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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2017-0164
RCO INTERNATIONAL INC.,)	
)	CONSENT AGREEMENT
)	
Harrisburg, Oregon,)	
)	
Respondent.)	

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 RCO International 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. 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....”

3.4. 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.”

3.5. 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.”

3.6. 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.”

3.7. According to Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), a pesticide is misbranded if “the labeling accompanying it does not contain: directions for use and use classifications which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under [Section 3(d) of FIFRA, 7 U.S.C. § 136a(d)], are adequate to protect health and the environment.”

3.8. A pesticide product is misbranded under section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), if the label on the product does not comply with the regulation at 40 C.F.R. § 156.140(a).

3.9. Pursuant to Section 19 of FIFRA, 7 U.S.C. § 136q, on August 16, 2008, EPA issued regulations establishing container labeling requirements. These regulations are codified at 40 C.F.R. §§ 156.140-156.159.

3.10. The regulation at 40 C.F.R. § 156.140 states that “For products other than plant-incorporated protectants, the following statements, as applicable, must be placed on the label or container. The information may be located on any part of the container except the closure. If the statements are placed on the container, they must be durably marked on the container. Durable marking includes, but is not limited to etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, or marking with durable ink.”

3.11. The regulation at 40 C.F.R. § 156.140(a) states that “For nonrefillable containers, the statements in paragraphs (a)(1) through (a)(4) of this section are required except as provided in paragraphs (a)(5), (c), (d), and (e) of this section. If placed on the label, the statements in paragraphs (a)(1) through (a)(3) of this section must be under an appropriate heading under the heading “Storage and Disposal.” If any of the statements in paragraphs (a)(1) through (a)(3) of this section are placed on the container, an appropriate referral statement such as ‘See container for recycling [or other descriptive word] information.’ must be placed on the label under the heading ‘Storage and Disposal.’”

3.12. The regulation at 40 C.F.R. § 156.140(a)(2)(i)-(iii) states that one of the following statements is required: “Do not reuse or refill this container;” “Do not reuse this container to hold materials other than pesticides or dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state;” “Do not

reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.”

3.13. The regulation at 40 C.F.R. § 156.140(a)(3)(i)-(v) states that one of the following statements is required: “Offer for recycling if available;” “Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site];” “A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice; An alternative recycling statement that has been reviewed and approved by EPA;” “Offer for reconditioning if appropriate.”

3.14. The regulation at 40 C.F.R. § 156.159 states that “Any pesticide product released for shipment by a registrant after August 16, 2011, must bear a label that complies with §§156.10(d)(7), 156.10(f), 156.10(i)(2)(ix), 156.140, 156.144, 156.146 and 156.156.”

3.15. In accordance with Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), “it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is adulterated or misbranded.”

3.16. In accordance with Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), “it shall be unlawful for any person to violate any regulation issued under [Sections 3 and 19 of FIFRA].”

3.17. 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).

3.18. The product “Omega Gopher Grain Bait” (EPA Reg. No. 5042-32) (“Omega”) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.19. The product “RCO Avalon” (EPA Reg. No. 5042-34) (“Avalon”) is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

3.20. The labels on each container of Omega distributed between January 1, 2013, and June 19, 2017, lacked the Storage and Disposal Statements as required by 40 C.F.R. § 156.140(a). Therefore, each Omega product distributed between January 1, 2013, and June 19, 2017, was misbranded in accordance with Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

3.21. Respondent distributed or sold Omega to a person on at least 19 occasions between January 1, 2013, and June 19, 2017.

3.22. Therefore, between at least January 1, 2013, and June 19, 2017, Respondent violated FIFRA on at least 19 occasions by failing to comply with the regulations issued pursuant to Section 19 of FIFRA and by distributing and selling to a person the misbranded pesticide product Omega on at least 19 occasions.

3.23. The labels on each container of Avalon distributed to a person between at least January 1, 2013, and June 19, 2017, lacked the Storage and Disposal Statements as required by 40 C.F.R. § 156.140(a). Therefore, each Avalon product distributed between January 1, 2013, and June 19, 2017, was misbranded in accordance with Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F).

3.24. Respondent distributed or sold Avalon to a person on at least one occasion between January 1, 2013, and June 19, 2017.

3.25. Therefore, between at least January 1, 2013, and June 19, 2017, Respondent violated FIFRA by failing to comply with the regulations issued pursuant to Section 19 of FIFRA and by distributing and selling to a person the misbranded pesticide product Avalon.

3.26. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$7,500 for each offense occurring after January 12, 2009, through November 2, 2015, and \$19,057 for each offense occurring after 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 specific factual allegations contained in this Consent Agreement.

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(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 \$25,400 (the "Assessed Penalty").

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. 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.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 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

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

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, 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.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. 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.

4.8.2. 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.

4.8.3. 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.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. 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.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. 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.

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

4.14. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

9/21/17

FOR RESPONDENT:

Douglas C. Freeman

DOUGLAS C. FREEMAN, President
RCO International Inc.

DATED:

9/25/2017

FOR COMPLAINANT:

Edward J. Kowalski

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. FIFRA-10-2017-0164
)	
RCO INTERNATIONAL INC.)	FINAL ORDER
)	
Harrisburg, Oregon,)	
)	
Respondent.)	


1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated 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 26th day of September, 2017.


M. SOCORRO RODRIGUEZ
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: RCO International Inc., Docket No.: FIFRA-10-2017-0164**, 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:

Douglas C. Freeman
RCO International Inc.
P.O. Box 191
Harrisburg, Oregon 97446

DATED this 27 day of September, 2017.


TERESA YOUNG
Regional Hearing Clerk
EPA Region 10