFORMATION REDACTED – A complete copy of the document has been filed with the Environmental Appeals Board Hearing Clerk

CONSENT AGREEMENT AND FINAL ORDER

Complainant, United States Environmental Protection Agency ("EPA"), and Respondent, Wal-Mart Stores, Inc. ("Walmart") have agreed to settle this action and consent to the entry of this Consent Agreement and Final Order ("CAFO") before taking testimony and without any adjudication of any issues of law or fact herein.

I. NATURE OF THE ACTION

1. This is a civil administrative action instituted under Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (HSWA) (collectively "RCRA"), 42 U.S.C. § 6928(a); Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136*l*(a); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22 (2010). This action orders injunctive relief and civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a).

2. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

II. THE PARTIES

4. Rosemarie A. Kelley, Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized, by lawful delegation, to institute and settle civil administrative actions brought pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a).

5. Respondent is Wal-Mart Stores, Inc. ("Walmart" or "Respondent"), a Delaware corporation doing business in the State of Arkansas, as well as any subsidiaries or affiliated companies of Walmart in all 50 states.

III. PRELIMINARY STATEMENTS

6. The terms of this CAFO constitute a full and final settlement between the parties for all claims for civil penalties and injunctive relief pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Section 14(a) of FIFRA, for the alleged violations of RCRA and FIFRA specified in Section XI of this CAFO. Except as provided in paragraph 111, compliance with this CAFO shall not be a defense to any other action arising out of Walmart's future conduct and commenced pursuant to federal, state, and local environmental laws and it is the responsibility of the Respondent to comply with all applicable provisions of RCRA, FIFRA, and any other

federal, state, or local laws and regulations. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent.

7. Respondent admits the Stipulated Facts in Section VII of this CAFO. 40 C.F.R. § 22.18(b).

8. Respondent agrees to pay the civil penalties specified in Section XIII as full and final settlement for all civil claims specified in this CAFO. 40 C.F.R. § 22.18(b).

9. Each party to this CAFO shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

IV. JURISDICTION AND WAIVER OF RIGHT TO HEARING

10. This CAFO is entered into pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a); and the Consolidated Rules, 40 C.F.R. Part 22.

11. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of the EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program, when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939(e), or of any state provision authorized pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, constitutes a violation of RCRA, subject to the assessment of civil penalties and issuance of compliance orders as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Affected States have been authorized to administer the base RCRA hazardous waste program (requirements imposed by the Solid Waste Disposal Act prior to the Hazardous and Solid Waste Amendments of 1984) in lieu of the federal government's program.

13. The violations of RCRA described herein are alleged to have occurred in all Affected States and this compliance agreement covers Walmart Retail Facilities, Return Centers, and Distribution Centers in all Affected States, so citations to federal RCRA regulations are used for the parties' convenience. Respondent agrees that the terms of this compliance agreement govern its actions

but that States may impose requirements broader in scope than the federal regulations and this CAFO.

14. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) the Administrator may issue an order assessing a civil penalty for any past or current violation and require compliance immediately or within a specified time period.

15. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), EPA may enforce federally-authorized hazardous waste programs for violations of any requirement of Subtitle C of RCRA, Sections 3001-3023e, 42 U.S.C. §§ 6921-6939e.

16. Section 3006 of RCRA, 42 U.S.C. § 6926, as amended, provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

17. EPA has provided notice of commencement of this action to all authorized states pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

18. For the purpose of the CAFO, Respondent admits the jurisdictional allegations set out in this consent agreement and waives any defenses it might have to venue and jurisdiction. Solely for the purpose of the approval of this CAFO by the Environmental Appeals Board ("EAB"), Respondent agrees not to assert before the EAB any statute of limitations affirmative defense it might have for the RCRA and FIFRA violations alleged in Section XI.

19. Except as provided in paragraphs 7 and 18, above, Respondent neither admits nor denies the factual allegations and legal conclusions set out in this CAFO.

20. Respondent waives any right it may have to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement for purposes of this CAFO only.

21. Respondent waives any right it may have to challenge the validity of this CAFO and the settlement of the matters addressed in this CAFO based on any issue related to the Paperwork Reduction Act.

22. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions, with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CAFO so long as the EPA Officials provide Respondent with notice and, if written, a copy of such memorandum or communication from any third party.

V. PARTIES BOUND

23. This CAFO applies to and is binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or part, directly or indirectly, by Respondent. Nothing in the previous sentence shall adversely affect any right of EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee, even if not owned in whole or in part, directly or indirectly, by Respondent.

24. Each Party certifies that at least one of its undersigned representatives is fully authorized by the Party whom he or she represents to enter into the terms and conditions of the CAFO, to execute it on behalf of that Party, and to legally bind the Party on whose behalf he or she signs this CAFO.

VI. DEFINITIONS

25. Unless otherwise expressly provided herein, terms used in the CAFO that are defined in RCRA, 42 U.S.C. §§ 6902-6991i, or in regulations promulgated under RCRA, 40 C.F.R. Parts 260-270, or in a state's authorized hazardous waste program, shall have the same meaning assigned to them in RCRA or in such regulations or applicable authorized state hazardous waste program. Terms used in this CAFO that are defined in FIFRA, 7 U.S.C. §§ 136-136y, or in regulations

promulgated under FIFRA at 40 C.F.R. Parts 152-169, shall have the same meaning assigned to them in FIFRA or in such regulations.

26. Whenever terms listed below are used in this CAFO, the following definitions shall apply:

a. "Affected State" shall mean a state in which a Walmart Retail Facility is located as specified in Appendix C of this CAFO.

b. "Business Day" means any day other than Saturday, Sunday, or a federal or legal holiday.

c. "Claims Supervisor" means a Walmart Retail Facility Associate as described in Paragraph 94(d) and assigned the title claims supervisor (or similar title) for Stores. Claims Supervisors' job responsibilities will include accountability for hazardous waste management issues.

d. "Conditionally Exempt Small Quantity Generator" means a facility that generates less than 100 kg of hazardous waste in a calendar month.

e. "Consent Agreement and Final Order" or "CAFO" shall mean this Consent Agreement and attached Final Order and all Attachments hereto. In the event of conflict between this Consent Agreement and any Attachment, this Consent Agreement shall control.

f. "Consumer Products" shall mean products sold in consumer product packaging which are transported as part of the Reverse Distribution Process.

