



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

**OCT 17 2013**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 OCT 17 P 2:39  
REGIONAL HEARING  
CLERK

William C. Sullivan, Jr.  
Counsel  
Scarinci Hollenbeck  
Attorney for Respondent  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, NJ 07071

Re: In the Matter of Royce Associates  
Docket No. FIFRA-02-2013-5109

Dear Mr. Sullivan:

Enclosed is a fully executed Consent Agreement and Final Order ("CA/FO") that resolves the above referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with the terms of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Regards,

A handwritten signature in blue ink, appearing to read "KLT" followed by a horizontal line.

Karen L. Taylor, Esq.  
Office of Regional Counsel  
Waste and Toxic Substance Branch

Enclosure

cc: Karen Maples, Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

-----X  
In the Matter of :  
 :  
Royce Associates, : **CONSENT AGREEMENT**  
 : **AND FINAL ORDER**  
 :  
Respondent :  
 : Docket No. FIFRA-02-2013-5109  
 :  
Proceeding under the Federal :  
Insecticide, Fungicide, and :  
Rodenticide Act, as amended :  
-----X

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 OCT 17 P 2 40  
REGIONAL HEARING  
CLERK

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is being initiated pursuant to Title 7 of the United States Code (“U.S.C.”) Section 136l(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 *et seq.* (“FIFRA” or “the Act”). Pursuant to Section 22.13(b) of Title 40 of the Code of Federal Regulations (“C.F.R.”) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules of Practice”), where the parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to Sections 22.18(b)(2) and 22.18(b)(3). This administrative proceeding constitutes one that is being simultaneously commenced and concluded pursuant to said provisions.

Complainant and Respondent agree that settling this matter by entering into this CA/FO, pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without litigation.

### **EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Royce Associates, a limited partnership organized and doing business under and by virtue of the laws of the State of New Jersey, located at 735 Carlton Avenue, East Rutherford, New Jersey 07073 (“Respondent” or “Royce”).
2. On June 29, August 24 and November 18, 2011, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, duly authorized representatives of the EPA conducted inspections of Royce Associates at its establishment located in East Rutherford, New Jersey. During the inspections, documentary samples were collected. Based upon review of the documentary samples collected, EPA discovered that Royce imported zinc borate (EPA Registration No.75630-1) between February 2010 and May 2011.
3. Royce did not submit a Notice of Arrival of Pesticides and Devices EPA Form 3540-1 (“NOA”), prior to the arrival of the aforementioned shipments in the United States.
4. Pursuant to Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), it is unlawful for a registrant, dealer, or other distributor to fail to file reports required by FIFRA. Title 19 C.F.R. Section 12.112, promulgated under the authority of Section 17 of FIFRA, 7 U.S.C. § 136o, requires an importer desiring to import pesticides into the United States to submit NOAs to the EPA prior to the arrival of the shipment in the United States.

5. The EPA concluded that Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j (a)(2)(N), by failing to submit NOAs to the EPA prior to the arrival of the aforementioned shipments in the United States.
6. On February 26, 2013, EPA sent Respondent a Notice of Opportunity with Respect to Action under FIFRA to initiate discussions with the Respondent. In response to EPA's notice of alleged violations of FIFRA, Royce forwarded correspondence dated May 2, 2013. In that correspondence, Royce explained the circumstances related to the NOAs at issue, particularly the role of Mara Shipping, Inc., the import broker on whom Royce relied with respect to FIFRA compliance. More specifically, Royce forwarded the NOAs to Mara, but Mara forwarded them to U.S. Customs not to EPA. Thereafter, EPA and Royce exchanged correspondence setting forth the merits of each party's position, resulting in the terms set forth in this Consent Agreement.
7. Respondent has informed EPA that it has taken steps to ensure future compliance with the applicable importation requirements of FIFRA.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice, 40 C.F.R. § 22.18, it is hereby agreed, and accepted by Respondent that it shall after the date of execution of this Consent Agreement comply with the following terms:

1. For purposes of this proceeding, Respondent: (a) admits that EPA has jurisdiction under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), to commence a civil administrative proceeding for the violations described in EPA's Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies EPA's Findings of Fact and Conclusions of Law.

2. Respondent shall ensure its compliance with the applicable importation requirements of FIFRA.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Thirty Four Thousand Four Hundred Dollars (\$34,400)**, payable to the "**Treasurer, United States of America.**" The check shall be identified with a notation of the name and docket number of this case as follows:

In the Matter of Royce Associates, Docket No. FIFRA-02-2013-5109

The check shall be mailed to:

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

Alternatively, payment may be by electronic fund transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: **FRNYUS33, 33 Liberty Street,  
New York, NY 10045**
- 3) Account: **68010727**
- 4) ABA number: **021030004**
- 5) Field Tag 4200 of the Fedwire message should read  
**"D 68010727 Environmental Protection Agency"**
- 6) **Royce Associates**
- 7) Docket Number FIFRA-02-2013-5109

Respondent shall also send a copy of the payment to each of the following:

Karen L. Taylor, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Respondent shall make two payments of \$11,466.66 each and one payment of \$11,466.68. The first payment must be received at the above address (or account of EPA) on or before 45 calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.

The second payment must be received at that address on or before 75 calendar days after the date of the signature of the Final Order. The third payment must be received at that address on or before 105 calendar days after the date of the signature of the Final Order. (The dates by which the payments must be received shall hereinafter be referred to as the “due dates”.)

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of the payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
- d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. Section 162(f).

4. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law section above. Nothing herein shall be read to preclude the EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on any of the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

9. The provisions of this CA/FO shall be binding upon both EPA and Respondent, its agents, servants, authorized representatives and successors or assigns.

10. Respondent waives any right it may have pursuant to 40 C.F.R. Section 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. This CA/FO and any provision herein shall not be construed as an admission of liability in any judicial or administrative proceeding, except in a proceeding to enforce or seek compliance with this CA/FO.

12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.



**In the Matter of Royce Associates**  
**Docket No. FIFRA-02-2013-5109**

RESPONDENT: **Royce Associates**

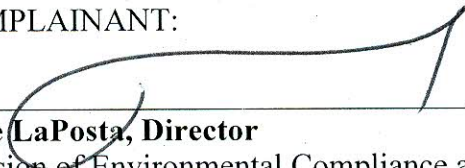
BY:   
(Signature)

NAME: Albert J. Royce IV  
(PLEASE PRINT)

TITLE: President, Menepco, Inc., General Partner Royce Associates, ACD

DATE: 9/25/13

COMPLAINANT:



**Dore LaPosta, Director**  
Division of Environmental Compliance and Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, NY 10007-1866

DATE: SEPTEMBER 27, 2013

**In the Matter of Royce Associates**  
**Docket No. FIFRA-02-2013-5109**

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14 of FIFRA and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

*Helen Ferrara*

**Helen Ferrara**

Regional Judicial Officer

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, NY 10007-1866

DATE: September 30, 2013

**In the Matter of Royce Associates**  
**Docket No. FIFRA-02-2013-5109**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Hand:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, NY 10007-1866

Certified Mail  
Return Receipt Requested:

William C. Sullivan, Jr.  
Counsel  
Scarinci Hollenbeck  
Attorney for Respondent  
1100 Valley Brook Avenue  
P.O. Box 790  
Lyndhurst, NJ 07071

Dated: OCT 17 2013  
New York, NY

Michelle N. Bag