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12 UNITED STATES
13 ENVIRONMENTAL PROTECTION AGENCY
14 REGION IX
15 75 HAWTHORNE STREET
16 SAN FRANCISCO, CA 94105
17

18 In the matter of:) Docket No. FIFRA-09-2017- 0006
19) CONSENT AGREEMENT
20 Rockwood Chemical Co.)
21) and
22)
23) FINAL ORDER PURSUANT TO
24 Respondent.) SECTIONS 22.13 AND 22.18
25)
26
27
28

29 **I. CONSENT AGREEMENT**

30 The United States Environmental Protection Agency ("EPA") and Rockwood Chemical
31 Company ("Respondent") agree to settle this matter and consent to the entry of this Consent
32 Agreement and Final Order ("CAFO"). This CAFO simultaneously initiates and concludes this
33 proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

34 **A. AUTHORITY AND PARTIES**

35 1. This administrative proceeding for the assessment of a civil administrative penalty is
36 initiated pursuant to section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
U.S.C. § 136, et seq. (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated

1 Rules of Practice Governing the Administrative Assessment of Civil Penalties and the
2 Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

3 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
4 been duly delegated to commence and settle an enforcement action in this matter.

5 3. Rockwood Chemical Company is a California corporation with an office or business
6 at 47 W Rutherford Rd, Brawley, California.

7 **B. STATUTORY AND REGULATORY AUTHORITIES**

8 4. Under section 2(s) of FIFRA, 7 U.S.C. §136(s), the term *person* means “any
9 individual, partnership, association, corporation, or any organized group of persons whether
10 incorporated or not.”

11 5. Under section 2(u) of FIFRA, 7 U.S.C. §136(u), the term *pesticide* is, among other
12 things, any substance or mixture of substances intended for preventing, destroying, repelling, or
13 mitigating any pest.

14 6. Under section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), a pesticide is
15 *misbranded* if its label does not bear the registration number assigned under section 136e of
16 FIFRA to each establishment in which it was produced.

17 7. Under section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), a pesticide is *misbranded*
18 if any word, statement, or other information required by or under the authority of FIFRA to
19 appear on the label or labeling is not prominently placed thereon in such terms as to render it
20 likely to be read and understood by the ordinary individual under customary conditions of
21 purchase and use.

22 8. Under section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), the term *label* means the
23 written, printed, or graphic matter on, or attached to, the pesticide or device or any of its

1 containers or wrappers.

2 9. Under section 2(p)(2)(A) of FIFRA, 7 U.S.C. § 136(p)(2)(A), the term *labeling* means
3 all labels and all other written, printed or graphic matter accompanying the pesticide or device at
4 any time.

5 10. Under section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), the term *to distribute or sell*
6 means to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment,
7 ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or
8 offer to deliver.

9 11. Under section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any
10 person in any state to distribute or sell to any person any pesticide that is adulterated or
11 misbranded.

12 12. Under section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any
13 person to violate any regulation issued under sections 3 or 19 of FIFRA, 7 U.S.C. §§ 136a(a) and
14 136q.

15 13. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
16 regulations governing the labeling requirements for pesticides and devices, which are codified at
17 40 C.F.R. Part 156.

18 14. Pursuant to sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
19 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
20 containers and pesticide containment structures (“the Container/Containment regulations”),
21 which are codified at 40 C.F.R. Part 165.

22 15. *Agricultural pesticide* means any pesticide product labeled for use in or on a farm,
23 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

1 16. *Container* means any package, can, bottle, bag, barrel, drum, tank, or other
2 containing-device (excluding any application tanks) used to enclose a pesticide. Containers that
3 are used to sell or distribute a pesticide product and that also function in applying the product
4 (such as spray bottles, aerosol cans, and containers that become part of a direct injection system)
5 are considered to be containers for the purposes of the Container/Containment regulations. 40
6 C.F.R. § 165.3.

7 17. *Containment pad* means any structure that is designed and constructed to intercept
8 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40
9 C.F.R. § 165.3.

10 18. *Containment structure* means either a secondary containment unit or a containment
11 pad. 40 C.F.R. § 165.3.

