



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 25, 2015

REPLY TO THE ATTENTION OF:
LC-8J

CERTIFIED MAIL: No.7011 1150 0000 2643 8210
RETURN RECEIPT REQUESTED

Mr. Hector Treto
Merx Trade, Inc.
6553 Star, Court
Laredo, Texas 78041

Consent Agreement and Final Order In the Matter of
Merx Trade, Inc., Docket No. FIFRA-05-2015-0035

Mr. Treto:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. This document was filed on March 25, 2015 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,800 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letter and on the check.

Thank you for your cooperation in resolving this matter.

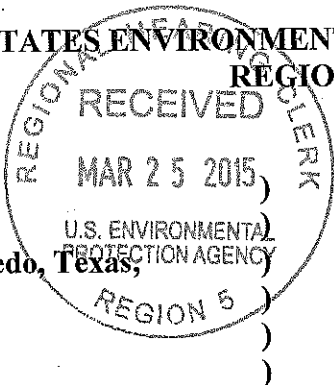
Sincerely,

A handwritten signature in cursive script, appearing to read "E. Calvo".

Estrella Calvo
Pesticides and Toxics Compliance Section

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:

Merx Trade, Inc., Laredo, Texas,

Respondent.

Docket No. FIFRA-05-2015-0035

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order Commencing and Concluding the Proceeding

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.
3. Respondent is Merx Trade, Inc., 6553 Star Court, Laredo, Texas, a corporation operating in the State of Texas.
4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO,

and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. It is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a. 7 U.S.C. § 136j(a)(1)(A).

11. The term “distribute or sell” means “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.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

16. On or about November 23, 2011, Respondent was a corporation.

17. Therefore, on or about November 23, 2011, Respondent was a "person" as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. On or about November 23, 2011, Respondent owned or operated a place of business located at 6553 Star Court, Laredo, Texas.

19. On or about November 23, 2011, Respondent did "distribute or sell" to La Bodega, Ltd., the products "Axion Vinagre Citrico," "Axion Antibacterial," and "Axion Tri-Cloro Antibacterial."

20. The label of "Axion Vinagre Citrico" stated, "antibacterial," "Ademas su accion antibacterial, le da la seguridad de una limpieza efectiva," "Elimina 99.999% de bacterias," and "Para una acción antibacterial use el producto sin diluir y deje actuar por 5 minutos."¹

21. The label of "Axion Antibacterial" stated, "Ademas, Axion Antibacterial elimina el 99.99% de P.aeruginosa, E. coli, S. typhymiriom, S. aureus."²

22. The label of "Axion Tri-Cloro" stated, "Antibacterial," "Elimina 99% de bacterias," "Elimina el 99.99% E. coli, S. typhymuriom y S. aureus," and "Recomendación: Para una accion

¹ "In addition to its antibacterial action, it gives you the safety of an effective cleaning," "Eliminates 99.999% of bacteria," and "For antibacterial action, use this product without diluting it and leave it working for 5 minutes."

² "In addition, Axion Antibacterial eliminates 99.99% of P. aeruginosa, E. coli, and S. typhymiriom."

antibacterial applique directamente el producto y deje que actue por 5 minutos.”³

23. Bacteria were a “pest” as defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

24. Therefore, “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial” were pesticides.

25. However, “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial” were not registered with EPA as pesticides under Section 3 of FIFRA, 7 U.S.C. § 136a.

26. Therefore, Respondent’s distribution or sale of the unregistered pesticides “Axion Vinagre Citrico,” “Axion Antibacterial,” and “Axion Tri-Cloro Antibacterial.” “Axion Antibacterial” constituted unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

27. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action was \$10,800. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent’s business, the effect on Respondent’s ability to continue in business, and the gravity of the alleged violation. Complainant also considered EPA’s *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated July 2, 1990.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,800 civil penalty for the alleged violation of FIFRA by sending a cashier’s or certified check, payable to the “Treasurer, United States of America,” to:

³ Eliminates 99% of bacteria,” “Eliminates 99.99% of E. coli, S. typhimuriom, and S. aureus.” and

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000.

The check must note the case title and the docket number of this CAFO.

29. The payment must include a transmittal letter, stating Respondent's name, the case title, Respondent's complete address and the case docket number. Respondent must also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not pay the civil penalty timely EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment

"Recommendation: For antibacterial action, apply directly to the product and leave working for 5 minutes."

was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

34. This CAFO does not 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.

35. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

36. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

37. The terms of this CAFO bind Respondent, its successors, and assigns.


38. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorney's fees, in this action.

40. This CAFO constitutes the entire agreement between the parties.

Merx Trade, Inc., Laredo, Texas


Jan 15, 2015
Date



Ivan Montemayor
Presidente
Merx Trade, Inc.

United States Environmental Protection Agency, Complainant

3/17/15
Date

In M.G.


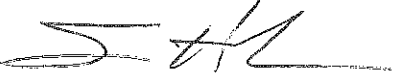
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of: Merx Trade, Inc., Laredo, Texas
Docket No. FIFRA-05-2015-0035

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

3-23-2015
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

In the matter of: Merx Trade, Inc.
Docket Number: FIFRA-05-2015-0035

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing *Consent Agreement and Final Order*, which was filed on March 25, 2015, in the following manner to the addressees:

Copy by Certified Mail
Return-receipt:

Mr. Hector Treto
Merx Trade, Inc.
6553 Star, Court
Laredo, Texas 78041

Copy by E-mail to
Attorney for Complainant:

Jeffery M. Trevino
Trevino.Jeffery@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: March 25, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2643 8210