

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of :
 :
Innova Trading, Corp., :
 :
Respondent. :
 :
 :
Proceeding Under the Federal :
Insecticide, Fungicide and :
Rodenticide Act, as amended :
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CONSENT AGREEMENT/FINAL ORDER
Docket No. FIFRA-02-2016-5301

U.S. Environmental Protection Agency
2017 SEP 29 11:18
REGIONAL OFFICE
CIBOLA

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 14(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA” or “the Act”), 7 U.S.C. § 1361(a)(1). On September 29, 2016, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”), issued a Complaint and Notice of Opportunity for Hearing (the “Complaint”) to Respondent, Innova Trading, Corp., located at Foreign Trade Zone #61, Bldg. 9, Door 13-14, Pueblo Viejo, Guaynabo, PR 00936 (“Respondent’s facility”). The Complaint alleged that Respondent committed twenty-four violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), involving the distribution or sale of unregistered pesticides; two violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and Title 19 of the Code of Federal Regulations (“C.F.R.”) § 12.112(a), involving the failure to submit a Notice of Arrival

("NOA") prior to the arrival of pesticide shipments into the United States; and thirty-six violations of Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and 40 C.F.R. § 168.75, involving the failure to obtain from foreign purchasers and submit to EPA statements acknowledging the unregistered status of the pesticide exported.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3) of the Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation. On October 24, 2016, Respondent Answered the Complaint. Both parties accepted participation in the alternative dispute resolution ("ADR") process with the EPA Office of Law Judges. On December 5, 2016, December 20, 2016, January 12, 2017, and January 24, 2017, the parties discussed settlement during ADR conferences with Judge Buschmann. The parties agreed to resolve the matter as set forth below and without litigation. No findings of fact or conclusions of law have been judicially or administratively adjudicated.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation organized and doing business under and by virtue of the laws of the State of New York, located at Foreign Trade Zone #61, Bldg. 9, Door 13-14, Pueblo Viejo, Guaynabo, PR 00936 ("Respondent's facility").
2. On August 12, 2012, a representative of the Puerto Rico Department of Agriculture ("PRDA") conducted an inspection at Respondent's facility (the "Inspection") for the purposes of enforcing the provisions of FIFRA, 7 U.S.C. §§ 136-136y, and the regulations promulgated pursuant thereto.
3. Based upon a review of documentary samples collected during the Inspection and submitted to the EPA by Respondent subsequent to the Inspection, the EPA found that

Respondent distributed or sold an unregistered pesticide, Power Moth Balls, on twenty-four separate occasions between March 2011 and August 2012. On each occasion, Respondent distributed or sold Power Moth Balls with a label that stated “Kills Moths and House Insects.” Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by distributing or selling unregistered pesticides.

4. Evidence collected revealed that Respondent purchased Power Moth Balls from vendors located in Hong Kong, China on two separate occasions (on April 11, 2012 and June 12, 2012) and arranged for the import of the product into the United States. No NOAs were submitted to EPA for Respondent’s imports of Power Moth Balls from China into the United States. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and 19 C.F.R. § 12.112(a) by failing to submit NOAs to the EPA prior to the arrival of each shipment of Power Moth Balls into the United States.
5. The EPA also determined that Respondent sold Power Moth Balls, an unregistered pesticide, to foreign purchasers (exports) on thirty-six separate occasions. Respondent did not submit to EPA signed statements from the foreign purchasers acknowledging that the product is not registered for use in the United States and cannot be sold in the United States. Respondent violated Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), and 40 C.F.R. § 168.75, with each export by failing to obtain and submit foreign purchaser acknowledgement statements to the EPA.
6. On July 29, 2014, April 9, 2015 and November 1, 2016, Respondent submitted financial information and documentation regarding its financial condition and demonstrating an inability to pay the penalty agreed to in paragraph 4 of the Consent Agreement, below, in a lump sum.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits, knowingly and voluntarily: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies specific factual allegations contained in the Complaint; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement; and (e) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall hereinafter maintain compliance with all applicable provisions and statutory requirements of FIFRA Sections 12(a)(1)(A) and (a)(2)(N), 7 U.S.C. §§ 136j(a)(1)(A) and (a)(2)(N), and the implementing regulations at 19 C.F.R. § 12.112(a) and 40 C.F.R. § 168.75.
2. Respondent hereby certifies that, as of the date of its signature to this Agreement, to the best of its knowledge and belief, it is now in full compliance with the provisions and statutory requirements of FIFRA that are applicable to Respondent's activities relating to the distribution, sale, import and export of pesticides.
3. Respondent further certifies that the information and documentation it submitted to EPA on July 29, 2014, April 9, 2015 and November 1, 2016 regarding Respondent's financial

condition is accurate, complete, and not misleading. EPA has relied on the accuracy of the financial information and documentation submitted by Respondent during the negotiation of the settlement. Respondent is aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondent's claim of inability to pay is false or, in any material aspect, inaccurate.

