



U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 1 – NEW ENGLAND

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

BY HAND

September 18, 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

RECEIVED

SEP 18 2018

EPA ORC
Office of Regional Hearing Clerk

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

Dear Ms. Santiago:

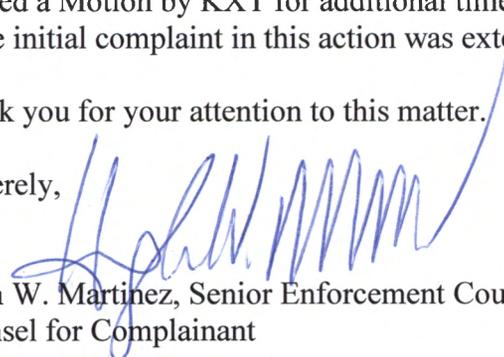
Enclosed for filing in the above-referenced action, please find the original and one copy of an Amended Complaint and Notice of Opportunity for Administrative Hearing (“Amended Complaint”) as well as a Certificate of Service documenting that a copy of the Amended Complaint was mailed to representatives of the Respondents named in the Amended Complaint, including the originally named Respondent, KX Technologies LLC (“KXT”), and a Respondent added in the Amended Complaint, KX Technologies Pte. Ltd. (“KXT Limited”).

Please note that the Amended Complaint is being filed pursuant to 40 C.F.R. § 22.14(c) which allows Complainant to file an amended complaint once, as of right, before an answer is filed. The same section of the Consolidated Rules also allows Respondents an additional 20 days to file an answer in response to the Amended Complaint.

At this time, under an August 15, 2018 Order issued by the Regional Judicial Officer which granted a Motion by KXT for additional time to file an answer, the deadline for filing an answer to the initial complaint in this action was extended to October 5, 2018.

Thank you for your attention to this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Counsel for Complainant

Enclosures

cc: Peter Cook, 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 Amended Complaint and Notice of Opportunity for Hearing has been provided to the following persons on the date noted below:

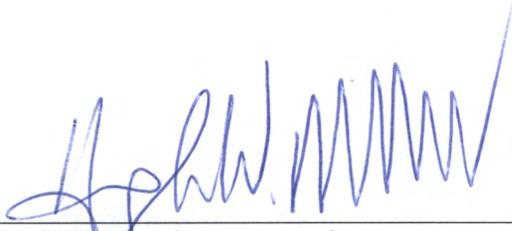
Original and one copy,
hand-delivered to:

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, by First Class Mail,
Return Receipt Requested, each to:

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

Peter Cook
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 (OES 04-3)
Boston, MA 02109-3912

Date:

9-18-18

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
55 Railroad Avenue
West Haven, CT 06516-4143

and

KX Technologies Pte. Ltd.
No. 2 Serangoon North Avenue 5
Singapore 554911,

Respondents.

Proceedings under Section
14(a) of the Federal
Insecticide, Fungicide, and
Rodenticide Act, as amended,
7 U.S.C. Section 136l(a).

RECEIVED

SEP 18 2018

EPA ORC *WS*
Office of Regional Hearing Clerk

Docket No. FIFRA-01-2018-0049

**AMENDED
COMPLAINT and NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

This Amended Complaint and Notice of Opportunity for Hearing (“Complaint”) is being issued under Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136l(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules”). This Complaint alleges that the Respondents, KX Technologies LLC (“KXT LLC”) and KX Technologies Pte. Ltd. (“KXT Limited”), have violated Sections 12(a)(2)(L) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(L) and 136j(a)(2)(N), and the regulations promulgated pursuant to FIFRA, at 40 C.F.R. Parts 150 – 189 *et seq.* and 19 C.F.R §§ 12.110 – 12.117, and provides written notice that the United States Environmental Protection Agency (“EPA”) proposes to assess civil

administrative penalties for such violations. The Complaint also provides notice of Respondents' opportunity to request a hearing on the proposed penalty. The Complainant is, by lawful delegation, the Legal Enforcement Manager in the Office of Environmental Stewardship, EPA Region 1.