g. "Clubs" means the members-only retail facilities operated by Wal-Mart Stores, Inc. under the name Sam's Club, or any future such facility.

h. "Distribution Center" means a distribution center facility, or any future such facility, operated by Walmart for the distribution of new products from vendors to Walmart's Retail Facilities.

i. "EPA" means the U.S. Environmental Protection Agency.

j. "Establishment" means "any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale," 7 U.S.C. § 136(dd).

k. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

l. "Large Quantity Generator" means a facility that generates 1000 kg or more of hazardous waste in a calendar month.

m. "Notify" and "Submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the U.S. mail or dispatch by express courier not later than the day that such transmission or communication is required by this CAFO. If that day is not a business day then the delivery, deposit, or dispatch shall be made the next business day.

n. "Paragraph" shall mean a portion of this CAFO identified by an arabic numeral and, in some cases, an associated lower case letter.

o. "Parties" shall mean U.S. EPA and Respondent.

p. "Pesticidal product" means "a pesticide, active ingredient, or device." 40 C.F.R. § 167.3.

q. "Pesticide" means, in relevant part, "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer … ." 7 U.S.C. § 136(u).

r. "Pesticide product" means, in relevant part, "a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. …" 40 C.F.R. § 152.3.

s. This paragraph intentionally left blank.

t. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

u. "Respondent" shall mean Wal-Mart Stores, Inc. and its successors and assigns, as well as any subsidiaries or affiliated companies of Walmart.

v. "Responsible Official" means an official of Walmart who is in charge of a principal business function, or any other person who performs similar policy or decision-making functions for Walmart.

w. "Return Center" means the six reverse distribution facilities operated by Walmart or on Walmart's behalf and located in Bentonville, Arkansas; Las Vegas, Nevada; Waco, Texas; Spartanburg, South Carolina; Indianapolis, Indiana; and Johnstown, New York; the facility previously located in Macon, Georgia, and any future such facility utilized as part of the Reverse Distribution Process or any new location for an above identified facility.

x. "Reverse Distribution Process" or "Reverse Distribution System" means a process for consolidating returned, recalled or other items in centralized Return Centers from Retail Facilities and Distribution Centers, one of the purposes of which is waste minimization through bulk resale of items, donation of items, return to manufacturer, or proper handling as waste. The items transported to a Return Center may have first been transported through a Distribution Center and consolidated prior to transfer to the Return Center.

y. "Retail Facility Associate" means a Walmart Retail Facility employee.

z. "Section" shall mean a portion of this CAFO identified by a roman numeral.

aa. "Small Quantity Generator" means a facility who generates more than 100 kg and less than 1000 kg of hazardous waste in a calendar month.

bb. "Solid Waste" shall mean any discarded material that is not excluded by 40 C.F.R. § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31. For purposes of this CAFO with specific respect to Walmart Retail Facilities, discarded material means all Consumer Products under Respondent's control that cannot be sold at a Walmart Retail Facility or used by Walmart, and for which Respondent does not have a contractual

agreement or general practice providing for the return of that material to the manufacturer (readily confirmed by a written agreement with the manufacturer or business records maintained by the Respondent documenting routine returns of the material to the manufacturer), or the material otherwise cannot be donated, resold, reused, or recycled in a manner that does not constitute discard pursuant to 40 C.F.R. § 261.2 or applicable state law, or which the donation, resale, reuse, or recycling is prohibited under other applicable federal or state law.

cc. "Stores" means Walmart Discount Stores and Supercenters, or any future such Walmart Retail Facility (but not including Clubs as defined above).

dd. "United States" means the United States of America, and all of its departments, agencies, and instrumentalities.

ee. "Walmart Retail Facility" or "Retail Facility" means the Walmart owned retail facilities in the United States (including Puerto Rico and other U.S. territories), which includes Walmart Discount Stores, Supercenters, Neighborhood Markets, Sam's Clubs, and Marketside Stores or any future such facility. However, Walmart Retail Facility does not include any small format Walmart owned retail facility opened after January 1, 2011, that totals less than 30,000 sq. ft. in retail space. Nothing in this CAFO relieves Respondent from its obligation to comply with all applicable federal, state, and local statutes and regulations for all such small format Walmart owned retail facilities.

VII. STIPULATED FACTS

27. Complainant is the Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, U.S. EPA.

28. Respondent is Wal-Mart Stores, Inc. (Walmart). Walmart's corporate office is located at 702 SW 8th Street, Bentonville, AR 72716-8611. Walmart operates approximately 4000 retail facilities throughout all fifty (50) states in the United States.

VIII. RCRA LEGAL BACKGROUND

29. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. §§ 6921 *et seq.*, empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270, 273, and 279.

30. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are regulated as "hazardous wastes." These regulations and definitions are set forth at 40 C.F.R. Part 261.

31. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded by regulation or variance.

32. Regulations governing the identification of hazardous wastes are found in 40 C.F.R. Part 261. These regulations contain two (2) categories of hazardous wastes, "listed" and "characteristic." Those wastes that have been determined to be hazardous by definition have been assigned certain identification numbers and are referred to as "listed wastes." "Characteristic hazardous wastes" are solid wastes that exhibit one or more of the following characteristics: ignitability, reactivity, corrosivity or toxicity.

33. Section 3002 of RCRA, 42 U.S.C. § 6938, requires EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and include requirements for determining whether a waste is hazardous, managing waste in proper containers, labeling and dating containers, inspecting waste storage areas, training, planning for emergencies, and procedures and requirements related to shipping wastes off-site for treatment, storage, or disposal.

IX. FIFRA LEGAL BACKGROUND

34. FIFRA grants the Agency authority to regulate the production, distribution, sale, labeling, and application of pesticides. Pursuant to 7 U.S.C. § 136j(a)(2)(L), no person shall produce any pesticide unless the establishment in which it is produced is registered with EPA under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a). Pursuant to 7 U.S.C. § 136j(a)(1)(E) and (C), respectively, with certain exceptions not applicable to this CAFO, it is unlawful for any person to distribute or sell, *inter alia*: a) any pesticide which is adulterated or misbranded; and b) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under 7 U.S.C. § 136a. It is unlawful for any person to detach, alter, deface, or destroy any labeling required under FIFRA. 7 U.S.C. § 136j(a)(2)(A).

