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13 **UNITED STATES**
14 **ENVIRONMENTAL PROTECTION AGENCY**
15 **REGION IX**
16 **75 HAWTHORNE STREET**
17 **SAN FRANCISCO, CA 94105**

18
19 In the matter of:)
20) U.S. EPA Docket No. FIFRA-09-2021-0011
21 Qantas Airways Limited)
22) **CONSENT AGREEMENT**
23) and
24) **FINAL ORDER PURSUANT TO**
25 Respondent.) **SECTIONS 22.13 AND 22.18**
26)
27)
28)

29 **I. CONSENT AGREEMENT**

30 The United States Environmental Protection Agency (“EPA”) and Qantas Airways
31 Limited (“Respondent”) agree to settle this matter and consent to the entry of this Consent
32 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
33 proceeding in accordance with 40 C.F.R. §§22.13(b) and 22.18(b).

34 **A. AUTHORITY AND PARTIES**

35 1. This administrative proceeding for the assessment of a civil administrative penalty
36 is initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
37 U.S.C. § 136, et seq. (hereinafter referred to as “FIFRA” or the “Act”), and the Consolidated
38 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
39 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

40 2. Complainant is the Manager of the Toxics Section of the Enforcement and
Compliance Assurance Division, EPA Region IX, who has been duly delegated to commence

1 and settle an enforcement action in this matter.

2 3. Respondent is an international air carrier incorporated under the laws of the
3 Commonwealth of Australia with facilities or businesses in Honolulu, Hawaii and Los Angeles,
4 California.

5 **B. STATUTORY AND REGULATORY AUTHORITIES**

6 4. Pursuant to Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19
7 C.F.R. § 12.112, an importer desiring to ship pesticides or pesticide devices into the United
8 States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and
9 Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United
10 States, or, as an alternative to submitting an NOA, the importer or its agent may file an entry via
11 the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE)
12 Data Processing System.

13 5. The FIFRA requirement to submit a NOA prior to importing a pesticide or device
14 into the United States protects against unreasonable risks to human health or the environment by
15 providing EPA with vital information about pesticides and devices before their arrival into the
16 United States for distribution or sale. NOAs provide information - including active ingredients,
17 quantities, countries of origin, identity of producing establishments, carriers, and ports of entry-
18 that enables EPA to make informed decisions about whether importation will pose unreasonable
19 adverse risks to public health or the environment and, also, provide critical contact information
20 in the event of an emergency related to the movement of potentially harmful pesticides or
21 devices.

22 6. Under section 2(s) of FIFRA, 7 U.S.C. §136 s), a person is “any individual,
23 partnership, association, corporation, or any organized group of persons whether incorporated or
24 not.”

25 7. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), a pesticide is, among other
26 things, “any substance or mixture of substances intended for preventing, destroying, repelling, or
27 mitigating any pest.”

28 8. The term “to distribute or sell” means to distribute, sell, offer for sale, hold for
29 distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or
30 receive and (having so received) deliver or offer to deliver. Section 2(gg) of FIFRA, 7 U.S.C. §
31 136(gg).

1 9. The term “pest” includes (1) any insect, rodent, nematode, fungus, weed, or (2)
2 any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-
3 organism (except viruses, bacteria, or other micro-organisms on or in living man or other living
4 animals) which the Administrator declares to be a pest under FIFRA section 25(c)(1). Section
5 2(t) of FIFRA, 7 U.S.C. §136(t).

6 *Unlawful Acts*

7 10. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is
8 unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail
9 to file reports required by FIFRA. Such reports include, but are not limited to, NOAs submitted
10 to EPA for each shipment of pesticides or devices that are imported into the United States under
11 Section 17 of FIFRA, 7 U.S.C. § 136o, and 19 C.F.R. § 12.112(a).

12 11. Section 3(a) of FIFRA, 7 U.S.C. § 136a, states that "no person in any State may
13 distribute or sell to any person any pesticide that is not registered under this Act." See also 40
14 C.F.R. 152.15, which also provides that no person may distribute or sell any pesticide that is not
15 registered under the Act, with certain exceptions not applicable here.

16 *Penalty*

17 12. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
18 distributor who violates any provision of the Act may be assessed a civil penalty of not more
19 than \$20,288 for violations that occurred after November 2, 2015 and are assessed on or after
20 January 13, 2020. Section 14(a)(1) of the Act, 7 U.S.C. § 136l(a)(1), as amended by the Civil
21 Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

22 **C. COMPLAINANT’S ALLEGATIONS**

23 Complainant alleges:

24 13. Respondent is a “*person*” as that term is defined by section 2(s) of FIFRA, 7
25 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

26 14. For all shipments of pesticides relevant to this CAFO, Respondent is the importer
27 of record.

