



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

June 15, 2022

VIA EMAIL ONLY

Mr. Kevin Burke
President
Retailers Supply Co. Inc.
4398 Security Parkway
New Albany, Indiana 47150

Kevin@retailerssupply.com

Consent Agreement and Final Order
In the Matter of Retailers Supply Co. Inc.
Docket Number **FIFRA-05-2022-0013**

Mr. Burke:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on June 15, 2022 with the Regional Hearing Clerk.

The civil penalty in the amount of \$2,320 is to be paid in the manner described in paragraphs 45-46. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

**ANNA
NGUYEN**

Digitally signed by ANNA
NGUYEN
Date: 2022.06.08
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Anna Nguyen
Pesticides and Toxics Compliance Section

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2022-0013
)	
Retailers Supply Co. Inc.)	Proceeding to Assess a Civil Penalty
New Albany, Indiana)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
)	Rodenticide Act, 7 U.S.C. § 136l(a)
Respondent.)	
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Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Retailers Supply Co. Inc., a corporation which is doing business in the State of Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

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

Jurisdiction and Waiver of Right to Hearing

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

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), with few exceptions not applicable here, states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA or whose registration has been cancelled or suspended.

11. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

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

13. Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), defines a “pesticide,” in part, as any “substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as an “(1) insect, rodent, nematode, fungus, weed or (2) any other form of terrestrial or aquatic plant or animal life

or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].”

15. Section (y) of FIFRA, 7 U.S.C. § 136(y), states that the term “registrant” means “a person who has registered any pesticide pursuant to the provisions of [FIFRA].”

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), states that the term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

17. The regulation at 40 C.F.R. § 152.3 defines a pesticide product as “a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.”

18. The regulation at 40 C.F.R. § 156.10(b)(2)(ii) states that no name, brand, or trademark may appear on the label which has not been approved by EPA through registration or supplemental registration as an additional name pursuant to 40 C.F.R. 152.132.

19. The regulation at 40 C.F.R. § 152.132 allows Registrants to distribute or sell their registered products under an alternative product name and address and is termed “supplemental distribution.”

20. The regulation at 40 C.F.R. § 152.132(a) allows supplemental distribution if the registrant and distributor notify EPA among other items, of the additional brand name(s) to be used and the registration number of the registered product.

21. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA of up to \$21,805 for each offense occurring after November 2, 2015 and assessed

after December 23, 2020, pursuant to Section 14(a)(1), 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

23. At all times relevant to this Complaint, Respondent owned or operated a place of business located at 4398 Security Parkway, New Albany, Indiana 47150.

24. On July 22, 2020, an inspector employed by the Office of Indiana State Chemist (OISC) conducted an inspection at the Retailers Supply store located at 4398 Security Parkway, New Albany, Indiana.

25. During the inspection, the inspector identified **Blood & Bodily Fluid Cleanup Kit #7353** offered for sale.

26. **Blood & Bodily Fluid Cleanup Kit #7353** appears to be a kit which contains pesticide product, **SaniZide Plus Germicidal Solution**, EPA Registration Number (EPA Reg. No.) 1839-83-67161, disposal personal protective equipment, and cleaning supplies.

27. During the inspection, the OISC inspector collected inventory records and one physical sample of **Blood & Bodily Fluid Cleanup Kit #7353**, for formulation analysis.

28. On July 22, 2020, the OISC inspector issued an Action Order to Respondent which instructs the removal of remaining quantities of **Blood & Bodily Fluid Cleanup Kit #7353** found in Respondent’s possession.

29. On October 5, 2020, OISC forwarded the information collected during the inspection to Region 5 for review.

30. On January 26, 2022, Region 5 visited Respondent’s website, where **Blood & Bodily Fluid Cleanup Kit #7353** was offered for sale as **Impact® Bloodborne Pathogen Kit**

w/**Disinfectant** and observed one of the kit components lists “1 2 oz. spray pump disinfectant (has HIV-1 tuberculocidal claim).”