12 19. *Facility* means all buildings, equipment, structures, and other stationary items which
13 are located on a single site or on contiguous or adjacent sites and which are owned or operated by
14 the same person (or by any person who controls, who is controlled by, or who is under common
15 control with such person). 40 C.F.R. § 165.3.

16 20. *Establishment* means any site where a pesticidal product, active ingredient, or device
17 is produced, regardless of whether such site is independently owned or operated, and regardless
18 of whether such site is domestic and producing a pesticidal product for export only, or whether
19 the site is foreign and producing any pesticidal product for import into the United States. 40
20 C.F.R. § 165.3.

21 21. *Operator* means any person in control of, or having responsibility for, the daily
22 operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

23 22. *Owner* means any person who owns a facility at which a containment structure is

1 required. 40 C.F.R. § 165.3.

2 23. *Pesticide dispensing area* means an area in which pesticide is transferred out of or
3 into a container. 40 C.F.R. § 165.3.

4 24. *Produce* means to manufacture, prepare, propagate, compound, or process any
5 pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active
6 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container
7 of any pesticide or device. 40 C.F.R. § 165.3.

8 25. *Refilling establishment* means an establishment where the activity of repackaging
9 pesticide product into refillable 1 containers occurs. 40 C.F.R. § 165.3.

10 26. *Refillable container* means a container that is intended to be filled with pesticide
11 more than once for sale or distribution. 40 C.F.R. § 165.3.

12 27. *Refiller* means a person who engages in the activity of repackaging pesticide product
13 into refillable containers. 40 C.F.R. § 165.3.

14 28. *Repackage* means, for the purposes of this part, to transfer a pesticide formulation
15 from one container to another without a change in the composition of the formulation, the
16 labeling content, or the product's EPA registration number, for sale or distribution. 40 C.F.R. §
17 165.3.

18 29. *Secondary containment unit* means any structure, including rigid diking, that is
19 designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff
20 and leaching from stationary pesticide containers. 40 C.F.R. § 165.3.

21 30. *Stationary pesticide container* means a refillable container that is fixed at a single
22 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30
23 consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

1 31. *Transport vehicle* means a cargo-carrying vehicle such as an automobile, van, tractor,
2 truck, semitrailer, tank car, or rail car used for the transportation of cargo by any mode. 40 C.F.R.
3 § 165.3.

4 32. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other
5 distributor who violates any provision of the Act may be assessed a civil penalty of not more than
6 \$7,500 for violations that occurred after January 12, 2009 through November 2, 2015, or are
7 assessed before August 1, 2016; not more than \$18,750 for violations that occurred after
8 November 2, 2015 and are assessed on or after August 1, 2016 but before January 15, 2017; and
9 \$19,057 for violations that occurred after November 2, 2015 and are assessed on or after January
10 15, 2017. Section 14(a)(1) of the Act, 7 U.S.C. § 136l(a)(1), as amended by the Civil Monetary
11 Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

12 C. COMPLAINANT'S ALLEGATIONS

13 Complainant alleges:

14 33. Respondent is a *person* as that term is defined by section 2(s) of FIFRA, 7 U.S.C. §
15 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

16 34. Respondent is an *owner* and *operator* of a *facility* that is an *establishment*, as those
17 terms are defined by 40 C.F.R. § 165.3, located at 47 W. Rutherford Rd, Brawley, California (the
18 "Facility").

19 35. The Facility is a *refilling establishment* whose principal business is retail sale and the
20 Facility *repackages* and dispenses Eptam 7E, EPA Reg. No. 10163-283 ("Eptam 7E"), which is
21 an *agricultural pesticide*, as those terms are defined by 40 C.F.R. § 165.3.

22 36. Owners or operators of refilling establishments who repackage agricultural pesticides
23 and whose principal business is retail sale that have a stationary pesticide container or a pesticide

1 dispensing (including container refilling) area must comply with the secondary container
2 requirements of the Container/Containment regulations. 40 C.F.R. § 165.80(b)(1).

3 37. At all times relevant to this CAFO, the Facility includes the Eptam 7E Tank which is
4 a *stationary pesticide container* located within a *secondary containment unit*, as those terms are
5 defined by 40 C.F.R. § 165.3.

6 38. At all times relevant to this CAFO, the Eptam 7E Tank had a holding capacity of
7 approximately 3,000 gallons and held Eptam 7E.