X. EPA ALLEGATIONS AND DETERMINATIONS

35. Respondent, Wal-Mart Stores, Inc. is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and 40 C.F.R. § 260.10;

36. Respondent operates retail grocery and department stores in various formats across the United States at which Walmart sells commonly used consumer products.

37. Respondent sells common consumer products, some of which may be considered hazardous waste (when discarded) under federal or state law, including but not limited to, bleaches, pool chlorine and acids, pesticides, fertilizers, paints and varnishes, lamp oil and other ignitable liquids, aerosol products, oven cleaners and various other cleaning agents, automotive products and solvents, and other flammable and corrosive materials. Most of these consumer products are sold to the public in the ordinary course of business.

38. If these common consumer products are spilled or leaking or in a condition such that they cannot be used for their intended purpose, sold, or recycled, some of these products may be considered hazardous waste under federal or state law. Prior to 2006, some of these hazardous wastes were

then sent by the Retail Facilities to one (1) of six (6) Walmart Return Centers to determine final disposition.

39. Respondent is the owner and operator of approximately 4000 Walmart Retail Facilities and Distribution Centers, of which, on a monthly basis, a very large majority may be Conditionally Exempt Small Quantity Generators ("CESQG") of hazardous waste, pursuant to 40 C.F.R. § 261.5.

40. Prior to 2006, Walmart Retail Facilities that generated more than 100 kg of hazardous waste per month did not systematically determine if Solid Wastes were hazardous waste as required by 40 C.F.R. § 262.11, and where such waste was hazardous, did not systematically handle the hazardous waste in accordance with the requirements of 40 C.F.R. Part 262.

41. Prior to 2006, Respondent did not prepare manifests for shipment of these wastes to the Return Centers.

42. Prior to 2006, some of the returned or damaged products Walmart shipped to its Return Centers on Walmart trucks were hazardous waste. Walmart trucks are not authorized to transport hazardous waste, as defined in 40 C.F.R. Part 263.

43. Walmart's Return Centers are not designated hazardous waste treatment, storage or disposal facilities under RCRA and are not authorized to accept hazardous waste.

    Prior to 2006, Respondent did not have a proper employee training plan in place at the Retail Facilities, as required by 40 C.F.R. Part 262 nor did Respondent have emergency procedures in place.

44. This paragraph intentionally left blank.

45. A majority of the Respondent's Retail Facilities typically generate less than 100 kg of hazardous waste per month, and therefore, are subject only to the RCRA regulatory requirements applicable to Conditionally Exempt Small Quantity Generators ("CESQGs") at 40 C.F.R. § 261.5.
46. Walmart sells, at Wal-Mart Retail Facilities, among other things, a variety of pesticides and fertilizer-pesticide mixtures that are regulated under FIFRA.
47. On October 9, 2006, Walmart entered into a written agreement with an entity that became known as Greenleaf LLC, to receive, re-package and otherwise prepare certain household products, including regulated pesticides for reuse and re-sale.
48. On at least 70 days between, approximately, July 2006 and February 2008, Walmart sent truckloads of household products, including charcoal, kitty litter, and approximately two million pounds of solid and liquid pesticides from Walmart Return Centers destined for and delivered to Greenleaf's facility in Neosho, Missouri ("the Greenleaf facility"). At least nine pesticide products (see Appendix B) were included in the shipments described above. Respondent avers that the shipments to Greenleaf were intended for the purpose of re-packaging and re-sale in order to allow the useable products to be used for their intended purposes, thereby reducing waste.
49. Greenleaf did not, at the time of the violations alleged herein, have appropriate EPA FIFRA registrations, required pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, to mix, repackage, and relabel some of the pesticides that Walmart sent to the Greenleaf facility.
50. Walmart subsequently removed and disposed of all materials, including pesticides, from the Greenleaf facility under the supervision of the Missouri Department of Natural Resources.
51. In 2006, Respondent began to implement an enhanced environmental management program in all of its Retail Facilities which seeks to provide for the proper management of hazardous wastes

at all Walmart Retail Facilities and in many respects goes beyond mere compliance with environmental laws. This program is more fully described in Paragraph 93 of this CAFO.

52. Under the Respondent's current environmental management program, hazardous waste determinations are made at all Walmart Retail Facilities and hazardous wastes are picked up by licensed hazardous waste haulers and transported under a RCRA hazardous waste manifest to a hazardous waste treatment, storage, or disposal facility.

53. Respondent currently operates all Walmart Retail Facilities generally in compliance with the Small Quantity Generator requirements of 40 C.F.R. Part 262, even if the facility does not generate more than 100 kg of hazardous waste per month.

54. Respondent continues to operate a Reverse Distribution System for products that cannot, for various reasons, be sold in Walmart Retail Facilities. The Parties agree that the use of reverse distribution for the management of retail consumer products (wherein items are centralized for determining the most efficient use, re-use, or other disposition of the item), is an effective means of ensuring re-use, recycling, and waste minimization. The Parties acknowledge that for some Consumer Products sent to Return Centers a decision as to whether those products will be discarded can only be made at the Return Center, as reflected in the terms of this CAFO. This means that Return Centers do generate certain hazardous wastes. This agreement attempts to facilitate the effective use of the reverse distribution process while ensuring that those Consumer Products that clearly constitute hazardous wastes are managed in accordance with RCRA at Walmart's Retail Facilities.

XI. VIOLATIONS

Count 1: Failure to Make a Hazardous Waste Determination

55. Paragraphs 1 through 54 above are incorporated herein by reference as if they were set forth in their entirety.

56. 40 C.F.R. § 262.11 requires a person who generates a Solid Waste to determine if that waste is a hazardous waste.

57. Solid Waste is generated at Walmart Retail Facilities. From January 1, 2005 until January 1, 2006, Respondent, before shipping Solid Wastes to Return Centers, failed to make hazardous waste determinations at any of its Walmart Retail Facilities.

58. By failing to determine whether the Solid Waste generated at Walmart Retail Facilities was a hazardous waste, Respondent violated 40 C.F.R. § 262.11.

Count 2: Failure to Prepare a Hazardous Waste Manifest

59. Paragraphs 1 through 58 above are incorporated herein by reference as if they were set forth in their entirety.

60. 40 C.F.R. § 262.20 requires any generator who generates more than 100 kg of hazardous waste per month and who transports or offers for transport hazardous waste to prepare a manifest.

61. From January 1, 2005 until January 1, 2006, Respondent failed to prepare a manifest for each shipment of hazardous waste requiring such a manifest from Walmart Retail Facilities to its Return Centers.

