

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region 2**

-----X  
In the Matter of :  
VIP Beauty Group, LLC, :  
Respondent. :  
Proceeding under the Federal :  
Insecticide, Fungicide and :  
Rodenticide Act, as amended. :  
-----X

**CONSENT AGREEMENT AND**  
**FINAL ORDER**

**Docket No.**  
**FIFRA-02-2015-5101**

REGIONAL HEARING  
CLERK

2015 SEP 25 AM 10:19

U.S. Environmental  
Protection Agency-Reg 2

This administrative proceeding for the assessment of a civil penalty is being commenced pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (“FIFRA” or the “Act”). That provision provides that “[a]ny registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this subchapter [subchapter II, 7 U.S.C. §§ 136 — 136y] may be assessed a civil penalty by the Administrator [of the United States Environmental Protection Agency; “EPA” or “Agency”] of not more than \$5,000 for each offense. That provision has been revised under authority of the Federal Civil Penalties Inflation Adjustment Act of 1990, 104 Stat. 890, Public Law 101-410 (codified at 28 U.S.C. § 2461 note), as amended by the Debt Collection Improvement Act of 1996, 110 Stat. 1321, Public Law 104-134 (codified at 31 U.S.C. § 3701 note). EPA has consequently promulgated regulations, codified at 40 C.F.R. Part 19, that, *inter alia*, increase the maximum penalty EPA might obtain pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), to \$7,500 for any violation occurring after January 12, 2009.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b) (64 Fed. Reg. 40181, July 23, 1999), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties that settling this matter by entering into this CA/FO

pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without further litigation. To that end, the parties met on November 13, 2014. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal findings of fact or conclusions of law have been made in or by an administrative or judicial tribunal. The following constitute EPA's findings of fact and conclusions of law based on information of which Complainant was aware as of July 31, 2015.

### **EPA FINDINGS OF FACT**

1. Respondent is VIP Beauty Group, LLC, a limited liability company organized and existing under the laws of the State of New Jersey.

2. Respondent owns and/or operates facilities located at 159 Mount Pleasant Avenue in East Hanover, New Jersey, and 91 Winant Place in Staten Island, New York. Through each such facility, Respondent conducts its business, *i.e.* it is engaged (in whole or in part) in the business of distributing or selling household and personal care products, some of which have included pesticides and pesticidal products.

3. On April 17, 2013, representatives of EPA conducted an inspection of Respondent's aforementioned Staten Island facility (warehouse), pursuant to Sections 8 and 9(a)(1) of FIFRA, 7 U.S.C. § 136(f) and § 136g(a)(1) (the "April inspection").

4. On July 24, 2013, representatives of EPA conducted an inspection of the H & M Warehouse facility located at 700 Belleville Pike in Kearny, New Jersey, pursuant to Sections 8 and 9(a)(1) of FIFRA, 7 U.S.C. § 136(f) and § 136g(a)(1) (the "July inspection").

5. As a result of the April inspection, EPA obtained information and evidence that Respondent VIP engaged in the sale or distribution of a number of products that are pesticides within the meaning of FIFRA § 2(u), 7 U.S.C. §136(u). These products included "Sano K-300 PLUS," "Sano K-2000," "Sano K-500," "Sano K-600," "Sano Maxima Concentrated Fabric Softener" "cool" and "musk" scents), "Sano Javel Cleaning Foam," and "Sano Carpet Plus Shampoo."

6. During the April inspection, EPA observed, *inter alia*, that the labels affixed to the products the EPA representatives observed did not list an EPA Registration Number. Further, the labels on the products observed made a number of pesticidal claims, including, "Exterminates Cockroaches and other crawling insects" and "Exterminates flies and mosquitoes."

7. During the July inspection, EPA obtained information and evidence that VIP had imported cleaning products into the United States that are pesticides within the meaning of FIFRA § 2(u), 7 U.S.C. §136(u). These products included: Bagi brand bathroom cleaner and **b**) Bagi brand "AQUALAN for cleaning and restoring showers and bathrooms..." .

8. During the July inspection, EPA observed, *inter alia*, that the labels affixed to the Bagi products the EPA representatives observed did not list an EPA Registration Number. EPA further observed that the labels on the products observed made a number of pesticidal claims, including (translated into English) “to remove mildew in bath tubs and showers” and “[e]liminates mildew and protects against new bacteria” on its label on the bathroom cleaner and “agent for thoroughly cleaning, disinfecting and adding luster to bathroom fixtures and acrylic surfaces” on the label of the AQUALAN.