8 39. At all times relevant to this CAFO, the Facility included an area where tank trucks
9 park to refill the Eptam 7E bulk tank (“Truck Unloading Area”). At all times relevant to this
10 CAFO, the Truck Unloading Area was gravel and dirt.

11 40. The Truck Unloading Area is a *pesticide dispensing area* as that term is defined by
12 40 C.F.R. § 165.3.

13 41. A pesticide dispensing area is subject to the Container/Containment regulations and
14 must have a containment pad that complies with the requirements of 40 CFR Part 165 Subpart E
15 if agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable
16 container. 40 C.F.R. § 165.82(a)(3).

17 42. On April 6, 2016, an Inspector from the California Department of Pesticide
18 Regulation (CDPR) conducted an inspection of the Brawley establishment.

19 **Count 1: Failure to Meet Material Specifications**

20 43. Containment structures must not be constructed of natural earthen material, unfired
21 clay, or asphalt. 40 C.F.R. §§ 165.85(a)(2) and 165.87(a)(2).

22 44. On and about April 6, 2016, Respondent failed to meet the material specifications
23 that the Truck Unloading Area have a containment pad that is not constructed of natural earthen

1 material, as required by 40 C.F.R. §§ 165.82(a)(3), 165.85(a)(2) and 165.87(a)(2).

2 45. On and about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
3 U.S.C. § 136j(a)(2)(S) by failing to meet the material specifications that the Truck Unloading
4 Area have a containment pad that was not constructed of natural earthen material, as required by
5 40 C.F.R. §§ 165.82(a)(3), 165.85(a)(2) and 165.87(a)(2).

6 **Count 2: Failure to have Required Holding Capacity**

7 46. Containment pads in pesticide dispensing areas which have a pesticide container or
8 pesticide-holding equipment with a volume of 750 gallons or greater must have a holding
9 capacity of at least 750 gallons. 40 C.F.R. §§ 165.85(c)(3) and 165.87(c)(2). Containment pads in
10 pesticide dispensing areas which do not have a pesticide container or pesticide-holding
11 equipment with a volume of at least 750 gallons must have a holding capacity of at least 100
12 percent of the volume of the largest pesticide container or pesticide-holding equipment used on
13 the pad. 40 C.F.R. §§ 165.85(c)(4) and 165.87(c)(3).

14 47. On and about April 6, 2016, Respondent failed to meet the holding capacity
15 requirements that the Truck Unloading Area have a containment pad that has a holding capacity
16 of at least 750 gallons or 100 percent of the volume of the largest pesticide container or pesticide-
17 holding equipment used on the pad, whichever is less, as required by 40 C.F.R. §§ 165.82(a)(3),
18 165.85(c) and 165.87(c).

19 48. On and about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
20 U.S.C. § 136j(a)(2)(S) by failing to meet the holding capacity requirement that the Truck
21 Unloading Area have a containment pad with the holding capacity of at least 750 gallons or 100
22 percent of the volume of the largest pesticide container or pesticide-holding equipment used on
23 the pad, whichever is less, as required by 40 C.F.R. §§ 165.82(a)(3), 165.85(c), and 165.87(c).

1 **Count 3: Failure to Meet Specific Design Requirements to Intercept Leaks & Spills**

2 49. Containment pads in pesticide dispensing areas must be designed and constructed to
3 intercept leaks and spills of pesticides which may occur in the pesticide dispensing area. 40
4 C.F.R. §§ 165.85(e)(1) and 165.87(e)(1).

5 50. Containment pads in pesticide dispensing areas must have a containment pad with
6 surface area sufficient to accommodate at least the portion of the vehicle where the delivery hose
7 or devise couples to the vehicle. 40 C.F.R. §§ 165.85(e)(2) and 165.87(e)(2).

8 51. Containment pads in pesticide dispensing areas must allow, in conjunction with a
9 sump, for removal and recovery of spilled, leaked, or discharged material and rainfall. 40 C.F.R.
10 §§ 165.85(e)(3) and 165.87(e)(3).