28 *Elsil Drinking Water Purifier, made by Elsan Ltd.*

29 15. At times relevant to this CAFO, Respondent imported into the United States the
30 product *Elsil Drinking Water Purifier*, made by Elsan Ltd. (“Elsan Elsil”).

31 16. Elsan Elsil is a water purifier that protects against micro-organisms in drinking

1 water.

2 17. The active ingredients of Elsan Elsil include Hydrogen Peroxide and silver. *JML*

3 18. Micro-organisms in drinking water are “pests” and Elsan Elsil is a “pesticide” as
4 those terms are defined by FIFRA.

5 19. Respondent imported Elsan Elsil for use as a pesticide.

6 20. Elsan Elsil is not a registered pesticide in the United States.

7 21. The Elsan Elsil imported by Respondent was not labeled in accordance with 40
8 CFR Part 156.

9 **Counts 1 – 9: Failure to File NOA for each shipment of Elsan Elsil**

10 22. Respondent imported into the United States shipments of the product Elsan Elsil
11 that arrived on or about May 8, 2019, June 14, 2019, June 29, 2019, August 8, 2019, September
12 1, 2019, November 2, 2019, November 25, 2019, December 24, 2019, and February 10, 2020.

13 23. On each of the nine occasions listed in Paragraph 22, Respondent is the importer
14 of Elsan Elsil.

15 24. On each of the nine occasions listed in Paragraph 22, Respondent failed to file a
16 NOA for each shipment and import of the pesticide Elsan Elsil as required by Section 17 of
17 FIFRA, 7 U.S.C. § 136o, and 19 C.F.R. § 12.112(a).

18 25. On each of the nine occasions listed in Paragraph 22, Respondent violated Section
19 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) by failing to file the NOA for each shipment of
20 this pesticide imported into the United States.

21 **Counts 10 – 18: Distribution and Sale of Unregistered Pesticide**

22 26. On each of the nine occasions listed in Paragraph 22, Respondent shipped Elsan
23 Elsil to its facilities in the United States, and thus Respondent “distributed or sold” Elsan Elsil as
24 the term “to distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

25 27. On none of the nine occasions did Respondent’s shipment of Elsan Elsil to its
26 facilities in the United States meet the criteria of 40 CFR 152.30, the section in the FIFRA
27 regulations that describes when an unregistered pesticide may be distributed or sold, or otherwise
28 transferred.

29 28. In each of these nine instances, Respondent violated section 12(a)(1)(A) of
30 FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling to any person an unregistered
31 pesticide.

1 **Calla 1452 Neutral Disinfectant Cleaner**

2 29. Calla 1452, a Supplemental Distributor Product assigned the Distributor Product
3 Number 1839-168-67026, is a disinfectant, fungicide, virucide, and mildewstat, distributed in
4 connection with the EPA product registered to Stepan Company, under EPA Registration
5 Number 1839-168. The active ingredients of Calla 1452 are **1.05%** Alkyl* dimethyl benzyl
6 ammonium chloride *(50%C14, 40%C12, 10%C16); **.814%** 1-Decanaminium, N,N-dimethyl-N-
7 octyl-, chloride; **.407%** 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride and **.407** 1-
8 Octanaminium, N,N-dimethyl-N-octyl-, chloride.

9 **Count 19: Failure to File NOA for Calla 1452**

10 30. On or about April 16, 2020, Respondent imported into the United States the
11 product *Calla 1452 Neutral Disinfectant Cleaner* (“Calla 1452”).

12 31. Respondent failed to file a NOA for this shipment of Calla 1452, EPA Distributor
13 Product Number 1839-168-67026, imported on or about April 16, 2020 as required by Section 17
14 of FIFRA, 7 U.S.C. § 136o, and 19 C.F.R. § 12.112(a).

15 32. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N) by
16 failing to file the NOA for Calla 1452, EPA Distributor Product Number 1839-168-67026,
17 imported into the United States on or about April 16, 2020.

18 **D. RESPONDENTS’ ADMISSIONS**

19 33. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this
20 proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this
21 CAFO and over Respondent; (ii) **neither admits nor denies** the specific factual allegations
22 contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this
23 CAFO, (iv) agrees to pay, and consents to the assessment of, the civil administrative penalty
24 under Section I.E of this CAFO; (v) waives any right to contest the allegations contained in
25 Section I.C of this CAFO; and (vi) waives the right to appeal the proposed final order contained
26 in this CAFO.

