

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez 9/25/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number E1FRA-01-2018-0049

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

KX Technologies LLC et al
Jerome Barrillon
55 Railroad Avenue
West Haven, CT 06515

Total Dollar Amount of Receivable \$ 76,362 Due Date: 10/25/18

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____
2nd \$ _____ on _____
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 1 – NEW ENGLAND

5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 25 2018

EPA ORC *ws*
Office of Regional Hearing Clerk

BY HAND

September 25, 2018

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, MA 02109-3912

Re: *In the Matter of KX Technologies LLC et al.*, Docket No. FIFRA-01-2018-0049

Dear Ms. Santiago:

Please find enclosed for filing in the above-referenced action the original and one copy of a Consent Agreement and Final Order (“CAFO”) entered between EPA Region 1 and the Respondents named in the case, KX Technologies LLC (“KXT”) and KX Technologies Pte. Ltd. (“KXT Limited”).

The CAFO concludes the above-entitled enforcement case. Also accompanying the CAFO are the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO, the certificate of service, and this cover letter were sent to Respondents in the manner identified.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hugh W. Martinez".

Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant

Enclosures

cc: Jerome Barrillon, KX Technologies LLC
Herbert Estreicher, Esquire and James G. Votaw, Esquire
Keller & Heckman LLP, Respondents’ counsel
Kan S. Tham, EPA Region 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order, Cover Letter to the Regional Hearing Clerk, and this Certificate of Service have been provided to the following persons on the date and in the manner noted below:

Original and one copy of each, hand-delivered to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA – Region 1
5 Post Office Square, Suite 100 (ORC 04-6)
Boston, Massachusetts 02109-3912

One copy of each, by First Class Mail, to:

Herbert Estreicher, Esquire
and
James G. Votaw, Esquire
Keller & Heckman LLP
1001 G Street, N.W., Suite 500W
Washington, D.C. 20001

and

Jerome Barrillon, VP and General Manager
KX Technologies LLC
55 Railroad Avenue
West Haven, CT 55125



Hugh W. Martinez, Sr. Enforcement Counsel
U.S. EPA Region 1
5 Post Office Square, Suite 100 (ORC 04-3)
Boston, MA 02109-3912

Date:

9-25-18

Phone (dir.): (617) 918-1867
Fax: (617) 918-0867
e-mail: Martinez.hugh@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

In the Matter of:)
)
KX Technologies LLC)
)
and)
)
KX Technologies Pte. Ltd.,)
)
Respondents.)
_____)

Docket No. FIFRA-01-2018-0049

**CONSENT AGREEMENT and
FINAL ORDER**

RECEIVED

SEP 25 2018

EPA ORC WS
Office of Regional Hearing Clerk

INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 (“EPA”) as Complainant, and Respondents, KX Technologies LLC (“KXT LLC”) and KX Technologies Pte. Ltd. (“KXT Limited”), enter into this Consent Agreement and Final Order (“CAFO”) by mutual consent.

2. Complainant and Respondents (collectively, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

4. On July 31, 2018, EPA filed a Complaint and initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a).

5. On August 13, 2018, KXT LLC filed a motion with the Regional Judicial Officer (“RJO”) for an extension of time in which to file an Answer to the Complaint. On August 15,

2018, the RJO granted KXT LLC's motion and extended the deadline for filing an Answer to October 5, 2018.

6. EPA filed an Amended Complaint, on September 18, 2018, to add KX Technologies Pte. Ltd. as a Respondent in this proceeding.

7. The Amended Complaint alleges that Respondent KXT LLC imported FIFRA-regulated water filtration devices in 2016 and 2017 without submitting the required reports, called Notices of Arrival, before the products entered the United States and, also, alleges that KXT LLC and KXT Limited, for each of their respective production establishments in West Haven, CT and Singapore, failed to file FIFRA production reports for the reporting year 2016, all in violation on FIFRA Sections 12(a)(2)(N) and 12(a)(2)(L), 7 U.S.C. §§ 136j(a)(2)(N) and 136j(a)(2)(L), and FIFRA regulations at 19 C.F.R §§ 12.110 – 12.117 and 40 C.F.R. § 167.85.