11 52. On and about April 6, 2016, Respondent failed to meet the specific design
12 requirements that the Truck Unloading Area have a containment pad that is designed and
13 constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing
14 area, with surface area sufficient to accommodate at least the portion of the vehicle where the
15 delivery hose or devise couples to the vehicle, and that allows, in conjunction with a sump, for
16 removal and recovery of spilled, leaked, or discharged material and rainfall, as required by 40
17 C.F.R. §§ 165.82(a)(3), 165.85(e) and 165.87(e).

18 53. On and about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
19 U.S.C. § 136j(a)(2)(S) by failing to meet the specific design requirements that the Truck
20 Unloading Area have a containment pad that meets the specific design requirements to intercept
21 leaks and spills of pesticides which may occur in the pesticide dispensing area and allow
22 removal and recovery of spilled, leaked, or discharged material and rainfall, as required by 40
23 C.F.R. §§ 165.82(a)(3), 165.85(e), and 165.87(e).

1 **Count 4: Failure to Meet General Design Requirement of Sufficient Freeboard**

2 54. Containment pads in pesticide dispensing areas must be designed and constructed
3 with sufficient freeboard to contain precipitation and prevent water and other liquids from
4 seeping into or flowing onto it from adjacent lands or structures. 40 C.F.R. §§ 165.85(b)(3) and
5 165.87(b)(3).

6 55. On and about April 6, 2016, Respondent failed to meet the general design
7 requirements that the Truck Unloading Area have a containment pad that is designed and
8 constructed with sufficient freeboard to contain precipitation and prevent water and other liquids
9 from seeping into or flowing onto it from adjacent lands or structures, as required by 40 C.F.R.
10 §§ 165.82(a)(3), 165.85(b)(3) and 165.87(b)(3).

11 56. On and about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
12 U.S.C. § 136j(a)(2)(S) by failing to meet the general design requirements that the Truck
13 Unloading Area have a containment pad constructed with sufficient freeboard to contain
14 precipitation and prevent water and other liquids from seeping into or flowing onto it from
15 adjacent land or structures, as required by 40 C.F.R. §§ 165.82(a)(3), 165.85(b)(3), and
16 165.87(b)(3).

17 **Count 5: Failure to Anchor or Elevate Eptam 7E Tank as Required**

18 57. The owner or operator must either anchor or elevate each stationary container of
19 liquid pesticide protected by an existing secondary containment unit to prevent flotation in the
20 event that the secondary containment unit fills with liquid. 40 C.F.R. § 165.87(d).

21 58. On or about April 6, 2016, Respondent failed to have the Eptam 7E Tank either
22 anchored or elevated, as required by 40 C.F.R. § 165.87(d).

23 59. On or about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7

1 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate the Eptam 7E Tank as required by
2 40 C.F.R. § 165.87(d).

3 **Count 6: Failure To Keep Containment Structure Liquid-Tight**

4 60. At all times relevant to this CAFO, the Facility included an area where Eptam 7E was
5 dispensed from the Eptam 7E Tank to fill 30 gallon refillable containers (“Refilling Pad”) and
6 this area is a *pesticide dispensing area* and also a *containment pad*, as those terms are defined by
7 40 C.F.R. § 165.3.

8 61. A pesticide dispensing area where agricultural pesticides are dispensed from a
9 stationary pesticide container designed to hold undivided quantities of agricultural pesticides
10 equal to or greater than 500 gallons of liquid pesticide is subject to the Container/Containment
11 regulations and must have a containment pad that complies with the requirements of 40 CFR Part
12 165 Subpart E. 40 C.F.R. § 165.82(a)(2).

13 62. On or about April 6, 2016, the Refilling Pad had unsealed cracks.

14 63. On or about April 6, 2016, Respondent failed to keep containment structures liquid-
15 tight with cracks, seams and joints appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

16 64. On or about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
17 U.S.C. § 136j(a)(2)(S), by failing to keep the Refilling Pad liquid-tight with cracks, seams, and
18 joints appropriately sealed, in violation of 40 C.F.R. § 165.87(a).

19 **Count 7: Failure To Keep Inspection and Maintenance Records**

20 65. An owner or operator of a pesticide containment structure must keep for three years
21 records of inspection and maintenance for each containment structure and for each stationary
22 pesticide container and its appurtenances, and these records must include the (1) name of the
23 person conducting the inspection or maintenance; (2) date the inspection or maintenance was

1 conducted; (3) conditions noted; and (4) specific maintenance performed. 40 C.F.R. § 165.95(a).

