

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:) Docket No. FIFRA-03-2017-0199
)
Clean-Flo International, LLC)
827 Lincoln Avenue, Suite 1)
West Chester, Pennsylvania 19380) Proceeding Under Section 14(a) of the
Federal Insecticide, Fungicide and
Rodenticide Act, *as amended*, 7 U.S.C.
RESPONDENT.) § 136l(a)

CONSENT AGREEMENT

This Consent Agreement is entered into by the Acting Director for the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Clean-Flo International, LLC (“Clean-Flo,” the “Company” or “Respondent”), pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), *as amended*, 7 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 (“*Consolidated Rules of Practice*”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3)). This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant's civil penalty claims against Respondent under FIFRA (or the “Act”) for the violations alleged herein.

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged commission of unlawful acts by: producing pesticidal products (*i.e.*, pesticides and devices) in contravention of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to comply with the applicable establishment registration requirements of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and of 40 C.F.R. § 167.20(a); distributing and/or selling unregistered pesticides in contravention of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by failing to comply with the pesticide registration requirements of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and of 40 C.F.R. § 152.15; and producing pesticidal products (*i.e.*, pesticides and devices) in violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by failing to comply with the applicable annual recordkeeping/reporting requirements of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and of 40 C.F.R. § 167.85.

2. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant hereby simultaneously commences and resolves, as part of the settlement set forth herein, EPA’s civil claims alleged in Sections IV and V of this Consent Agreement.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 14(a) of FIFRA, as amended, 7 U.S.C. § 136l(a), and 40 C.F.R. §§ 22.1(a)(5) and 22.4 of the *Consolidated Rules of Practice*.

III. GENERAL PROVISIONS

4. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and the attached Final Order, hereinafter collectively referred to as the “CAFO.”
5. Except as provided in Paragraph 4, immediately above, the Respondent neither admits nor denies the specific factual allegations and legal conclusions set forth in this Consent Agreement.
6. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms and conditions.
9. Each party to this Consent Agreement shall bear its own costs and attorney’s fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. In accordance with 40 C.F.R. § 22.13(b) and .18(b)(2) and (3) of the *Consolidated Rules of Practice*, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
11. Respondent is a Pennsylvania Limited Liability Company and a “person,” within the meaning and definition of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), that has operated a

water restoration services business in the Commonwealth of Pennsylvania at all times herein relevant.

12. Respondent owns and operates a business which employs water resource management techniques, and which sells related products, to address and remediate nutrient pollution in ponds, lakes, rivers and other water bodies. Respondent operates its business from a facility that is and was, at all times herein relevant, located at 827 Lincoln Avenue, Suite 1, West Chester, Pennsylvania 19380 (hereinafter, the “Facility”).
13. Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and 40 C.F.R. § 152.500(a), each define the term “device” to mean “any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.”
14. Pursuant to Section 25(c)(4) of FIFRA, 7 U.S.C. § 136w(c)(4), the Administrator may specify those classes of devices which shall be subject to any provision of FIFRA Section 2(q)(1), 7 U.S.C § 136(q)(1), or FIFRA Section 7, 7 U.S.C. § 136e, upon his determination that application of such provision is necessary to effectuate the purposes of this Act.
15. On July 3, 1975, the Administrator promulgated regulations (at 40 F.R. 28242) amending the Code of Federal Regulations pursuant to this authority so as to provide that devices, as defined in FIFRA section 2(h), 7 U.S.C. § 136(h), are subject to the requirements of FIFRA section 2(q)(1)(A) – (G) , 7 U.S.C. § 136(q)(1)(A) – (G) and to those provisions of FIFRA Section 7, 7 U.S.C. § 136e, which are necessary to effectuate the purposes of FIFRA with respect to devices.
16. Pursuant to FIFRA Section 2(p)(2), 7 U.S.C. § 136(p)(2), the term “labeling” means all labels and all other written, printed, or graphic matter— (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide or device . . . ”.
17. On October 14, 2008, EPA issued guidance to the general public regarding “Web Site Addresses on Pesticide Product Labeling,” which explains and instructs that: “. . . references to websites may be placed on labels. Be aware that such a reference transforms the website into labeling under FIFRA [S]sec[tion] 2(p)(2) and the website is subject to review by the Agency. . . .” *See*, <https://archive.epa.gov/pesticides/regulating/con-labels/web/pdf/weblabeling.pdf>.