27 **E. CIVIL ADMINISTRATIVE PENALTY**

28 34. Respondent consents to the assessment of a civil administrative penalty in the
29 amount of **ONE HUNDRED THOUSAND DOLLARS (\$ 100,000)** as final settlement and
30 complete satisfaction of the civil claims against Respondent arising from the facts alleged in
31 Section I.C of the CAFO and under the Act. Respondent provided EPA with information that

1 demonstrates Respondent has a limited ability to pay civil penalties at this time. Therefore,
2 Respondent shall pay the penalty amount in installment payments no later than the specified
3 dates as set out in Attachment A to this CAFO, and for any penalty amount not paid within thirty
4 (30) days of the effective date of this CAFO Respondent shall also pay interest on that amount
5 calculated from the effective date of this CAFO at the IRS underpayment rate.

6 a. Respondent shall pay the civil penalty by one of the methods listed below:

7 i. Respondent may pay online through the Department of the Treasury
8 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
9 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
10 complete the SFO Form Number 1.1.

11 ii. Respondent may also pay the civil penalty using any method, or
12 combination of methods, provided on the following website:

13 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>
14

15 If clarification regarding a particular method of payment remittance is needed,
16 contact the EPA's Cincinnati Finance Center at (513) 487-2091.
17

18 b. Respondent shall identify payment with the name and docket number of this
19 case; and
20

21 c. Within 24 hours of each payment, Respondent shall provide EPA with proof of
22 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
23 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
24 other information required to demonstrate that payment has been made according to EPA
25 requirements, in the amount due, and identified with the name and docket number of this case),
26 including proof of the date payment was made, along with a transmittal letter, indicating
27 Respondent's names, the case title, and docket number, to the following addresses:
28

29 Regional Hearing Clerk
30 U.S. EPA, Region IX
31 r9HearingClerk@epa.gov
32

33 Brandon Boatman
34 Toxics Branch
35 Enforcement and Compliance Assurance Division
36 U.S. EPA, Region IX
37 Boatman.Brandon@epa.gov
38

1 35. In the event that Respondent fails to pay the civil administrative penalty assessed
2 above by the due date, Respondent shall pay to EPA a stipulated penalty in the amount of FIVE
3 HUNDRED DOLLARS (\$500) for each day that payment is late in addition to the unpaid
4 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
5 immediately become due and payable.

6 36. If Respondent fails to pay the penalty assessed by this CAFO in full or for each
7 installment payment by each of the dates specified in Paragraph 34, the entire unpaid balance and
8 accrued interest shall become immediately due and owing. Respondent's tax identification
9 numbers may be used for collecting or reporting any delinquent monetary obligation arising from
10 this CAFO (see 31 U.S.C. § 7701). If payment is not received in full by the date specified in
11 Paragraph 34, interest, penalty and administrative costs will accrue from the effective date of this
12 CAFO as described at 40 CFR §13.11. The reduced penalty amount and installment payment
13 terms in Paragraph 34 are based on statements referenced in the certified statement in Paragraph
14 37 describing how the COVID-19 pandemic has negatively impacted Respondent's financial
15 health and any false statement made by Respondent may result in voiding these terms without
16 limiting EPA's ability to seek penalties or pursue other legal action. In addition, if this matter is
17 referred to another department or agency (e.g., the Department of Justice, the Internal Revenue
18 Service), that department or agency may assess its own administrative costs, in addition to EPA's
19 administrative costs, for handling and collecting Respondent's overdue debt. Respondent's
20 failure to pay in full the civil administrative penalty by its due date also may also lead to any or
21 all of the following actions:

22 a. The debt being referred to a credit reporting agency, a collection agency, or to
23 the Department of Justice for filing of a collection action in the appropriate United States District
24 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
25 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

26 b. The debt being collected by administrative offset (i.e., the withholding of
27 money payable by the United States to, or held by the United States for, a person to satisfy the
28 debt the person owes the Government), which includes, but is not limited to, referral to the
29 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
30 and H.

31 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)

1 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
2 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
3 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
4 of-credit. 40 C.F.R. §§ 13.17.

