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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. FIFRA-10-2018-0204
CONCENTRATES, INC.,	)	
	)	<b>CONSENT AGREEMENT</b>
	)	
Milwaukie, Oregon,	)	
	)	
Respondent.	)	

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**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l(a).

1.2. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Concentrates, Inc. ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement ("Final Order").

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of FIFRA is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of FIFRA together with the specific provisions of FIFRA and the implementing regulations that Respondent is alleged to have violated.

## III. ALLEGATIONS

3.1. 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.”

3.2. 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.”

3.3. The regulation at 40 C.F.R. § 152.15 states 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): (1) That the substance (either by itself or in combination with any other substance) can or should

be used as a pesticide, or (2) That 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 substances), (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.”

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

3.5. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” as “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “producer” as “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling, and relabeling).”

3.6. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “produce” as “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.” The regulation at 40 C.F.R. § 167.3 further defines “produce” as “[T]o package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”

3.7. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”

3.8. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), defines “to 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.”

3.9. The regulation at 40 C.F.R. § 152.3 further defines “distribute or sell” as “the acts of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment, or receiving and (having so received) delivering or offering to deliver, or releasing for shipment to any person in any State.”

3.10. According to 40 C.F.R. § 152.3, a product becomes “released for shipment” when the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment.”

3.11. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), provides that “No person shall produce any pesticide subject to [FIFRA] or active ingredient used in producing a pesticide subject to [FIFRA] in any State unless the establishment in which it is produced is registered with the Administrator.”

3.12. The regulation at 40 C.F.R. § 167.20(a)(1) requires that “Any establishment where a pesticidal product is produced must be registered with the Agency.”

3.13. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states, “Except as provided in this subchapter, no person in any State may distribute or sell to any person any pesticide that is not registered under this subchapter.”

3.14. Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), provides that “it shall be unlawful for any person who is a producer to violate any of the provisions of [Section 7 of FIFRA].”

3.15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), provides that “it shall be unlawful for any person in any State to sell or distribute to any person any pesticide that is not registered under Section 3 of FIFRA.”

3.16. Respondent is a corporation located and incorporated in the State of Oregon. Therefore, Respondent is a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

3.17. Between at least May 1, 2014, and May 29, 2015, Respondent owned and operated an establishment located at 5505 SE International Way, Milwaukie, Oregon (“Establishment”).

3.18. Between at least May 1, 2014, and May 29, 2015, Respondent on multiple occasions repackaged a product called Vinegar Concentrate, consisting of 20% acetic acid, from 55-gallon containers into 3.5-gallon containers and 1-gallon containers at the Establishment.

3.19. Between at least May 1, 2014, and May 29, 2015, Respondent labeled each container of Vinegar Concentrate sold with a label entitled “Horticultural Vinegar Supplemental Info” (“Vinegar Label”).

3.20. The Vinegar Label stated in part, “Some uses include but not limited to, ph modification of water and soil. Drip irrigation line and hydroponic equipment cleaner. Clean

brick/stone patios and drive ways. Liquid organic fertilizer stabilizer (via lower pH). And general cleaner/sanitizer for greenhouses, hothouses and solariums . . . . Although many folks, especially in organic culture, have historically used strong vinegars to abate vegetation growth, be advised that Acetic Acids of 8% or less when characterized as an inert ingredient, in a mixture, are exempt from registration by the EPA as a pesticide under EPA "Minimum Risk Pesticide" FIFRA 25B, List 4A. Thus, this product (at 20% acidity) is not to be labeled, marketed or characterized in any way as having any herbicidal virtues."

3.21. Therefore, between at least May 1, 2014, and May 29, 2015, Respondent claimed, stated, or implied by labeling that Vinegar Concentrate can or should be used as a pesticide.

3.22. Between at least May 1, 2014, and May 29, 2015, Respondent on multiple occasions repackaged a product called Boric Acid Granules, consisting of boric acid granules, from 55-pound containers into 5-pound and 1-pound containers at the Establishment.

3.23. Between at least May 1, 2014, and May 29, 2015, Respondent maintained a webpage at the address: <http://www.concentratesnw.com> ("Webpage").

3.24. Between at least May 1, 2014, and May 29, 2015, Respondent posted on the Webpage a document titled "Retail Price List," accessible via the tab "Our Store and Products."

3.25. Between at least May 1, 2014, and May 29, 2015, on the Retail Price List Respondent listed under the heading "Fungicides/Herbicides/Animal Repellent" the product: "Vinegar Concentrate 20% 1gal and 3.5gal."

3.26. Therefore, between at least May 1, 2014, and May 29, 2015, Respondent claimed, stated, or implied that Vinegar Concentrate can or should be used as a pesticide.

3.27. Therefore, Vinegar Concentrate is a pesticide as the term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.28. Between at least May 1, 2014, and May 29, 2015, on the Retail Price List, Respondent listed under the heading "Organic/Natural Controls: Insecticides" the product "Diatomaceous Earth OMRI."

3.29. Therefore, between at least May 1, 2014, and May 29, 2015, Respondent claimed, stated, or implied that the Diatomaceous Earth OMRI product can or should be used as a pesticide.

3.30. Between at least May 1, 2014, and May 29, 2015, the Diatomaceous Earth OMRI product contained diatomaceous earth.

3.31. Between at least May 1, 2014, and May 29, 2015, Respondent posted on the Webpage a document entitled "Concentrates' Top 25 Natural Soil Amendments" that stated "Diatomaceous Earth. It is used for natural insect control. It is chemically inert and harmless, but shouldn't be inhaled. It won't harm people or animals (unless inhaled), but it causes insects to dehydrate & die!"

3.32. Therefore, between at least May 1, 2014, and May 29, 2015, Respondent claimed, stated, or implied that the products containing diatomaceous earth can or should be used as pesticides.

3.33. Therefore, the Diatomaceous Earth OMRI product is a pesticide as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.34. Between at least May 1, 2014, and May 29, 2015, on the Retail Price List, Respondent listed under the heading "Organic/Natural Controls: Insecticides" the product "Boric Acid Granules."

3.35. Therefore, between at least May 1, 2014, and May 29, 2015, Respondent claimed, stated, or implied that the product Boric Acid Granules can or should be used as a pesticide.

3.36. Therefore, the product Boric Acid Granules is a pesticide as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

#### **Production in an Unregistered Establishment**

3.37. Between at least May 1, 2014, and May 29, 2015, Respondent produced the pesticide products Vinegar Concentrate and Boric Acid Granules at the Establishment.

3.38. Therefore, the Establishment meets the definition of that term in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd).

3.39. At no time between at least May 1, 2014, and May 29, 2015, did Respondent register the Establishment with the EPA Administrator, in violation of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) and 40 C.F.R. § 167.20(a)(1).

#### **Distribution of the Unregistered Pesticide Product Vinegar Concentrate**

3.40. Between at least May 1, 2014, and May 29, 2015, Respondent distributed and sold the pesticide product Vinegar Concentrate to persons on at least 12 occasions.

3.41. At no time between at least May 1, 2014, and May 29, 2015, was the pesticide product Vinegar Concentrate registered under Section 3 of FIFRA.



3.42. Therefore, Respondent violated FIFRA by distributing and selling the unregistered pesticide product Vinegar Concentrate to persons on at least 12 occasions between at least May 1, 2014, and May 29, 2015.

**Distribution of the Unregistered Pesticide Product Diatomaceous Earth OMRI**

3.43. Between at least May 1, 2014, and May 29, 2015, Respondent distributed and sold the pesticide product Diatomaceous Earth OMRI to a person on at least one occasion.

3.44. At no time between at least May 1, 2014, and May 29, 2015, was the pesticide product Diatomaceous Earth OMRI registered under Section 3 of FIFRA.

3.45. Therefore, Respondent violated FIFRA by distributing and selling the unregistered pesticide product Diatomaceous Earth OMRI to a person on at least one occasion between at least May 1, 2014, and May 29, 2015.

**Distribution of the Unregistered Pesticide Product Boric Acid Granules**

3.46. Between at least May 1, 2014, and May 29, 2015, Respondent distributed and sold the pesticide product Boric Acid Granules to a person on at least one occasion.

3.47. At no time between at least May 1, 2014, and May 29, 2015, was the pesticide product Boric Acid Granules registered under Section 3 of FIFRA.

3.48. Therefore, Respondent violated FIFRA by distributing and selling the unregistered pesticide product Boric Acid Granules to a person on at least one occasion between at least May 1, 2014, and May 29, 2015.

## **ENFORCEMENT AUTHORITY**

3.49. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense that occurred after December 6, 2013, through November 2, 2015.

## **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the legal and factual allegations contained in Section III of this Consent Agreement, but is willing to enter this Consent Agreement to settle these claims as expeditiously as possible.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136/(a)(4), EPA has taken into account the appropriateness of such penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violations. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$82,136 (the "Assessed Penalty").

4.4. Pursuant to 31 U.S.C. § 3717(a)(1) and 40 C.F.R. § 13.11(a)(1), Respondent must pay an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury on any portion of the penalty agreed to in Paragraph 4.3 not paid within 30 days of the effective date of this Consent Agreement and Final Order.

