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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. FIFRA-09-2016-00 05
11)
12 Clorox Professional Products Company,) 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 Clorox
17 Professional Products Company ("Respondent") agree to settle this matter and consent to the
18 entry of this Consent Agreement and Final Order ("CAFO"). This CAFO simultaneously
19 initiates and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

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 a
25 misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

26 2. Complainant is the Assistant Director of the Water and Pesticides Branch in the
27 Enforcement Division in EPA Region IX. The Administrator of EPA delegated to the Regional
28 Administrator of EPA Region IX the authority to bring and resolve this action under FIFRA by
EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of

1 Region IX further delegated the authority to bring and resolve this action under FIFRA to the
2 Director, Deputy Director, Assistant Directors, and Managers of the Enforcement Division by
3 EPA Regional Order Number R9-5-14, dated February 11, 2013.

4 3. Respondent is Clorox Professional Products Company, a Delaware corporation with
5 headquarter offices located at 1221 Broadway in Oakland, California, 94612.

6 **B. STATUTORY AND REGULATORY BASIS**

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

10 5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), provides, in part, that a “pesticide” means
11 any substance or mixture of substances intended for preventing, destroying, repelling, or
12 mitigating any pest.

13 6. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), provides that the term “to distribute or
14 sell” means to distribute, sell, offer for sale, hold for distribution, hold fo sale, hold for shipment,
15 ship, deliver for shipment, release for shipment, or receive (and having so received) deliver or
16 offer to deliver.

17 7. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), provides that a pesticide is
18 “misbranded” if its labeling bears any statement, design, or graphic representation relative thereto
19 or to its ingredients which is false or misleading in any particular.

20 8. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any
21 person to distribute or sell to any person any pesticide that is adulterated or misbranded.

22 **C. ALLEGED VIOLATIONS**

23 9. Respondent is a corporation and therefore a “person,” as that term is defined by
24 Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25 10. At all times relevant to this CAFO, Respondent produced and “distributed or sold”
26 the product, “Dispatch Hospital Cleaner Disinfectant with Bleach,” as that term is defined by
27 Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

1 11. "Dispatch Hospital Cleaner Disinfectant with Bleach" (EPA Reg. No. 56392-7) is a
2 "pesticide," as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. §
3 152.3.

4 12. At all times relevant to this CAFO, the labeling accompanying the pesticide,
5 "Dispatch Hospital Cleaner Disinfectant with Bleach," bore the statement that it was effective as
6 a tuberculocide against *Mycobacterium bovis* - BCG, (TB).

7 13. On May 14, 2013, EPA's Office of Chemical Safety and Pollution Prevention found
8 during an efficacy review of the pesticide that "Dispatch Hospital Cleaner Disinfectant with
9 Bleach" failed to be effective as a tuberculocide against *Mycobacterium bovis* - BCG, (TB).

10 14. Accordingly, at all times relevant to this CAFO, the statement on the labeling of the
11 pesticide, "Dispatch Hospital Cleaner Disinfectant with Bleach," regarding its efficacy as a
12 tuberculocide against *Mycobacterium bovis* - BCG, (TB) was false and constitutes
13 "misbranding," as that term is defined at Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

14 15. From June 19, 2013 to September 23, 2013, Respondent "distributed or sold" the
15 pesticide, "Dispatch Hospital Cleaner Disinfectant with Bleach," to numerous persons
16 throughout the United States in 647 separate transactions.

17 16. Consequently, each of Respondent's distributions or sales of the pesticide, "Dispatch
18 Hospital Cleaner Disinfectant with Bleach," in 647 separate transactions from June 19, 2013 to
19 September 23, 2013, constitutes a violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. §
20 136j(a)(1)(E), which makes it unlawful for any person to distribute or sell to any person any
21 pesticide that is adulterated or misbranded.

22 17. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary
23 Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, and the FIFRA Enforcement Response
24 Policy dated December 2009 provide for a penalty of up to \$7,500 for each violation.

25 D. RESPONDENT'S ADMISSIONS

26 18. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
27 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
28 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section

1 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
2 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
3 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
4 proposed Final Order contained in this CAFO.

5 E. CIVIL ADMINISTRATIVE PENALTY

6 19. In final settlement of the violations of FIFRA specifically alleged in Section I.C of
7 this CAFO, Respondent shall pay a civil administrative penalty of TWO HUNDRED AND
8 FIFTY THOUSAND DOLLARS (\$250,000). Respondent shall pay this civil penalty no later
9 than thirty (30) calendar days from the effective date of this CAFO. The civil penalty shall be
10 paid by remitting a certified or cashier's check, including the name and docket number of this
11 case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the
12 other methods listed below) and sent as follows:

13 Regular Mail:

14 U.S. Environmental Protection Agency
15 Fines and Penalties
16 Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

17 Wire Transfers:

18 Wire transfers must be sent directly to the Federal Reserve Bank in New
19 York City with the following information:
20 Federal Reserve Bank of New York
ABA = 021030004
21 Account = 68010727
22 SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

23 Overnight Mail:

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

27 ACH (also known as REX or remittance express):

28 Automated Clearinghouse (ACH) for receiving U.S. currency
PNC Bank
808 17th Street, NW
Washington, DC 20074

1 ABA = 051036706
2 Transaction Code 22 – checking
3 Environmental Protection Agency
4 Account 31006
5 CTX Format

6 On Line Payment:
7 This payment option can be accessed from the information below:
8 www.pay.gov
9 Enter "sfo1.1" in the search field
10 Open form and complete required fields

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

13 Concurrently, a copy of each check, or notification that the payment has been made by one of the
14 other methods listed above, including proof of the date payment was made, shall be sent with a
15 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
16 following addresses:

17 Regional Hearing Clerk
18 Office of Regional Counsel (ORC-1)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 Bill Lee
23 SDWA/FIFRA Section
24 Enforcement Division (ENF-3-3)
25 U.S. Environmental Protection Agency, Region IX
26 75 Hawthorne Street
27 San Francisco, CA 94105

28 Edgar P. Coral
Office of Regional Counsel (ORC-2)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

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

21. If Respondent fails to pay the assessed civil administrative penalty of TWO
HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) as identified in Paragraph 19 by
the deadline specified in that Paragraph, then Respondent shall also pay a stipulated penalty to

1 EPA upon EPA's written request. The amount of the stipulated penalty will be FIFTY
2 THOUSAND DOLLARS (\$50,000) and will be immediately due and payable upon EPA's
3 written request, together with the initially assessed civil administrative penalty of TWO
4 HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000), resulting in a total penalty due
5 of THREE HUNDRED THOUSAND DOLLARS (\$300,000). Failure to pay the civil
6 administrative penalty specified in Paragraph 19 by the deadline specified in that Paragraph may
7 also 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. Part 13, Subparts C and 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 19 by the deadline specified in that Paragraph.

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 22. In executing this CAFO, Respondent certifies that it is no longer selling or
11 distributing the pesticide, "Dispatch Hospital Cleaner Disinfectant with Bleach," that is
12 misbranded in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), as alleged in
13 Section I.C this CAFO.

14 G. RETENTION OF RIGHTS

15 23. 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 24. 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

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

I. EFFECTIVE DATE

26. 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.

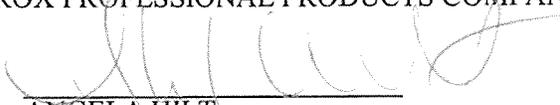
J. BINDING EFFECT

27. 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.

28. 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 CLOROX PROFESSIONAL PRODUCTS COMPANY:

11-26-15
DATE



ANGELA HILT
Vice President - Corporate Secretary
Clorox Professional Products Company
1221 Broadway
Oakland, CA 94612

FOR COMPLAINANT EPA:

12/15/15
DATE



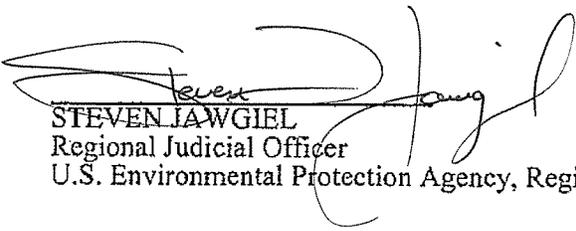
CLAIRE TROMBADORE
Assistant Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and Clorox Professional Products Company having entered into the foregoing
3 Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2016-0005) be
5 entered, and Respondent shall pay a civil administrative penalty in the amount of TWO
6 HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000), and comply with the terms and
7 conditions set forth in the Consent Agreement.

8
9
10 12/16/15
11 DATE


12 STEVEN J. AWGUEL
13 Regional Judicial Officer
14 U.S. Environmental Protection Agency, Region IX
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CERTIFICATION OF SERVICE

I certify that the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to:

Regional Hearing Clerk
U.S. EPA, Region IX
75 Hawthorne St.
San Francisco, CA 94105

And that a true and correct copy of the Consent Agreement and Final Order was placed in the United State Mail, certified mail, return receipt requested, addressed to the following:

Angela Hilt
Vice President - Corporate Secretary
Clorox Professional Products Company
1221 Broadway
Oakland, CA 94612

CERTIFIED MAIL NUMBER

7012 1640 0001 2190 9773

Dated: Dec 17 2015

By: 
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX