

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

<p>In the Matter of:</p> <p>Aqueus, LLC</p> <p>Troy, Michigan</p> <p>Respondent.</p> <hr style="border: 1px solid black;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. FIFRA-05-2023-0014</p> <p>Proceeding to Assess a Civil Penalty</p> <p>Under Section 14(a) of the</p> <p style="text-align: center;">Federal Insecticide, Fungicide, and</p> <p>Rodenticide Act, 7 U.S.C. § 136l(a)</p>
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Consent Agreement and Final Order

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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Aqueus, LLC, formerly known as Jungle Control LLC, a limited liability company doing business in the State of Michigan.
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. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that 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, or whose registration has been cancelled or suspended.

11. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines a “label” as “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

12. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines “labeling” as “all labels and all other written, printed, or graphic matter... accompanying the pesticide or device at any time; or ... to which reference is made on the label or in literature accompanying the pesticide or device.”

13. 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.”

14. Section 2(u)(2) of FIFRA, 7 U.S.C. § 136(u)(2), defines a “pesticide,” in part, as a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

15. Section 2(v) of FIFRA, 7 U.S.C. § 136(v), defines a “plant regulator” as “any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof.”

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), states that 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.”

17. The regulation at 40 C.F.R. 152.15(a)(1) states that a substance is considered to be intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or otherwise implies (by labelling or otherwise) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide.

18. 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 \$23,494 for each offense that occurred after November 2, 2015, and assessed on or after January 6, 2023, 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

19. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

20. On March 17, 2020, inspectors employed by the Michigan Department of Agriculture and Rural Development (MDARD), and authorized to conduct inspections under FIFRA, conducted an inspection in accordance with Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136(f) and 136(g), at a retail store known as Hydro Pros Garden Center located at 44880 Van Dyke Avenue, Utica, Michigan 48317.

21. During the March 17, 2020 inspection, MDARD inspectors observed Jungle Control Ferocious Premium Plant Optimizer offered for sale at Hydro Pros Garden Center and collected receiving, sales, and photographic records of this product from the 2020 calendar year.

22. The label of Jungle Control Ferocious Premium Plant Optimizer observed by MDARD during the March 17, 2020 inspection and affixed to the container of the product collected as a physical sample contained the following plant regulator claims or statements:

- a. Strengthens the cellular structure of plants.
- b. Reduces the space between internodes, creating more flowers and increasing yield.

23. Respondent owned or operated a website located at www.junglecontrol.it during the calendar year 2021.

24. On February 26, 2021, an inspector employed by EPA, and authorized to conduct inspections under FIFRA, examined Respondent's website located at www.junglecontrol.it which made identical claims for Jungle Control Ferocious Premium Plant Optimizer as listed in Paragraph 22.

25. On February 26, 2021, EPA's inspector obtained true and accurate screenshots from Respondent's website located at www.junglecontrol.it wherein Jungle Control Ferocious Premium Plant Optimizer was being offered for sale by Respondent.

26. Jungle Control Ferocious Premium Plant Optimizer is a “pesticide” as that term is defined in Section 2(u)(2) of FIFRA, 7 U.S.C. § 136(u)(2).

27. Jungle Control Ferocious Premium Plant Optimizer is a pesticide, and, as such, is required to be registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

28. Jungle Control Ferocious Premium Plant Optimizer is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a, and as such, is an unregistered pesticide based on the intended use and pesticidal claims made in relation to the product.

Count 1

29. Complainant incorporates Paragraphs 1 through 28 of this CAFO as though set forth in this paragraph.

30. On February 26, 2021, Respondent offered for sale Jungle Control Ferocious Premium Plant Optimizer, a pesticide, as that term is defined in Paragraph 14, that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

31. Respondent’s offer for sale of unregistered Jungle Control Ferocious Premium Plant Optimizer on February 26, 2021, is a “distribution or sale” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

32. Respondent’s distribution or sale of the unregistered pesticide Jungle Control Ferocious Premium Plant Optimizer on February 26, 2021, constitutes one unlawful act, pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

33. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), subjects Respondent to the assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

34. 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 is **\$7,280**. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of the Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$7,280** civil penalty for the alleged FIFRA violations by Automated Clearinghouse (ACH) electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

In the comment area of the electronic funds transfer, state "Aqueus, LLC" and the docket number of this CAFO.

36. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

Juliane Grange (E-19J)
Regional Hearing Clerk
U.S. EPA, Region 5
r5hearingclerk@epa.gov;

Angela Bouche (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
bouche.angela@epa.gov
and
r5lecab@epa.gov;

and

Kevin Chow (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
chow.kevin@epa.gov

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

38. If Respondent does not pay the civil penalty in a timely manner, 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. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

39. 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 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

40. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: chow.kevin@epa.gov (for Complainant), and Kyoffy@icloud.com (for Respondent).

41. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

42. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

44. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

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

46. 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.

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

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

Aqueus, LLC, Respondent

Jun 21, 2023
Date

John Coppolino
John Coppolino
Member, Board of Managers
Aqueus, LLC

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS
Digitally signed by MICHAEL HARRIS
Date: 2023.06.29 11:15:11 -05'00'
Michael D. Harris
Division Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

In the Matter of: Aqueus, LLC
Docket No.: FIFRA-05-2023-0014

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.

ANN COYLE Digitally signed by ANN
COYLE
Date: 2023.06.30
09:25:05 -05'00'

Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5