5 **F. RESPONDENT CERTIFICATION**

6 37. In executing this CAFO, Respondent certifies that the information it has supplied
7 concerning this matter was at the time of submission, and is at the time of signature to this
8 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
9 in Section I.C of this CAFO. This certification includes, but is not limited to, the information
10 Respondent supplied to EPA during penalty negotiations, including all statements describing
11 how COVID-19 negatively impacted respondent's financial health and each submission,
12 response, and statement made by Respondent to establish its inability to pay the full penalty
13 proposed by EPA for the violations alleged in Section I.C. of this CAFO. Under 18 U.S.C. §
14 1001, submitting false or misleading information can result in significant penalties, including the
15 possibility of fines and imprisonment for knowing submission of such information.

16 **G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.**

17 38. This Consent Agreement constitutes the entire agreement between the Respondent
18 and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or
19 penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty
20 liability against Respondent for the violations alleged in Section I.C of this CAFO.

21 39. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
22 liabilities for federal civil penalties for the violations specifically alleged in Section I.C of this
23 CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability
24 for violations of any provision of any federal, state, or local law, statute, regulation, rule,
25 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
26 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
27 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
28 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.
29 This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to
30 comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and
31 permits.

1 40. Except as set forth in Paragraph **36** above, EPA and Respondent shall each bear
2 its own fees, costs, and disbursements in this action.

3 41. For the purposes of state and federal income taxation, Respondent shall not claim
4 a deduction for any civil penalty payment made pursuant to this CAFO.

5 42. This CAFO constitutes an enforcement action for purposes of considering
6 Respondent's compliance history in any subsequent enforcement action. This CAFO will be
7 available to the public and does not contain any confidential business information.

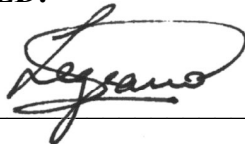
8 43. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of
9 this CAFO shall be the date on which the accompanying Final Order, having been signed by the
10 Regional Judicial Officer, is filed.

11 44. The provisions of this CAFO shall be binding on Respondent and on
12 Respondent's officers, directors, employees, agents, servants, authorized representatives,
13 successors, and assigns.

14 45. The undersigned representatives of each party to this Consent Agreement certify
15 that each is duly authorized by the party whom he or she represents to enter into the terms and
16 conditions of this Consent Agreement and Final Order and bind that party to it.

17
18 **QANTAS AIRWAYS LIMITED:**

19
20
21 Date: 14 October 2020 By: _____



22
23
24 Name: Jean-Michel LEGRAND

25
26
27 Title: Head of Procurement
28

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

2
3
4 Date: 11/9/2020

5 By: _____

MATTHEW
SALAZAR

Digitally signed by
MATTHEW SALAZAR
Date: 2020.11.09
16:46:40 -08'00'

6 MATT SALAZAR
7 Manager, Toxics Branch
8 Enforcement and Compliance Assurance Division
9 U.S. Environmental Protection Agency,
10 Region IX
11
12
13

1 **II. FINAL ORDER**

2
3 IT IS HEREBY ORDERED that this Consent Agreement and Final Order (EPA Docket
4 No. FIFRA-09-2021-0011) be entered and that Respondent shall pay a civil administrative
5 penalty in the amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** plus
6 interest in accordance with the terms of this Consent Agreement and Final Order.
7
8

9
10 Date: _____

11 **Steven L. Jawgiel**

12 _____
13 Steven Jawgiel
14 Regional Judicial Officer
15 U.S. EPA, Region IX

Digitally signed by Steven L.
Jawgiel
Date: 2020.11.18 12:30:34
-08'00'

Attachment A

Payment Schedule for \$100,000:

	To by paid no later than:	Payment	Principal	Interest
First Payment	December 1, 2020	25,257.53	25,000.00	257.53
Second Payment	March 1, 2021	25,365.75	25,000.00	365.75
Third Payment	June 1, 2021	25,249.32	25,000.00	249.32
Fourth Payment	September 1, 2021	25,124.66	25,000.00	124.66
Totals:		100,997.26	100,000.00	997.26

Respondent may pay the penalty earlier or in fewer payments than set out in this installment plan but the full penalty amount including all interest owed is to be paid no later than September 1, 2021.

CERTIFICATE OF SERVICE

This is to certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Qantas Airways Limited* (FIFRA-09-2021-0011), has been filed with the Regional Hearing Clerk, and a copy was served on the Respondent and on the Complainant as indicated below:

RESPONDENT

Nick Brodribb
Head of Legal
Qantas Airways Limited
via email:
nickbrodribb@qantas.com.au

COMPLAINANT

Margaret Alkon
Assistant Regional Counsel
U.S. EPA - Region 9
via email:
Alkon.Margaret@epa.gov

Date Filed: _____, 2020

Steven Armsey
Regional Hearing Clerk
EPA, Region 9