



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8 2018 SEP 27 PM 12:28

1595 WYNKOOP STREET

DENVER, CO 80202-1129

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http://www.epa.gov/region08

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2018-0005

IN THE MATTER OF:

JUSTEQ, LLC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 27th DAY OF September, 2018.

Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2018 SEP 27 PM 12: 28

In the Matter of:)
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Justeq, LLC)
1660 Hertel Lane)
Deerfield, Illinois 60015)
Respondent)
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EPA REGION VIII
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Docket No. FIFRA-08-2018-0005

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

I. JURISDICTIONAL ALLEGATIONS

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Respondent for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.
2. The Administrator of the EPA is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.
3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.
4. This proceeding is subject to the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).
5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the factual or legal allegations in this Agreement.

II. FACTUAL AND LEGAL ALLEGATIONS

6. "The term 'to 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." FIFRA § 2(gg), 7 U.S.C. § 136 (gg).
7. "The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers." FIFRA § 2(p)(1), 7 U.S.C. § 136 (p)(1).
8. "The term 'labeling' means all labels and all other written, printed, or graphic matter (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device." FIFRA § 2(p)(2), 7 U.S.C. § 136 (p)(2).

9. A “pesticide is misbranded if . . . the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health and the environment.” FIFRA § 2(q)(1)(F), 7 U.S.C. § 136 (q)(1)(F).
10. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”
11. Respondent, Justeq, LLC, (Justeq) is a “person” as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136 (s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
12. At all times relevant to the alleged violations, Respondent was a “distributor/seller” as defined by section 2(gg) of FIFRA, 7 U.S.C. § 136 (gg), of a “pesticide” as defined in FIFRA section 2(u), 7 U.S.C. § 136 (u), and a “producer” as defined by section 2(w) of FIFRA, 7 U.S.C. § 136 (w).
13. Justeq is a corporation organized under the laws of the state of Illinois and is authorized to do business in the state of Illinois.
14. Justeq’s place of business is located at 1660 Hertel Lane, Deerfield, Illinois 60015.
15. Justeq is a registrant with the EPA-assigned company number 84024.
16. Power Engineering Company is a "person" as defined in section 2(s) of FIFRA, 7 U.S.C. § 136 (s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
17. Power Engineering Company is a corporation organized under the laws of the state of Utah and is authorized to do business in the state of Utah.
18. Power Engineering Company’s place of business is located at 364 West 600 North, Salt Lake City, Utah 84103.
19. Power Engineering Company is a distributor with the EPA-assigned distributor company number 41368.
20. On or about September 4, 2009, Justeq submitted a Notice of Supplemental Distribution of a Registered Pesticide Product, EPA form 8570-5, to the EPA. Form 8570-5 identifies Power Engineering Company as a distributor of the Justeq pesticide product Justeq07, EPA Reg. No. 84024-1, under the new name 7407 and EPA Reg. No. 84024-1-41368.
21. Product 7407, EPA Reg. No. 84024-1-41368, was registered with the EPA as of October 7, 2009.
22. Form 8570-5 states in item 7: “All conditions of the basic registration apply equally to distributor products. It is the responsibility of the basic registrant to see that all distributor labeling is kept in compliance with requirements placed on the basic product.”

23. As stated at 40 C.F.R. § 152.132, the "registrant may distribute or sell his registered product under another person's name and address instead of (or in addition to) his own. Such distribution and sale is termed 'supplemental distribution' and the product is referred to as a 'distributor product.' The distributor is considered an agent of the registrant for all intents and purposes under the Act, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product."
24. Container labeling regulations require "the following statements, as applicable," to be placed on the label or container: a statement identifying the container as refillable or nonrefillable and a reuse statement appropriate to that container; and for nonrefillable containers, a recycling or reconditioning statement providing additional instructions for managing an empty container, a batch code for the product contained; and for some nonrefillable containers and all refillable containers, a statement providing cleaning instructions prior to container disposal. 40 C.F.R. § 156.140.
25. All pesticide products distributed or sold by a registrant must have labels that comply with the requirements of 40 C.F.R. § 156.140 by August 16, 2011. 40 C.F.R. § 156.159.
26. On May 14, 2014, an EPA-credentialed inspector conducted a routine FIFRA inspection at the Power Engineering Company facility.
27. During the inspection the inspector requested and obtained labeling that was applied to the pesticide products distributed at the Power Engineering Company facility. A label review was conducted finding that the labeling for the product identified in paragraph 21 did not contain the language as required pursuant to 40 C.F.R. § 156.159.
28. During the inspection the inspector requested and obtained copies of distribution records demonstrating that Power Engineering had distributed the pesticide product 7407, EPA Reg. No. 84024-1-41368, with labels that did not contain required language on fourteen separate occasions.

