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4 Region IX
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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
9 REGION IX

10 In the matter of:) Docket No. FIFRA-09-2024-0085
11)
12 Flora Coatings, Inc.,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14 _____)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and Flora
17 Coatings, Inc. (“Respondent”) agree to settle this matter and consent to the entry of this Consent
18 Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and concludes this
19 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
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21 A. AUTHORITY AND PARTIES

- 22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for the sale and/or distribution of an
25 unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
26 2. Complainant is the Manager of the Toxics Section in the Enforcement and
27 Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to
28 bring this action and to sign a consent agreement settling this action.

1 3. Respondent is Flora Coatings, Inc., a Delaware corporation with headquarter offices
2 located at 275 North Gateway Drive, Suite #137, in Phoenix, Arizona.

3 B. STATUTORY AND REGULATORY BASIS

4 4. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it is unlawful
5 for any person to distribute or sell to any person any pesticide that is not registered under Section
6 3 of FIFRA, 7 U.S.C. § 136a.

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

10 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to
11 mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship,
12 deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to
13 deliver.

14 7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any
15 substance or mixture of substances intended for preventing, destroying, repelling, or mitigating
16 any pest.

17 8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent,
18 nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus,
19 bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in
20 living man or other living animals) which the Administrator declares to be a pest under Section
21 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

22 9. The Administrator of EPA may assess a civil penalty against any registrant,
23 commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any
24 provision of FIFRA of up to \$24,255 for each offense that occurred after November 2, 2015,
25 where penalties are assessed on or after December 27, 2023. See Section 14(a)(1) of FIFRA, 7
26 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19
27 (as amended by 88 Fed. Reg. 89309 (December 27, 2023)).
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C. ALLEGED VIOLATIONS

10. At all times relevant to this CAFO, Respondent was a corporation and therefore a “person” as that term is 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.

11. At all times relevant to this CAFO, the labeling for the product, “INVESIL,” bore numerous pesticidal claims including “strong antimicrobial agent,” “antimicrobial claim on the active ingredient,” and “INVESIL is undergoing extensive testing against [a] wide variety of pathogens including aggressive viruses.” “INVESIL” is thus a substance intended for use as an antimicrobial and virucide and is therefore a “pesticide,” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

12. Between April 2020 and April 2022, Respondent “distributed or sold” as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide, “INVESIL,” by supplying it to consignees located in the United States for trial and testing purposes.

13. At all times relevant to this CAFO, the pesticide, “INVESIL,” that Respondent “distributed or sold” in 29 separate instances between April 2020 and April 2022 was not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

14. By distributing or selling the unregistered pesticide, “INVESIL,” in 29 separate instances between April 2020 and April 2022, Respondent committed 29 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

D. RESPONDENT’S ADMISSIONS

15. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the proposed Final Order contained in this CAFO.

1 E. CIVIL ADMINISTRATIVE PENALTY

2 16. In full and final settlement of the violations specifically alleged in Section I.C of this
3 CAFO, Respondent shall pay a civil administrative penalty of FIVE HUNDRED DOLLARS
4 (\$500). Respondent shall pay this civil penalty within thirty (30) days of the effective date of this
5 CAFO. The civil penalty shall be paid by remitting a certified or cashier's check, including the
6 name and docket number of this case, for the amount, payable to "Treasurer, United States of
7 America," (or be paid by one of the other methods listed below) and sent as follows:

8 Regular Mail:

9 U.S. Environmental Protection Agency
10 Fines and Penalties
11 Cincinnati Finance Center
12 PO Box 979077
13 St. Louis, MO 63197-9000

14 Wire Transfers:

15 Wire transfers must be sent directly to the Federal Reserve Bank in New
16 York City with the following information:
17 Federal Reserve Bank of New York
18 ABA = 021030004
19 Account = 68010727
20 SWIFT address = FRNYUS33
21 33 Liberty Street
22 New York, NY 10045
23 Beneficiary = U.S. Environmental Protection Agency

24 Certified or Overnight Mail:

25 U.S. Bank
26 1005 Convention Plaza
27 Mail Station SL-MO-C2GL
28 ATTN Box 979077
St. Louis, MO 63101

ACH (also known as Remittance Express or REX):

Automated Clearinghouse (ACH) payments to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account = 31006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court

1 Riverdale, MD 20737

2 Remittance Express (REX) = (866) 234-5681

3 On Line Payment:

4 This payment option can be accessed from the information below:

5 www.pay.gov
6 Enter "SFO 1.1" in the search field
7 Open form and complete required fields

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

9 A copy of each check, or notification that the payment has been made by one of the other
10 methods listed above, including proof of the date payment was made, shall be sent with a
11 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
12 following regular mail or email addresses:

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14 Regional Hearing Clerk
15 Office of Regional Counsel (ORC-1)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105
19 R9HearingClerk@epa.gov

17 Savannah Merritt
18 Toxics Section
19 Enforcement and Compliance Assurance Division (ENF-2-3)
20 U.S. Environmental Protection Agency, Region IX
21 75 Hawthorne Street
22 San Francisco, CA 94105
23 merritt.savannah.1@epa.gov

21 17. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
22 from Respondent's federal, state, or local taxes, nor shall Respondent allow or otherwise
23 facilitate any other person to use such payment as a tax deduction.