9. During the July inspection, EPA observed, *inter alia*, that a number of the labels on the products identified above (paragraphs 7 and 8) were not in the English language.

10. No “Notice of Arrival” form was submitted to the Agency for the aforementioned (paragraph 7, above) pesticides prior to their arrival in the United States.

11. At least up to and including through July 24, 2013, none of the aforementioned (paragraphs 5, 6, 7, 8 and 9, above) products was, or has ever been, registered with the Agency, as required by FIFRA, either by Respondent or a third-party.

12. The information and evidence observed and/or collected by EPA during the April and July inspections reveal VIP has committed a number of separate violations of the provisions of FIFRA, including the distribution and sale of unregistered pesticides, the failure to submit a Notice of Arrival for imported pesticides, and the distribution and sale of misbranded pesticides (the labels in containers holding pesticides failed to contain required information in English).

### **EPA CONCLUSIONS OF LAW**

1. Respondent has been, and continues to be, a “person” (as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s)).

2. Each aforementioned (paragraph 2 and 3 of the EPA Findings of Fact, above) facilities constitutes an “establishment” (as defined by Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd)).

3. Pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, each of the aforementioned (paragraphs 5, 6 and 7 of the EPA Findings of Fact, above) products was required to be registered with EPA as a pesticide prior to its distribution or sale.

4. Respondent’s having offered to sell and/or holding for sale, distribution or shipment each of the aforementioned (paragraph 5, 6 and 7 of the EPA Findings of Fact, above) unregistered pesticides constitutes a separate and distinct:

- a. unlawful act pursuant to and under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); and

b. prohibited act pursuant to and under 40 C.F.R. § 152.15.

5. Section 12(a)(2)(N) of FIFRA, 7 § 136j(a)(2)(N), makes it unlawful for any person who is, *inter alia*, a wholesaler, dealer, retailer or other distributor of pesticides to fail to file any report required by subchapter II of FIFRA, 7 U.S.C. §§ 136-136yy.

6. Pursuant to 19 C.F.R. § 12.112(a), a person intending to import pesticides into the United States is required to submit to EPA a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) prior to the arrival of the shipment into the United States.

7. Nineteen C.F.R. § 12.112(a) is a regulation promulgated pursuant to and under authority of Section 17 of FIFRA, 7 U.S.C. § 136o.

8. Respondent's failure to have submitted to EPA a Notice of Arrival of Pesticides and Devices for the aforementioned pesticides, as noted in paragraphs 7 and 10 of the "EPA Findings of Fact," above," constitutes a violation of 19 U.S.C. § 12.112(a), and consequently an unlawful, and thus prohibited, act pursuant to Section 12(a)(2)(N) of FIFRA, 7 § 136j(a)(2)(N).

9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person to distribute or sell any pesticide that is, *inter alia*, misbranded.

10. Respondent's failure to have labels affixed to pesticides it intended to distribute or sell with required information in the English language constitutes an unlawful, and thus prohibited, act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

### **AGREEMENT ON CONSENT**

Based upon the foregoing, and pursuant to Section 14(a) FIFRA, as amended, 7 U.S.C. § 136l(a), and 40 C.F.R. § 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22," it is hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, Respondent: (a) admits EPA, Region 2, has jurisdiction under FIFRA to prosecute this proceeding; (b) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives its right to seek judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when filed with the Regional Hearing Clerk of the Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **TWO THOUSAND FIVE HUNDRED (\$2,500.00) DOLLARS**, to be paid within forty-five (45) days<sup>1</sup> of the date the Regional Judicial Officer of EPA, Region 2, signs the Final Order accompanying this Consent Agreement (the “due date”).

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier’s check, certified check or by electronic fund transfer (EFT). If payment is made by cashier’s check or by certified check, each such check shall be made payable to the “**Treasurer, United States of America,**” and shall be identified with a notation thereon listing the following: *In re VIP Beauty Group, LLC, Docket Number FIFRA-02-2015-5101*. If payment is made by either form of check, such payment shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when payment in accordance with this paragraph is made:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
**68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**
- e. Field Tag 4200 of the Fedwire message should read: **D 68010727  
Environmental Protection Agency**
- f. Name of Respondent: **VIP Beauty Group, LLC**
- g. Case docket number: **FIFRA-02-2015-5101**

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<sup>1</sup> For purposes of this CA/FO, days shall mean calendar days.

