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1 NANCY J. MARVEL  
Regional Counsel

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3 EDGAR P. CORAL  
Assistant Regional Counsel  
U. S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3898

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7 UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
8 REGION IX

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10 In the matter of: ) Docket No. FIFRA-09-2008- **00 2 3**

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12 Eqyss International, Inc., )

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14 Respondent. )

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CONSENT AGREEMENT  
AND FINAL ORDER  
pursuant to 40 C.F.R. §§ 22.13(b),  
22.18(b)(2), and 22.18(b)(3)

I. CONSENT AGREEMENT

The United States Environmental Protection Agency ("EPA"), Region IX, and Eqyss International, Inc. ("Eqyss" or the "Respondent") agree to settle this matter and consent to the entry of this Consent Agreement and Final Order ("CAFO").

A. AUTHORITY AND PARTIES

1. This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a), for the assessment of a civil administrative penalty against Respondent for the sale and/or distribution of unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

2. Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division in EPA, Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture

1 of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1,  
2 dated June 9, 2005.

3 3. Respondent is Eqyss, a corporation that distributes specialty horse and pet products  
4 and is headquartered at 1210 Keystone Way in Vista, California.

5 **B. STATUTORY AND REGULATORY BASIS**

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

9 **C. ALLEGED VIOLATIONS**

10 5. Respondent is a corporation and therefore fits within the definition of “person” as that  
11 term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

12 6. “McNasty Anti-Chewing Spray,” “MicroTek Anti-Microbial Wrap and Blanket  
13 Wash,” “Marigold Horse Spray,” and “Marigold Mist” are substances intended for preventing,  
14 destroying, repelling, or mitigating any pest and are therefore “pesticides” as that term is defined  
15 in Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

16 7. On or about May 23, 2007, June 20, 2007, July 9, 2007, July 10, 2007, September 10,  
17 2007, October 2, 2007, November 20, 2007, and December 13, 2007, Respondent “distributed or  
18 sold,” as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide  
19 “McNasty Anti-Chewing Spray.”

20 8. On or about February 23, 2007, June 20, 2007, July 9, 2007, August 1, 2007, and  
21 September 10, 2007, Respondent “distributed or sold,” as those terms are defined by Section  
22 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide “MicroTek Anti-Microbial Wrap and Blanket  
23 Wash.”

24 9. On or about May 23, 2007, July 9, 2007, July 10, 2007, and August 1, 2007,  
25 Respondent “distributed or sold,” as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C.  
26 § 136(gg), the pesticide “Marigold Horse Spray.”  
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1 10. On or about June 20, 2007, and September 10, 2007, Respondent “distributed or  
2 sold,” as those terms are defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the pesticide  
3 “Marigold Mist.”

4 11. At all times relevant to this CAFO, the pesticides “McNasty Anti-Chewing Spray,”  
5 “MicroTek Anti-Microbial Wrap and Blanket Wash,” “Marigold Horse Spray,” and “Marigold  
6 Mist” sold or distributed by Respondent were not registered under Section 3 of FIFRA, 7 U.S.C.  
7 § 136a.

8 12. By distributing or selling the unregistered pesticides “McNasty Anti-Chewing  
9 Spray,” “MicroTek Anti-Microbial Wrap and Blanket Wash,” “Marigold Horse Spray,” and  
10 “Marigold Mist” on nineteen total occasions between February 23, 2007 and December 13, 2007,  
11 as detailed above, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

12 13. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Civil Monetary Penalty Inflation  
13 Adjustment Rule, 40 C.F.R. Part 19, provide that any registrant, commercial applicator,  
14 wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be  
15 assessed a civil penalty by the EPA Administrator in an amount not to exceed \$6,500 for each  
16 offense occurring on or after March 15, 2004. Under the Enforcement Response Policy for  
17 FIFRA, dated July 2, 1990, and the Civil Monetary Penalty Inflation Adjustment Rule, the  
18 violations cited above would merit a pre-adjustment civil penalty of \$123,500, given the alleged  
19 violations’ gravity level, size of business, and applicable gravity adjustments.

20 **D. RESPONDENT’S ADMISSIONS**

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



1 deadlines specified in Exhibit 1, then Respondent shall pay to EPA the remaining balance of the  
2 civil administrative penalty specified in Paragraph 15 along with a stipulated penalty. The  
3 amount of the stipulated penalty will be THIRTY-SIX THOUSAND DOLLARS (\$36,000), and,  
4 together with the remaining balance of the civil administrative penalty specified in Paragraph 13,  
5 will be immediately due and payable upon the missed deadline. Failure to pay the civil  
6 administrative penalty specified in Paragraph 15 by the deadlines specified in Exhibit 1 may also  
7 lead to any or all of the following actions:

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

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

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

21 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.  
22 Government may assess interest, administrative handling charges, and nonpayment penalties  
23 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the  
24 civil administrative penalty specified in Paragraph 15 by the deadlines specified in Exhibit 1.