62. By failing to prepare a manifest for each shipment of hazardous waste requiring such a manifest from Walmart Retail Facilities, Respondent violated 40 C.F.R. § 262.20.

Count 3: Offering Hazardous Waste to Un-permitted Treatment, Storage, or Disposal Facility

63. Paragraphs 1 through 62 above are incorporated herein by reference as if they were set forth in their entirety.

64. From January 1, 2005 until January 1, 2006, Respondent transported hazardous waste from its Retail Facilities to its Return Centers.

65. From January 1, 2005 until January 1, 2006, the transporter did not have an EPA identification number and the Return Centers were not authorized hazardous waste treatment, storage, or disposal facilities with valid EPA identification numbers.

66. By offering its hazardous waste to transporters and hazardous waste treatment, storage or disposal facilities that did not have valid EPA identification numbers, Respondent violated 40 C.F.R. § 262.12.

Count 4: Failure to Meet Hazardous Waste Handling, Storage, and Emergency Response Requirements

67. Paragraphs 1 through 66 above are incorporated herein by reference as if they were set forth in their entirety.

68. From January 1, 2005 until January 1, 2006, Respondent accumulated hazardous waste at its Retail Facilities in unmarked and undated containers.

69. From January 1, 2005 until January 1, 2006, Walmart Retail Facilities did not comply with the emergency planning procedures and training requirements pursuant to 40 C.F.R. § 262.34(d).

70. By accumulating hazardous waste in unmarked and undated containers and failing to have implemented the required emergency planning procedures and employee training, Respondent did not meet the conditions for an exemption from permit requirements under 40 C.F.R. § 262.34. Therefore, Respondent failed to qualify for an exemption from the permit requirements and violated RCRA § 3005(a) and 40 C.F.R. § 270.1 by storing containers of hazardous wastes without a permit to store such waste, or interim status.

Count 5: Detachment and/or alteration of pesticide labels in violation of FIFRA Section 12(a)(2)(A)

71. Paragraphs 1 through 70 above are incorporated herein by reference as if they were set forth in their entirety.

72. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), provides that it shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under FIFRA.

73. Respondent repackaged or otherwise changed the FIFRA-required labeling of at least two pesticide products, which were handled at its Return Centers and shipped to or destined for the Greenleaf facility on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraph 48 above.

74. As a result of damage to certain containers and Respondent's changes to the packaging or labeling of pesticide products as alleged in paragraph 73, the labeling, required under FIFRA and 40 C.F.R. § 156.10(a), on one or more containers of at least two pesticides, which were shipped to or destined for the Greenleaf facility in Neosho, Missouri from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, was, in whole or in part, detached, altered, or obscured by opaque outer wrappers or containers that Respondent placed over some of the damaged containers.

75. By covering, detaching, altering, or otherwise changing, in whole or in part, the labeling on the containers of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraphs 73 and 74, above, Respondent violated Section 12(a)(2)(A) of FIFRA, for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a).

Count 6: Distribution of misbranded pesticidal products in violation of Section 12(a)(1)(E) of FIFRA

76. Paragraphs 1 through 75 above are incorporated herein by reference as if they were set forth in their entirety.

77. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is adulterated or misbranded.

78. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is "misbranded" if, *inter alia*, any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

79. Section 2(q)(2)(A) of FIFRA, 7 U.S.C. § 136(q)(2)(A), provides, in relevant part, a pesticide is "misbranded" if, *inter alia*, the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read), which is presented or displayed under customary conditions of purchase.

80. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), provides, in relevant part, a pesticide is "misbranded" if, *inter alia*, there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the information enumerated in that paragraph.

81. Pursuant to 40 C.F.R. § 156.10(a)(1), pesticide products must bear labels containing the information specified by FIFRA and its implementing regulations. The contents of the label must show clearly and prominently, *inter alia*, the name, brand, or trademark under which the product is sold; the name and address of the producer, registrant, or person for whom produced; the net contents expressed in the units specified in 40 C.F.R. § 156.10(d); the product registration number; the pesticide producing establishment number; the ingredient statement (with the active ingredients identified by name and designated as "active ingredients" with their total percentage

by weight identified and inert ingredients designated collectively as "inert ingredients" with their total percentage by weight identified); a hazard and precautionary statement; directions for use of the pesticide; and use classification. The label must appear on or be securely attached to the immediate container of the pesticide product. 40 C.F.R. § 156.10(a)(4)(i).

82. As a result of damage to certain containers, and Respondent's changes to the packaging or labeling of pesticide products as alleged in paragraph 73, above, the labels on one or more containers of each of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraph 48, above, did not clearly display all of the information required by FIFRA and 40 C.F.R. § 156.10(a) or such labels could not be read because they were obscured by opaque outer wrappers or containers.

83. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), provides that a pesticide is "misbranded" if its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.

84. Some of the containers of pesticides or pesticide products that Respondent shipped to Greenleaf's facility in Neosho, Missouri on at least 70 occasions between January 1, 2007 and January 30, 2008, as alleged in paragraph 48, above, contained quantities of pesticides that differed significantly from the quantities listed on the container labels.

85. For the reasons described in paragraphs 82 and 84, above, one or more containers of each of at least two pesticide products, which were shipped to or destined for the Greenleaf facility from Respondent's Return Centers on each of at least 70 days between July 1, 2006 and January 30, 2008, were "misbranded" as that term is defined in FIFRA § 2(q)(1)(A) and (E) and 2(q)(2)(A) and (C).

86. Respondent's distributions of at least two misbranded pesticides on at least 70 days between July 1, 2006 and January 30, 2008, as alleged in paragraphs 48, 82, and 84, above, were unlawful acts

under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which a penalty may be assessed pursuant to Section 14(a) of FIFRA.

