



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 27 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rajesh Kasbekar
Kaz USA, Inc.
400 Donald Lynch Boulevard, Suite 300
Marlborough, Massachusetts 01752

Re: Kaz USA, Inc.
Ratified Consent Agreement and Final Order
Docket No. FIFRA-04-2019-3022(b)

Dear Mr. Kasbekar:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Should you have any questions about this matter or your compliance status in the future, please contact Kanoelehua Ho of the U.S. Environmental Protection Agency Region 4 staff at (404) 562-9162.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry L. Lamberth".

Larry L. Lamberth
Chief
Chemical Safety and Land Enforcement Branch

Enclosure

II. Preliminary Statements

3. Respondent Kaz is licensed to do business in the State of Massachusetts.
4. Respondent is a "person" as 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.
5. The term "pesticide" is defined by Section 2(u) of FIFRA, 7 U.S.C § 136(u), to mean any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
6. A "pest" is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).
7. The term "establishment" is defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd) and 40 C.F.R. § 167.3, to mean any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.
8. The term "to distribute or sell" as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
9. Pursuant to Section 17(c) FIFRA, 7 U.S.C. § 136o(c) and the regulations at 19 C.F.R. § 12.112, an importer desiring to ship pesticides or pesticide devices into the United States is required to submit to the EPA Administrator a Notice of Arrival of Pesticides and Devices (NOA) [EPA Form 3540-1], prior to the arrival of the shipment(s) into the United States, or a United States Customs and Border Protection (CBP) Automated Commercial Environment (ACE) Data Processing System entry, prior to the arrival of the shipment(s) into the United States.

10. The term “misbranded” as defined by Section 2(q) of FIFRA, 7 U.S.C. § 136 (q), includes labeling which bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.
11. Pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

III. Specific Allegations

12. On or around August 16, 2018, the licensed customs broker Expeditors International of Memphis (Expeditors) submitted an NOA concurrent with the filing of entry documentation via the CBP’s ACE Data Processing System on behalf of Kaz for the importation of one shipment under Entry Number 231-05993765, of the pesticide product Nosquito Stinger Insect Zapper and Mosquito Ocetenol Replacement Lure (EPA Reg. No. 70909-3-72336), Model number TZ15V2 (hereinafter TZ15V2) which contained a total of 16,576 boxes, each box containing one 3-gram lure and one electronic insect zapper device. The information provided to the EPA Region 4 through the CBP ACE System indicated that the shipment of TZ15V2 was scheduled to arrive at the Port of Memphis, Tennessee on or after August 7, 2018.
13. A copy of the product label uploaded by Expeditors into the ACE system for the shipment of the above-referenced pesticide did not fully match the pesticide’s most current EPA-approved master label. More specifically, the label included false and misleading claims that the product is effective at larger ranges than approved on the EPA-approved master label including, but not limited to: “Attracts & kills flying insects up to ½ acre coverage” and “Position unit approximately 25’ from human activity.”
14. On or around August 16, 2018, the EPA Region 4 informed Kaz and Expeditors by email that the 16,576 boxes of the pesticide product TZ15V2 associated with Entry Number 231-05993765 being imported by Kaz were misbranded due to the false and misleading statements on the

product label as noted in paragraph 13, and that the shipment should be held intact and not moved or further distributed until further notice.

15. On or around August 17, 2018, the EPA was contacted by Kaz via phone inquiring about the opportunity to potentially relabel the boxes. The EPA offered Kaz the following options: 1) move the shipment under a CBP Permit-to-Transfer to a CBP-bonded warehouse with an EPA producer establishment number where the relabel could take place; or 2) move the shipment under a Stop Sale, Use, or Removal Order (SSURO) issued by the EPA to an EPA-registered producer establishment. Additionally, the EPA requested that Kaz submit a table including the entry information, product number, and the relabeling process that Kaz was proposing for the boxes of the pesticide product.
16. On or around August 23, 2018, Expeditors submitted entry documents via the ACE system on behalf of Kaz for the importation of a second shipment, Entry Number 231-85001042, of the pesticide product TZ15V2 which contained a total of 8,288 boxes, each box containing one 3-gram lure and one electronic zapper device scheduled to arrive at the Port of Memphis, Tennessee on or after August 21, 2018.
17. After reviewing a copy of the label that was uploaded into the ACE System by Expeditors, the EPA determined that it did not match the EPA-approved master label in the same manner as described in paragraph 13 above.
18. The EPA denied entry of the shipment of the 8,288 boxes of TZ15V2 because the boxes were misbranded and emailed a Notice of Refusal of Admission to Kaz and Expeditors that declined to allow the misbranded pesticide to be used, sold or distributed in the United States.
19. On or around August 31, 2018, Kaz submitted to the EPA via email, a table outlining entry and product information and requested that the EPA allow Kaz to relabel the 24,864 misbranded boxes of TZ15V2 pesticide product described above at Easley Transportation, LLC, an EPA-

registered establishment (EPA Establishment Number 93827-TN-1) located at 4300 Air Trans Road, Memphis, Tennessee 38118. On or around September 12, 2018, Kaz agreed to the issuance of a SSURO in order to conduct the relabeling.

