

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

07 APR 27 AM 10:56
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF)
)
Qualis, Inc.) Docket No. FIFRA-07-2007-0004
4600 Park Avenue) CONSENT AGREEMENT
Des Moines, Iowa 50321) AND
) FINAL ORDER
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region VII and Qualis, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

FACTUAL ALLEGATIONS

Jurisdiction and Statutory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region VII, is the Director of the Water, Wetlands, and Pesticides Division, EPA, Region VII.
4. The Respondent is Qualis, Inc., a pesticide producer, located at 4600 Park Avenue, Des Moines, Iowa 50321. The Respondent is and was at all times referred to in this Complaint, as a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and a corporation qualified

to do business in the state of Iowa.

Alleged Violations

5. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

6. Respondent Qualis, Inc., at all times relevant to this Complaint, operated a registered pesticide-producing establishment in Des Moines, Iowa, under EPA Establishment No. 34797-IA-003, and produced FIVE POINT PREMIUM #101 FLEA & TICK SPRAY, EPA Registration No. 34797-56-72749.

7. On April 14 and 15, 2004, a representative of the Iowa Department of Agriculture and Land Stewardship conducted an inspection at Respondent's manufacturing plant (4600 Park Avenue) and at Respondent's warehouse (3811 Dixon Street), both in Des Moines, Iowa, and collected documents related to the distribution and sale of FIVE POINT PREMIUM #101 FLEA & TICK SPRAY.

8. On March 23, 2004, Respondent shipped twelve (12) 16 ounce containers of FIVE POINT PREMIUM #101 FLEA & TICK SPRAY to Roswell Livestock & Farm Supply at 1105 E. 2nd Street, Roswell, New Mexico, documented by invoice number 124302.

9. Section 3(c)(1)(C) of FIFRA, 7 U.S.C. § 136a(c)(1)(C) states that each applicant for registration of a pesticide shall file with the Administrator a statement which includes a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

10. The last EPA approved label for FIVE POINT PREMIUM #101 FLEA & TICK SPRAY, EPA Registration No. 34797-56-72749 was dated May 20, 1985. This approved label stated that the product was only a flea and tick spray.

11. The product referred to in paragraphs 7 and 8 bore the claim, "For use on cats and dogs and on premises to control fleas, ticks, and *lice*".

12. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean 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.

13. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B) states that it shall be unlawful for any person in any State to distribute or sell to any person any registered pesticide if

any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3.

14. Respondent violated Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), by distributing or selling a registered pesticide whose claims differed in substance from the claims made as part of its registration under Section 3 of FIFRA, 7 U.S.C. 136a.

CONSENT AGREEMENT

It is hereby agreed and accepted by the parties, that:

1. This Consent Agreement and Final Order is being entered into by the parties in full settlement of and release from all FIFRA civil penalties that might have attached as a result of allegations made above. Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order, but does not object to the entry of the Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

5. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq. and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by the U. S. Environmental Protection Agency. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the

due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in paragraph 1 of the Final Order.

11. The effect of the settlement described in Paragraph 10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 5 above.

FINAL ORDER

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. § 136l, and according to the terms of the Consent Agreement set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent, in settlement of the allegations set forth in the Complaint, shall pay by cashier's or certified checks, a civil penalty, for the violations cited herein, in the amount of Three Thousand Six Hundred and Forty Dollars (\$3,640.00), on or before thirty (30) days of the effective date this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer, United States of America" and remitted to:

**Regional Hearing Clerk
United States Environmental Protection Agency
Region VII,
c/o Mellon Bank
P.O. Box 371099M,
Pittsburgh, Pennsylvania 15251.**

3. The payment shall reference Docket Number, FIFRA 07-2007-0004 and **In the Matter of Qualis, Inc.** Copies of the check shall be forwarded to:

Demetra O. Salisbury
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
Office of Regional Counsel
United States Environmental Protection Agency
Region VII
901 North 5th Street
Kansas City, Kansas 66101

4. No portion of the civil penalty or interest paid by Respondent pursuant to the

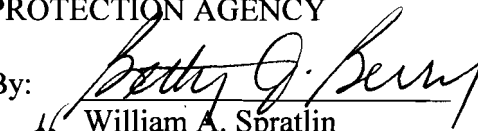
requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

5. The effective date of this Order shall be the date on which it is signed by the Regional Judicial Officer.

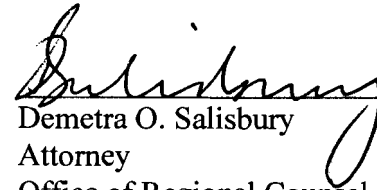
6. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas, 66101.

COMPLAINANT:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: 
William A. Spratlin
Director
Water, Wetlands, and Pesticides Division


Date: 04/26/07

By: 
Demetra O. Salisbury
Attorney
Office of Regional Counsel

Date: 4/23/07

RESPONDENT:

Qualis, Inc.

By: 
Title: COO/CFO
Date: 4-19-07

In the Matter of Qualis, Inc.
Docket No. FIFRA-07-2007-0004
Page 8 of 8

IT IS SO ORDERED. This Order shall become effective immediately.



ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

April 27, 2007
Date

IN THE MATTER OF Qualis, Inc., Respondent
Docket No. FIFRA-07-2007-0004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

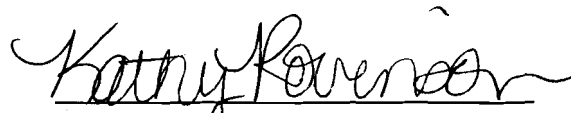
Copy hand delivered to
Attorney for Complainant:

Demetra O. Salisbury
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Charles R. McConachie
Simpson Woolley McConachie LLP
700 The Quadrangle
2828 Rough Street
Dallas, Texas 75201

Dated: 4/27/07


Kathy Robinson
Hearing Clerk, Region 7