4.5. The rate of the current value of funds to the United States Treasury is 1%. Pursuant to 40 C.F.R. § 13.11(a)(3), the rate of interest, as initially assessed, remains fixed for the duration of the indebtedness.

4.6. Respondent agrees to pay the Assessed Penalty set forth in Paragraph 4.3 in three installments. The first installment of \$7,201 shall be paid within 30 days of the effective date of this Consent Agreement and Final Order. The second installment of \$37,841.67 (consisting of \$37,467 plus \$374.67 in accrued interest) shall be paid within 365 calendar days of the effective date of this Consent Agreement and Final Order. The third installment of \$37,842.68 (consisting of the \$37,468 plus \$374.68 in accrued interest) shall be paid within 730 calendar days of the effective date of this Consent Agreement and Final Order.

4.7. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.8. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.7 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Young.teresa@epa.gov

Bethany Plewe  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
Plewe.bethany@epa.gov

4.9. If Respondent fails to pay any portion of the Assessed Penalty in full by the due dates in Paragraph 4.6, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5), to collect any unpaid penalties, together with interest, handling charges, and nonpayment penalties, as set forth below.

4.10. If Respondent fails to pay any portion of the Assessed Penalty in full by the due dates in Paragraph 4.6, Respondent shall also be responsible for payment of the following amounts:

4.10.1. Interest. Pursuant to 31 U.S.C. § 3717(a)(1), any unpaid portion of the Assessed Penalty shall bear interest at the rate established by the Secretary of the Treasury from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

4.10.2. Handling Charge. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of \$15 shall be paid if any portion of the Assessed Penalty is more than 30 days past due.

4.10.3. Nonpayment Penalty. Pursuant to 31 U.S.C. § 3717(e)(2), a nonpayment penalty of 6% per annum shall be paid on any portion of the Assessed Penalty that is more than 90 days past due, which nonpayment shall be calculated as of the date the underlying penalty first becomes past due.

4.11. The Assessed Penalty and accrued interest described in Paragraphs 4.3 through 4.6, including any additional costs incurred under Paragraph 4.10, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.13. Except as described in Paragraph 4.10, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

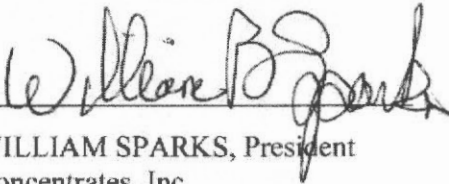
4.17. The above provisions in Part IV are STIPULATED AND AGREED upon by

Respondent and EPA Region 10.

DATED:

1/17/18

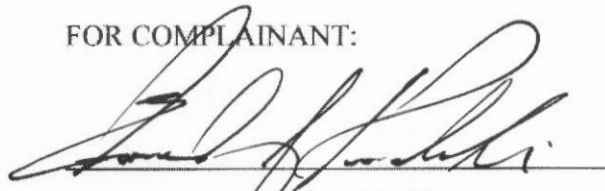
FOR RESPONDENT:

  
WILLIAM SPARKS, President  
Concentrates, Inc.

DATED:

1/19/2018

FOR COMPLAINANT:

  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: )  
 )  
CONCENTRATES, INC., )  
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Milwaukie, Oregon, )  
 )  
Respondent. )

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DOCKET NO. FIFRA-10-2018-0204  
**FINAL ORDER**

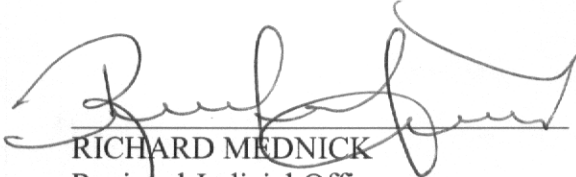
1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has re-delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under FIFRA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated or permits issued thereunder.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

SO ORDERED this 23<sup>rd</sup> day of January, 2018.



RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10



Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Concentrates, Inc., Docket No.: FIFRA-10-2018-0204**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

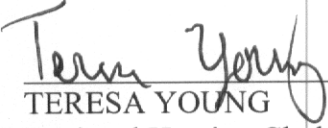
Brett S. Dugan  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Heather Havens  
General Manager  
Concentrates, Inc.  
5505 SE International Way  
Milwaukie, Oregon 97222

Laura Maffei, R.G.  
Cable Huston LLP  
1001 SW Fifth Avenue  
Suite 2000  
Portland, Oregon 97204

DATED this 24 day of January, 2018.

  
TERESA YOUNG  
Regional Hearing Clerk  
EPA Region 10