

1 GRETCHEN BUSTERUD
Acting Regional Counsel
2
3 EDGAR P. CORAL
Assistant Regional Counsel
U.S. Environmental Protection Agency
4 Region IX
75 Hawthorne Street
5 San Francisco, CA 94105
(415) 972-3898
6



7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2022-0045
11)
12 Best Buy Stores, L.P.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Best Buy
17 Stores, L.P. (“Respondent”) agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for: (1) the sale and/or distribution of an
25 unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A),
26 and (2) the sale and/or distribution of a misbranded pesticide in violation of Section 12(a)(1)(E)
27 of FIFRA, 7 U.S.C. § 136j(a)(1)(E).
28

2. Complainant is the Manager of the Toxics Section in the Enforcement and
Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to

1 bring this action and to sign a consent agreement settling this action.

2 3. Respondent is Best Buy Stores, L.P., a Virginia corporation with headquarter offices
3 located at 7601 Penn Avenue S in Minneapolis, Minnesota, 55423.

4 B. STATUTORY AND REGULATORY BASIS

5 4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it is unlawful
6 for any person to distribute or sell to any person any pesticide that is not registered under Section
7 3 of FIFRA, 7 U.S.C. § 136a.

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

11 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to
12 mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship,
13 deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to
14 deliver.

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

18 8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent,
19 nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus,
20 bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in
21 living man or other living animals) which the Administrator declares to be a pest under Section
22 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

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

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

1 11. Pursuant to 40 C.F.R. § 156.10(a)(1)(v), which sets forth general labeling
2 requirements, the contents of a label must show clearly and prominently the producing
3 establishment number as prescribed in paragraph (f) of this section.

4 C. ALLEGED VIOLATIONS

5 12. At all times relevant to this CAFO, Respondent was a corporation and therefore a
6 “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is
7 subject to FIFRA and the regulations promulgated thereunder.

8 13. At all times relevant to this CAFO, Respondent “distributed or sold” the product,
9 “Pure Mobile Sanitizing Tech Wipes,” as that term is defined by Section 2(gg) of FIFRA, 7
10 U.S.C. § 136(gg), to persons in the United States.

11 14. At all times relevant to this CAFO, the labeling for the product, “Pure Mobile
12 Sanitizing Tech Wipes,” bore numerous pesticidal claims including “sanitizing,” “kills viruses
13 and bacteria,” and “the easy way to clean and disinfect.” “Pure Mobile Sanitizing Tech Wipes”
14 is thus a substance intended for use as a bactericide and virucide and is therefore a “pesticide,”
15 as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16 15. From July 15, 2020 to February 1, 2021, Respondent “distributed or sold” as that
17 term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Pure Mobile
18 Sanitizing Tech Wipes,” to persons in the United States on 55 separate occasions from its Union
19 City, California store.

20 16. At all times relevant to this CAFO, the pesticide, “Pure Mobile Sanitizing Tech
21 Wipes,” that Respondent “distributed or sold” on 55 separate occasions from its Union City,
22 California store was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

23 17. By distributing or selling the unregistered pesticide, “Pure Mobile Sanitizing Tech
24 Wipes,” on 55 separate occasions from July 15, 2020 to February 1, 2021 from its Union City,
25 California store, Respondent committed 55 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C.
26 § 136j(a)(1)(A).

27 18. On or about December 3, 2020, Respondent “distributed or sold” as that term is
28 defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “Pure Mobile Sanitizing

1 Tech Wipes,” by holding and offering it for sale from its Union City, California store.

2 19. The pesticide, “Pure Mobile Sanitizing Tech Wipes,” that Respondent “distributed or
3 sold” on or about December 3, 2020, from its Union City, California store was held and offered
4 for sale with a label that included a producing establishment number even though the product
5 was not produced in an EPA-registered establishment (as required by Section 7(a) of FIFRA, 7
6 U.S.C. § 136e(a)). Instead, the label included a non-existent producing establishment number.

7 20. Respondent’s inclusion of a non-existent producing establishment number on the
8 label for the pesticide, “Pure Mobile Sanitizing Tech Wipes,” that Respondent distributed or sold
9 on or about December 3, 2020, from its Union City, California store violated 40 C.F.R. §
10 156.10(a)(1)(v) by being an false and/or misleading statement and thus constitutes
11 “misbranding,” as that term is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

12 21. By distributing or selling the misbranded pesticide, “Pure Mobile Sanitizing Tech
13 Wipes,” on or about December 3, 2020, from its Union City, California store, Respondent
14 violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

15 22. The Administrator of EPA may assess a civil penalty against any registrant,
16 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
17 provision of FIFRA of up to \$21,805 for each offense that occurred after November 2, 2015
18 where penalties are assessed on or after January 15, 2022. See Section 14(a)(1) of FIFRA, 7
19 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at
20 87 Fed. Reg. 1676 (January 12, 2022).