GENERAL ALLEGATIONS

1. Respondent, KX Technologies LLC, is a limited liability corporation organized under the laws of the State of Delaware with a principal place of business located at 55 Railroad Avenue in West Haven, Connecticut (the "West Haven Establishment").

2. Respondent, KX Technologies Pte. Ltd., is a Singapore private limited company with a principal place of business in Singapore (the "Singapore Establishment") and an official mailing address at 55 Railroad Avenue in West Haven, Connecticut.

3. Each Respondent, KXT LLC and KXT Limited, is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder. In addition to the West Haven and Singapore Establishments, KXT LLC and KXT Limited (collectively, "Respondents") also own or operate a facility in Iuka, Mississippi.

4. Respondents import into the United States, produce, distribute, and/or sell water filtration devices for various applications, such as removal of sediment, chlorine, volatile organic compound, lead, and microbial contaminants.

5. At all times relevant to the violations alleged in this Complaint, each Respondent produced water filtration devices at the West Haven and/or Singapore Establishments and, accordingly, each was a "producer" as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 C.F.R. § 167.3.

6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines "to distribute or sell" as "to

distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

7. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

8. Each of Respondents’ establishments in West Haven, Iuka, and Singapore is an “establishment” as defined under Section 2(dd) of FIFRA, each has been registered as pesticide-producing or device-producing establishment pursuant to Section 7(a) and (b) of FIFRA, 7 U.S.C. § 136e(a) and (b), and 40 C.F.R. § 167.20, and each has been assigned, and is identified by, the following unique EPA Establishment Number:

- a. West Haven: EPA Est. No. 69625-CT-1;
- b. Iuka: EPA Est. No. 69625-MS-1; and
- c. Singapore: EPA Est. No. 85075-SGP-1.

9. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), defines the term “device” as “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

10. Among the products Respondents produce are the following three pesticidal products, each of which is believed to be a “device” within the meaning of FIFRA Section 2(h):

- a. “PureSource Ultra WF;”
- b. “PureSource 2;” and
- c. “PureSource 3.”

11. EPA regulations at 40 C.F.R Part 152, Subpart Z enumerate the provisions of FIFRA and FIFRA regulations that are applicable to devices. *See* 40 C.F.R § 152.500. Such applicable provisions include, among others, the following:

- a. Labeling requirements under Section 2(q)(1) of FIFRA, 7 U.S.C. §136(q)(1), and 40 C.F.R. Part 156;
- b. Establishment registration and reporting requirements under FIFRA Section 7, 7 U.S.C. § 136e, and 40 C.F.R. Part 167;
- c. Requirements relating to books and records and establishment inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, and 40 C.F.R. Part 169;
- d. Importation requirements under FIFRA Section 17, 7 U.S.C. § 136o;
- e. Child-resistant packaging requirements under Section 25(c)(3) of FIFRA, 7 U.S.C. § 136w(c)(3); and,
- f. Requirements relating to FIFRA violations, enforcement, and penalties under Sections 12, 13, and 14 of FIFRA, 7 U.S.C. §§ 136j, 136k, and 136l.

See also 41 Fed. Reg. 51065 (November 19, 1976).

12. The import of pesticides and devices into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the EPA Administrator.

13. FIFRA Section 17(c) requires the Secretary of the Treasury to notify the EPA Administrator of the arrival of pesticides and devices in the United States.

14. FIFRA Section 17(e) requires the Secretary of the Treasury, in consultation with the Administrator, to prescribe regulations for the enforcement of FIFRA Section 17(c).

15. Pursuant to FIFRA Section 17(e), the Secretary of the Treasury, acting through the United States Custom Service, prescribed regulations for the enforcement of Section 17(c) of FIFRA at 19 C.F.R. §§ 12.110 – 12.117 (the “Import Regulations”).