## 2. Payment instructions:

- a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then the EFT shall be *received* on or before the date specified.
- b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that each required payment has been made, and such proof shall be furnished to both:

Lee A. Spielmann  
 Assistant Regional Counsel  
 Environmental Protection Agency, Region 2  
 290 Broadway, 16<sup>th</sup> floor  
 New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk  
 Environmental Protection Agency, Region 2  
 290 Broadway, 16<sup>th</sup> floor  
 New York, New York 10007-1866

- c. Failure to pay the specified amounts in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- d. Furthermore, if required payment is not received on or before the date when it is made due under the terms of this document, interest therefor shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date payment was to have been made through the date payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date payment was to have been received, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

3. The civil penalty provided for in this section constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. Respondent will endeavor to comply with the applicable provisions of FIFRA

and its implementing regulations with respect to any pesticide that it offers for sale, holds for sale, holds for distribution and/or holds for shipment, and shall maintain such compliance.

5. With regard to the aforementioned pesticides as set forth in the “EPA Findings of Fact,” Respondent hereby certifies it no longer distributes or sells any of them.

6. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2:

Steven R. Yuniver, Esq.  
The Kleyman Law Firm  
2747 Coney Island Avenue  
Brooklyn, New York 11235

7. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

8. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable federal, state and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, state or local permit.

9. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the administrative claims herein set forth in the “EPA Findings of Fact” and the “EPA Conclusions of Law” upon full payment of the penalty amount set forth above. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to operations conducted on, at or through any facility owned, operated, controlled or otherwise utilized by Respondent.

10. Respondent hereby waives its right to seek or to obtain any hearing on the administrative claims set forth in the “EPA Findings of Fact” and the “EPA Conclusions of Law” of this document, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

11. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.


12. Each party shall bear its own costs and fees in connection with this proceeding.

13. The undersigned signatories hereto certify that: a) they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement.



*In re VIP Beauty Group, LLC*  
Docket Number FIFRA-02-2015-5101

**RESPONDENT:**

BY:   
(Signature)  
NAME: Stava Gendler  
(Please Print)  
TITLE: Vice-President  
DATE: 9/8/15

**COMPLAINANT:**



Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2


DATE: SEPTEMBER 17, 2015

*In re VIP Beauty Group, LLC*  
Docket Number FIFRA-02-2015-5101

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of VIP Beauty Group, LLC*, bearing Docket Number FIFRA-02-2015-5101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3).

DATED: September 22, 2015  
New York, New York

  
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**HELEN FERRARA**  
Regional Judicial Officer  
United States Environmental Protection Agency –  
Region 2

***In re VIP Beauty Group, LLC***  
**Docket No. FIFRA-02-2015-5101**

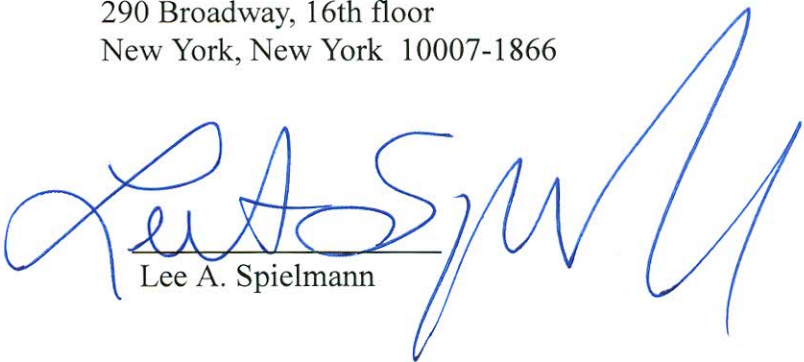
CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing “CONSENT AGREEMENT AND FINAL ORDER,” said Final Order having been executed by the Region Judicial Officer of the United States Environmental Protection Agency, Region 2, on September 22, 2015, in the above-referenced administrative enforcement proceeding in the following manner to the addressee listed below:

Original and One Copy  
By Inter-Office Mail:

Office of Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Dated: September 22, 2015  
New York, New York

  
\_\_\_\_\_  
Lee A. Spielmann