III. VIOLATION: DISTRIBUTION OR SALE OF MISBRANDED PESTICIDES

29. As outlined above, Respondent produced, distributed, or sold misbranded pesticides in violation of section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), on at least two separate occasions, and is therefore subject to the assessment of civil penalties under section 14 of FIFRA, 7 U.S.C. § 136l.

IV. PAYMENT OF CIVIL PENALTY

30. 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.
31. 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 Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
32. 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 \$10,400 against Respondent for the above-described violation.

33. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a Final Order in this matter and agrees to pay the civil penalty of \$10,400 within thirty days of the effective date of the Final Order as follows:
- a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered received that day.
 - b. Respondent shall
 - i. pay the penalty using any method provided on the following website:
<https://www.epa.gov/financial/makepayment>,
 - ii. identify each and every payment with the docket number assigned to the Final Order, and
 - iii. within 24 hours of payment, email proof of payment to Erin Agee at agee.erin@epa.gov. "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 EPA requirements, in the amount due, and identified with the docket number assigned to the Final Order.
34. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest will have accrued).
35. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6 percent per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6 percent penalty interest, late interest, and any balance is then applied to the outstanding principal amount.
36. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may pursue any of the following remedies:
- a. Request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5).
 - b. Refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14 and 13.33.

- c. 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.
- d. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

V. TERMS AND CONDITIONS

37. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.
38. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
39. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.
40. Each party shall bear its own costs and attorney fees in connection with this matter.
41. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning this Agreement to the EPA, Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.
42. This Agreement, upon incorporation into a Final Order by the regional judicial officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.
43. Respondent shall never claim the penalty as a federal or other tax deduction or credit.
44. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.
45. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

46. Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

VI. EFFECTIVE DATE

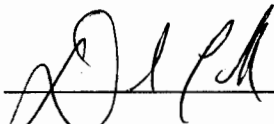
47. The effective date of this Agreement shall be the date on which the Agreement is filed with the regional hearing clerk.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

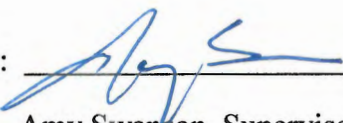
Office of Enforcement, Compliance
and Environmental Justice

Complainant

Date: 9/25/18

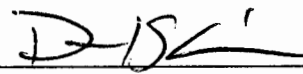
By: 
David Cobb, Unit Chief
Toxics Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/25/2018

By: 
Amy Swanson, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

JUSTEQ, LLC.,
Respondent

Date: September 7, 2018

By: 
Printed Name: Daniel Shim

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **JUSTEQ, LLC; DOCKET NO.: FIFRA-08-2018-0005** was filed with the Regional Hearing Clerk on September 27, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Erin Agee, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 27, 2018, to:

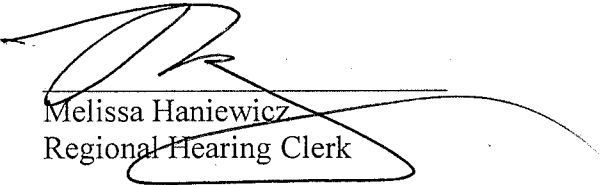
Respondent

Daniel Shim
Justeq, LLC
1660 Hertel Lave
Deerfield, Illinois 60015

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 27, 2018


Melissa Haniewicz
Regional Hearing Clerk