

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**REGION 4**

In the Matter of:

Aguair LLC

Respondent.

Docket No. **FIFRA-04-2022-0735(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, Region 4, who has been delegated the authority on behalf of the Administrator of the United States Environmental Protection Agency 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 Aguir LLC (Aguair), a limited liability company doing business in the State of Georgia. This proceeding pertains to Respondent's facility located at 1359 Gresham Road, Marietta, Georgia 30062 (Facility).

III. GOVERNING LAW

6. Pesticides that are sold and distributed in the United States are required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
7. 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 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. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” to mean “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
9. Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), defines an “antimicrobial pesticide” as “a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.”
10. Pursuant to 40 C.F.R. § 152.15, 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 the substance can or should be used as a pesticide; (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. Pursuant to 40 C.F.R. § 152.25, certain “treated articles and substances” are exempt from regulations under FIFRA, if (1) the article or substance is treated with, or contains, a pesticide to protect the article or substance itself (for example, paint treated with a pesticide to protect the paint coating, or wood products treated to protect the wood against insect or fungus infestation), and (2) the pesticide is registered for such use.
12. Section 2(p) of FIFRA, 7 U.S.C. § 136(p), defines the term “label” to mean “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers;” and defines “labeling” as “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”
13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” to include to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or to release for shipment.
14. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

15. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by administrative order.

IV. FINDINGS OF FACTS

16. 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.
17. On October 12, 2021, an authorized representative of the EPA conducted an inspection at Aguir’s Facility located at 1359 Gresham Road, Marietta, Georgia 30062 to determine compliance with FIFRA. The inspection revealed that Aguir sells and distributes the “ClensAir” air purifier products to non-retail end users of the ClensAir products.
18. During the inspection, the inspector collected the following: shipping records from December 29, 2020, through October 5, 2021, showing that Aguir had sold and distributed the ClensAir products; photographs of the product packaging; and a copy of the operations and maintenance manual for the ClensAir products.
19. Prior to the inspection, the inspector viewed and collected marketing materials for the ClensAir products from the websites for Aguir and ProdeW, Inc. (ProdeW). ProdeW is the manufacturer and the patent owner of ClensAir and markets the product to retailers. The materials reviewed and collected included, among other items, a screenshot from Aguir’s website (www.aguir.com) which included an overview of the product, how it works, and where it can be used; and a flyer from the ProdeW, Inc. website (www.prodeW.com) titled “ClensAir Next Generation Air Sanitation Technology.” Subsequent to the inspection, the inspector emailed Aguir to request a copy of the labeling for the “antimicrobial filter” that “is reported to be available for purchase for replacement by customers.” On October 13, 2021, Aguir emailed a photograph of the ClensAir filter packaging to the inspector.
20. The labeling and marketing materials for the ClensAir product as described in paragraph 19, included, among other things, the following representative pesticidal claims on Aguir’s website and/or on ProdeW’s website: (1) “Antimicrobial filter;” (2) “Air is pushed through an antimicrobial filter, which consists of a proprietary blend of micro fibers that kill the microorganisms by damaging cell walls;” (3) “Destroys airborne bacteria, viruses, and mold...;” (4) “Next generation air sanitation technology;” and (5) “Independently tested by the Research Triangle Institute...to determine Clean Air Rate (CARm) for multiple pathogens, including MS2 bacteriophage (a common viral simulant for mammalian viruses such as influenza and norovirus), Staphylococcus epidermidis (a gam [*sic*] positive bacteria and simulant associated with nosocomial infections and MRSA...)”.
21. Based on the pesticidal claims made for the ClensAir product in the marketing materials and labeling as set forth in Paragraph 20, the ClensAir product meets the definition of an “antimicrobial pesticide” pursuant to Section 2(mm) of FIFRA, 7 U.S.C. § 136(mm), in that, as marketed, the ClensAir product is “a pesticide that is intended to disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms.”
22. During a Show Cause meeting held on May 9, 2022, Aguir explained that there are two models of the ClensAir product (“ClensAir 10K Pathogen” and “ClensAir 10K Ethylene”) and both models contain an antimicrobial filter. The EPA asked Aguir to provide additional information about the pesticide used in the antimicrobial filter. On behalf of Aguir, ProdeW advised the EPA in a letter

dated May 13, 2022, that the ClensAir product is a multi-stage air purification system intended to reduce the concentration of viable airborne bacteria, viruses, and spores in the air, and that the product includes ultraviolet lamps, a Titanium Dioxide (TiO₂) coating, a particulate filter, an antimicrobial filter (PuraWard PuraFilter, a MERV 8 filter embedded with an EPA-registered antimicrobial additive), an odor control filter, and a surface contaminant prevention filter.