16. The Import Regulations at 19 C.F.R. § 12.112(a) state, in pertinent part, that “an importer desiring to import pesticides or devices into the United States shall submit to the Administrator a Notice of Arrival of Pesticides and Devices (Environmental Protection Agency

Form 3540-1), hereinafter referred to as a Notice of Arrival, prior to the arrival of the shipment in the United States.”

17. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for “any person ... who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this subchapter.”

18. A Notice of Arrival (“NOA”) constitutes a report under Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), that must be filed with the EPA Administrator prior to the arrival of each shipment of pesticides or devices in the United States.

19. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the regulations at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticidal product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

20. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing, and reporting the required information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA on or before March 1 of the year following the calendar year which is the subject of the report.

21. Pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful for “any person ... who is a producer to violate any of the provisions of section [7 of FIFRA].”

22. On August 21, 2017, EPA inspectors conducted a scheduled FIFRA inspection at the West Haven Establishment (the “Inspection”).

23. During or as a result of the Inspection, EPA requested additional information from KXT LLC relating to its device imports from July 2016 through July 2017. Respondent KXT LLC provided such additional information to EPA regarding such device imports, on or about

September 13, 2017.

VIOLATIONS

COUNT 1 – FAILURE TO FILE IMPORT REPORTS

24. Paragraphs 1 through 23 are realleged and incorporated by reference.

25. Based upon information from the August 2017 Inspection and EPA's subsequent investigation, EPA finds that KXT LLC imported the PureSource Ultra WF, PureSource 2, and PureSource 3 devices on numerous occasions in 2016 and 2017, through ports of entry in New York, New York, and Santa Teresa, New Mexico, without filing NOAs with EPA, as required by Section 17 of FIFRA, 7 U.S.C. § 136o, and 19 C.F.R. § 12.112(a).

26. Upon information and belief, EPA finds that Respondent KXT LLC imported devices and introduced them into the stream of commerce for distribution or sale in the United States on numerous occasions in 2016 and 2017 without filing NOAs with EPA, in violation of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and the Import Regulations promulgated pursuant to FIFRA.

27. Accordingly, on numerous occasions in 2016 and 2017, Respondent KXT LLC violated Section 12(a)(2)(N) of FIFRA, and the Import Regulations by failing to file an NOA with EPA, each of which is an unlawful act under Section 12(a)(2)(N) and a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

COUNT 2 – FAILURE TO SUBMIT ANNUAL REPORTS (2016 REPORTING YEAR)

28. Paragraphs 1 through 27 are realleged and incorporated by reference.

29. During the calendar year 2016, both the West Haven and Singapore Establishments were registered with EPA as producing establishments under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167, Subpart E.

30. Notwithstanding the March 1, 2017 due date for reporting under FIFRA Section 7, Respondent KXT LLC did not submit its annual report for the 2016 reporting year for the West Haven Establishment until on or about the date of the Inspection (August 21, 2017).

31. Notwithstanding the March 1, 2017 due date for reporting under FIFRA Section 7, Respondent KXT Limited did not submit its annual report for the 2016 reporting year for the Singapore Establishment until on or about the date of the Inspection (August 21, 2017).

32. Respondents' failure to submit the required information for the 2016 reporting year on or before March 1, 2017 for the West Haven Establishment and the Singapore Establishment each constitutes a separate violation of 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E and an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

PROPOSED CIVIL PENALTY

33. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule") at 40 C.F.R. Part 19, this amount was increased to \$7,500 for violations occurring after December 6, 2013. *See* 78 Fed. Reg. 66643-48 (Nov. 6, 2013). Under the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 ("2015 Penalty Inflation Act"), effective August 1, 2016, the \$7,500 maximum penalty was raised to \$19,446 for such violations occurring after November 2, 2015 where the penalties are assessed on or after January 15, 2018. *See* 28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701 (Nov. 2, 2015); 81 Fed. Reg. 43091-96 (July 1, 2016); 83 Fed. Reg. 1190 (January 10, 2018).