8. For purposes of this proceeding, without trial or litigation of the issues or any adjudication of the facts, each Respondent: (1) admits that EPA has jurisdiction over the subject matter alleged in the Complaint, (2) neither admits nor denies the factual allegations contained in the Complaint, and (3) consents to the terms of this CAFO as a settlement of the allegations raised by EPA in the Complaint.

9. Each Respondent hereby waives any defenses it might have as to jurisdiction and venue, its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and its right to appeal the Final Order accompanying the Consent Agreement. For purposes of this proceeding, Respondent KXT Limited also waives service of process of the Amended Complaint under 40 C.F.R. § 22.5.

10. By signing this CAFO, each Respondent certifies that it is presently operating in compliance with FIFRA and the regulations promulgated thereunder and that it has fully

addressed the violations alleged by EPA in the Complaint.

TERMS OF SETTLEMENT

11. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 “FIFRA Enforcement Response Policy,” the May 2010 “Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements,” the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, at 28 U.S.C. § 2461 note, the Monetary Penalty Inflation Adjustment Rules, at 40 C.F.R. Part 19, EPA’s January 11, 2018 penalty inflation guidance, entitled “Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2018) and Transmittal of the 2018 Civil Monetary Penalty Inflation Adjustment Rule,” and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondents pay a civil penalty in the amount of \$76,362 in settlement of the violations alleged in the Complaint.

12. Respondents shall pay the total penalty of \$76,362, within thirty (30) days of the effective date of this CAFO, in the following manner:

a. Respondents may submit a company, bank, cashier’s or certified check in the amount of \$76,362, payable to “Treasurer, United States of America.” Such payment shall include the case name and docket number on the face of the check and shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

b. Respondents may make payment by electronic funds transfer instead of check. If payment is remitted by wire transfer, any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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”

c. Respondents shall include the case name and docket number (“*In the Matter of KX Technologies LLC et al.*, Docket No. FIFRA-01-2018-0049”) on the face of any check or wire transfer confirmation. In addition, within 24 hours of payment, Respondents shall forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt, by first class mail or commercial delivery service, to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORC 04-6)
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES 04-3)
Boston, MA 02109-3912

Notice of payment may be given to Mr. Martinez via e-mail, at Martinez.hugh@epa.gov.

13. If Respondents fail to pay the civil penalty, they will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is

due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

14. The civil penalty due and any interest, non-payment penalties, or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, each Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

15. This CAFO constitutes a settlement by EPA of all claims for civil penalties, pursuant to Section 14(a) of FIFRA, for the specific violations alleged in the Complaint.

16. This CAFO in no way relieves Respondents of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of each Respondent to comply with said laws and regulations.

17. The Parties each shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and each Respondent specifically waives any right to seek attorneys' fees under

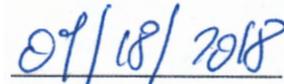
the Equal Access to Justice Act, 5 U.S.C. § 504.

18. The undersigned representatives of Respondents each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent KX Technologies LLC:



Jerome Barrillon, Vice President & General Manager
KX Technologies LLC
55 Railroad Avenue
West Haven, CT 06516

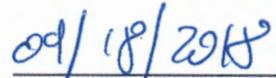


(Date)

For Respondent KX Technologies Pte. Ltd.:



Jerome Barrillon, Vice President & General Manager
KX Technologies LLC



(Date)

As Agent for KX Technologies Pte. Ltd.

For EPA Region 1:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA-Region 1

9/20/18
(Date)

and:



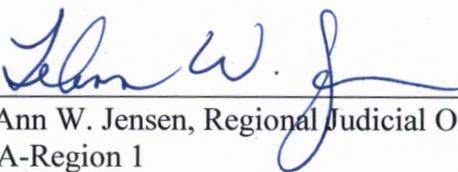
Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
EPA-Region 1

9-19-18
(Date)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18 of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondents, KX Technologies LLC and KX Technologies Pte. Ltd., are ORDERED to comply with the terms of the Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

9/24/18
(Date)



LeAnn W. Jensen, Regional Judicial Officer
EPA-Region 1