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

1 (30) days of the effective date of this CAFO.

2 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §  
3 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on  
4 either actual or average cost incurred (including both direct and indirect costs), for every month  
5 in which any portion of the assessed penalty is more than thirty (30) days past due.

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

9 **F. CERTIFICATION OF COMPLIANCE**

10 18. In executing this CAFO, Respondent certifies that: (1) it is no longer selling or  
11 distributing any unregistered pesticides in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §  
12 136j(a)(1)(A); and (2) it has complied with all other FIFRA requirements at all facilities under its  
13 control.

14 **G. RETENTION OF RIGHTS**

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

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

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H. ATTORNEYS' FEES AND COSTS

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

I. EFFECTIVE DATE

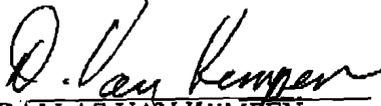
22. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the Final Order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

23. 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.

24. 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 EQYSS INTERNATIONAL, INC.:

9-11-08  
DATE  
  
DALLAS VAN KEMPEN  
President  
Eqyss International, Inc.  
1210 Kevstone Way #C  
Vista, CA 92081-8354

FOR COMPLAINANT EPA:

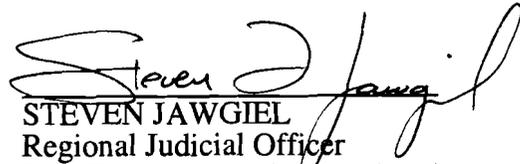
9/24/08  
DATE  
  
KATHERINE A. TAYLOR  
Associate Director for Agriculture  
Communities and Ecosystems Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

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II. FINAL ORDER

EPA and Eqyss International, Inc. having entered into the foregoing Consent Agreement,  
IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2008~~00 23~~) be  
entered, and Respondent shall pay a civil administrative penalty in the amount of SEVENTY-  
TWO THOUSAND DOLLARS (\$72,000), and comply with the terms and conditions set forth in  
the Consent Agreement and Exhibit 1.

09/25/08  
DATE

  
STEVEN JAWGIEL  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region IX

## EXHIBIT 1

### INSTALLMENT PAYMENT AND INTEREST SCHEDULE *In re Eqyss International, Inc.*

Payment Number	Installment Payment Due	Principal	Interest (At 3% Annum)
1	\$9,000.00	\$9,000.00	\$0
2	\$9,272.02	\$8,799.52	\$472.50
3	\$9,272.02	\$8,865.52	\$406.50
4	\$9,272.02	\$8,932.01	\$340.01
5	\$9,272.02	\$8,999.00	\$273.02
6	\$9,272.02	\$9,066.49	\$205.53
7	\$9,272.02	\$9,134.49	\$137.53
8	\$9,271.99	\$9,202.97	\$69.02
<b>Totals</b>	<b>\$73,904.11</b>	<b>\$72,000.00</b>	<b>\$1,904.11</b>

1 <sup>st</sup> Installment:	\$9,000.00	(Due within 30 days of the effective date of the Consent Agreement and Final Order)
2 <sup>nd</sup> Installment:	\$9,272.02	(Due within 120 days of the effective date of the Consent Agreement and Final Order)
3 <sup>rd</sup> Installment:	\$9,272.02	(Due within 210 days of the effective date of the Consent Agreement and Final Order)
4 <sup>th</sup> Installment:	\$9,272.02	(Due within 300 days of the effective date of the Consent Agreement and Final Order)
5 <sup>th</sup> Installment:	\$9,272.02	(Due within 390 days of the effective date of the Consent Agreement and Final Order)
6 <sup>th</sup> Installment:	\$9,272.02	(Due within 480 days of the effective date of the Consent Agreement and Final Order)

7 <sup>th</sup> Installment:	\$9,272.02	(Due within 570 days of the effective date of the Consent Agreement and Final Order)
8 <sup>th</sup> Installment:	\$9,271.99	(Due within 660 days of the effective date of the Consent Agreement and Final Order)
<b>Total Payment:</b>	<b>\$73,904.11</b>	

CERTIFICATION / CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Consent Agreement and Final Order, Docket No FIFRA-09-2008- <sup>09 23</sup> has been filed with the Region 9 Hearing Clerk and that a copy was sent certified mail (7005 3110 0002 8247 3760), return receipt requested, to:

Dallas Van Kempen  
Eqyss International, Inc.  
1210 Keystone Way  
Vista, CA 92081-8354

SEP 26 2008

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DATE



Danielle Carr  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105