18. On April 4, 2014, EPA also issued “Pesticide Registration Notice 2014-1 Web-Distributed Labeling for Pesticide Products,” which provides that: “Should the registrant wish to add or retain a reference to the company’s website on the labeling, including by directing the user to the registrant’s primary website to download labeling, the registrant should be aware that the website becomes labeling under FIFRA and is subject to review by the Agency.” *See*, <https://www.epa.gov/sites/production/files/2016-03/documents/pr2014-1.pdf>.
19. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136a(t), the term “pest” means “(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-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section [25(c)(1) of FIFRA, 7 U.S.C. §] 136w(c)(1). . . .”
20. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), the term “pesticide,” means “(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) of title 21, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of title 21 bearing or containing a new animal drug.”
21. Pursuant to 40 C.F.R. § 167.3, the term “pesticidal product” means “a pesticide, active ingredient, or device.”
22. Pursuant to Section 2(w) of FIFRA, 7 U.S.C. § 136(w), the term “producer” means “the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide[;]” and the term “produce” means “to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide”
23. Pursuant to Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), the term “establishment” means “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.”
24. Pursuant to 40 C.F.R. § 167.3, the term “establishment” similarly means “any site where a pesticidal product, active ingredient, or device is produced.”

25. Pursuant to Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), the term “distribute or sell” means 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.
26. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, with exceptions not herein applicable, that “no person in any State may distribute or sell to any person any pesticide that is not registered [with EPA]” and that “[t]o the extent necessary to prevent unreasonable adverse effects on the environment, the Administrator may by regulation limit the distribution, sale, or use in any State of any pesticide that is not registered [with EPA].
27. 40 C.F.R. § 152.15 further provides, in relevant and applicable part, and with exceptions not herein applicable, that:
- “No person may distribute or sell any pesticide product that is not registered under the Act . . . [;] A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose,” and thus to be a pesticide requiring registration, if:
- (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise):
- (1) [t]hat the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or . . .
- * * *
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”
28. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, provide that no person shall produce any pesticide or active ingredient used in producing a pesticide that is subject to FIFRA in any State unless the establishment in which it is produced is registered with the Administrator of EPA.
29. The establishment registration requirements of 40 C.F.R. § 167.20(a)(1) further provide, in relevant part, that “[a]ny establishment where a pesticidal product is produced must be registered with the Agency.”
30. 40 C.F.R. § 152.500(b)(2) further provides and instructs that “[a] device is subject to the requirements set forth in . . . FIFRA [S]ec[ti]on 7 and [40 of the C.F.R.] [P]art 167 [], with respect to establishment registration and reporting[.]”

31. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and 40 C.F.R. §§ 167.85, generally provide that each producer, other than a custom blender, operating an establishment must submit annual reports concerning any pesticide, active ingredient, or device produced at each establishment to the Agency.
32. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
33. Section 12(a)(2)(L) of FIFRA 7 U.S.C. § 136j(a)(2)(L), makes it unlawful for any person who is a producer of pesticides to violate any of the establishment registration requirements of Section 7 of FIFRA, 7 U.S.C. § 136e.
34. On November 13, 2013, pursuant to Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly authorized EPA representatives (“EPA Inspectors”) performed an inspection (the “EPA Inspection”) at the Clean-Flo Facility located at 827 Lincoln Avenue, Suite 1, West Chester, Pennsylvania 19380.
35. During the EPA Inspection, a Company representative provided the EPA Inspectors with copies of requested product labels and promotional literature pertaining to Company products, including products with the names *Lake Clear*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes*, *Lake Care* and *Clean-Flo Continuous Laminar Flow Inversion and Oxygenation System* (hereinafter, “*Clean-Flo Laminar System*”), and a Company representative subsequently mailed requested production and sales information regarding those same products to EPA.
36. On January 28, 2016 and on October 14, 2016, pursuant to its FIFRA Section 8, 7 U.S.C. § 136f(b) inspection authorities, EPA sent Respondent formal written information request letters (“IRL”) seeking information as to the pesticide registration status, chemical formulations and sales of the Company products identified in the preceding Paragraph, for the period from November 13, 2012 through November 13, 2013.
37. Via return correspondence dated February 3, 2016, November 9, 2016 and December 14, 2016, respectively, Respondent provided EPA with information responsive to the Agency’s IRL requests.
38. EPA has reviewed the information collected at the Facility during the EPA Inspection, submitted by Respondent in response to requests made by the Agency during the EPA Inspection and in its subsequent IRLs, and posted by Respondent on its publicly available internet site, seeking to determine, among other things: (a) whether the Company had made actual or implied pesticidal claims for any of its above-identified products; (b) if any of the Company’s above-identified products was subject to, or exempt from, EPA

registration and/or other FIFRA requirements; and (c) whether the Company had violated any FIFRA statutory and/or regulatory registration, production, distribution or sale, recordkeeping/reporting, or other FIFRA statutory or regulatory requirements and/or prohibitions.

39. At all times herein relevant, with respect to the Clean-Flo product Lake Care:
- a. the Company's product label and Information Sheet each contained statements that "*Lake Care was developed with the purpose of neutralizing the electrostatic charges in water and has been found particularly effective in neutralizing those charges that are utilized by submerged weeds and green planktonic algae[;]*" and
 - b. the Company's Product Information Sheet contained statements that: "*[w]hen algae and weeds photosynthesize, they establish a potential gradient across the boundary of the exterior plan cells. . . . This negative potential attracts calcium bicarbonate and other mineral cations to the plant. In the case of calcium bicarbonate, the plant strips off carbon dioxide for use as a food source . . . [;]*" and that "*Lake Care was developed to 'fool' aquatic plants into 'thinking' that they were receiving calcium bicarbonate[.] . . . this ion has no carbon dioxide to release to the plant [and that] [t]he calcium compound neutralizes the negative charge on the surface of the plant [such that] "[t]he plants then drop to the bottom[.]*"
40. At all times herein relevant, with respect to the Clean-Flo product Lake Cleanser Special:
- a. the Company's Product Information Sheet contained statements that: "*the product has been found to be particularly effective in limiting phosphorus that is food for blue-green algae . . . , filamentous algae . . . , duckweed . . . , and watermeal . . . [in order] [t]o accelerate the removal of phosphates, limit plant and algal growth, and improve water quality, . . . [;]*" and
 - b. the Company's product label prominently displayed the URL for the Company's internet site, which contained the very same written statements contained in the Company's Lake Cleanser Special Product Information Sheet, as set forth in the immediately preceding subparagraph.
41. At all times herein relevant, with respect to the Clean-Flo product Clean & Clear Concentrated Enzymes, the Company's product label and Information Sheet each contained statements that: "*CLEAN & CLEAR™ CONCENTRATED ENZYMES is a special blend of non-toxic enzymes from nature that acts as a catalyst to biodegrade non-living organic matter and reduces available nutrients in the water, thus improving water quality[;]*" "*CLEAN & CLEAR™ reduces odor caused by toxic gases from pathogenic (disease-type) bacteria, including hydrogen sulfide, ammonia, amines and*

mercaptans[;]” and that the product “. . . [h]elps beneficial bacteria compete with weeds and algae for fertilizers such as phosphorous and nitrogen[; and] . . . [h]elps improve water quality[.]

