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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	
Quest USA Corp.,)	Docket No. FIFRA-09-2021- <u>0005</u>
)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
<u>Respondent.</u>)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Quest USA Corp. (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7 U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Manager of the Toxics Branch of the Enforcement and Compliance Assurance Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is a New York corporation that imported pesticide products into the State of California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States. . . .”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” 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 living micro-

organisms 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. § 136 w(c)(1).

9. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. 40 C.F.R. § 152.15 states in pertinent part that “a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose...” and that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:
 - (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise) that: (1) the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.
11. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that it shall be unlawful for any person to distribute or sell to any person a pesticide which is not registered with EPA under section 3 of FIFRA.
13. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it shall be unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act.
14. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$20,288 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 84 Fed. Reg. 2056 (January 13, 2020).

C. ALLEGATIONS

15. At all times relevant to this CAFO, Respondent was a corporation and therefore a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
16. Respondent imported 20 shipments of 40-count and 50-count packages of BioPure Multipurpose Wipes ("BioPure Wipes") associated with the following Entry Numbers and Dates of Arrival that entered the United States at the Port of Los Angeles, California from China:

Date of Arrival	Entry Number	Product Description
6/8/2020	820-87971378	50-count packages
6/8/2020	820-87971303	50-count packages
6/15/2020	820-87973234	40-count packages
6/15/2020	820-87973242	40-count packages
6/15/2020	820-87973275	40-count packages
6/15/2020	820-87973226	40-count packages
6/23/2020	820-87974513	40-count packages
6/23/2020	820-87974398	40-count packages

6/23/2020	820-87974521	40-count packages
6/23/2020	820-87974307	40-count packages
6/27/2020	820-87974836	40-count packages
6/27/2020	820-87974844	40-count packages
6/27/2020	820-87974786	40-count packages
6/27/2020	820-87974778	40-count packages
6/27/2020	820-87974802	40-count packages
6/27/2020	820-87974794	40-count packages
7/1/2020	820-87976914	40-count packages
7/1/2020	820-87976567	40-count packages
7/1/2020	820-87977128	40-count packages
7/3/2020	820-87976559	40-count packages

17. As the importer of the 20 shipments listed in Paragraph 16 and by doing business in the United States, Respondent is subject to the requirements of FIFRA and its implementing regulations.
18. The label on the 40-count and 50-count packages of “BioPure Wipes” in the shipments contained images indicating that the Wipes are intended for use on cell phones, shopping carts, and desks and when traveling on airplanes. The label also includes the claim “stay safe on the go.”
19. Based on the images and the claim on its label, “BioPure Wipes” are “pesticides” pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.15.
20. Each of the 20 shipments of “BioPure Wipes” listed in Paragraph 16 is a “distribution or sale” of the pesticides, “BioPure Wipes,” pursuant to Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
21. The “BioPure Wipes” in the 20 shipments are not registered with EPA under section 3 of FIFRA.
22. Consequently, Respondent’s importation of 20 shipments of 40-count and 50-count packages of BioPure Wipes through the Port of Los Angeles, California under the Entry

Numbers and Dates of Entry listed in Paragraph 16 constitutes 20 violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136(j)(a)(1)(A), which provides that it is unlawful for any person to distribute or sell to any person a pesticide that is unregistered.

23. Respondent also failed to file a Notice of Arrival of Pesticides and Devices for each of the 20 shipments of “BioPure Wipes” associated with the Entry Numbers and Dates of Entry listed in Paragraph 16, as required by 19 C.F.R. §12.112.
24. Respondent’s failure to file a Notice of Arrival of Pesticides and Devices for each of the 20 shipments of “BioPure Wipes” associated with the Entry Numbers and Dates of Entry listed in Paragraph 16 constitutes 20 violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), which provides that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.

D. RESPONDENT’S ADMISSIONS

25. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

26. Respondent agrees to the assessment of a penalty in the amount of TWO HUNDRED, THIRTEEN THOUSAND, SIX HUNDRED AND SIXTY-EIGHT DOLLARS

(\$213,668) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.

27. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made (including the name and docket number of this case) payable to the "Treasurer, United States of America," by one of the methods listed below:

a. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

b. ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 — checking
Physical location of US Treasury Facility
5700 Rivertech Court
Rivertech, MD 20737
Remittance Express (REX): 1-866-234-5681

c. On-Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo 1.1" in the search field

Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. Concurrent with payment of the penalty, Respondent shall send a PDF copy of the notification that the payment has been made by one of the methods listed above, including proof of the date payment was made, to the following email addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
R9HearingClerk@epa.gov

Janice Chan
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
chan.janice@epa.gov

28. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
29. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 26, then Respondent shall pay to EPA the stipulated penalty of ONE THOUSAND DOLLARS (\$1,000.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 27 may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

- b. The debt being collected 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. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 27. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own

administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. CERTIFICATION OF COMPLIANCE

30. In executing this CAFO, Respondent certifies that, to the best of its knowledge, it is currently in compliance with any and all FIFRA requirements that apply to its ongoing operations.

G. RETENTION OF RIGHTS

31. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.
32. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

H. ATTORNEY'S FEES AND COSTS

33. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

I. EFFECTIVE DATE

34. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

J. BINDING EFFECT

35. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
36. 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.

FOR RESPONDENT, QUEST USA CORP.

10/5/2020

DATE


Ikey Srour
President
Quest USA Corp.

FOR COMPLAINANT, EPA REGION IX:

10/6/2020

DATE

MATTHEW
SALAZAR

Matt Salazar, P.E.

Manager

Toxics Branch

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region IX

Digitally signed by MATTHEW
SALAZAR
Date: 2020.10.06 14:36:47 -07'00'

II. FINAL ORDER

Complainant and Respondent, Quest USA Corp., having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2021-0005) be entered and that Respondent shall pay a civil administrative penalty in the amount of TWO HUNDRED, THIRTEEN THOUSAND, SIX HUNDRED AND SIXTY-EIGHT DOLLARS (\$213,668) and comply with the terms and conditions set forth in the Consent Agreement.

DATE

Steven L. Jawgiel

Digitally signed by Steven L. Jawgiel
Date: 2020.10.16 12:05:50 -07'00'

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the matter of *Quest USA Corporation* (FIFRA-09-2021-0005), has been filed with the Regional Hearing Clerk, and a copy was served on representatives for Respondent and Complainant as indicated below:

RESPONDENT:

Timothy J. Bergère
Counsel, Armstrong Teasdale LLP
TBergere@atllp.com

COMPLAINANT:

Carol Bussey
Assistant Regional Counsel, EPA - Region 9
Bussey.Carol@epa.gov

Date Filed: _____, 2020

Steven Armsey
Regional Hearing Clerk
EPA, Region 9