

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2021-0010
OZWEST, INC.)	
)	
)	CONSENT AGREEMENT
Portland, 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 Ozwest, 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 Enforcement and Compliance Assurance Division, 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. 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).

3.3. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), states that the term “device” means “any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and

other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.”

3.4. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “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 (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].”

3.5. Respondent’s product “Zeon Mobee UVC Light Sanitizer” is a device as defined by Section 2(h) of FIFRA, 7 U.S.C. § 136(h).

3.6. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), provides that “it shall be unlawful for any person in any State to distribute or sell to any person . . . any device which is misbranded.”

3.7. 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.”

3.8. 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.”

3.9. Respondent imported and, thus, distributed or sold at least three shipments of Zeon Mobee UVC Light Sanitizer to persons in the United States on or about September 30, 2020.

3.10. Under section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), a pesticide is misbranded if “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false and misleading in any particular.”

3.11. The regulation at 40 C.F.R. § 152.500(b) states that a device is subject to the requirements set forth in Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).

3.12. The term “label” is defined at Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), to mean “the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.”

3.13. The term “labeling” is defined at Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), to mean “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.”

3.14. The regulation at 40 C.F.R. § 156.10(a)(5)(v) states that a device’s labelling is false and misleading if it includes “Any statement directly or indirectly implying that the pesticide or device is recommended or endorsed by any agency of the Federal Government.”

3.15. The regulation at 40 C.F.R. § 156.10(a)(5)(ix) states that a device’s labelling is false and misleading if it includes “Claims as to the safety of the pesticide or its ingredients, including statements such as ‘safe,’ ‘nonpoisonous,’ ‘harmless,’ or ‘nontoxic to humans and pets’ with or without such a qualifying phrase as ‘when used as directed.’”

3.16. At all times relevant to this Consent Agreement, the label on each Zeon Mobee UVC Light Sanitizer included the statement “Safely eliminates up to 99% of viruses and bacteria.” In accordance with 40 C.F.R. § 156.10(a)(5)(ix), this statement is false and misleading. Therefore, each Zeon Mobee UVC Light Sanitizer was misbranded as that term is defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

3.17. At all times relevant to this Consent Agreement, the label on each Zeon Mobee UVC Light Sanitizer included the statement “EPA Company Distribution No. 97565.” In accordance with 40 C.F.R. § 156.10(a)(5)(v), this statement is false and misleading. Therefore, each Zeon Mobee UVC Light Sanitizer was misbranded as that term is defined by Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A).

3.18. Respondent, therefore, distributed or sold the misbranded device Zeon Mobee UVC Light Sanitizer on at least three occasions on or around September 30, 2020. Therefore, on or around September 30, 2020, Respondent violated Section 12(a)(1)(F) of FIFRA, 7 U.S.C. § 136j(a)(1)(F), at least three times.

3.19. In accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. § 19.4, EPA may assess a civil penalty of not more than \$20,528 for violations that occurred 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. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4). After considering all of these factors, EPA determined and Respondent agrees that an appropriate penalty to settle this action is \$6,480.

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,
R10_RHC@epa.gov

Martin Lovato
U.S. Environmental Protection Agency
Region 10,
lovato.martin@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:

a. 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.

b. 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.

c. 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 affirmative defenses and the 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. 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.

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

DATED:

3/25/21

FOR RESPONDENT:

Debbie Parigian

DEBBIE PARIGIAN, President
Ozwest, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. FIFRA-10-2021-0010
OSWEST, INC.)	
)	FINAL ORDER
Portland, 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 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 _____ day of _____, 2021.

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: Ozwest, Inc., Docket No.: FIFRA-10-2021-0010**, 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:

Brandon Cobb
U.S. Environmental Protection Agency
cobb.brandon@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was delivered to:

DEBBIE PARIGIAN, President
Ozwest, Inc.
debbie@ozwest.toys

DATED this _____ day of _____, 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10