42. At all times herein relevant, with respect to the Clean-Flo product Lake Clear:
- a. the Company’s product label and the Information Sheet each contained statements that: *“Lake Clear is a proprietary blend of bacteria specifically formulated for filamentous, blue green and planktonic algae control[;]”* that *“[u]se of Lake Clear results in dramatically reduced growth of algae, improved water quality, odor control and an enhanced appearance of a pond or lake[;]”* that *“Lake Clear works by outcompeting algae for essential nutrients such as nitrogen and phosphorus in the water and by digesting organic sediment[; and]”* that *“[t]hrough nitrification, denitrification, and rapid growth on soluble pollutants, Lake Clear will out-compete the excess algae for these nutrients. Algae will starve, die, and then be digested by other Lake Clear bacteria[;]”* and
 - b. the Company’s product Information Sheet contained additional statements that: *“Lake Clear is a proprietary blend of beneficial bacteria specifically formulated for reducing and controlling nutrient levels, ammonia and nitrate reduction, odor reduction, excess organic sediment reduction, and B[iochemical] O[xygen]D[emand] reduction[;]”* that *“[u]se of Lake Clear results in dramatically reduced nutrient levels, improved water quality, odor control and an enhanced appearance of a pond or lake[;]”* that *“Lake Clear works by competing for essential nutrients such as nitrogen and phosphorus in the water and by digesting organic sediment[;]”* and that *“[t]hrough nitrification, de-nitrification, and rapid growth on soluble pollutants, Lake Clear will out-compete the mats for these nutrients. Decaying plant material and other organics will be digested by other Lake Clear bacteria.”*
43. At all times herein relevant, the Clean-Flo product Clean-Flo Laminar System is described by the Company, in written statements on its internet site, as: a type of diffused air system which, *“unlike ordinary diffused air systems, surface aerators, paddlewheels, hypolimnetic aerators, or propeller-aspirator aerators, [involves a] process [that] oxygenates an entire body of water from top to bottom”* by *“carr[ying] oxygenated, toxic gas-free surface water down to the bottom where it binds phosphorus and nitrogen to the sediments and kills anaerobic, often pathogenic (disease producing) bacteria that produce acids and toxic gases . . . [and provides] . . . valuable improvements in water quality and fish health and growth, while also producing reductions of nutrients, algae and aquatic weed growth, organic muck, foul odors and disease bacteria.”*

V. VIOLATIONS ALLEGED

COUNTS 1 - 5
***(PRODUCTION OF PESTICIDES AND OF A
PESTICIDAL DEVICE AT AN UNREGISTERED ESTABLISHMENT)***

44. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.
45. The statements made by Respondent in Company product labels, Company product Information Sheets and on the Company's Internet site, as set forth with particularity in Paragraphs 39 through 43, above, include claims and implications that:
- a. the Company products *Lake Clear*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes*, *Lake Care*, and *Clean-Flo Laminar System* will prevent, destroy, repel and/or mitigate submerged weeds, algae and other aquatic pests;
 - b. each of these products can or should be used as a pesticide; and,
 - c. establish that the Respondent had actual or constructive knowledge that each of these Company products would be used, or were each intended to be used, for a pesticidal purpose, within the meaning of 40 C.F.R. § 152.15(a) and (c).
46. At all times herein relevant, Respondent's *Lake Clear*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes* and *Lake Care* products were "pesticides" within the meaning and definition of Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and "pesticidal products," within the meaning and definition of 40 C.F.R. § 167.3.
47. At all times herein relevant, Respondent's *Clean-Flo Laminar System* product was a pesticidal "device" within the meaning and definition of Section 2(h) of FIFRA, 7 U.S.C. § 136(h), and of 40 C.F.R. §§ 152.500(a) and 167.3.
48. During the period from November 20, 2012 through November 7, 2013, Respondent, at its Facility, prepared, processed and, therefore, "produced" and was a "producer," within the meaning and definition of FIFRA Section 2(w), 7 U.S.C. § 136(w), and of 40 C.F.R. § 167.3, of:
- a. the Company's *Lake Care* pesticide by means that included re-packaging or changing the product container (from the original containers in which the product was received into 50-pound containers at the Facility), and by labeling this product, prior to such product's distribution and sale.

