UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

2017 AUG 29 AM 9:30
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: FIFRA-08-2017-0007

IN THE MATTER OF:	)	
	)	
Rentokil North America, Inc.	)	**FINAL ORDER**
d/b/a Presto-X	)	
	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29th **DAY OF** August, **2017.**

Katherin E. Hall
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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In the Matter of:	)	
	)	
Rentokil North America, Inc.	)	
d/b/a Presto-X	)	
800 West Lincolnway	)	
Cheyenne, Wyoming 82001	)	**Docket No.: FIFRA-08-2017-0007**
	)	
Respondent	)	
	)	**COMBINED COMPLAINT AND**
	)	**CONSENT AGREEMENT**
	)	

I. JURISDICTION

1. This Combined Complaint and Consent Agreement (Agreement) is issued to Rentokil North America, Inc. d/b/a Presto-X (Respondent) for violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136j.

2. The U.S. Environmental Protection Agency (the EPA) is authorized to bring an action under section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), for civil administrative penalties against a Respondent who the EPA alleges has violated a requirement or prohibition of FIFRA.

3. The undersigned EPA officials enter into this Agreement under the authority vested in the Administrator of the EPA by section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1). The Administrator of the EPA has delegated this authority under FIFRA to the signatories of this Agreement.

4. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Agreement is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3).

5. Respondent admits the jurisdictional allegations in this Agreement, but neither admits nor denies the allegations in this Agreement.

II. GENERAL FACTUAL ALLEGATIONS

6. Respondent is a corporation organized under the laws of the State of Pennsylvania and authorized to do business in the State of Wyoming and is therefore a "person" as that term is defined by section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.

7. Respondent's place of business is located at 800 West Lincolnway, Cheyenne, Wyoming 82001.

8. At all times relevant to the alleged violations, the Respondent was a "certified applicator" and a "commercial applicator" as those terms are defined at section 2(e) of FIFRA, 7 U.S.C. § 136(e), of a "pesticide" defined in FIFRA section 2(u), 7 U.S.C. § 136(u).

9. 40 C.F.R. § 156.10(a) requires that, "Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part. The contents of a label must show clearly and prominently the following: (viii) The directions for use...."

10. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), makes it unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling.

III. ALLEGATIONS OF VIOLATIONS

11. On September 9, 2016, the EPA received a complaint about several applications of Talastar P (7.9% bifenthrin, EPA Reg. No. 279-3206) by Respondent to offices and cubicles (suites 259B, 259C, 259D, and conference rooms) located inside the State of Wyoming Department of Health and their contractor Northrop Grumman at 6101 Yellowstone Road, Cheyenne, Wyoming (WY DH) for the treatment and control of bedbugs.

12. Respondent applied the Talastar P to baseboards, cubicle walls, and work spaces on June 15, 2015; July 7, 2015; July 10, 2015; July 21, 2015; July 22, 2015; and August 3, 2015. Respondent applied Talastar P to WY DH offices, cubicles, and conference rooms for the treatment and control of bedbugs.

13. At the time of the Talastar P applications listed above, there were employees present at the WY DH.

14. At all times relevant to the allegations herein, the label for Talastar P contained the following statements: 1) Do not allow people or pets on treated surfaces until spray has dried; 2) Allow all treated areas to thoroughly dry before use; and 3) Limit repeat applications to no more than once per seven days.

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Count 1

15. On July 10, 2015, employees were asked to vacate a conference room while the Respondent applied Talastar P to the WY DH conference room.

16. Respondent allowed the employees to return to the conference room immediately following the treatment and before the Talastar P was dry.

17. By allowing the employees to return to the conference room before the Talastar P was dry on July 10, 2015, Respondent used the Talastar P in a manner inconsistent with its labeling and therefore violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 2

18. On August 3, 2015, one employee at WY DH felt overspray on their shoulders during the application in an adjacent cubicle, and another employee felt spray on their feet during the pesticide application while seated at their workspace.

19. The employees at WY DH were not asked to leave and to wait until the Talastar P was dry before returning to their work stations.