XII. RCRA COMPLIANCE AGREEMENT

Based on the foregoing Preliminary Statements, Allegations and Determinations, the Parties agree to the following:

87. Although a majority of Walmart Retail Facilities may qualify as CESQGs in any given month (pursuant to 40 C.F.R. § 261.5), the hazardous waste management program implemented by Respondent at Walmart Retail Facilities, as referenced in Paragraphs 87-95, generally seeks to satisfy RCRA Small Quantity Generator requirements. To the extent Consumer Products continue to be subject to RCRA hazardous waste requirements when discarded, Walmart agrees to:

    a. As applicable, Respondent shall ensure that all Walmart Retail Facilities have an EPA identification number, pursuant to 40 C.F.R. § 262.12.

    b. At all Walmart Retail Facilities, Respondent will properly segregate and store all hazardous wastes for no more than 180 days (270 days if the waste must be shipped more than 200 miles to a treatment, storage, or disposal facility) and comply with all other requirements applicable to Small Quantity Generators at 40 C.F.R. § 262.34.

    c. Respondent shall properly package, label, mark, and placard all hazardous waste shipments from Walmart Retail Facilities pursuant to 40 C.F.R.§§ 262.30 – 262.33.

    d. Respondent shall comply with all manifest and related requirements for hazardous wastes shipped from Walmart Retail Facilities pursuant to 40 C.F.R. §§ 262.20 – 262.27.

    e. Respondent shall only use transporters that have an EPA identification number to transport hazardous wastes from Walmart Retail Facilities.

    f. Respondent shall send all hazardous wastes generated at Walmart Retail Facilities to treatment, storage, or disposal facilities that have an EPA identification number.

g. Respondent shall maintain required records and submit required reports pursuant to 40 C.F.R. §§ 262.40 – 262.44.

88. If at any time a Walmart Retail Facility generates 1000 kg or more of hazardous waste in a calendar month or accumulates more than 6000 kg of hazardous waste, Respondent shall comply with all Large Quantity Generator requirements in 40 C.F.R. Part 262 with respect to that Walmart Retail Facility.

89. Respondent shall manage all hazardous wastes generated at Walmart Retail Facilities (as determined pursuant to Paragraph 91) as hazardous waste and will not send hazardous waste to its Distribution and Return Centers.

90. Respondent shall submit to EPA within sixty (60) days of the filing of this CAFO a current list of all Consumer Products that Respondent currently manages as hazardous waste at its Retail Facilities if those products are spilled, leaking, and cannot be used for their intended purpose in Walmart Retail Facilities ("RCRA Hazardous Item List"). This list shall be marked as and considered Confidential Business Information.

91. Respondent shall make hazardous waste determinations for all Solid Wastes, pursuant to 40 C.F.R. § 262.11. As a means of compliance with this requirement and for purposes of this CAFO only, Respondent shall implement a program to continuously monitor the management of hazardous waste at Walmart Retail Facilities. This program will address Consumer Product items sent to the Return Centers in quantities greater than 1000 items (by Walmart Item ID number), on an annual and nationwide basis. If this program identifies Consumer Product(s) managed as a hazardous waste more than 85% of the time at all Return Centers in the previous calendar year and Walmart has not identified an alternative method of management for those products, then those products will be managed as hazardous wastes at the Retail Facilities pursuant to this CAFO only. Respondent shall submit to EPA on January 31, 2014, and annually thereafter for the duration of this CAFO, a description of all products that as a result of this

review, Respondent will manage as hazardous waste in accordance with this CAFO. Respondent shall submit this report on January 31 of each calendar year for as long as this CAFO is in effect, with a reference to the RCRA docket number for this agreement, to the following person:

Rosemarie A. Kelley
Director, Waste and Chemical Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W. (MC 2249A)
Washington, DC 20460

92. At each Retail Facility, Respondent shall maintain a current database of all Consumer Products that should be managed as hazardous waste pursuant to this agreement and shall make the information available to any EPA or State official conducting a RCRA compliance inspection at that Retail Facility. This database shall be the same or similar as the handheld terminal-type system described in Paragraph 93(a).

93. As of the date of filing of this CAFO, Walmart has already taken steps to improve its environmental compliance program to address the allegations in this CAFO and to ensure compliance with all applicable environmental laws related to Walmart's Reverse Distribution Processes and hazardous waste management. Generally, these steps include an improved hazardous waste management system at Walmart Retail Facilities, development of enhanced hazardous waste training programs for Walmart Retail Facility Associates, and the development of various standardized operating procedures. Specifically, Walmart agrees to the following programs that have been implemented in response to the allegations of the United States:

a. Implementation of Improved Hazardous Waste Management System at Retail Facilities. Walmart has engaged a third-party consultant to review the Consumer Products to be sold at a Retail Facility and determine if those products, if discarded by Walmart, would be considered hazardous waste pursuant to RCRA ("RCRA Items"). Once the RCRA Items are identified, either through the third-party consultant or by the supplier(s) of the RCRA Item, that information is then loaded into the Retail Facilities' handheld terminal (or

equivalent) and the RCRA Items are identified as being potentially flammable, toxic/corrosive, reactive, or listed pursuant to RCRA, in the Retail Facilities' handheld terminal and on the product's shelf label (each category designated by color). To the extent these RCRA Items become a waste (as the result of spills or damage at the Retail Facility), Walmart has implemented a system that conforms with the provisions of RCRA – commonly and currently known as the "bucket system." The bucket system provides training and color-coded buckets for the management of items that become hazardous waste at the Retail Facility. At Retail Facilities, Walmart will continue operation of its "RCRA item file" and "bucket system" (or equivalent file or systems) to ensure proper management of RCRA Items once they become Solid Waste during the term of this CAFO, to the extent the law continues to identify these items as subject to the hazardous waste requirements of RCRA.

b. Development and Implementation of Enhanced Hazardous Waste Training at Retail Facilities. Walmart has developed and implemented hazardous waste management and hazardous waste and spill cleanup training, as well as hazard communication training, that is provided to all Retail Facility Associates within sixty (60) days of hire and on an annual basis.

c. Development of Standard Operating Procedures Relating to Environmental Compliance. In order to assist its Retail Facilities in the management of various types of hazardous and universal waste, Walmart has developed and implemented standard operating procedures for use by Retail Facility Associates. These standard operating procedures are available and accessible to Retail Facility Associates through Walmart's intranet system. Appendix A contains the current list of hazardous material and hazardous waste related standard operating procedures implemented at the Stores and Clubs.

d. Corporate Compliance Structure. In addition to existing Walmart personnel with environmental compliance responsibilities within a particular home office department, Walmart has created a home office vice president position responsible for environmental compliance. Walmart has, when needed, increased the staffing resources of the Vice President of Environmental Compliance in order to oversee proper implementation of the above programs.