2 66. On and before April 6, 2016, Respondent failed to keep records of inspection and
3 maintenance for each containment structure and for each stationary pesticide container and its
4 appurtenances that include the name of the person conducting the inspection or maintenance;
5 date the inspection or maintenance was conducted; conditions noted; and specific maintenance
6 performed, as required by 40 C.F.R. § 165.95(a).

7 67. On and before April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
8 U.S.C. § 136j(a)(2)(S) by failing to keep records as required by 40 C.F.R. § 165.95(a).

9 **Count 8: Failure to Maintain Repackaging Records**

10 68. Respondent is a *refiller* of Eptam 7E as that term is defined by 40 C.F.R. § 165.3, but
11 not the registrant. Refillers who are not the registrant of the pesticide product must maintain
12 records in accordance with 40 C.F.R. § 165.70(j). 40 C.F.R. § 165.70(e)(10).

13 69. Each time a pesticide product is repackaged into a refillable container and distributed
14 or sold, the refiller must generate records of the EPA registration number of the pesticide
15 product, the date of the repackaging, and the serial number or other identifying code of the
16 refillable container and maintained these records for at least 3 years after the date of repackaging.
17 40 C.F.R. § 165.70(j)(2)(i).

18 70. On and about April 6, 2016, Respondent was packaging Eptam 7E into refillable
19 containers but was not generating or maintaining records of the EPA registration number of the
20 pesticide product, the date of the repackaging, and the serial number or other identifying code of
21 the refillable container, as required by 40 C.F.R. § 165.70(j)(2)(i).

22 71. On and about April 6, 2016, Respondent violated section 12(a)(2)(S) of FIFRA, 7
23 U.S.C. § 136j(a)(2)(S), by failing to generate and maintain refillable container repackaging

1 records as required by 40 C.F.R. § 165.70(j)(2)(i).

2 **Count 9: Distribution and Sale of Misbranded Eptam 7E**

3 72. On or about April 6, 2016, Respondent distributed or sold the pesticide Eptam 7E in
4 the Eptam 7E Tank, as that term is defined by section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by
5 holding Eptam 7E for distribution, sale, or shipment.

6 73. When pesticide products are stored in bulk containers, whether mobile or stationary,
7 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
8 directions for use, must be securely attached to the container in the immediate vicinity of the
9 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). This includes marking the producing
10 establishment registration number preceded by the phrase “EPA Est.”, of the final establishment
11 at which the product was produced. 40 C.F.R. § 156.10(f). The producing establishment
12 registration number may appear in any suitable location on the label or immediate container [40
13 C.F.R. § 156.10(f)] but all words, statements, graphic representations, designs or other
14 information required on the labeling by the Act or the regulations must be clearly legible to a
15 person with normal vision and all required label text must not be obscured. 40 C.F.R. §
16 156.10(a)(2)(i) and 156.10(a)(2)(ii)(C).

17 74. On or about April 6, 2016, Respondent did not have a copy of the label or labeling
18 attached to the Eptam 7E Tank that included the EPA establishment number of the final
19 establishment at which the bulk product, Eptam 7E, was produced.

20 75. On or about April 6, 2016, Respondent’s failure to attach to the Eptam 7E Tank a
21 copy of the label for Eptam 7E that included the establishment number of the final establishment
22 at which Eptam 7E was last produced, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B) and
23 156.10(f), constitutes misbranding, as that term is defined by section 2(q)(1)(D) of FIFRA, 7

1 U.S.C. § 136(q)(1)(D).

2 76. On or about April 6, 2016, Respondent placed a sticker with the EPA Establishment
3 Number on refilled drums of Eptam 7E in a location that obscured required label language.

4 77. On or about April 6, 2016, Respondent's placement of stickers on the labels of
5 refilled containers in a location that obscured required label text, in violation of 40 C.F.R. §
6 156.10(a)(2)(i) and 156.10(a)(2)(ii)(C), constitutes misbranding, as that term is defined by
7 section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E).

