

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA, GEORGIA**

In the Matter of:

Aquapharm Chemicals PVT Limited

Respondent.

Docket No. **FIFRA-04-2020-0718(b)**

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA or the Act), and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.) Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions of FIFRA and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Director of the Enforcement and Compliance Assurance Division, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency (EPA) to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

5. Respondent is Aquapharm Chemicals PVT Limited (Aquapharm), a company based in India that does business in the United States by exporting its products to the United States and by importing its products into United States. Respondant's facility is located at Sadhu Vaswani Road, Pune 411001, India. This proceeding pertains to pesticide products imported by Respondent into the United States through the Port of Memphis, Tennessee.

III. GOVERNING LAW

6. 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.
7. 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).
8. 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.
9. Pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.
10. Pursuant to Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
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.
12. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or “release for shipment”.
13. Pursuant to Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it shall be unlawful for any person to violate any regulation issued under Section 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a), and 136q.
14. Pursuant to Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), The Administrator may require that the labeling of a pesticide contain requirements and procedures for the

transportation, storage and disposal of the pesticide, any container of the pesticide, any rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide.

15. The term “to distribute or sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or “release for shipment”.
16. 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, as an alternative to submitting an NOA, the importer or its agent may file an entry via the U.S. Customs and Border Protection’s (CBP) Automated Commercial Environment (ACE) Data Processing System.
17. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) may be assessed by administrative order.

IV. FINDINGS OF FACTS

18. 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.
19. On or around February 8, 2019, MOT Intermodal Shipping USA, Inc. (hereinafter MOT), the licensed customs broker for Aquapharm, filed a Notice of Arrival of Pesticides and Devices (NOA) in the U.S. Customs and Border Protection’s (CBP) Automated Commercial Environment (ACE) system for the importation of 45 supersacks of Aquapharm MBT II (EPA Reg. No. 73646-1), each weighing 410 kilograms, which arrived at the Port of Memphis, Tennessee under entry number BFE-00888305 on or around February 2, 2019.
20. Upon review of the label, the EPA determined that the product was misbranded in that the pesticide product arrived in supersacks and at the time of arrival, neither the EPA-approved Master label nor the label affixed to the product included Container Handling language for the disposal of the container of the pesticide in supersacks as required under FIFRA Section 19(a) and 40 C.F.R. § 156.144 (and as interpreted by the EPA in Pesticide Registration Notice 83-3).
21. On or around February 12, 2019, MOT filed a second NOA in the CBP ACE system for the importation of 45 additional supersacks of Aquapharm MBT II (EPA Reg. No. 73646-1), each weighing 410 kilograms, which arrived at the Port of Memphis, Tennessee under entry number BFE-00888412 on or around February 4, 2019.
22. On or around March 11, 2019, MOT filed an NOA in the CBP ACE system for the importation of 42 supersacks of Methylene BIS (Thiocyanate) (EPA Reg. No. 1448-80), each weighing 410 kilograms, which arrived at the Port of Memphis, Tennessee under entry number BFE-00912386 on or around March 4, 2019.

23. On or around March 29, 2019, MOT filed a third NOA in the CBP ACE system for the importation of 45 additional supersacks of Aquapharm MBT II (EPA Reg. No. 73646-1), each weighing 410 kilograms, which arrived at the Port of Memphis, Tennessee under entry number BFE-00937219 on or around March 11, 2019.
24. Upon review of the labels of the products in the second, third and fourth entries - numbers BFE-00888412, BFE-00912386, and BFE-00937219, the EPA determined that the products were misbranded in the same manner as described in paragraph 20.
25. MOT, located at 1200A Scottsville Road, Rochester, New York 14624, was identified as the registered Agent for Aquapharm.
26. On April 8, 2019, the EPA issued four Advisory of Conditions for Release letters to MOT conditionally releasing each of the four shipments to be moved to IBC Manufacturing Company (EPA Establishment Number 1022-TN-1) (IBC) located at 416 East Brooks Road for relabeling.
27. In response to a request from Aquapharm and MOT, an Amended Conditions of Release letter was issued to MOT, on or around April 18, 2019, which allowed entry number BFE-00912386 to be moved to Buckman Laboratories, Inc., located at 1256 North McLean Boulevard, Memphis, Tennessee 38108 [EPA Establishment number 1448-TN-1] for relabeling.
28. After verifying that Aquapharm had relabeled all the supersacks in the four shipments described above in compliance with FIFRA, the EPA release the products for use and distribution.

V. ALLEGED VIOLATIONS

29. The EPA alleges that by importing the pesticide products Aquapharm MBT II and Methylene BIS (Thiocyanate), as described above, without appropriate container handling language for residue removal on the labels, Aquapharm violated Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least four occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
30. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with 40 C.F.R. Part 19, Adjustments of Civil Monetary Penalties for Inflation, authorizes the assessment of a civil penalty.

VI. STIPULATIONS

31. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:
 - (a) admits that the EPA has jurisdiction over the subject matter alleged in this CAFO;

- (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
 - (c) consents to the assessment of a civil penalty as stated below;
 - (d) consents to the conditions specified in this CAFO;
 - (e) waives any right to contest the alleged violations of law set forth in Section V (Alleged Violations) of this CAFO; and
 - (f) waives its rights to appeal the Final Order accompanying this CAFO.
33. For the purpose of this proceeding, Respondent:
- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
 - (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) waives any right it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
 - (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of FIFRA and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
 - (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept or issue this CAFO; and
 - (f) agrees to comply with the terms of this CAFO.
34. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by electronic means.

VII. TERMS OF PAYMENT

35. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$24,500.00**, which is to be paid within thirty (30) calendar

days of the Effective Date of this CAFO.

36. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

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

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen (513) 487-2091

REX (Remittance Express): 1-866-234-5681

37. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
bullock.patricia@epa.gov

and

Kanoelehua Ho
Chemical Safety Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
ho.kanoelehua@epa.gov

38. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the Facility name and Docket No. **FIFRA-04-2020-0718(b)**.
39. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to remit the civil penalty as agreed to herein, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Accordingly, the EPA may require the Respondent to pay the following amounts on any amount overdue:
- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, interest will continue to accrue on any unpaid portion until the unpaid portion of the penalty and accrued Interest is paid. Interest will be assessed at the rate of the United States Treasury tax and loan rate, as established by the Secretary of the Treasury, in accordance with 31 U.S.C. § 3717(a)(1), 31 C.F.R. § 901.9(b), and 40 C.F.R. § 13.11(a).
- (b) Non-Payment Penalty. On any portion of a civil penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of not more than six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid, as provided in 31 U.S.C. § 3717(e)(2) and 31 C.F.R. § 901.9(d). This non-payment penalty is in addition to charges which accrue or may

accrue under subparagraphs (a) and (c) and will be assessed monthly. 40 C.F.R. § 13.11(c).

(c) Monthly Handling Charge. Respondent must pay a late payment handling charge to cover the administrative costs of processing and handling the delinquent claim, based on either actual or average cost incurred. 31 C.F.R. § 901.9(c), and 40 C.F.R. § 13.11(b). Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by 40 C.F.R. § 13.12.

40. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, pursuant to Section 14 (a)(5) of FIFRA 7 U.S.C. § 136l(a)(5), EPA may:
- (a) refer the debt to a credit reporting agency or a collection agency pursuant to Section 14(a) of FIFRA 7 U.S.C. § 136l(a), 40 C.F.R. §§ 13.13 and 13.14;
 - (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
 - (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
 - (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed pursuant to Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5).

41. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

42. 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 and facts specifically alleged above.
43. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 40 C.F.R. § 22.18(c),
44. Any violation of this CAFO may result in a civil judicial action for civil penalties as provided in Section 14(a) of the Act, 42 U.S.C. § 136l(a), as well as criminal sanctions as provided in Section 14(b) of the Act, 42 U.S.C. § 136l(b). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

45. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.
46. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.
47. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.
48. 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.
49. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
50. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
51. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
52. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
53. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
54. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

55. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.
56. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECTIVE DATE

57. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing with the Hearing Clerk.

[Remainder of Page Intentionally Left Blank

Complainant and Respondent will Each Sign on Separate Pages]

The foregoing Consent Agreement In the Matter of **Aquapharm Chemicals PVT Limited**,
Docket Number **FIFRA-04-2020-0718(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR RESPONDENT:

Nimal Mangwai 24-07-2020
Signature Date

Printed Name: MR. NIMAL MANGWANI

Title: MANAGING DIRECTOR

Address: 10TH FLOOR, 'AMAR SYNERGY', 12 B SADHU
VASWANI ROAD, PUNE 411001, INDIA.

The foregoing Consent Agreement In the Matter of **Aquapharm Chemicals PVT Limited**,
Docket Number **FIFRA-04-2020-0718(b)** Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Aquapharm Chemicals PVT Limited,

Respondent.

Docket No. **FIFRA-04-2020-0718(b)**

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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.

The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order, in the Matter of [**Aquapharm Chemicals PVT Limited**, Docket No. **FIFRA-04-2020-0718(b)**], were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: Brittney Powell, Associate
 Fox Rothschild, LLP
 bpowell@foxrothschild.com
 1030 15th Street NW
 Suite 380 East
 Washington DC 20005
 (202) 794-1186

To EPA: Kanoelehua Ho, Life Scientist
 ho.kanoelehua@epa.gov
 (404)562-9162

 Robert Caplan, Senior Attorney
 caplan.robert@epa.gov
 (404)562-9520

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

Patricia A. Bullock, Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511