

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2024-0003
)	
Superior Manufacturing, Inc.,)	
d/b/a Alkuhme)	Proceeding to Assess a Civil Penalty
Auburn Hills, Michigan)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
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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, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Superior Manufacturing, Inc. (Superior Manufacturing), d/b/a Alkuhme, a limited liability company doing business in the State of Michigan.

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, and the regulations promulgated thereunder.

Statutory and Regulatory Background

10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded.

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

12. Section 2(q) of FIFRA, 7 U.S.C. § 136(q), defines a pesticide as “misbranded” if, among other things, the label does not bear “the registration number assigned to the pesticide under this subchapter.”

13. 40 C.F.R. § 156.10(a)(1) states that every pesticide product shall bear a label containing the information specified by FIFRA and the regulations in 40 C.F.R Part 156.

14. 40 C.F.R. § 156.10(a)(5) states, in pertinent part, that a pesticide is misbranded if its labeling is false or misleading in any particular including both pesticidal and non-pesticidal claims. Among other things, examples of statements or representations in the labeling which

constitute misbranding include a false or misleading statement concerning the safety of the pesticide or its ingredients.

15. 40 C.F.R. § 156.10(e) states, in pertinent part, that the registration number assigned to the pesticide product at the time of registration shall appear on the label, preceded by the phrase “EPA Registration No.,” or the phrase “EPA Reg. No.”

16. 40 C.F.R. § 156.10(g) states, in pertinent part, that the label of each pesticide product must bear a statement which contains the name and percentage by weight of each active ingredient and the total percentage by weight of all inert ingredients. The active ingredients must be designated by the term “active ingredients” and the inert ingredients by the term “inert ingredients,” or the singular forms of these terms when appropriate.

17. 40 C.F.R. § 152.132 states that a registrant may distribute or sell his registered product under another person’s name and address instead of (or in addition to) his own. Such distribution and sale is termed “supplemental distribution” and the product is referred to as a “distributor product.”

18. 40 C.F.R. § 152.132 states that supplemental distribution is permitted upon notification to the Agency if, among other things,

- a. The registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor’s company number, the additional brand name(s) to be used, and the registration number of the registered product; and
- b. The label of the distributor product is the same as that of the registered product, except that (1) the product name of the distributor product may be different, (2)

the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) specific claims may be deleted, provided that no other changes are necessary.

19. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), states that it is unlawful for any person to refuse to prepare, maintain, or submit any records required by Section 8 of FIFRA.

20. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), states that the Administrator may prescribe regulations requiring producers, registrants, and applicants for registration to maintain records with respect to their operations and the pesticides and devices produced as the Administrator determines are necessary for the effective enforcement of FIFRA.

21. 40 C.F.R. § 169.2(c) states, in pertinent part, that all producers of pesticides shall maintain records showing the following information regarding the receipt, by the producer, of all pesticides, devices, and active ingredients used in producing pesticides:

- a. Brand name of the pesticide or device, or common or chemical name of the pesticide active ingredient;
- b. Date received; and
- c. Quantities received.

22. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

23. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as 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. *See also* 40 C.F.R. § 152.3.

24. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. *See also* 40 C.F.R. § 152.3.

25. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator [of the EPA] declares to be a pest under Section 25(c)(1) of FIFRA. *See also* 40 C.F.R. § 152.5.

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

27. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label or in literature accompanying the pesticide or device.

28. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$23,494 for each offense that occurred after November 2, 2015, and assessed on or after January 6, 2023, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

30. Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

31. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 4520 Glenmeade Lane, Auburn Hills, Michigan (Facility).

32. At all times relevant to this CAFO, the Facility had EPA Establishment Number (EPA Est. No.) 85984-MI-2.

33. On or about March 18, 2019, three inspectors employed with the Michigan Department of Agriculture and Rural Development (MDARD) conducted an inspection at the Facility (Inspection).

34. During the Inspection, MDARD collected a formulation agreement between Respondent and Global Environmental Restoration, Inc. governing the manufacturing of **SNiPER**, EPA Registration Number (EPA Reg. No.) 71700-2, **Bactrokill**, EPA Reg. No. 71700-2-90746, and **C3 Cosmetology Complete Care Hospital Disinfectant**, EPA Reg. No. 71700-2-90746.

SNiPER (EPA Reg. No. 71700-2)

35. **SNiPER**, EPA Reg. No. 71700-2, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

36. Among other names, **Amazing Nok Out Odor Eliminator** is an approved alternate brand name for **SNiPER**, EPA Reg. No. 71700-2.

37. At all times relevant to this CAFO, Respondent was producing, among other

products, **SNiPER**, EPA Reg No. 71700-2.

38. During the Inspection, the inspectors observed and collected bin labels for and receiving records associated with **SNiPER**, EPA Reg No. 71700-2.

Bactrokill (EPA Reg. No. 71700-2-90746)

39. **Bactrokill**, EPA Reg. No. 71700-2-90746, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

40. At all times relevant to this CAFO, Respondent was producing, among other products, **Bactrokill**, EPA Reg. No. 71700-2-90746.

41. On or about February 10, 2014, EPA approved a Supplemental Distribution of a Registered Pesticide Product Form (EPA Form 8570-5) for the supplemental distribution of **Amazing Nok Out Odor Eliminator**, EPA Reg. No. 71700-2, registered to Global Environmental Restoration, Inc., for Bactronix Corp. The supplemental distributor product was registered as “Bactrokill” and assigned EPA Reg. No. 71700-2-90746.

42. During the Inspection, the inspectors observed and collected bin labels for and receiving records associated with **Bactrokill**, EPA Reg No. 71700-2-90746.

