

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

11201 RENNER BOULEVARD

LENEXA, KANSAS 66219

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 7  
2017 MAY 16 PM 12:40

**BEFORE THE ADMINISTRATOR**

**In the Matter of:**

ROC Enterprises, LLC,

**Respondent.**

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**Docket No. FIFRA-07-2017-0147**

**CONSENT AGREEMENT AND FINAL ORDER**

**Preliminary Statement**

The U.S. Environmental Protection Agency (EPA), Region 7 and ROC Enterprises, LLC (Respondent) has agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 12 of FIFRA, 7 U.S.C. § 136j.

**Parties**

3. Complainant, by delegation from the Administrator of EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is ROC Enterprises, LLC, an LLC in good standing under the laws of the state of Kansas.

## Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution and use of pesticides in the United States. 7 U.S.C. 136 *et. seq.*

6. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1).

7. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term “person” to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “to distribute or sell” to mean 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.

10. The term “produce” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as meaning to manufacture, prepare, propagate, compound, or process any pesticide or device or active ingredient or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

11. The term “producer” is defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and by 40 C.F.R. § 167.3 as any person who manufactures, prepares, compounds, propagates or processes any pesticide or device or active ingredient used in producing a pesticide (such actions include packaging, repackaging, labeling, and relabeling a pesticide).

12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, a pesticide is misbranded if its labeling bears any statement which is false or misleading in any particular.

13. Section 2(q)(1)(E) of FIFRA, 7 U.S.C. § 136(q)(1)(E), states a pesticide is misbranded if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

14. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), states a pesticide is misbranded if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 136a(d) of this title, are adequate to protect health and the environment.

15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide that is adulterated or misbranded.

16. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), authorizes the EPA Administrator to assess a civil penalty of not more than \$5,000 for each offense. The EPA has adjusted this figure upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule and the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015, which amend 40 C.F.R. Part 19, so that penalties of up to \$7,500 per day are now authorized for violations that occur from January 12, 2009, through November 2, 2015, and penalties of up to \$19,057 are authorized for violations that occur after November 2, 2015.

### **General Factual Allegations**

17. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

18. The product at issue is Aluminum Phosphide 60%, Killz-All 60 Tablets, EPA Registration Number (EPA Reg. No.) 81951-1.

19. On April 6, 2016, an inspector from the Missouri Department of Agriculture, acting on behalf of EPA, Region 7, conducted a federal, for-cause imports inspection of the shipment of five hundred forty (540) boxes of Aluminum Phosphide 60%, Killz-All 60 Tablets, EPA Reg. No. 81951-1, imported from China, at Terminal Consolidation Company, Kansas City, Missouri, Piggyback Container Yard, 3600 NE Great Midwest Drive, Kansas City, Missouri 64161 (EPA Inspection).

20. During the inspection, the inspector inspected four (4) boxes of Killz-All 60 Tablets and collected evidence that each box did not contain the required number of applicator’s manuals. Each inspected box contained fourteen (14) canisters of Killz-All 60 Tablets, but only contained two (2) applicator’s manuals, instead of fourteen (14).

### **Allegations of Violations**

21. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

#### **Count 1**

22. The facts stated in Paragraphs 17 through 20 above are herein incorporated.

23. On or about April 6, 2016, Respondent sold or distributed five hundred forty (540) boxes of Aluminum Phosphide 60%, Killz-All 60 Tablets, EPA Reg. No. 81951-1.

24. The April 6, 2016 inspection revealed that four (4) boxes of the imported product contained fourteen (14) canisters of product each, but that each of those four (4) boxes contained only two (2) applicator's manuals.

25. Respondent violated Sections 2(q)(1)(E) and (F) of FIFRA, 7 U.S.C. §§ 136(q)(1)(E) and (F) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E) by selling or distributing a pesticide (EPA Reg. No. 81951-1) that did not have the requisite number of applicator's manuals and therefore was misbranded.

### **CONSENT AGREEMENT**

26. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;
- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

27. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

### **Penalty Payment**

29. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a mitigated civil penalty of seven thousand five hundred fifty-two dollars (\$7,552.00).

30. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

31. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219; and

Britt Bieri, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

32. Respondent understands that its failure to timely pay any portion of the civil penalty as stated in Paragraph 29 may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

33. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty.

#### **Effect of Settlement and Reservation of Rights**

34. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged

herein. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

35. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in the paragraph directly below.

36. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with all requirements of FIFRA and its implementing regulations.

37. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and regulations promulgated thereunder.

38. Complainant reserves the right enforce the terms and conditions of this Consent Agreement and Final Order.

#### **General Provisions**

39. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

40. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

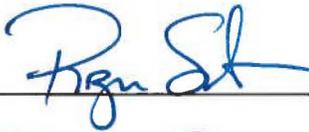
41. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

42. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

**RESPONDENT**

ROC Enterprises, LLC

Date: 5-5-17

By: 

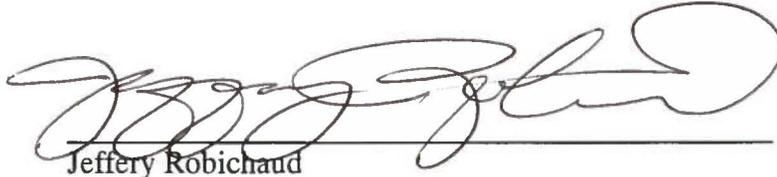
ROGER SANBORN  
Print Name

PRESIDENT  
Title

**COMPLAINANT**

U.S. Environmental Protection Agency

Date: 5/10/17



Jeffery Robichaud  
Acting Director  
Water, Wetlands and Pesticides Division

Date: 5/8/17

*for* 

Britt Bieri  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 72 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

May 16, 2017  
Date

**CERTIFICATE OF SERVICE**

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by ~~certified mail, return receipt requested~~<sup>102</sup>, a true and correct copy of the original Consent Agreement and Final Order to the following:

*First class Mail*

Roger Sanborn  
ROC Enterprises, LLC  
1908 West Old 40 Highway  
Salina, KS 67401

Dated this 16<sup>th</sup> day of May, 2017.

*Kathy Robinson*  
Name