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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

**1201 Elm Street, Suite 500
Dallas, Texas 75270**

REGIONAL HEARING CLERK
EPA REGION 6

In the Matter of	§	
	§	
Supermercado El Rancho Inc.	§	Docket No. FIFRA-06-2024-0378
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

The U.S. Environmental Protection Agency, Region 6 (“EPA” or “Complainant”), and Supermercado El Rancho Inc. (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. Complainant is the Director of Enforcement and Compliance Assurance Division of the EPA, Region 6, as duly delegated by the Administrator of the EPA and the Regional Administrator, EPA, Region 6.

4. Respondent is Supermercado El Rancho Inc., a corporation incorporated in the state of Texas and conducting business in the state of Texas.

Statutory and Regulatory Background

5. Congress enacted FIFRA, 7 U.S.C. 136 et. seq., in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution, and use of pesticides in the United States.

6. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it shall be unlawful for any person to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, or whose registration has been cancelled or suspended.

7. Pursuant to the regulation at 40 C.F.R. § 152.15, in relevant part, no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) 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. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or

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.

8. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), authorizes a civil penalty of not more than \$5,000 for each offense. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$24,255 for violations that occur after November 2, 2015, and for which penalties are assessed on or after December 27, 2023.

Definitions

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

10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean (1) any 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-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to mean 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.

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

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

EPA Findings of Fact and Conclusions of Law

15. Respondent is, and at all times referred to herein was, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

16. Respondent owns and operates a grocery store located at: 1909 E. Park Row, Arlington, Texas, 76010 (the “Facility”).

17. Pursuant to Section 9 of FIFRA, 7 U.S.C. § 136g, the EPA conducted an inspection of the Facility on May 30, 2023, to determine Respondent’s compliance with FIFRA and the federal regulations promulgated thereunder (the “Inspection”).

18. During the inspection, EPA discovered that Respondent distributed or sold, as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at the Facility four products that are unregistered pesticides: (1) Fabuloso Multi-Purpose Cleaner - Orange Energy; (2) San-X Disinfectant Spray - Lavender Fresh; (3) Always Save All Purpose Ammonia Cleaner; and (4) Dr. Heal Alcohol Wipes (collectively the “Products”).

19. On July 12, 2023, the EPA sent Respondent a Stop Sale, Use, or Removal Order.

EPA Findings of Violation

20. The facts stated in the EPA Findings of Fact and Conclusions of Law above are herein incorporated.

21. Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder as follows:

Count 1

22. At the time of the Inspection, the label for Respondent's product Fabuloso Multi-Purpose Cleaner - Orange Energy stated that it is "Bacterial and Antiviral," that it "Eliminates virus and bacteria," and that it "Eliminates 99.99% of bacteria and viruses" (all in Spanish), implying that the product could or should be used as a pesticide.

23. Because Respondent claimed by labeling that the Fabuloso Multi-Purpose Cleaner - Orange Energy product can or should be used as a pesticide, the product was intended for a pesticidal purpose and required registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

24. At the time of the inspection, the Fabuloso Multi-Purpose Cleaner - Orange Energy product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

25. Respondent's distribution or sale of Fabuloso Multi-Purpose Cleaner - Orange Energy, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 2

26. At the time of the Inspection, the label for Respondent's product San-X Disinfectant Spray - Lavender Fresh stated that it is an "Anti-Bacterial Spray" that "Kills 99.9% Viruses & Bacteria," "Kills Cold & Flu Viruses," "Prevents Mold & Mildew," and "Kills Staphylococcus aureus, E. coli, Pseudomonas aeruginosa, and Candida albicans etc" implying that the product could or should be used as a pesticide.

27. Because Respondent claimed by labeling that the San-X Disinfectant Spray - Lavender Fresh product can or should be used as a pesticide, the product was intended for a pesticidal purpose and required registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

28. At the time of the inspection, the San-X Disinfectant Spray - Lavender Fresh product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

29. Respondent's distribution or sale of San-X Disinfectant Spray - Lavender Fresh, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 3

30. At the time of the Inspection, the label for Respondent's product Always Save All Purpose Ammonia Cleaner product stated that it "Fights Germs!", implying that the product could or should be used as a pesticide.