21 D. RESPONDENT’S ADMISSIONS

22 23. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
23 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
24 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
25 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
26 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
27 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
28 proposed Final Order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

24. In full and final settlement of the violations specifically alleged in Section I.C of this CAFO, Respondent shall pay a civil administrative penalty of ONE HUNDRED AND NINETY-NINE THOUSAND, EIGHT HUNDRED, AND TWENTY-ONE DOLLARS (\$199,821). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier’s check, including the name and docket number of this case, for the amount, payable to “Treasurer, United States of America,” (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary = U.S. Environmental Protection Agency

Certified or Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5700 Rivertech Court
Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to the following regular mail or email addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
R9HearingClerk@epa.gov

Julie Jordan
Toxics Section
Enforcement and Compliance Assurance Division (ENF-1-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
jordan.julie@epa.gov

25. Respondent shall not use payment of any penalty under this CAFO as a tax deduction from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to use such payment as a tax deduction.

26. If Respondent fails to pay the assessed civil administrative penalty of ONE HUNDRED AND NINETY-NINE THOUSAND, EIGHT HUNDRED, AND TWENTY-ONE DOLLARS (\$199,821), as identified in Paragraph 24, by the deadline specified in that Paragraph, then Respondent shall pay a stipulated penalty to EPA of FIVE HUNDRED DOLLARS (\$500)

1 per day in addition to the assessed penalty. Stipulated penalties shall accrue until such time as
2 the assessed penalty and all accrued stipulated penalties are paid and shall become due and
3 payable upon EPA's written request. Failure to pay the civil administrative penalty specified in
4 Paragraph 24 by the deadline specified in that Paragraph may also lead to any or all of the
5 following actions:

6 (1) EPA may refer the debt to a credit reporting agency, a collection
7 agency, or to the Department of Justice for filing of a collection action in the appropriate United
8 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
9 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
10 collection proceeding.

11 (2) The U.S. Government may collect the debt by administrative offset
12 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
13 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
14 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
15 C.F.R. §§ 13(C) and 13(H).

16 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
17 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
18 business with EPA or engaging in programs EPA sponsors or funds.

19 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
20 Government may assess interest, administrative handling charges, and nonpayment penalties
21 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
22 civil administrative penalty specified in Paragraph 24 by the deadline specified in that Paragraph.

23 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
24 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
25 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
26 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
27 (30) days of the effective date of this CAFO.

28 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §

1 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
2 either actual or average cost incurred (including both direct and indirect costs), for every month
3 in which any portion of the assessed penalty is more than thirty (30) days past due.

4 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
5 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
6 may be assessed on all debts more than ninety (90) days delinquent.

7 F. CERTIFICATION OF COMPLIANCE

8 27. In executing this CAFO, Respondent certifies that the information it has supplied
9 concerning this matter was at the time of submission, and is at the time of signature to this
10 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
11 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading
12 information can result in significant penalties, including the possibility of fines and
13 imprisonment for knowing submission of such information.

14 G. RETENTION OF RIGHTS

15 28. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
16 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
17 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
18 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
19 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
20 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
21 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
22 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

23 29. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
24 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
25 and permits.

26 H. ATTORNEYS' FEES AND COSTS

27 30. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
28 this proceeding.

I. EFFECTIVE DATE

31. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

32. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

33. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT BEST BUY STORES, L.P.:

03/11/2022
DATE

DocuSigned by:
Patrick McGinnis
365855074A7244B...
Patrick McGinnis
VP - Category Officer
Best Buy Stores, L.P.
7601 Penn Avenue S
Minneapolis, MN 55423

FOR COMPLAINANT EPA:

4/15/2022
DATE

MATTHEW
SALAZAR
MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

Digitally signed by MATTHEW SALAZAR
Date: 2022.04.15 15:18:58 -07'00'

II. FINAL ORDER

EPA and Best Buy Stores, L.P. having entered into the foregoing Consent Agreement, IT IS
HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2022-0045) be entered, and
Respondent shall pay a civil administrative penalty in the amount of ONE HUNDRED AND
NINETY-NINE THOUSAND, EIGHT HUNDRED, AND TWENTY-ONE DOLLARS
(\$199,821) and comply with the terms and conditions set forth in the Consent Agreement.

STEVEN
JAWGIEL

Digitally signed by STEVEN
JAWGIEL

Date: 2022.04.19 13:05:07 -07'00'

DATE

STEVEN JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of Best Buy Stores, L.P. (FIFRA-09-2022-0045) was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by:

Electronic mail to:

RESPONDENT

Patrick McGinnis, VP-Category Officer
Best Buy Stores, L.P.
7601 Penn Avenue S Richfield, MN 55423
Patrick.Mcginnis@BestBuy.com

COUNSEL FOR RESPONDENT

Peggy Otum
Wilmer Hale
One Front Street, Suite 3500
San Francisco, CA 94111 USA
Peggy.Otum@wilmerhale.com

COUNSEL FOR EPA

Edgar Coral
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105
Coral.Edgar@epa.gov

Ponly Tu
Regional Hearing Clerk
Office of Regional Counsel, Region IX