

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2024-0011
)	
2XL Corporation)	Proceeding to Assess a Civil Penalty
Bolingbrook, Illinois)	Under Section 14(a) of the
)	Federal Insecticide, Fungicide, and
Respondent.)	Rodenticide Act, 7 U.S.C. § 136l(a)
)	
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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 2XL Corporation, a corporation doing business in the State of Illinois.

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)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), states that it is unlawful for any person in any state to distribute or sell to any person any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3 of FIFRA, 7 U.S.C. § 136a.

11. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1) states that each applicant for registration of a pesticide shall file a statement which includes, in part, a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use.

12. 40 C.F.R. § 152.44 provides for the modification of the labeling of a registered product through an amendment process.

13. 40 C.F.R. § 152.132 states that a 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.” Supplemental distribution is permitted upon notification to the Agency if,

among other things, the label of the distributor product is the same as that of the registered product, except that the product name of the distributor product may be different, the name and address of the distributor may appear instead of that of the registrant, the registration number of the registered product must be followed by a dash, followed by the distributor's company number, the establishment number must be that of the final establishment at which the product was produced, and specific claims may be deleted, provided that no other changes are necessary.

14. 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."

15. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines "labeling," in part, 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."

16. 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."

17. Section 2(u)(2) of FIFRA, 7 U.S.C. § 136(u)(2), defines a "pesticide," in part, as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term "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 which the Administrator of the EPA declares to be a pest under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. § 152.5.

19. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “distribute or sell” as “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.”

20. 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 \$24,255 for each offense that occurred after November 2, 2015, and assessed on or after December 27, 2023, pursuant to Section 14(a)(l) of FIFRA, 7 U.S.C. § 136l(a)(l), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

22. Respondent owned or operated a website located at www.2xlpro.com during the calendar year 2023.

23. On April 6, 2023, an inspector employed by EPA and authorized to conduct inspections under FIFRA examined Respondent’s website located at www.2xlpro.com which made the following claims for FORCE2 Wipes (180 Count) (EPA Reg. No. 6836-372-82144):

a. “FORCE2 Disinfecting Wipes are safe fast-acting, EPA registered, medical-grade disinfectant wipes.”

b. “FORCE2 Disinfecting Wipes provide daily disinfecting defense needed in healthcare and long-term care facilities, schools, offices, etc; anywhere stringent protocols are necessary to help prevent illness and protect people.”

24. On April 6, 2023, and May 19, 2023, EPA’s inspector obtained true and accurate screenshots from Respondent’s website www.2xlpro.com wherein FORCE2 Wipes (180 Count) (EPA Reg. No. 6836-372-82144) was being offered for sale by Respondent.

25. FORCE2 (EPA Reg. No. 6836-372-82144) was registered as a supplemental distributor product on April 19, 2017.

26. NuGEN 2M Disinfectant Wipes (EPA Reg. No. 6836-372), the basic registered product, was registered under Section 3 of FIFRA on March 16, 2015.

27. The most recent master label amendment for the basic registered product, NuGEN 2M Disinfectant Wipes (EPA Reg. No. 6836-372), was accepted by EPA on January 9, 2023 and did not include the claims listed in paragraph 23 or any similar claims.

28. On April 28, 2023, EPA purchased a box of FORCE2 Wipes (180 Count) (EPA Reg. No. 6836-372-82144) from www.2xlpro.com which was delivered to EPA Region 5's office on May 1, 2023.

Count 1

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

30. On April 28, 2023, Respondent distributed or sold the registered pesticide FORCE2 Wipes (180 Count) (EPA Reg. No. 6836-372-82144) on www.2xlpro.com with claims for the product that substantially differed from the claims made for the product as part of the statement required in connection with its registration under section 3 of FIFRA.

31. Respondent's distribution or sale of the registered pesticide FORCE2 Wipes (180 Count) (EPA Reg. No. 6836-372-82144) on April 28, 2023 with claims made for it as part of its distribution or sale that substantially differed from claims made for it as a part of the statement required in connection with its registration under section 3 of FIFRA constitutes one unlawful act, pursuant to Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B).

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

Civil Penalty

33. 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 **\$4,080**. 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.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$4,080** civil penalty for the alleged FIFRA violations by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state 2XL Corporation and the docket number of this CAFO.

35. 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

Sue Landsittel (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
landsittel.sue@epa.gov

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

37. 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.

38. 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

39. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: landsittel.sue@epa.gov (for Complainant), and michelleg@2xlpro.com (for Respondent).

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

41. 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.

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

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

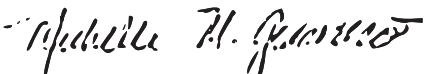
44. The terms of this CAFO bind Respondent, its successors, and assigns.

45. 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.

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

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

2XL Corporation, Respondent

6-10-2024 _____	 _____
Date	Michelle Giammanco President 2XL Corporation

United States Environmental Protection Agency, Complainant

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS
Date: 2024.06.26
14:49:21 -05'00'

Michael D. Harris
Division Director
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency
Region 5

**In the Matter of:
2XL Corporation
Docket No.: FIFRA-05-2024-0011**

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