

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA -- REGION 10

In the Matter of:)
)
)
)
OR-CAL, INC.)
500 Territorial Street)
Harrisburg, Oregon 97446)
)
Respondent.)

DOCKET NO. FIFRA-10-2011-0081

**CONSENT AGREEMENT AND
FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") 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. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1316(l)(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 Or-Cal, Inc. ("Respondent") agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO 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, to sign consent agreements between EPA and the party against whom a FIFRA penalty is proposed to be assessed.

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

III. ALLEGATIONS

3.1. Respondent owns and operates a business facility located at 500 Territorial Street, Harrisburg, Oregon 97446.

3.2. On at least 52 separate occasions in 2008 and 2009, Respondent produced, sold, and distributed from its Harrisburg facility at least two products, Or-Cal, Inc. Slug & Snail Bait (EPA Reg. No. 71096-7) and Southern Ag Snail & Slug Bait (EPA Reg. No. 71096-7-829), with labels that did not contain directions for use and warning or caution statements necessary to adequately protect human health and the environment and were therefore misbranded under FIFRA Section 2(q)(1)(F) & (G), 7 U.S.C. § 136(q)(1)(F) & (G), in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

3.3. Pursuant FIFRA Section 14(a), 7 U.S.C. § 136l(a), 40 C.F.R. Part 19, and the Federal Civil Penalties Adjustment Act of 1990, EPA may assess a civil penalty of not more than \$6,500 for each offense against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA between March 2004 and January 2009.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO

4.3. As required by Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), EPA has considered the appropriateness of the penalty to the size of the business, the effect of the 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 FIFTY-FOUR THOUSAND EIGHTY DOLLARS (\$54,080).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

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

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to 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-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Derrick Terada
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-084
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action under FIFRA Section 14(a)(5), 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. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.8.1. Interest. Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

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 penalty shall be calculated as of the date the underlying penalty first becomes past due.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8 above, 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 CAFO and to bind Respondent to this document.

4.11. Except as described in Subparagraph 4.8.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

FOR RESPONDENT:



Signature

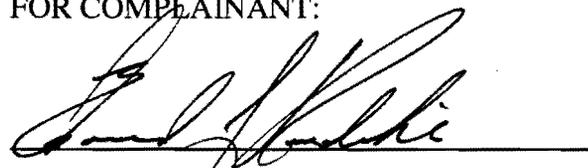
Print Name: George B. Becker

Title: President

DATED:

7/8/2001

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

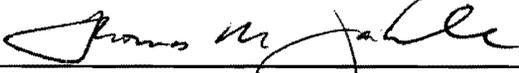
V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the FIFRA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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 CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 14th day of July, 2011.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: OR-CAL, INC., DOCKET NO.: FIFRA-10-2011-0081** was filed with the Regional Hearing Clerk on July 15, 2011.

On July 15, 2011 the undersigned certifies that a true and correct copy of the document was delivered to:

Mercer St. Peter, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 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 on July 15, 2011, to:

OR-CAL, Incorporated
300 Territorial Street
Harrisburg, Oregon 97446

William G. Wheatley
Jaqua & Wheatley, LLC
Attorneys at Law
825 East Park Street
Eugene, Oregon 97401-2909

DATED this 15th day of July 2011.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10