



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 24 2009

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7001 0320 0006 0182 9573

Mr. Mark Clark
Vice President
Neptune Pool & Spa, Inc
3557 West Jefferson Street
Joliet, Illinois 60431-4708

Consent Agreement and Final Order, Docket No. FIFRA-05-2009-0012

Dear Mr. Clark:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on April 24, 2009 with the Regional Hearing Clerk.

In accordance with paragraph 42 of the CAFO, there is no assessed civil penalty.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Joseph G. Lukascyk".

Joseph G. Lukascyk

Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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PROTECTION AGENCY

In the Matter of:)	Docket No.
)	FIFRA-05-2009-0012
Neptune Pool & Spa, Inc.)	Proceeding to Assess a Civil Penalty
Joliet, Illinois)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)		

Consent agreement and Final Order
Commencing and Concluding a Proceeding

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region 5.
3. The Respondent is Neptune Pool & Spa, Inc. (Neptune), a corporation doing business in the State of Illinois.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. In accordance with authority granted under Sections 7 and 25 of FIFRA, 7 U.S.C. §§ 136e and 136w, the Administrator of EPA promulgated the “Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports” Final Rule on September 8, 1988 (53 Fed. Reg. 35055). The Final Rule became effective on August 9, 1989 (54 Fed. Reg. 32636). Requirements for establishment registration and production reports are codified at 40 C.F.R. Part 167.

11. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator. Also see 40 C.F.R. § 167.20(a).

12. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1) requires any producer operating an establishment registered with the EPA under Section 7 of FIFRA, 7 U.S.C. § 136e, and 40 C.F.R. Part 167 to inform the Administrator within 30 days after it is registered, and annually thereafter, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides (a) which the producer is currently producing, (b) which the producer has produced in the past year, and (c) which the producer has sold or distributed during the past year (Annual

Pesticide Production Report). Also see 40 C.F.R. § 167.85.

13. 40 C.F.R. § 167.85(c) requires that the Annual Pesticide Production Report be made on forms supplied by EPA (known as the “Pesticides Report for Pesticide-Producing Establishments” form, or EPA Form 3540-16). 40 C.F.R. § 167.85(c) specifies that it is the ultimate responsibility of companies to obtain, complete, and submit the forms for each year.

14. 40 C.F.R. § 167.85(d) requires the producer to submit the Annual Pesticide Production Report for the preceding year to the EPA on or before March 1 of each year, even if the producer has not produced any pesticidal product for that reporting year.

15. Section 12(a)(2)(L), 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any provisions of Section 7 of FIFRA, 7 U.S.C. § 136e.

16. The Administrator of the EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$5,500 for each offense that occurred from January 31, 1997 through March 15, 2004, and up to \$6,500 for each offense that occurred after March 15, 2004 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

17. At all times relevant to this Complaint, the Respondent has been a “person” as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

18. At all times relevant to this Complaint, the Respondent has been a “producer” as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w) and 40 C.F.R. § 167.3.

19. At all times relevant to this Complaint, the Respondent has been a registrant, commercial applicator, wholesaler, dealer, retailer and/or other distributor within the meaning of those terms as used in Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

20. On or about January 23, 2002, Respondent registered its establishment located at 2411 West Jefferson Street, Joliet, Illinois 60435 with EPA.

21. EPA assigned Respondent's establishment, EPA Establishment Number (EPA Est. No.) 074664-IL-001.

22. During calendar year 2003, Respondent's place of business located at 2411 West Jefferson Street, Joliet, Illinois 60435, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

23. During calendar year 2004, Respondent's place of business located at 2411 West Jefferson Street, Joliet, Illinois 60435, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

24. During calendar year 2005, Respondent's place of business located at 2411 West Jefferson Street, Joliet, Illinois 60435, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

25. During calendar year 2006, Respondent's place of business located at 2411 West Jefferson Street, Joliet, Illinois 60435, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

26. During calendar year 2007, Respondent's place of business located at 2411 West Jefferson Street, Joliet, Illinois 60435, was a registered "establishment" as defined in Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and 40 C.F.R. § 167.3.

27. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2003, for EPA Est. No.074664-IL-001 on or before March 1, 2004.

28. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2004, for EPA Est. No. 074664-IL-001 on or before March 1, 2005.

29. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2005, for EPA Est. No. 074664-IL-001 on or before March 1, 2006.

30. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2006, for EPA Est. No. 074664-IL-001 on or before March 1, 2007.

31. Respondent failed to submit an Annual Pesticide Production Report to EPA for reporting year 2007, for EPA Est. No. 074664-IL-001 on or before March 1, 2008.

32. On December 18, 2008, Respondent submitted the required Annual Pesticide Production Reports for calendar years 2004 through 2007 for EPA Est. No. 074664-IL-001.

Count 1

33. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

34. The Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 074664-IL-001 for calendar year 2004 on or before March 1, 2005, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

35. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

36. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

37. The Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 074664-IL-001 for calendar year 2006 on or before March 1, 2007, constitutes a

violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

38. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 3

39. Complainant incorporates by reference the allegations contained in paragraphs 1 through 32 of this Complaint.

40. The Respondent's failure to submit the Annual Pesticide Production Report for EPA Est. No. 074664-IL-001 for calendar year 2007 on or before March 1, 2008, constitutes a violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85.

41. The Respondent's violation of Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and 40 C.F.R. Section 167.85 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) which subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

42. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$0. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's *Enforcement Response Policy for FIFRA Section 7(c)(ERP)*, dated June 2007. After a review of Respondent's financial information, it has been determined that Respondent has an inability to pay a proposed penalty of \$14,500.

General Provisions

43. This CAFO resolves only Respondent's liability for federal civil penalties for the violation and facts alleged in the CAFO.

44. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

45. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

46. This CAFO is a "final order" for purposes of EPA's ERP for FIFRA.

47. The terms of this CAFO bind Respondent, its successors, and assigns.

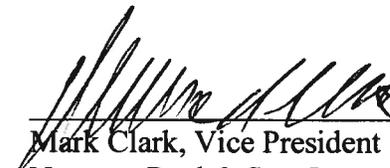
48. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorney's fees in this action.

50. This CAFO constitutes the entire agreement between the parties.

Neptune Pool & Spa, Inc., Respondent

3/26/09
Date


Mark Clark, Vice President
Neptune Pool & Spa, Inc.

United States Environmental Protection Agency, Complainant

4/21/09
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Neptune Pool & Spa, Inc.
Docket No. **FIFRA-05-2009-0012**

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4/21/09
Date

Walter W. Karalich
Bharat Mathur *for*
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

OFFICE OF REGIONAL
COUNSEL
APR 08 2009
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Neptune Pool & Spa, Inc., was filed on April 24, 2009, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0182 9573, a copy of the original to the Respondents:

Mr. Mark Clark
Vice President
Neptune Pool & Spa, Inc
3557 West Jefferson Street
Joliet, Illinois 60431-4708

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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