94. In addition to requiring continued operation of its hazardous waste management programs, a purpose of this CAFO is to require Walmart to implement an Environmental Management System (EMS) in all of its Retail Facilities located in the United States. This EMS will not only advance compliance with environmental regulatory requirements, including Walmart's management of hazardous materials and hazardous waste and reduction of waste generated from its Retail Facilities, but will also achieve enhanced compliance at Return Centers, and Distribution Centers. To that end, Walmart has agreed to implement enhanced EMS procedures. These enhanced procedures, detailed further in Appendix A, include the following:

a. Reorganization of Walmart's Home Office Environmental Compliance Organization. In order to provide increased resources and support structure to Walmart Retail Facilities, Walmart will reorganize its Home Office Environmental Compliance organization in order to ensure a uniform reporting structure under the Vice President of Environmental Health and Safety Compliance. The net effect of the reorganization will be a more uniform environmental command structure and improved environmental communications, resulting in a more robust organization available to address environmental compliance issues.

b. Addition of Resources Outside of Home Office for Stores. Walmart will implement resources outside of Home Office to assist Stores in compliance with hazardous waste and hazardous materials laws and regulations. These resources will be responsible for

executing, training, and overseeing the company's hazardous waste and hazardous materials policies at the store, market, and regional level of the Stores' business operations.

c. Job Descriptions. In order to improve accountability, Walmart will add an explicit environmental compliance requirement to certain Walmart Retail Facility staff personnel job descriptions.

d. Claims Supervisor for Stores. Walmart will assign a new claims supervisor (Claims Supervisor) position at each Store whose job responsibilities will include responsibility and accountability for hazardous waste management issues.

e. Club-Level Manager for Sam's Clubs. Walmart will also create a new Manager position at each Club whose job responsibilities will include responsibility and accountability for hazardous waste management issues.

f. Advanced Training for Certain Retail Associates. Walmart will develop and implement additional/advanced training requirements for Store Claims Supervisors and Club Compliance Managers.

g. Tracking of Environmental Training at Stores and Clubs. Walmart will implement an improved information technology system to enable tracking of Core Environmental Training (as described in Paragraph 93(b) and Appendix A) and the Advanced Training for Certain Retail Associates (as described in Paragraph 94(f) and Appendix A) by the Home Office Environmental Compliance Organization.

h. Environmental Compliance Information Systems. Walmart will contract with an independent third party (or use in-house resources) to develop environmental compliance information systems to be used to track environmental obligations at Retail Facilities.

i. Development and Implementation of Return Center Hazardous Waste EMS and Distribution Center Hazardous Waste EMS. Walmart will contract with a third-party

environmental compliance consultant for the development and implementation of a Return Center specific Hazardous Waste EMS. In addition, Walmart will contract with a third-party environmental compliance consultant for the development and implementation of a Distribution Center specific Hazardous Waste EMS.

95. Walmart will perform the EMS procedures as set forth in Paragraph 94 in accordance with the specifications and schedules set forth in Appendix A.

96. Respondent shall certify compliance to EPA with the appropriate documentation to certify that Respondent is complying with the requirements set forth in Paragraphs 87-95 above, within ninety (90) calendar days of the schedule provided for completion in Appendix A. The certification and supporting documentation should be provided to:

KC Schefski, Associate Director
Waste and Chemical Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2249A)
Washington, DC 20460

97. Respondents shall be liable for stipulated penalties to the EPA, as specified below, for failure to comply with the requirements of this CAFO, unless excused by EPA in its sole discretion. Compliance by Respondent shall include the timely completion and submittal of all plans and reports required by this agreement or any subsequent modification. Respondent shall pay stipulated penalties in the following amounts for the following obligations in the amounts set forth below:

a. for failure to timely submit reports, plans, notifications, or other submittals required in this CAFO or its Appendices;

b. for failure to timely meet any deadlines set forth in the Resources, Systems, and Accountability Work Plan to be submitted pursuant to Appendix A;

c. for failure to develop a Retail Facility Associate training program that requires that Retail Facility Associates are trained on Walmart's hazardous waste management policies as provided in Paragraphs 4(a) and (b) of Appendix A;

d. for failure to timely implement the standard operating procedure for store-level hazardous waste management as provided by Paragraph 6 of Appendix A; or

e. for failure to select and retain an independent third party to develop a Return Center specific Hazardous Waste Environmental Management System as provided by Paragraphs 8-9 of Appendix A.

f. for failure to select and retain an independent third party to develop a Distribution Center specific Hazardous Waste Environmental Management System as provided by Paragraphs 10-11 of Appendix A.

Period of Failure to Comply	**Penalty Per Violation Per Day**
1st through 7th day	$100.00
8th through 21st day	$250.00
22nd through 30th day	$500.00
Greater than 30 days	$1,000

98. Respondent's failure to timely comply with any requirement of this CAFO may subject Respondent to a civil action pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), to collect penalties for noncompliance with this CAFO.

99. Payment of stipulated penalties will not alter in any way Walmart's obligation to comply with the requirements of this CAFO.

100. Nothing in this CAFO relieves Respondent from its obligation to comply with all applicable federal, state, and local statutes and regulations, including Subtitle C requirements at 40 C.F.R. Parts 260 through 279, and authorized state programs, at all its facilities.

101. Nothing in this CAFO will require Respondent to meet more stringent requirements contained in this CAFO in the event that the applicable law becomes less stringent. Within 60 days of Walmart providing notice to EPA that applicable requirements have been modified by issuance of any new EPA final regulation (as promulgated in the Federal Register); policy or guidance governing hazardous waste management; upon EPA approval or promulgation of new or revised waste management standards; or upon the issuance of a permit that contains new requirements pertaining to Walmart's operations, Walmart may conform its practices to the less stringent obligations contained in the applicable new regulation, policy, new or revised standard or permit.

XIII. PAYMENT OF CIVIL PENALTY

102. Respondent agrees to pay a civil penalty in the sum of $6,116,000 within thirty (30) calendar days of the effective date of this CAFO to resolve the RCRA violations alleged herein.

103. Respondent agrees to pay a civil penalty in the sum of $1,512,000 within thirty (30) calendar days of the effective date of this CAFO to resolve the FIFRA violations alleged herein.

104. The parties agree that the payment of the civil penalties specified in Paragraphs 102-103 resolves the civil penalty liability for the violations alleged herein.

105. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: **Treasurer, United States of America**. EPA's Employer ID Number is 52-0852695. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered via the U.S. Postal Service to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent shall submit a copy of the payment to the following addresses:

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board

Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460-0001

Ann Stephanos, Attorney-Adviser
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (MC 2249A)
Washington, DC 20460

Alternatively, Respondent shall pay by wire transfer with a notation of "Wal-Mart Stores, Inc, Civil Penalty Docket Nos. RCRA-HQ-2013-4001, FIFRA-HQ-2013-, using the following information:

Federal Reserve Bank of New York
ABA Routing Number: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read: "D 6810727 Environmental Protection Agency"

106. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within thirty (30) calendar days after the effective date of this CAFO. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

(a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

(b) Monthly Handling Charge. Respondent must pay a late payment handling charge of $15.00 on any late payment, with an additional charge of $15.00 for each subsequent thirty (30) calendar day period over which an unpaid balance remains.

(c) Non-payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b). Penalties paid pursuant to this CAFO are not deductible for federal purposes under 28 U.S.C. § 162(f).

107. Each Party will pay its own costs and attorneys' fees.

XIV. RESERVATION OF RIGHTS AND RELEASE

108. Notwithstanding any other provision of this CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other applicable statutory authority, to address conditions that may present an imminent and substantial endangerment to human health or the environment.

109. Except as provided in Paragraph 111, Complainant reserves the right to take enforcement action against Respondent to enforce the terms and conditions of this CAFO.

110. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the release of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from its facilities.

111. Subject to the conditions in paragraph 112, EPA agrees not to sue or take administrative action against Walmart pursuant to RCRA and FIFRA for civil violations or alleged civil violations of the conditions, limitations and requirements of RCRA and FIFRA based on the following categories of violations committed prior to the execution of this Consent Agreement:

a. any alleged violation of RCRA generator, transporter, or treatment, storage, or disposal facility requirements for the management of hazardous waste at Walmart Retail Facilities and the transportation of hazardous waste from Walmart Retail Facilities and Distribution Centers to Walmart Return Centers; and

b. any alleged violation involving the transportation, management, and disposal of FIFRA-regulated products shipped from any Return Center to Greenleaf.

112. EPA's agreement not to sue or take administrative action against Walmart as described in paragraph 111 is conditional upon the accuracy of Respondent's representations to EPA related to the EPA Allegations and Determinations set forth in Section X of this CAFO, including the following:

a. That, outside of California and Missouri, on average fewer than 300 of its stores episodically generated more than 100 kg of potentially RCRA "hazardous waste" in any given month during the time period of the alleged violations;

b. that unmanifested hazardous waste as part of the Reverse Distribution Process shipped from Walmart's Retail Facilities were not sent to destinations other than Walmart Distribution Centers, Walmart Return Centers, or Greenleaf;

c. that all pesticides shipped by Walmart to Greenleaf have since been removed from Greenleaf's facilities and disposed of in accordance with all applicable laws; and

113. Unless specifically allowed under the terms of this CAFO, this CAFO may be amended or modified only by written agreement executed by both the EPA and Respondent.

114. Walmart may alter the organizational requirements or implementation structure described in this Consent Agreement, Appendix A and any Work Plan in response to future business needs. In the event that any of the positions outlined in this Consent Agreement, Appendix A or any Work Plan cease to exist in the Walmart organization or are otherwise substantially modified, the responsibilities of the position eliminated will be added to the responsibilities of the remaining

positions or to those of an equivalent position under a new title or to a third party. Within 30 Days after a significant change has taken effect, Walmart will send EPA notice of the reorganization and the title and general job description of the person(s) to whom the responsibilities have been given.

XV. DISPUTE RESOLUTION

115. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this CAFO.

116. If Respondent disagrees, in whole or in part, with any decision by EPA under this CAFO, Respondent shall notify EPA through the Chief of the Waste Enforcement Branch, and the Parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion relating to this CAFO.

117. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph, Respondent may pursue the matter by submitting its objection to the Chief of the Waste Enforcement Branch of EPA in writing. Respondent's written objections must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.

118. EPA and Respondent shall have thirty (30) days from receipt of Respondent's written objections to attempt to resolve the dispute through formal discussions.

119. Within sixty (60) days of EPA's receipt of Respondent's written objections, EPA, through the Chief of the Waste Enforcement Branch of EPA, will provide to Respondent in writing EPA's decision on the pending dispute.

120. If the Respondent disagrees with the written decision, the Respondent may, within thirty (30) days of receipt of the written decision, appeal to the Director, Waste and Chemical Enforcement Division. Respondent's appeal must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.

Within thirty (30) days of receipt of the appeal, the Director, Waste and Chemical Enforcement Division will issue a written decision.

121. If Respondent disagrees with the written decision of the Director, Waste and Chemical Enforcement Division, within sixty (60) days of receipt of the Director's decision, Respondent may file an appeal of that decision with the Environmental Appeals Board ("EAB").

122. The Parties may, by mutual written agreement, extend any of the time periods provided for in the dispute resolution process.

XVI. FORCE MAJEURE

123. A "Force Majeure event" is any event beyond the control of Walmart, its contractors, or any entity controlled by Walmart that delays the performance of any obligation under this CAFO despite Walmart's reasonable efforts to fulfill the obligation. "Reasonable efforts" includes anticipating any potential Force Majeure event and addressing the effects of any such event: (1) as it is occurring, and (2) after it has occurred, such that the delay is minimized to the greatest extent reasonably possible.

124. Walmart agrees to notify the United States by written notice as soon as possible, but not later than 72 hours after the time Walmart first knew of any event which might constitute a Force Majeure event. The written notice Walmart submits pursuant to this Paragraph will indicate whether Walmart claims that the delay should be excused due to a Force Majeure event. The notice will describe the basis for Walmart's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Walmart agrees to adopt all reasonable measures to avoid or minimize such delay.

125. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, the United States agrees to extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties will not be due for

such a period. In proceedings on any dispute regarding a delay in performance, Walmart will have the burden of proving, by a preponderance of the evidence, that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

126. An extension of one compliance date based on a particular event will not automatically extend any other compliance date. Walmart will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XVII. OTHER APPLICABLE LAWS

127. All actions required to be taken pursuant to this CAFO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XVIII. PARTIES BOUND

128. This CAFO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CAFO.

129. No change in ownership, partnership, corporate, or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CAFO.

130. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into this CAFO and to execute and legally bind Respondent to this CAFO.