C3 Cosmetology Complete Care Hospital Disinfectant (EPA Reg. No. 71700-2-90746)

43. **C3 Cosmetology Complete Care Hospital Disinfectant**, produced under EPA Reg. No. 71700-2-90746, is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

44. At all times relevant to this CAFO, Respondent was producing, among other products, **C3 Cosmetology Complete Care Hospital Disinfectant** under EPA Reg. No. 71700-2-90746.

45. During the Inspection, the inspectors observed and collected bin labels for and

receiving records associated with **C3 Cosmetology Complete Care Hospital Disinfectant**, produced under EPA Reg. No. 71700-2-90746.

Counts 1-9

Sale or Distribution of Misbranded Pesticide SNI^{PER} (EPA Reg. No. 71700-2)

46. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

47. The label for **SNI^{PER}**, EPA Reg. No. 71700-2, contained the claim that “SNI^{PER}® has the unique ability to eliminate VOCs,” a claim not found on the EPA-accepted label for the basic registrant’s product, **Amazing Nok Out Odor Eliminator**, EPA Reg. No. 71700-2.

48. The bin labels collected for **SNI^{PER}** (EPA Reg No. 71700-2) did not contain the correct EPA Reg. No. as required by 40 C.F.R. § 156.10(e).

49. Between February 20, 2019, and March 11, 2019, Respondent distributed or sold **SNI^{PER}** (EPA Reg No. 71700-2) on at least nine separate occasions.

50. Respondent’s distribution or sale of the misbranded pesticide **SNI^{PER}** (EPA Reg No. 71700-2), on at least nine separate occasions constitutes nine unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and its implementing regulations at 40 C.F.R. § 156.10, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 10

Failure to Maintain Records for Pesticide SNI^{PER} (EPA Reg. No. 71700-2)

51. Complainant incorporates paragraphs 1 through 38 of this CAFO as though set forth in this paragraph.

52. During the Inspection, the inspectors collected receiving records for **SNI^{PER}** (EPA

Reg No. 71700-2).

53. The receiving records for **SNiPER** (EPA Reg. No. 71700-2) collected during the Inspection did not include the common chemical name of the active ingredient and the quantities received, as required by 40 C.F.R. § 169.2(c)(1).

54. The distribution records for **SNiPER** (EPA Reg. No. 71700-2) collected during the Inspection did not include the name of the originating carrier, as required by 40 C.F.R. § 169.2(d)(4).

55. The receiving records for **SNiPER** (EPA Reg. No. 71700-2) collected during the Inspection did not include the name of the delivering carrier, as required by 40 C.F.R. § 169.2(c)(3).

56. The receiving records for **SNiPER** (EPA Reg. No. 71700-2) collected during the Inspection did not include the date the shipment was received by the Facility, as required by 40 C.F.R. § 169.2(c)(4).

57. On or about March 18, 2019, Respondent failed to maintain complete receiving records for **SNiPER** (EPA Reg No. 71700-2) on at least 1 occasion.

58. Respondent's failure to maintain complete receiving records for **SNiPER** (EPA Reg No. 71700-2) as required by 40 C.F.R. §§ 169.2(c)(3) and (d)(4), constitutes one unlawful act pursuant to Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), and its implementing regulations at 40 C.F.R. § 169.2, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 11

Sale or Distribution of Misbranded Pesticide Bactrokill (EPA Reg. No. 71700-2-90746)

59. Complainant incorporates paragraphs 1 through 34 and 39 through 42 of this CAFO

as though set forth in this paragraph.

60. The bin labels for **Bactrokill** (EPA Reg No. 71700-2-90746) did not properly distinguish active and inert/other ingredients, as required by 40 C.F.R. § 156.10(g).

61. On March 8, 2019, Respondent distributed or sold **Bactrokill** (EPA Reg No. 71700-2-90746) on at least one occasion.

62. Respondent's distribution or sale of the misbranded pesticide **Bactrokill** (EPA Reg No. 71700-2-90746) on at least one occasion constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and its implementing regulations at 40 C.F.R. § 156.10, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 12

Sale or Distribution of Misbranded Pesticide C3 Cosmetology Complete Care Hospital

Disinfectant (EPA Reg. No. 71700-2-90746)

63. Complainant incorporates paragraphs 1 through 34 and 43 through 45 of this CAFO as though set forth in this paragraph.

64. The bin labels for **C3 Cosmetology Complete Care Hospital Disinfectant** (EPA Reg. No. 71700-2-90746) did not properly distinguish active and inert/other ingredients, as required by 40 C.F.R. § 156.10(g)

65. On March 8, 2019, Respondent distributed or sold **C3 Cosmetology Complete Care Hospital Disinfectant** (EPA Reg. No. 71700-2-90746) on at least one occasion.

66. Respondent's distribution or sale of the misbranded pesticide **C3 Cosmetology Complete Care Hospital Disinfectant** (EPA Reg. No. 71700-2-90746) on at least one occasion constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E),

and its implementing regulations at 40 C.F.R. § 156.10, and subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

67. 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 **\$32,880**. 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.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$32,880 civil penalty for the alleged FIFRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
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 Superior Manufacturing, Inc. and the docket number of this CAFO.

69. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Emma Gloekler (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
gloekler.emma@epa.gov

Sophie Grueterich (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
grueterich.sophie@epa.gov

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

71. 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.

72. 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

73. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grueterich.sophie@epa.gov (for Complainant), and aaron@gobrightwing.com (for Respondent).

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

75. 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.

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

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

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


79. 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.

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

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

Superior Manufacturing Inc., Respondent

11/16/2023
Date


Name: AARON CHERNOW
Title: OWNER

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
Superior Manufacturing, Inc.
Docket No.: FIFRA-05-2024-0003**

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 L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5