34. The FIFRA requirement to submit reports (NOAs) to EPA prior to importing a pesticide or device into the United States protects against unreasonable risks to human health or the environment by providing EPA with vital information regarding the pesticide or device before its arrival into the United States for distribution or sale. NOAs provide important information regarding any pesticide or device entering the United States—including active ingredients, quantities, countries of origin, identity of producing establishments, carriers, and ports of entry—and enable EPA to make informed decisions about whether importation will pose unreasonable adverse risks to public health or the environment. NOAs also provide critical contact information in the event of an emergency related to the movement of potentially toxic pesticidal materials or products.

35. The FIFRA requirement that a producer operating a registered establishment report to EPA the type and amounts of each pesticidal product that it is currently producing, that is produced during the past year, and that it sold or distributed during the past year is important because these annual reports are generally the only mechanism available to EPA for obtaining information on the type and quantity of pesticidal products produced in registered domestic and foreign establishments. The requirement for registered establishments to report annual production and sales information helps EPA carry out compliance, risk assessment, and risk reduction functions important for protecting human health and the environment and for maintaining the integrity of the national program regulating pesticides and devices.

36. Based on the foregoing findings of violation of FIFRA, EPA seeks to assess a penalty of up to \$19,446 per violation for each separate violation alleged in Counts 1 and 2. The assessment of a penalty for violations is warranted because the violations are serious and involve: 1) importing pesticides or devices into the United States without submitting the required

reports (i.e., NOAs) with EPA and 2) failing to file annual reports of the type and amount of each pesticidal product produced, sold or distributed.

37. In determining the amount of the penalty to be assessed under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), EPA will take into account the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which include the appropriateness of the penalty to the size of the business of the person charged, the effect of the penalty on the person's ability to continue in business, and the gravity of the violation. EPA will also take into account its December 2009 "FIFRA Enforcement Response Policy" issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, as well as the May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements" (a copy of each of these policies accompanies this Complaint).

38. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for Respondents' FIFRA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules (enclosed).

39. Neither assessment nor payment of any administrative penalty shall affect Respondents' continuing obligation to comply with FIFRA and its implementing regulations.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

40. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with 5 U.S.C. § 554 and 40 C.F.R. § 22.14, Respondents have the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To avoid being found in default and having a penalty assessed without further proceedings, Respondents must file a written Answer **within thirty (30) days** of receipt of this Complaint. Any Answer should (1) clearly and directly admit, deny, or explain each of

the factual allegations contained in the Complaint, (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). The denial of any material fact or raising any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, must be sent 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, Massachusetts 02109-3912

41. Respondents should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action to Hugh W. Martinez, the attorney assigned to represent EPA in this matter, at:

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

42. The hearing that will be held upon Respondents' request will be conducted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*) and the Consolidated Rules.

43. If any Respondent fails to file a written Answer within thirty (30) days of the service of this Complaint, pursuant to 40 C.F.R. § 22.17(a), such Respondent may be found in default which, under the Consolidated Rules, constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing such that penalties may be assessed without

further proceedings.

INFORMAL SETTLEMENT CONFERENCE

44. Whether or not Respondents request a hearing, Respondents may confer informally with EPA to discuss the facts of this case, the proposed penalties, and/or the possibility of settlement. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondents in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order, signed by Complainant and Respondents, would be binding as to all terms and conditions specified therein. Any requests for an informal conference, and any other questions that Respondents may have regarding this Complaint, should be directed to the above-referenced EPA attorney, Hugh W. Martinez.

45. A request for an informal settlement conference does not extend any deadline in this proceeding, including the thirty (30) day period for the submission of a written Answer to this Complaint which deadline is only extended on a motion granted by the Regional Judicial Officer in accordance with the Consolidated Rules.

46. To explore the possibility of settlement in this matter, Respondents should contact Hugh W. Martinez, Senior Enforcement Counsel, at the address provided above, or by using his office telephone number (617-918-1867) or e-mail address (Martinez.hugh@epa.gov). Mr. Martinez has been designated to represent Complainant in this matter and is authorized, under 40 C.F.R. § 22.5(c)(4), to receive service on behalf of Complainant.


Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship

Date: 9/18/18