XIX. SEVERABILITY

131. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such

provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

XX. EFFECTIVE DATE

132. This CAFO is effective upon the filing of the Final Order. 40 C.F.R. § 22.31(b).

133. The terms of this Consent Agreement will be effective for a period of five (5) years from the filing of the Final Order. After five (5) years from the effective date, this Consent Agreement terminates, provided Walmart has complied with the payment requirements set forth in Section XIII. This Consent Agreement may also be terminated at an earlier date upon agreement of Walmart and the EPA.

AGREED AND CONSENTED TO:

FOR COMPLAINANT:

Rosemarie A. Kelley, Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 5/14/13

Kenneth C. Schefski, Associate Director (Counsel for Complainant)
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 5/14/2013

FOR RESPONDENT:

Phyllis Harris
Wal-Mart Stores, Inc.
Senior Vice President,
Chief Compliance Officer
Wal-Mart Stores, Inc.

Date: 4/03/2013

Raymond B. Ludwiszewski
Gibson, Dunn & Crutcher LLP
Washington Square
1050 Connecticut Ave NW
Washington, DC 20036

Date: 4/4/13

Attorney for Wal-Mart Stores, Inc.

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In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056

File d
MAY 28 2013
Clerk, Environmental Appeals Board
INITIALS

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

IN THE MATTER OF	)	EPA Docket Nos.
	)	RCRA-HQ-2013-4001
	)	FIFRA-HQ-2013-5056
	)	
	)	
Wal-Mart Stores, Inc.	)	Proceeding Under Section 3008(a) of the
702 SW 8th Street,	)	Resource Conservation and Recovery Act,
Bentonville, AR 72716-8611	)	42 U.S.C. § 6928(a); Section 14(a) of the
	)	Federal Insecticide, Fungicide and
	)	Rodenticide Act, as amended, 7 U.S.C.
	)	§ 136*l*(a)

FINAL ORDER

Pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a), and Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136(a), Complainant, United States Environmental Protection Agency (EPA or Agency), and Respondent, Wal-Mart Stores Inc. (Walmart) (collectively, the Parties), having signed and consented to entry of the attached Consent Agreement incorporated by reference into this Final Order,

IT IS ORDERED THAT:

1. Respondent, Wal-Mart Stores, Inc., shall comply with all terms of the Consent Agreement;

2. Respondent is assessed a civil penalty of **Seven Million Six Hundred and Twenty Eight Thousand Dollars (7,628,000).**

3. Respondent shall, in accordance with the payment provisions set forth in the Consent Agreement, make payment via a certified or cashier's check or through a wire transfer as described in the Consent Agreement.

IT IS SO ORDERED.

By: Leslie M. Fraser
Environmental Appeals Board

Dated: May 28, 2013

CERTIFICATE OF SERVICE

I certify that the foregoing Final Order in the Matter of Wal-Mart Stores, Inc., Docket Nos. RCRA-HQ-2013-4001 and FIFRA-HQ-2013-5056, was filed and copies of the same were mailed to the parties as indicated below:

Via Interoffice Mail and Facsimile

Kenneth C. Schefski
Waste and Chemical Enforcement Division
Office of Civil Enforcement/OECA/US EPA
1200 Pennsylvania Ave., NW (Mail Code 2249A)
Washington, DC 20460-0001
Fax: 202-564-0022

Via U.S. Certified Mail and Facsimile

Raymond B. Ludwiszewski
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
USA
Fax: 202-530-9562

Annette Duncan
Secretary

Dated: 5/28/2013

APPENDIX A

(This attachment is BUSINESS CONFIDENTIAL and filed under seal)

REDACTED VERSION

In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056

APPENDIX A

APPENDIX B

APPENDIX B

PRODUCTS DISTRIBUTED BY WALMART TO GREENLEAF LLC

Registration #: 538-282

Registration Name: TURF BUILDER PLUS 2 R

Company: 538 - SCOTTS COMPANY, THE

Name	Status
TURF BUILDER WINTERGUARD WITH PLUS 2 WEED CONTROL	Alternate
TURF BUILDER WITH PLUS 2 WEED CONTROL	Alternate

Registration #: 538-281

Registration Name: WINTERIZER WITH PLUS 2 WEED CONTROL

Company: 538 - SCOTTS COMPANY, THE

Note: There are no other brand names.

Registration #: 538-18

Registration Name: SCOTTS BONUS S

Company: 538 - SCOTTS COMPANY, THE

Name	Status
SCOTTS BONUS S	Active
WEED & FEED FOR ST. AUGUSTINES GRASS	Alternate
SCOTTS BONUS S WEED CONTROL PLUS LAWN FERTILIZER	Alternate

Registration #: 2217-660-538
Registration Name: WEED AND FEED
Company: 538 - SCOTTS COMPANY, THE

Registration #: 279-3203-538
Registration Name: INSECT CONTROL PLUS LAWN FERTILIER
Company: 538 - SCOTTS COMPANY, THE

Name	Status
TURF BUILDER WITH SUMMERGUARD	Alternate

Registration #: 2217-827-538
Registration Name: EXPERT GARDENER WINTERIZER WEED & FEED
Company: 538 - SCOTTS COMPANY, THE

Name	Status
EXPERT GARDENER WINTERIZER WEED & FEED	Active
EXPERT GARDENER WEED & FEED	Alternate

Registration #: 538-190
Registration Name: SCOTTS TURF BUILDER PLUS HALTS FOR LAWNS
Company: 538 - SCOTTS COMPANY, THE

Name	Status
STEP 1 CRABGRASS PREVENTER PLUS LAWN FERTLIZER	Alternate

In the Matter of Wal-Mart Stores, Inc: RCRA HQ 2013-4001; FIFRA HQ 2013-5056

Registration #: 2217-660-62355

Registration Name: MIRACLE-GRO LAWN FERTILIZER PLUS WEED CONTROL

Company: 62355 - MIRACLE-GRO LAWN PRODUCTS INC

Name	Status
MIRACLE-GRO FALL LAWN FERTILIZER PLUS WEED CONTROL	Alternate
MIRACLE-GRO LAWN FERTILIZER PLUS WEED CONTROL	Active

Registration #: 538-202

Registration Name: CRABGRASS PREVENTER PLUS LAWN FOOD

Company: 538 - SCOTTS COMPANY, THE

Name	Status
TURF BUILDER WITH HALTS CRABGRASS PREVENTER	Alternate

APPENDIX C

APPENDIX C

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Puerto Rico
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming