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EPA Decision Highlights Risks to Retailers Under FIFRA

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A United States Environmental Protection Agency ("EPA") administrative judge levied \$409,490 in penalties against California-based retailer 99¢ Only Stores for selling pesticidal products that were either not registered with the EPA as required by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") or not properly labeled pursuant to FIFRA.

FIFRA regulates the sale, distribution, and use of pesticides. Every FIFRA-regulated pesticide must be registered with the EPA and properly labeled before being sold in the United States. Although the producer and/or importer of pesticides is responsible for compliance with FIFRA requirements, each seller and distributor must also ensure that the pesticide is properly labeled prior to sale.

The case involves the sale of two cleaning products and one pest-control product imported from Mexico. The majority of the violations involved the sale of one of the cleaning products, the label of which included statements in Spanish that it disinfects or sanitizes surfaces. According to the June 24, 2010, Initial Decision, the retailer sought to mitigate the penalties based on arguments that the violations occurred despite the retailer's exercise of due care. For example, the retailer asserted that the label on the products in question differed from the label on the product sample previously inspected by the retailer for the purpose of determining FIFRA compliance. Specifically, although the label on the sample product did not contain any pesticidal claims, the label on the products received for retail sale (and subsequently sold by the retailer) included the improper pesticidal claims. Furthermore, the purchase order for the contested products included a representation by the distributor that the products in question were "in conformity with all required laws; produced, labeled, and identified in compliance with all applicable federal, state, local laws, rules, and regulations."

However, notwithstanding the retailer's apparent belief that these products were in compliance with applicable laws and did not make any pesticidal claims, the Initial Decision highlighted that the retailer was negligent in failing to confirm that each unit of product sold by the

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retailer was properly labeled under FIFRA.

To read the EPA's Initial Decision, click [here](#).

Why it matters: Although the EPA continues to closely scrutinize FIFRA compliance by manufacturers of pesticidal products, this decision highlights that the EPA is also focusing its attention on retailers of such products. According to an EPA press release, the penalty represents "the largest contested penalty ever ordered by an EPA administrative law judge against a product retailer under [FIFRA]." Moreover, this case also emphasizes the heightened risk of FIFRA fines and stop sale orders by EPA, generally.

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[Matthew A. Dombroski's](#) practice focuses on environmental corporate compliance counseling, environmental issues in connection with real estate financing transactions, corporate dispositions, and real estate development projects, as well as regulatory compliance and toxic tort litigation.

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