20. On or around September 26, 2018, Expeditors notified the EPA via email that a third shipment of the pesticide product TZ15V2, containing a total of 8,288 boxes of the pesticide product TZ15V2, with each box containing one 3-gram lure and one electronic insect zapper device, was currently on its way to the Port of Memphis, Tennessee. Expeditors submitted entry documents (Entry Number 231-85023947), via the ACE system on behalf of Kaz for this shipment which was scheduled to arrive at the Port of Memphis, Tennessee on or after September 18, 2018.
21. After reviewing the label that was provided in the ACE System, the EPA determined that it did not match the EPA-approved master label in the same manner as described for the prior two shipments, as noted in paragraphs 13 and 17 above.
22. On or around September 26, 2018, Kaz requested that the EPA allow Kaz to also relabel the 8,288 additional boxes of the TZ15V2 pesticide product associated with Entry Number 231-85023947 at Easley Transportation, LLC, an EPA-registered establishment noted above under a SSURO.
23. On September 28, 2018, the EPA issued a SSURO to Kaz which prohibited further sale, distribution, use or removal of the 33,152 boxes of the misbranded pesticide product TZ15V2, but also provided Kaz an opportunity to come into compliance by relabeling the boxes at an EPA-registered establishment, or exporting or destroying the product.
24. On or about January 31, 2018, Kaz informed the EPA of its intent to destroy 70 of the 33,152 boxes of the pesticide product, and that the remaining 33,082 boxes would be relabeled.
25. On March 6, 2019, the EPA terminated the SSURO after verifying that Kaz had destroyed 70 boxes of the pesticide product and had properly relabeled the remaining 33,082 boxes in

compliance with FIFRA.

26. The EPA alleges that by importing the boxes of misbranded pesticide product as described above in paragraphs 13, 17, and 21, Kaz distributed a misbranded pesticide on three occasions, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is, therefore, subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
27. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
28. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation(s).
29. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of **EIGHT THOUSAND SEVEN HUNDRED DOLLARS (\$8,700)** against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

30. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
31. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
32. Respondent consents to the assessment of the penalty proposed by the EPA and agrees to pay the civil penalty as set forth in this CAFO.
33. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA as it relates to its products.

34. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in Section III of this CAFO and shall not otherwise affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Compliance with this CAFO is not a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA, and it is the responsibility of Respondent to comply with FIFRA and other applicable federal, state and local laws and regulations.
35. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

V. Final Order

36. Respondent is assessed a civil penalty of **EIGHT THOUSAND SEVEN HUNDRED DOLLARS (\$8,700)**. Payment shall be paid within thirty (30) days of the effective date of this CAFO.
37. Respondent shall remit the penalty by either the electronic method below or a cashier's or certified check made payable to the "Treasurer, United States of America". **The check shall reference on its face the name of the Respondent and Docket Number of this CAFO.** The penalty shall be sent by one of the methods below.

Address for standard delivery:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Address for payments by USPS overnight mail or other delivery service (e.g., Federal Express, United Parcel Service, DHL, etc.):

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819.

Electronic Payment:

Any electronic payment method as indicated in EPA's electronic payment options website found at:
<https://www.epa.gov/financial/makepayment#electronic>

38. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street S.W.
Atlanta, Georgia 30303-8960;

Kanoelehua Ho
Chemical Safety Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

39. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
40. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment

penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

41. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
42. This CAFO shall be binding upon the Respondent, its successors and assigns.
43. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

VI. Effective Date

44. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Respondent: Kaz USA, Inc

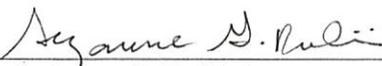
Docket No.: FIFRA-04-2019-3022(b)

By:  (Signature) Date: 8/28/2019

Name: CHRISTINE COVDREY (Typed or Printed)

Title: PRESIDENT (Typed or Printed)

Complainant: U. S. Environmental Protection Agency

By:  Date: 9/25/2019
Suzanne G. Rubini
Acting Director
Enforcement and Compliance Assurance Division

APPROVED AND SO ORDERED this 25th day of September 2019.


Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Kaz USA, Inc., Docket Number: FIFRA-04-2019-3022(b), to the addressees listed below:

Mr. Rajesh Kasbekar
Kaz USA, Inc.
400 Donald Lynch Boulevard, Suite 300
Marlborough, Massachusetts 01752

(via Certified Mail, Return Receipt Requested)

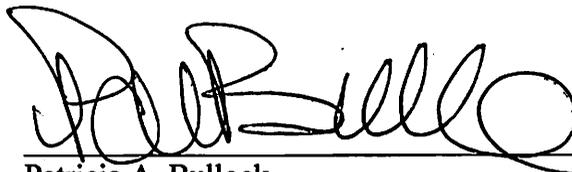
Kanoelehua Ho
Chemical Safety Section
Enforcement Compliance and Assurance Branch
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

Robert Caplan
Senior Attorney
Office of Regional Counsel
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(via EPA's internal mail)

Date: 9-27-19



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9511