31. On January 26, 2022, Region 5 visited Respondent’s website and placed **Impact® Bloodborne Pathogen Kit w/Disinfectant** into a virtual cart for online purchase.

32. The webpage for **Impact® Bloodborne Pathogen Kit w/Disinfectant** on Respondent’s website includes an image of **Blood & Bodily Fluid Cleanup Kit #7353**.

33. The registrant of **Detergent Disinfectant Pump Spray**, EPA Reg. No. 1839-83 is Stepan Company.

34. The supplemental distributor of **SaniZide Plus Germicidal Solution**, EPA Reg. No. 1839-83-67161 is Safetec of America Inc.

35. **Blood & Bodily Fluid Cleanup Kit #7353** is not an approved alternate brand name for EPA Reg. No. 1839-83-67161.

36. **Blood & Bodily Fluid Cleanup Kit #7353** is a “pesticide” as that term is defined in Section 2(u) of FIFRA.

37. **Blood & Bodily Fluid Cleanup Kit #7353** is a pesticide, and, as such, is required to be registered under Section 3 of FIFRA.

38. **Blood & Bodily Fluid Cleanup Kit #7353** is not registered under Section 3 of FIFRA and as such, is an unregistered pesticide based on the intended use and pesticidal claims made in relation to the product.

39. On January 26, 2022, Respondent offered **Blood & Bodily Fluid Cleanup Kit #7353**, for sale.

Count 1

Distribution of Unregistered Pesticide Blood & Bodily Fluid Cleanup Kit #7353

40. Complainant incorporates Paragraphs 1 through 39 of this CAFO as though set forth in this paragraph.

41. On January 26, 2022, Respondent offered for sale **Blood & Bodily Fluid Cleanup Kit #7353**, a pesticide, as that term is defined in Paragraph 13 and is not registered under Section 3 of FIFRA and as such, is an unregistered pesticide, on at least one occasion.

42. Respondent's offer for sale of **Blood & Bodily Fluid Cleanup Kit #7353**, constitutes one violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

43. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

44. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is **\$2,320**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

45. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$2,320** civil penalty for the FIFRA violations by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

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

In the comment or description field of the electronic funds transfer, state “Retailers Supply Co. Inc.” and the docket number of this CAFO.

46. Respondent must send a notice of payment that states Respondent’s name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk
U.S. EPA, Region 5
R5hearingclerk@epa.gov

Anna Nguyen
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
Nguyen.anna@epa.gov

Cynthia King
Office of Regional Counsel
King.cynthia@epa.gov

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

48. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

49. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

50. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: king.cynthia@epa.gov (for Complainant), and craig.burke@me.com (for Respondent).

51. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

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

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

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

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

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

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

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

Retailers Supply Co. Inc., Respondent

6/8/22
Date

Kevin T. Burke
Kevin T. Burke, President
Retailers Supply Co. Inc.

United States Environmental Protection Agency, Complainant

**MICHAEL
HARRIS**

Digitally signed by MICHAEL
HARRIS
Date: 2022.06.10 14:03:32
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Michael D. Harris, Division Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Retailers Supply Co. Inc.
Docket No. FIFRA-05-2022-0013

Final Order

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

ANN COYLE Digitally signed by ANN
COYLE
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Retailers Supply Co. Inc.
Docket Number: **FIFRA-05-2022-0013**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing Consent Agreement and Final Order, docket number FIFRA-05-2022-0013, which was filed on June 15, 2022, in the following manner to the following addressees:

Copy by E-mail to
Attorney for Complainant:

Ms. Cynthia King
king.cynthia@epa.gov

Copy by E-mail to
Attorney for Respondent:

Mr. Craig Burke
craig.burke@me.com

Copy by E-mail to
Regional Judicial Officer:

Ms. Ann Coyle
coyle.ann@epa.gov

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5