

UNITED STATES ENVIRONMENTAL PROTECTION
REGION 7

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ENVIRONMENTAL PROTECTION
AGENCY REGION 7
2015 FEB 19 AM 8:01

IN THE MATTER OF)
)
Quest Products, LLC)
)
)
Respondent)
)
_____)

Docket No. FIFRA-07-2014-0016

ORDER

Pursuant to 40 C.F.R § 22.5(a)(1), facsimile/electronic filing of page 10 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: 2-18-2015

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2015 FEB 19 AM 8:01

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KS 66219

BEFORE THE ADMINISTRATOR

In the Matter of)
) Docket No. FIFRA-07-2014-0016
)
Quest Products, LLC)
)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Quest Products, LLC (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) and 22.18(b)(2) 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) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding 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. § 136f.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Quest Products, LLC, a pesticide distributor with a facility located at 11712 230th Street, Linwood, Kansas 66052.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 et. seq.

6. Section 2(c) of FIFRA, 7 U.S.C. § 136(c), defines the term “adulterated” as applying to any pesticide if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

7. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

8. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

9. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

10. 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.

11. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it shall be unlawful for any person to distribute or sell any pesticide that is not registered under FIFRA.

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide which is misbranded.

13. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(A), states that a pesticide is misbranded if it is an imitation of, or is offered for sale under the name of, another pesticide.

Section IV

General Factual Allegations

14. The Respondent is and was at all times referred to in this Complaint, a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

15. In March of 2012, the EPA accepted a pesticide registration that had been submitted by Quest in December of 2011 for Reliant Systemic Fungicide, and assigned it the EPA Reg. No. 83416-1.

16. Quest’s registration for Reliant Systemic Fungicide, EPA Reg. No. 83416-1, represented that the product was to be a 100% repack of an existing product registered to another registrant (the parent product).

17. On August 28, 2013, a Kansas Department of Agriculture (KDA) inspector performed a producer establishment inspection at the Quest facility, and documented that, for the product that Quest had marketed and distributed as Reliant Systemic Fungicide, EPA Reg. No. 83416-1, in 2012 and 2013, the company had failed to do the required repack of the parent product.

18. Quest contracted with manufacturers to produce end use pesticide products that were not repacked or registered, through an integrated process consisting of reacting Phosphorous Acid and Potassium Hydroxide.

19. Rather than repack the parent product as required under the Reliant Systemic Fungicide registration, Quest marketed, sold, and distributed the unregistered product or products referenced in the preceding paragraph, using the label and name of its registered Reliant Systemic Fungicide product.

Violations

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

Counts 1-116

21. The facts stated in paragraphs 14 through 19 are realleged and incorporated as if fully stated herein.

22. In each of 116 separate transactions in 2012 and 2013, Respondent sold or distributed a quantity of an unregistered pesticide product.

23. In each of 116 separate transactions in 2012 and 2013, Respondent offered for sale, sold, or distributed a quantity of a pesticide product under the name of another pesticide.

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24. For each of the 116 sales or distributions of the unregistered pesticide product, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

25. For each of the 116 sales or distributions of the unregistered pesticide product under the name of the registered product, Reliant Systemic Fungicide, EPA Reg. No. 83416-1, Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Section V

Consent Agreement

26. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

27. Respondent neither admits nor denies the factual allegations set forth above.

28. Respondent waives its right to contest any allegations set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

29. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

30. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

31. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

32. Respondent certifies that by signing this CAFO that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et. seq., and all regulations promulgated thereunder.

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33. The effect of settlement as described in the following paragraph is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

34. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty as set forth in Paragraph 1 of the Final Order below. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document.

35. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA not addressed in this Consent Agreement and Final Order or any other applicable law and/or regulation administered by the EPA.

36. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(c)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.



Section VI

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 shall pay a civil penalty of Eighty-Eight Thousand Five Hundred and Thirty-Three Dollars (\$88,533.00) plus interest for one year of Three Hundred Thirty-One Dollars and Eighty-Four cents (\$331.84) in four quarterly installments of Twenty-Two Thousand, Two Hundred Sixteen Dollars and Twenty-One Cents (\$22,216.21). The first payment must be received at the address below on or before 30 days after the effective date of the Final Order. The three succeeding payments shall be due, respectively, on or before June 1, 2015; September 1, 2015; and December 1, 2015.

Each payment shall identify Respondent by name and docket number and made as follows:

If by certified or cashier's check, payment should be made payable to the "United States Treasury" and sent to the following address:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

If by wire transfer, payment should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 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 by electronic payment, payment may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete the required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to the contacts listed below

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219;

and

Royan Teter
Toxics and Pesticides Enforcement Branch, WWPD
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.



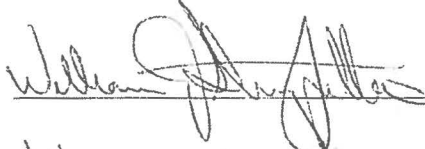
4. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

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RESPONDENT
QUEST PRODUCTS, LLC.

Date: 02-8-2015

By:




William J. Stringfellow
Print Name

Director
Title

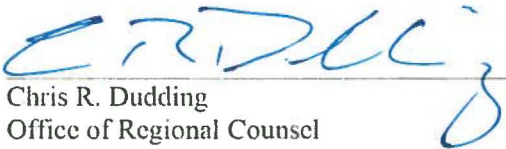


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/9/15


Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Date: 2/9/15


Chris R. Dudding
Office of Regional Counsel



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

Date: 2-18-15

Karina Borromeo
Karina Borromeo
Regional Judicial Officer



IN THE MATTER OF Quest Products, LLC, Respondent
Docket No. FIFRA-07-2014-0016

CERTIFICATE OF SERVICE

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

Copy by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by email to Attorney for Respondent:

pgray@mckennalong.com

Dated: 2/19/15

A handwritten signature in black ink that reads "Kathy Robinson". The signature is written in a cursive style with a horizontal line underneath the name.

Kathy Robinson
Hearing Clerk, Region 7