23. The EPA-approved label for the EPA-registered pesticide that is applied to or embedded in the antimicrobial filter in the ClensAir product states: “No finished product incorporating [the registered pesticide] may make any public health claims relating to antimicrobial activity without first obtaining an EPA registration for the finished product which permits such claims. When incorporated into treated articles, this product does not protect users of any such treated article or others against food-borne or disease-causing bacteria, viruses, germs or other disease-causing organisms.”
24. The claims made for the ClensAir product: (1) extend beyond claims to protect the air purifiers themselves from degradation, and (2) extend beyond the registered use in that the labeling and marketing material makes public health claims relating to antimicrobial activity of the ClensAir product without having first obtained an EPA registration for the product which permits such claims. Therefore, neither the ClensAir product nor the antimicrobial filter embedded in the ClensAir product qualify for the “treated article exemption” under 40 C.F.R. § 152.25; and the ClensAir product is required to be registered with the EPA, pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a.
25. Pesticidal claims made for the ClensAir product in the Prodew and Aguar marketing materials and in the product labeling, and the shipping records dated December 29, 2020, through October 5, 2021, that were collected during the inspection, confirm that Aguar distributed or sold an unregistered pesticide, as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), and 40 C.F.R. § 152.3.
26. Aguar’s distribution and sale of an unregistered pesticide are unlawful acts in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

V. ALLEGED VIOLATIONS

27. The EPA alleges that Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing and selling the unregistered pesticide product, ClensAir, as specified above in paragraph 18, and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
28. 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

29. The issuance of this CAFO simultaneously commences and concludes this proceeding as provided by 40 C.F.R. § 22.13(b).
30. 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.

31. 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 the 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.

32. 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

- 33. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **TWENTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$26,500)**, which is to be paid within thirty (30) days of the Effective Date of this CAFO.
- 34. Payment 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

35. Respondent shall send proof of payment within twenty-four (24) hours of payment of the civil penalty, to:

Regional Hearing Clerk
R4_Regional_Hearing_Clerk@epa.gov

and

Kimberly Tonkovich
tonkovich.kimberly@epa.gov

36. "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-04-2022-0735(b)**.
37. 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, the 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 thirty (30) days of the Effective Date of this CAFO, interest is waived. However, if the civil penalty is not paid in full within thirty (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) 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.
38. 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), the 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), and 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 the EPA or engaging in programs the 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).

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

VIII. EFFECT OF CAFO

- 40. 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.
- 41. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case affect the right of the 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),
- 42. 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). The EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.
- 43. 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 the 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.
- 44. Nothing herein shall be construed to limit the power of the 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.
- 45. 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.
- 46. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
- 47. 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.
- 48. 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.

49. 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.
50. 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.
51. 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.
52. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the 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 the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
53. 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.
54. 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

55. This CAFO shall become effective upon execution of the Final Order by the Regional Judicial Officer on the date of filing by the Regional 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 **Aguair LLC**, Docket Number FIFRA-04-2022-0735(b), Is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Signature

Date 3/3/2023

Printed Name: FAIZAN ALY

Title: COO

Address: 1359 GRESHAM RD
MARIETTA, GA 30062

The foregoing Consent Agreement In the Matter of **Aguair LLC**, Docket Number FIFRA-04-2022-0735(b), Is Hereby Stipulated, Agreed and Approved for Entry.

FOR COMPLAINANT:

Signing for

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:

Aguair LLC,

Respondent.

Docket No. **FIFRA-04-2022-0735(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.

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 by 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 **Aguair LLC**, Docket No. FIFRA-04-2022-0735(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: Robert Murphy
Aguair LLC
rmurphy@prodew.com
(844) 993-3660

To EPA: Kimberly Tonkovich
Life Scientist
tonkovich.kimberly@epa.gov

Robert Caplan
Senior Regional Counsel
caplan.robert@epa.gov

Shannon L. Richardson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960