8 78. On or about April 6, 2016, Respondent distributed or sold the misbranded pesticide
9 Eptam 7E in violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

10 **D. RESPONDENTS' ADMISSIONS**

11 79. In accordance with 40 C.F.R. § 22.18(b)(2), and for the purpose of this proceeding,
12 Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
13 Respondent; (ii) **neither admits nor denies** the specific factual allegations contained in Section
14 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO, (iv) agrees to
15 pay, and consents to the assessment of, the civil administrative penalty under Section I.E of this
16 CAFO; (v) waives any right to contest the allegations contained in Section I.C of this CAFO; and
17 (vi) waives the right to appeal the proposed final order contained in this CAFO.

18 **E. CIVIL ADMINISTRATIVE PENALTY**

19 80. Respondent consents to the assessment of a joint and severable civil administrative
20 penalty in the amount of **FIFTY THOUSAND NINE HUNDRED TWENTY-NINE**
21 **DOLLARS (\$50,929)** as final settlement and complete satisfaction of the civil claims against
22 Respondent arising from the facts alleged in Section I.C of the CAFO and under the Act.

1 a. Respondent shall pay the civil penalty within thirty (30) days of the effective
2 date of this CAFO by one of the methods listed below:

3 i. Respondent may pay online through the Department of the Treasury
4 website at www.pay.gov. In the Search Public Form field, enter SFO 1.1,
5 click EPA Miscellaneous Payments - Cincinnati Finance Center, and
6 complete the SFO Form Number 1.1.

7
8 ii. Respondent may pay by remitting a certified or cashier's check, including
9 the name and docket number of this case, for the amount, payable to
10 "Treasurer, United States of America," and sent as follows:

11
12 Regular Mail:

13 U.S. Environmental Protection Agency
14 PO Box 979077
15 St. Louis, MO 63197-9000

16
17 Overnight/Signed Receipt Confirmation Mail:

18 U.S. Environmental Protection Agency
19 ATTN Box 979077
20 1005 Convention Plaza
21 Mail Station SL-MO-C2GL
22 St. Louis, MO 63101

23
24 iii. Respondent may also pay the civil penalty using any method, or
25 combination of methods, provided on the following website:

26
27 <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

28
29 If clarification regarding a particular method of payment remittance is needed,
30 contact the EPA's Cincinnati Finance Center at (513) 487-2091.

31
32 b. Respondent shall identify each and every payment with the name and docket
33 number of this case; and

34 c. Within 24 hours of payment, Respondent shall provide EPA with proof of
35 payment ("proof of payment" means, as applicable, a copy of the check, confirmation of credit
36 card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any
37 other information required to demonstrate that payment has been made according to EPA

1 requirements, in the amount due, and identified with the name and docket number of this case),
2 including proof of the date payment was made, along with a transmittal letter, indicating
3 Respondent's names, the case title, and docket number, to the following addresses:

4 Regional Hearing Clerk
5 Office of Regional Counsel (ORC-1)
6 U.S. Environmental Protection Agency, Region IX
7 75 Hawthorne Street
8 San Francisco, CA 94105
9

10 Panah Stauffer
11 Enforcement Division (ENF 3-3)
12 U.S. Environmental Protection Agency, Region IX
13 75 Hawthorne Street
14 San Francisco, CA 94105
15

16 81. In the event that Respondent fail to pay the civil administrative penalty assessed
17 above by its due date, Respondent shall pay to EPA a stipulated penalty in the amount of **FIVE**
18 **HUNDRED DOLLARS (\$500)** for each day that payment is late in addition to the unpaid
19 balance of the penalty assessed above. Upon EPA's written demand, this stipulated penalty shall
20 immediately become due and payable.

21 82. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date,
22 the entire unpaid balance and accrued interest shall become immediately due and owing.
23 Respondent's tax identification numbers may be used for collecting or reporting any delinquent
24 monetary obligation arising from this CAFO (see 31 U.S.C. § 7701). If payment is not received
25 within thirty (30) calendar days, interest, penalty and administrative costs will accrue from the
26 effective date of this CAFO as described at 40 CFR §13.11. In addition, if this matter is referred
27 to another department or agency (e.g., the Department of Justice, the Internal Revenue Service),
28 that department or agency may assess its own administrative costs, in addition to EPA's
29 administrative costs, for handling and collecting Respondent's overdue debt. Respondent's

1 failure to pay in full the civil administrative penalty by its due date also may also lead to any or
2 all of the following actions:

3 a. The debt being referred to a credit reporting agency, a collection agency, or to
4 the Department of Justice for filing of a collection action in the appropriate United States District
5 Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount,
6 and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

7 b. The debt being collected by administrative offset (i.e., the withholding of
8 money payable by the United States to, or held by the United States for, a person to satisfy the
9 debt the person owes the Government), which includes, but is not limited to, referral to the
10 Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C
11 and H.

