

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), 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, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

11. Section 2(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), defines an “active ingredient,” to mean “in the case of a pesticide other than a plant regulator, defoliant, desiccant, or nitrogen stabilizer, an ingredient which will prevent, destroy, repel, or mitigate any pest.”

12. 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 of any of its containers or wrappers.”

13. 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[.]”

14. 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.”

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

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. 152.15(a)(1) states that a substance is considered to be intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or otherwise implies (by labeling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

18. The regulation at 40 C.F.R. 152.15(b) further states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), or (2) use for manufacture of a pesticide.

19. 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 January 12, 2022, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

21. At all times relevant to this CAFO, Respondent owned or operated a place of business located at 30600 Oregon Road, Perrysburg, Ohio 43551.

22. On January 18, 2022, the Ohio Department of Agriculture (ODA) conducted an inspection in accordance with Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136(f) and 136(g), at Respondent’s facility located at 30600 Oregon Road, Perrysburg, Ohio 43551 (the Inspection).

23. The Inspection focused on **Citro Fresh Dumpster Deodorizer** and **Slant 7 with Terminator Technology**, produced at Respondent’s facility at 30600 Oregon Road, Perrysburg, Ohio 43551 (the Facility).

24. During the Inspection, ODA collected receiving, sales, and photographic records of **Citro Fresh Dumpster Deodorizer** and **Slant 7 with Terminator Technology** from the 2021 and 2022 calendar years.

25. On November 9, 2021, Respondent distributed **Citro Fresh Dumpster Deodorizer** (Order Number 459739).

26. On December 20, 2021, Respondent distributed **Slant 7 with Terminator Technology** (Order Number 461982).

27. The bin label of **Citro Fresh Dumpster Deodorizer** collected by ODA during the Inspection contained the following claims or statements:

- a. “Eliminates dumpster odors and repels insects,”
- b. “Add more as needed to keep insects away,” and

- c. “Biodegradable Absorbents (C.A.S.# NA), Sodium Bicarbonate (C.A.S.# 144-55-8) Citronella Oil (C.A.S.# 8000-29-1), Proprietary Odor Eliminator (C.A.S.# N/A).”

28. The bin label of **Citro Fresh Dumpster Deodorizer** collected by ODA during the Inspection lists the website, “www.freshproducts.com.”

29. On March 4, 2022, EPA visited www.freshproducts.com and observed the following claim or statement for **Citro Fresh Dumpster Deodorizer**, “Patented odor neutralizer combined with natural citronella oil eliminates odors at the source and repels flying insects.”

30. On March 4, 2022, EPA visited www.freshproducts.com and observed the following claims or statements on the product flyer of **Citro Fresh Dumpster Deodorizer**:

- a. Repel flying insects from your dumpster thanks to natural citronella oils.
No more flies or insects contaminating your dumpster areas,
- b. Environmentally Friendly, and
- c. Formulated with biodegradable cellulose base and natural oils, so it’s safe and cares for the environment.

31. The bin label of **Slant 7 with Terminator Technology** collected by ODA during the Inspection contained the following claim, “Kills bacteria.”

32. The bin label of **Slant 7 with Terminator Technology** collected by ODA during the Inspection lists a graphic of a microorganism in the center of a target and references the website, “www.freshproducts.com.”

33. On March 4, 2022, EPA visited www.freshproducts.com and observed the following claim for **Slant 7 with Terminator Technology**, “Kills 99.9% of odor-causing bacteria.”

34. On March 4, 2022, EPA visited www.freshproducts.com and observed a video for **Slant 7 with Terminator Technology** communicating the following claims or graphics:

- a. “Kills 99.9% of odor-causing bacteria using proprietary antibacterial fragrance,”
- b. “Kills odor causing bacteria at the source,” and
- c. A graphic depicting bacterium in the center of a target.

35. On March 4, 2022, EPA visited www.freshproducts.com and observed the following claims or graphics on the product flyer of **Slant 7 with Terminator Technology**:

- a. “Kills bacteria that cause odors,”
- b. “Exclusive Terminator Technology kills bacteria that cause odors,”
- c. “Kills bacteria at the source,” and
- d. A graphic depicting bacterium in the center of a target.

36. On March 4, 2022, EPA visited www.freshproducts.com and observed a resource webpage titled “SB-258 Cleaning Products Right to Know Act of California,” which provides a list of certain ingredients in Respondent’s products based on an associated RTK code.

37. The RTK code for **Slant 7 with Terminator** is RTK0149.

38. The following active pesticidal ingredients and corresponding Chemical Abstracts Service Number (CASRN) are reported under RTK0149:

- a. Benzyl Benzoate, CASRN 120-51-4
- b. Cinnamal, CASRN 104-55-2
- c. Linalool, CASRN 78-70-6
- d. Geraniol, CASRN 106-24-1
- e. Eugenol, CASRN 97-53-0

Citro Fresh Dumpster Deodorizer

39. **Citro Fresh Dumpster Deodorizer** is a “pesticide” as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1).

40. **Citro Fresh Dumpster Deodorizer** is a pesticide, and, as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

41. **Citro Fresh Dumpster Deodorizer** is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and as such, is an unregistered pesticide based on the intended use and pesticidal claims made in relation to the product.

42. On November 9, 2021, Respondent distributed **Citro Fresh Dumpster Deodorizer**.

Slant 7 with Terminator Technology

43. **Slant 7 with Terminator Technology** is a “pesticide” as that term is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1).

44. **Slant 7 with Terminator Technology** is a pesticide, and, as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

45. **Slant 7 with Terminator Technology** is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and as such, is an unregistered pesticide based on the active ingredients, intended use and pesticidal claims made in relation to the product.

46. On December 20, 2021, Respondent distributed **Slant 7 with Terminator Technology**.

Count 1

Sale or Distribution of Unregistered Pesticide Citro Fresh Dumpster Deodorizer

47. The preceding paragraphs are incorporated by reference.

48. On November 9, 2021, Respondent distributed or sold **Citro Fresh Dumpster Deodorizer**, a pesticide, as that term is defined in Paragraph 15, that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

49. Respondent's distribution or sale of the unregistered pesticide **Citro Fresh Dumpster Deodorizer** constitutes an unlawful act, pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

50. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

Sale or Distribution of Unregistered Pesticide Slant 7 with Terminator Technology

51. The preceding paragraphs are incorporated by reference.

52. On December 20, 2021, Respondent distributed or sold **Slant 7 with Terminator Technology**, a pesticide, as that term is defined in Paragraph 15, that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

53. Respondent's distribution or sale of unregistered pesticide **Slant 7 with Terminator Technology** constitutes an unlawful act, pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

54. Respondent's violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subject Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

55. 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 **\$6,880**. 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.

56. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$6,880** civil penalty for the alleged 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 "Fresh Products LLC" and the docket number of this CAFO. To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

57. 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

Ariel MacMillan-Sanchez (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
MacMillanSanchez.Ariel@epa.gov

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

59. 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.

60. 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

61. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: MacMillanSanchez.Ariel@epa.gov for Complainant, and jsmith@mailfresh.us (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

63. 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.

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

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

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

67. 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.

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

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

Fresh Products, LLC, Respondent

8/17/2023
Date


Jeff Smith
Chief Operating Officer
Fresh Products, LLC

United States Environmental Protection Agency, Complainant

Michael D. Harris, Director
Enforcement and Compliance Assurance Division
Region 5

**In the Matter of:
Fresh Products, LLC
Docket No.: FIFRA-05-2023-0015**

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