24 18. If Respondent fails to pay the assessed civil administrative penalty of FIVE
25 HUNDRED DOLLARS (\$500) as identified in Paragraph 16, by the deadline specified in that
26 Paragraph, then Respondent shall pay a stipulated penalty to EPA of ONE HUNDRED
27 DOLLARS (\$100) per day in addition to the assessed penalty. Stipulated penalties shall accrue
28 until such time as the assessed penalty and all accrued stipulated penalties are paid and shall

1 become due and payable upon EPA's written request. Failure to pay the civil administrative
2 penalty specified in Paragraph 16 by the deadline specified in that Paragraph may also lead to any
3 or all of the following actions:

4 (1) EPA may refer the debt to a credit reporting agency, a collection
5 agency, or to the Department of Justice for filing of a collection action in the appropriate United
6 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
7 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
8 collection proceeding.

9 (2) The U.S. Government may collect the debt by administrative offset
10 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
11 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
12 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
13 C.F.R. §§ 13(C) and 13(H).

14 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
15 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
16 business with EPA or engaging in programs EPA sponsors or funds.

17 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
18 Government may assess interest, administrative handling charges, and nonpayment penalties
19 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
20 civil administrative penalty specified in Paragraph 16 by the deadline specified in that Paragraph.

21 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
22 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
23 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
24 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
25 (30) days of the effective date of this CAFO.

26 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
27 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
28 either actual or average cost incurred (including both direct and indirect costs), for every month

1 in which any portion of the assessed penalty is more than thirty (30) days past due.

2 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
3 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
4 may be assessed on all debts more than ninety (90) days delinquent.

5 F. CERTIFICATION OF COMPLIANCE

6 19. 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. Under 18 U.S.C. § 1001, submitting false or misleading
10 information can result in significant penalties, including the possibility of fines and
11 imprisonment for knowing submission of such information.

12 G. RETENTION OF RIGHTS

13 20. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's
14 liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C
15 of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil
16 liability for violations of any provision of any federal, state, or local law, statute, regulation, rule,
17 ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal
18 liability. EPA specifically reserves any and all authorities, rights, and remedies available to it
19 (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address
20 any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO.

21 21. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's
22 duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances,
23 and permits.

24 H. ATTORNEYS' FEES AND COSTS

25 22. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in
26 this proceeding.

I. EFFECTIVE DATE

23. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

24. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

25. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT FLORA COATINGS, INC.:

6/16/2024
DATE


ATUL TIWARI
~~President~~ CEO
Flora Coatings, Inc.

FOR COMPLAINANT EPA:

7/15/2024
DATE

MATTHEW SALAZAR
Digitally signed by
MATTHEW SALAZAR
Date: 2024.07.15
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MATT SALAZAR, P.E.
Manager, Toxics Section
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Flora Coatings, Inc., having entered into the foregoing Consent Agreement, IT IS
3 HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2024-0085) be entered, and
4 Respondent shall pay a civil administrative penalty in the amount of FIVE HUNDRED
5 DOLLARS (\$500) and comply with the terms and conditions set forth in the Consent
6 Agreement.

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8 BEATRICE WONG Digitally signed by
BEATRICE WONG
Date: 2024.07.16
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10 DATE

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12 BEATRICE WONG
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing Consent Agreement and Final Order in the matter of Flora
3 Coatings Inc., (FIFRA-09-2024-0085) was filed with the Regional Hearing Clerk, U.S. EPA,
4 Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of
the same was sent to the following parties via electronic mail, as indicated below:

5 **RESPONDENT** Atul Tiwari
6 CEO
7 Flora Coatings, Inc.
atul@floracoating.com

8
9 **COMPLAINANT** Edgar Coral
10 Assistant Regional Counsel ORC-2
11 United States Environmental Protection Agency, Region IX
coral.edgar@epa.gov

12
13
14 _____
Grace Elam Date
15 Regional Hearing Clerk
16 U.S. EPA - Region IX