31. Because Respondent claimed by labeling that the Always Save All Purpose Ammonia Cleaner product can or should be used as a pesticide, the product was intended for a pesticidal purpose and required registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

32. At the time of the inspection, the Always Save All Purpose Ammonia Cleaner product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

33. Respondent's distribution or sale of Always Save All Purpose Ammonia Cleaner, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count 4

34. At the time of the Inspection, the label for Respondent's product Dr. Heal Alcohol Wipes product stated it is "Disinfecting Alcohol Wipes," that it contains "Ethyl Alcohol 75%... Antiseptic," and "Usage: For cleaning to decrease bacteria on the skin and appliance," implying that the product could or should be used as a pesticide.

35. Because Respondent claimed by labeling that the Dr. Heal Alcohol Wipes product can or should be used as a pesticide, the product was intended for a pesticidal purpose and required registration pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

36. At the time of the inspection, the Dr. Heal Alcohol Wipes product was not registered pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.

37. Respondent's distribution or sale of Dr. Heal Alcohol Wipes, a pesticide that was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, is a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

CONSENT AGREEMENT

38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. admits the jurisdictional allegations set forth herein;

- b. neither admits nor denies the specific factual allegations stated herein;
- c. consents to the assessment of a civil penalty, as stated herein;
- d. consents to the issuance of any specified compliance or corrective action order;
- e. consents to any conditions specified herein;
- f. consents to any stated Permit Action;
- g. waives any right to contest the allegations set forth herein; and
- h. waives its right to appeal the Final Order accompanying this Consent Agreement.

39. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

40. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

41. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of \$230,800, as set forth below.

42. Respondent shall pay the penalty within thirty (30) days of receiving notice of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties

Cincinnati Finance Center
PO Box 979078
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

43. A copy of the check or other information confirming payment shall

simultaneously be sent to the following:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ORC)
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov; and

Lee McMillan
Enforcement and Compliance Assurance Division
Waste Enforcement Branch
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500 (ECDST)
Dallas, Texas 75270-2101
Mcmillan.Lee@epa.gov

44. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six percent (6%)

per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

45. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN; Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at chalifoux.jessica@epa.gov within 30 days after the

Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and

- c. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the effective date of this Order; and
 - ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

Effect of Settlement and Reservation of Rights

46. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of the FIFRA or any other applicable law.

47. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondents' representations to the EPA.

48. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations as they relate to the Products described in Paragraph 18.

49. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the FIFRA and regulations promulgated thereunder.

50. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

General Provisions

51. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party it represents to this Consent Agreement.

52. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 6. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

53. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State, and local taxes.

54. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for

Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

55. The EPA and Respondent agree to the use of electronic signatures for this matter pursuant to 40 C.F.R. § 22.6. The EPA and Respondent further agree to electronic service of this Consent Agreement and Final Order by email to the following:

To EPA: *Henley.Hollis@epa.gov*

To Respondent:

legal@heritagegrocers.com

**RESPONDENT:
SUPERMERCADO EL RANCHO INC.**

Date: _____



Leticia Espinoza (Aug 12, 2024 17:58 CDT)

Signature

Name

Title

**COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: August 13, 2024



Digitally signed by
CHERYL SEAGER
Date: 2024.08.13
17:36:53 -05'00'

Cheryl T. Seager
Director
Enforcement
and Compliance Assurance Division
U.S. EPA, Region 6

FINAL ORDER

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136/(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

This Final Order shall resolve only those causes of action alleged in the Consent Agreement. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondents' (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action.

IT IS SO ORDERED.

THOMAS
RUCKI

Digitally signed by
THOMAS RUCKI
Date: 2024.08.14
16:22:03 -04'00'

Thomas Rucki
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was filed with me, the Regional Hearing Clerk, U.S. EPA - Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that I sent a true and correct copy on this day in the following manner to the email addresses:

Copy via Email to Complainant, EPA:
Henley.Hollis@epa.gov

Copy via Email to Respondent:
sdirector09@elranchoinc.com

Supermercado El Rancho Inc.
2000 E. Pioneer Pkwy., Ste. 100,
Arlington, TX 76010

**LORENA
VAUGHN**

Digitally signed by
LORENA VAUGHN
Date: 2024.08.14
15:44:50 -05'00'

Regional Hearing Clerk
EPA Region 6