12 c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii)
13 suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA
14 sponsors or funds; (iii) convert the method of payment under a grant or contract from an
15 advanced payment to a reimbursement method; or (iv) revoke a grantee's or contractor's letter-
16 of-credit. 40 C.F.R. §§ 13.17.

17 **F. CERTIFICATION OF COMPLIANCE**

18 83. In executing this CAFO, Respondent certifies that the information it has supplied
19 concerning this matter was at the time of submission, and is at the time of signature to this
20 CAFO, truthful, accurate, and complete; and that Respondent has corrected the violations alleged
21 in Section I.C of this CAFO. Under 18 U.S.C. § 1001, submitting false or misleading information
22 can result in significant penalties, including the possibility of fines and imprisonment for
23 knowing submission of such information.

G. RETENTION OF RIGHTS, BINDING EFFECT, ETC.

84. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violations alleged in Section I.C of this CAFO.

85. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liabilities for federal civil penalties for the violations and facts specifically alleged in Section I.C of this CAFO. Nothing in this CAFO is intended to or shall be construed to resolve: (i) any civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of this CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of this CAFO. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duties to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

86. Except as set forth in Paragraph **82** above, EPA and Respondent shall each bear its own fees, costs, and disbursements in this action.

87. For the purposes of state and federal income taxation, Respondent shall not claim a deduction for any civil penalty payment made pursuant to this CAFO.


88. This CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action. This CAFO will be available to the public and does not contain any confidential business information.

1 89. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this
2 CAFO shall be the date on which the accompanying Final Order, having been signed by the
3 Regional Judicial Officer, is filed.

4 90. The provisions of this CAFO shall be binding on Respondent and on Respondent's
5 officers, directors, employees, agents, servants, authorized representatives, successors, and
6 assigns.

7 91. The undersigned representatives of each party to this Consent Agreement certify that
8 each is duly authorized by the party whom he or she represents to enter into the terms and
9 conditions of this Consent Agreement and Final Order and bind that party to it.

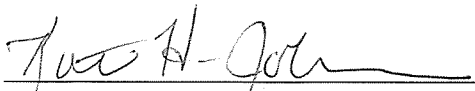
10
11 **ROCKWOOD CHEMICAL COMPANY:**

12
13
14 Date: 4/21/2017 By: 

15
16
17 Name: Frank Miranda

18
19
20 Title: President

1 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

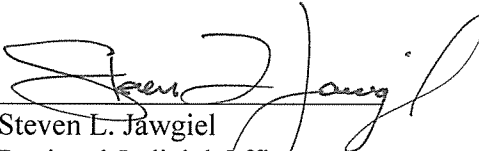
2
3
4 Date: 5/8/17 By: 

5
6 KATHLEEN H. JOHNSON
7 Director
8 Enforcement Division
9 U.S. Environmental Protection Agency,
10 Region IX
11
12
13

1
2
3 **II. FINAL ORDER**

4 IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and
5 that Respondent shall pay a civil administrative penalty in the amount of **FIFTY THOUSAND**
6 **NINE HUNDRED TWENTY-NINE DOLLARS (\$50,929)** in accordance with the terms set
7 forth in the Consent Agreement.
8
9

10 Date: 05/09/17

11 
12 Steven L. Jawgiel
13 Regional Judicial Officer
14 U.S. EPA, Region IX
15

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2017-0006) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:


A copy was mailed via CERTIFIED MAIL to:

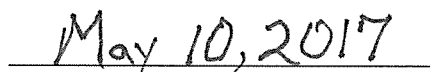
Rich Wagner
President
Rockwood Chemical Co.
47 W Rutherford Rd
Brawley, CA 92227-9613

CERTIFIED MAIL NUMBER: 7015 3010 0000 3883 9732

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Margaret Alkon
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date