4. Respondent shall pay a civil penalty to EPA in the total amount of **FORTY THOUSAND DOLLARS (\$40,000)**. The total sum shall be divided into two (2) payments of Twenty Thousand Dollars (\$20,000). Such payments shall be made by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If payments are made by check, then the checks shall be made payable to the **Treasurer, United States of America**, and shall be mailed to:

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

Each check shall be identified with a notation thereon listing the following: *In the Matter of Innova Trading, Corp.*, and shall bear thereon the **Docket No. FIFRA-02-2016-5301**.

If Respondent chooses to make payment by EFT, then 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 Code for Federal Reserve Bank of New York receiving payment: **68010727**.

- 4) Federal Reserve Bank of New York ABA routing number:
021030004.
- 5) Field Tag 4200 of the Fedwire message should read **D 68010727**
Environmental Protection Agency.
- 6) Name of Respondent: **Innova Trading, Corp.**
- 7) Case Number: **FIFRA-02-2016-5301.**

5. An initial payment of Twenty Thousand Dollars (\$20,000) shall be received (if made by check) or effected (if implemented by EFT) on or before thirty (30) calendar days of the Effective Date of this CA/FO followed by another payment of Twenty Thousand Dollars (\$20,000) one (1) year thereafter. Under said payment plan, full payment to the United States shall be made within one (1) year and thirty (30) days after the Effective Date. (Each date by which each payment must be received shall hereinafter be referred to as the “due date.”)

- a. Failure to pay the requisite civil penalty amounts, or any stipulated penalties that come due, in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payments are not made on or before the date specified in this document, interest for said payments shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payments were required to have been made through the date said payments have been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following

the date the payments were to have been made, in which payment of the amount remains in arrears.

c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for payment. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

6. In addition to any late fees as set forth above, if Respondent fails to make any payment as required and in accordance with the schedule set forth above, Respondent shall pay stipulated penalties for each day that a required payment is late, and such stipulated penalties shall be as follows: (a) \$200 for each day a required payment is late, and this shall apply from the first to the thirtieth (30th) day that Respondent has failed to make such payment(s); (b) \$300 for each day thereafter that a required payment is late, and this shall apply from the thirty-first (31st) to the ninetieth (90th) that Respondent has failed to make such payment(s); and \$500 for each day thereafter that a required payment is late, and this shall apply to every day after the ninetieth (90th) day that Respondent has failed to make such payment(s).
7. Respondent shall utilize the same procedures as set forth above to pay any stipulated penalty(ies) that becomes due pursuant to the provisions set forth above. EPA in its sole discretion may reduce or eliminate any stipulated penalty(ies) otherwise due.
8. The civil penalty herein or any stipulated penalty due hereunder constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal or state law.

9. Complainant shall mail to Respondent (to the representatives designated in Paragraph 10, below) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon it by an employee of EPA other than the Regional Hearing Clerk.
10. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

John Gorman, Chief
Pesticides and Toxic Substances Branch
US Environmental Protection Agency 2
2890 Woodbridge Avenue (MS-105) or
Edison, New Jersey 08837

and

Karen L. Taylor, Assistant Regional Counsel
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Juan J. Perez, President
Innova Trading, Corp.
PO Box 360428
San Juan, PR 00936

11. Full payment of the penalty described in Paragraph 4, above, shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the complaint issued in this matter. Full payment of this penalty shall not preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

12. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder or with any applicable federal, state, or local rules, regulations, and laws. Nothing in this document is intended nor shall be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.
13. The provisions of this Consent Agreement shall be binding upon Respondent, its officials, authorized representatives and successors or assigns.
14. This Consent Agreement and any provision herein shall not be construed as an admission of any fact or of liability in any criminal or civil action or other administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.
15. Respondent waives its right to request a hearing on this Consent Agreement, or the Final Order included herein, including any right to contest any allegations or findings of fact or conclusions of law contained within these documents.
16. The signatory for the Respondent certifies that: (a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and (b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.
17. Each party hereto shall bear its own costs and fees in this matter.

18. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Consent Agreement and Final Order herein shall be the date when the Final Order is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

RESPONDENT: **INNOVA TRADING, CORP.**


BY: 
Authorizing Signature

NAME: Johnny Musa Quinones
(PLEASE PRINT)

TITLE: Vice-Presidente

DATE: March 13, 2017

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**


Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

MAR 21 2017

DATE: _____

In the Matter of Innova Trading, Corp.
Docket No. FIFRA-02-2016-5301

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated by reference herein, and issued pursuant to FIFRA Section 14(a)(1), as an Order, effective immediately upon filing with the Regional Hearing Clerk of EPA, Region 2.



Catherine R. McCabe
Acting Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: March 23, 2017

In the Matter of Innova Trading, Corp.
Docket No. FIFRA-02-2016-5301

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:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Juan J. Perez, President
Innova Trading, Corp.
PO Box 360428
San Juan, PR 00936

Dated: _____

March 28, 2017

