



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 02 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Philip Moffat
Attorney at Law
Verdant Law, PLLC
1025 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

Re: Quik-Gro, LLC
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2013-3013(b)

Dear Mr. Moffat:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of his potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U.S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your client's compliance status in the future, please contact Ms. Patricia Livingston of the EPA Region 4 staff at (404) 562-9171.

Sincerely,

Handwritten signature of Stephen M. G. Toney in black ink, written in a cursive style. The signature is positioned above the typed name and title.

Anthony G. Toney
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Kentucky Department of Agriculture
State File No.082611320102

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

RECEIVED
EPA REGION IV

2014 JAN -2 AM 7:18

HEARING CLERK

In the Matter of:)
)
Quik-Gro, LLC)
)
)
Respondent.)
_____)

Docket No.: FIFRA-04-2013-3023(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Quik-Gro, LLC.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority to sign consent agreements

memorializing settlements between EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Patricia Livingston
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9171.

5. Respondent is Quik-Gro, LLC, a manufacturer and distributor of plant nutrition products with a facility located at 6255 Jack Hinton Road, Philpot, Kentucky.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about August 26, 2011, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 6255 Jack Hinton Road, Philpot, Kentucky.
8. At the time of the inspection, the inspector observed the product Gro-Max+ being stored and/or held for sale and/or distribution.

9. The label on the Gro-Max+ product observed by the inspector included the following claims, “Enhances Root Growth,” “A Plant Growth Stimulator,” “Fungicidal Activity with Seed Treatment and Foliar Applications,” and “Active Ingredients: Cytokins [sic]; Gibberellic; Indolebutyric Acid.”
10. The term pesticide is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), to include (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator.
11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
12. A plant regulator is defined in Section 2(v) of FIFRA, 7 U.S.C. § 136v, as any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the product thereof.
13. 40 C.F.R. § 152.15(c) states that a substance is intended for a pesticidal purpose, and therefore is a pesticide subject to registration, if the person who distributes or sells the substance claims, states or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.
14. Because the label for Gro-Max+ stated that the product was intended to be used as a plant regulator and a fungicide, it made pesticidal claims, and therefore, it is considered to be a pesticide.

15. At all times relevant, Respondent “distributed or sold” pesticides. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
16. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
17. At the time of the inspection, Gro-Max + was not registered as a pesticide with the EPA.
18. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
19. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least four occasions by distributing an unregistered pesticide from on or about February 13, 2009 through on or about July 12, 2011. Respondent therefore is subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l(a).
20. Establishments that produce pesticides are required to be registered with the Administrator of the EPA, pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e.
21. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), a producer is defined as “the person who manufacturers (sic), prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.”
22. At the time of the aforementioned inspection, Respondent produced the pesticide Gro-Max+ in an establishment that was not registered with the Administrator of the EPA as a pesticide-producing establishment during the relevant period between February 13, 2009, through July 12, 2011.

23. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of the EPA as set forth in Section 7 of FIFRA, U.S.C. § 136e.
24. Because Respondent produced pesticides in an unregistered establishment, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is, therefore, subject to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
25. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
26. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
27. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **NINE THOUSAND ONE HUNDRED AND TWENTY DOLLARS (\$9,120)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
29. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
30. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.

31. To the best of its knowledge, and after reasonable inquiry, Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
32. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
33. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.
34. Respondent is assessed a civil penalty of **NINE THOUSAND ONE HUNDRED AND TWENTY DOLLARS** (\$9,120). Four payments will be made to complete payment of the entire civil penalty including interest. The first installment is due within 30 days of the effective date of this CAFO. The subsequent three payments shall be due in 90 day intervals thereafter. Including the civil penalty and interest, the total amount that will be paid upon the completion of all payments will be **NINE THOUSAND ONE HUNDRED AND EIGHTY DOLLARS and FIFTEEN CENTS (\$9180.15)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$1,000.00
2	within 120 days of filing of CAFO	\$1,027.06
3	within 210 days of filing of CAFO	\$1,017.79
4	within 300 days of filing of CAFO	\$6,135.30

Respondent shall remit the penalty payments by either a cashier's or certified check made payable to the "Treasurer, United States of America."

The Respondent shall note on the face of the check the Respondent's Name and the Docket Number associated with this CAFO.

The penalty payment shall be sent by one of the methods below.

Address for payment submittal using the United States Postal Service (USPS) (excluding USPS overnight mail):

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

Address for payment submittal using USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101.

Contact Phone Number: (314) 425-1818.

At the time of each installment payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960;

Patricia Livingston
Pesticides Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960; and

Saundi J. Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960.

35. If Respondent fails to make one of the installment payments in accordance with the schedule set forth above, and if such payment is not made within 30 days after the due date, that payment plus all subsequent payments (the entire unpaid balance) shall become immediately due and payable on the 31st day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.
36. Further, if Respondent fails to pay the installment payments in accordance with the schedule set forth above, the EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
37. Notwithstanding Respondent's agreement to pay the assessed civil penalty in accordance with the installment schedule set forth above, Respondent may pay the entire civil penalty of **NINE THOUSAND ONE HUNDRED AND TWENTY DOLLARS (\$9,120.00)** within 30 days of the effective date of this CAFO and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with interest accrued up to the date of such full payment.

38. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
39. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
40. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
41. This CAFO shall be binding upon the Respondent, its successors and assigns.
42. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

The remainder of this page intentionally left blank.

43. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Quik-Gro, LLC
Docket No.: FIFRA-04-2013-3013(b)

By: Charles E. Rhoades (Signature) Date: 12/12/13
Name: CHARLES E. RHOADES (Typed or Printed)
Title: OWNER (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By: Carol G. Kemker for Date: 12/19/13
Jeaneanne M. Gettle, Acting Director
Air, Pesticides and Toxics
Management Division

APPROVED AND SO ORDERED this 24 day of December 2013.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

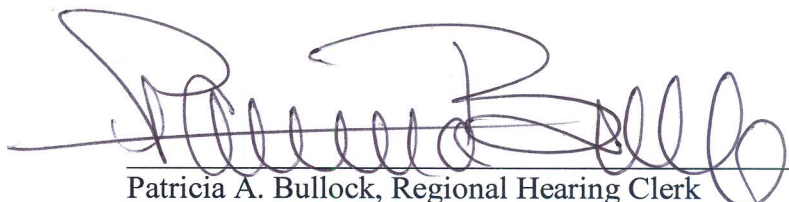
I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Quik-Gro, LLC., Docket Number: FIFRA-04-2013-3013(b), to the addressees listed below:

Mr. Phillip A. Moffat (via Certified Mail, Return Receipt Requested)
Attorney at Law
Verdant Law, PLLC
1025 Connecticut Avenue, NW
Suite 1000
Washington, DC 20036

Patricia Livingston (via EPA's internal mail)
Pesticides Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)
Associate Regional Counsel
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Date: 1-2-14


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9511