20. By allowing the employees to remain at their workspace during the Talastar P application on August 3, 2015, Respondent's used the Talastar P in a manner inconsistent with its labeling and therefore violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 3

21. Respondent applied Talastar P on July 7, 2015 and July 10, 2015 at WY DH.

22. By repeating the Talastar P application on July 10, 2015, before a seven-day period had elapsed from the July 7, 2015 application, Respondent used the Talastar P in a manner inconsistent with its labeling and therefore violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

Count 4

23. Respondent applied Talastar P on July 21, 2015 and July 22, 2015 at WY DH.

24. By repeating the Talastar P application on July 22, 2015, before a seven-day period had elapsed from the July 21, 2015 application, Respondent used the Talastar P in a manner inconsistent with its labeling and therefore violated section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G).

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IV. PAYMENT OF CIVIL PENALTY

25. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty of up to $19,057 for the violations referenced above.

26. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires the EPA to consider the appropriateness of the assessed penalty to the size of business of Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.

27. After consideration of the factors set forth in section 14(a)(4) of FIFRA, 7 U.S.C. § 1361(a)(4), the EPA proposes to assess a total civil penalty of $2000 against the Respondent for the above-described violations. Civil penalties under section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

28. Respondent consents, for the purpose of settlement and to avoid further litigation, to the issuance of a final order in this matter and agrees to pay the civil penalty of $2,000 within thirty days of the effective date of the Final Order as follows:

    a. If the due date of any of the payments falls on a weekend or legal federal holiday, the due date is the next business day. The date the payments are made is considered to be the date processed by U.S. Bank, as described below. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

    b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The checks or other payments shall designate the name and docket number of this case, be in the amount stated above, and be payable to "Treasurer, United States of America." The payment shall be sent accordingly as follows:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:
US Bank
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091

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Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:
US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
Randolph Maxwell: 202-874-7026
Remittance Express (REX): 1-866-234-5681

On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from www.pay.gov.

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

29. At the same time that payment is made, notice that the payment has been made shall be provided to:

Sherrie Kinard (8ENF-AT-TP) Technical Enforcement Program U.S. EPA Region 8 1595 Wynkoop St. Denver, CO 80202-1129	and	Melissa Haniewicz (8RC) Regional Hearing Clerk U.S. EPA Region 8 1595 Wynkoop St. Denver, CO 80202-1129

30. If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

31. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

32. A handling charge of fifteen dollars ($15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

V. TERMS AND CONDITIONS

33. This Agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's successors or assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

34. Nothing in this Agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

35. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Agreement and to bind the party he/she represents to the terms and conditions of this Agreement.

36. Each party shall bear its own costs and attorney fees in connection with this matter.

37. Respondent agrees that the penalty specified in this Agreement or any interest paid shall not be deductible for purposes of local, state, or federal taxes.

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38. Respondent has the right to request a hearing on any material fact or on the appropriateness of the penalty contained in this Agreement pursuant to 40 C.F.R. § 22.15. By signing and returning of this Agreement to the EPA, the Respondent waives the opportunity for a hearing pursuant to section 554 of the Administrative Procedure Act, 5 U.S.C. § 554.

39. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full payment of the civil penalty shall resolve Respondent's liability for civil penalties for the violations alleged herein.

40. Nothing in this Agreement shall relieve Respondent of the duty to comply with FIFRA and its implementing regulations.

41. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8,

Complainant

Date: 8/24/17

By: _____

David Cobb, Supervisor
Toxics and Pesticide Enforcement Unit
Office of Enforcement, Compliance and
Environmental Justice

Date: 8/24/17

By: _____

James H. Eppers, Supervisory Attorney
Attorney Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

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Rentokil North America, Inc. d/b/a Presto X
Respondent

Date: 8/21/2017

By: _____

Bruce Gelting, Secretary and General Counsel

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **RENTOKIL NORTH AMERICA, INC.; DOCKET NO.: FIFRA-08-2017-0007** was filed with the Regional Hearing Clerk on August 29, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Marc Weiner, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 29, 2017, to:

Respondent

Bruce A. Gelting, General Counsel
Rentokil North America, Inc.
1125 Berkshire Blvd., Suite 150
Wyomissing, Pennsylvania 19610

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 29, 2017

Melissa Haniewicz
Regional Hearing Clerk