- b. the Company's *Lake Cleanser Special* pesticide by means that included re-packaging or changing the product container (from the original containers in which the product was received into 50-pound containers at the Facility), and by labeling this product, prior to such product's distribution and sale.
 - c. the Company's *Clean & Clear Concentrated Enzymes* pesticide by means that included re-packaging, or changing the product container (from the bulk containers in which it is received into one and five-gallon containers), and labeling the product, prior to such product's distribution and sale;
 - d. the Company's *Lake Clear* pesticide by preparing and processing it by means that included on-site labeling of one, three and five-gallon product containers prior to such product's distribution and sale; and
 - e. the Company's *Clean-Flo Laminar System* pesticidal device by preparing and processing it by means that include on-site custom design, packaging and labeling prior to such product's distribution and sale.
49. At all times during the period from at least November 20, 2012 through at least November 7, 2013, Respondent's Facility was an "establishment," within the meaning and definition of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and of 40 C.F.R. § 167.3, as a result of the Respondent's production of one or more of the pesticides *Lake Care*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes* and *Lake Clear*, and/or of the *Clean-Flo Laminar System* pesticidal device, at the Facility during such time period.
50. During the period from November 20, 2012 through November 7, 2013, Respondent's Facility was not registered as an establishment, with EPA, for the production of any pesticides or pesticidal devices.
51. Respondent's production of each of the four (4) pesticides and of the pesticidal device identified in Paragraph 48, above, during the period from November 20, 2012 through November 7, 2013, at an establishment not then registered with EPA for such production, constitutes five (5) separate violations of Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and, therefore, five (5) separate unlawful acts under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNTS 6 - 319
(DISTRIBUTING / SELLING UNREGISTERED PESTICIDES)

52. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.

53. On the basis of records and information that Respondent provided to EPA, Respondent made each of the following sales and/or distributions, within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), of each of the following pesticides and devices that were products of, and which were then produced by, the Company to “persons,” within the meaning and definition of Section 2(s) of FIFRA, 7 U.S.C. § 136(s), who were Company customers during each of the noted time periods:
- a. One (1) distribution or sale of the pesticide product *Lake Care* on April 29, 2013;
 - b. Ten (10) distributions or sales of the pesticide product *Lake Cleanser Special* during the period from December 24, 2012 through August 28, 2013;
 - c. One hundred and forty-seven (147) distributions or sales of the pesticide product *Clean & Clear Concentrated Enzymes* during the period from January 2, 2013 through November 1, 2013; and
 - d. One hundred and fifty-six (156) distributions or sales of the pesticide product *Lake Clear* during the period from January 2, 2013 through October 3, 2013; and
54. The Respondent’s *Lake Care*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes* and *Lake Clear* pesticide products do not now, and did not at the time of any of the above-referenced distributions or sales, qualify for any of the registration exemption provisions of 40 C.F.R. §§ 152.20, .25, or .30.
55. The Respondent’s *Lake Care*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes* and *Lake Clear* pesticide products are not now, and were not at the time of any of the above-referenced distributions or sales, registered with the Agency pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15(a)(1).
56. Respondent’s sales and/or distributions of its *Lake Care*, *Lake Cleanser Special*, *Clean & Clear Concentrated Enzymes* and *Lake Clear* pesticide products, as identified in Paragraph 53, above, constitute three hundred and fourteen (314) separate sales and/or distributions of an unregistered pesticide in violation of Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and, therefore, three hundred and fourteen (314) separate unlawful acts under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

COUNTS 320 - 321
(FAILING TO COMPLY WITH
ANNUAL RECORDKEEPING / REPORTING REQUIREMENTS)

57. The allegations contained in each of the preceding Paragraphs of this Consent Agreement are incorporated by reference herein, as though fully set forth at length.
58. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), provides, in relevant and applicable part, that “[a]ny producer operating an establishment . . . shall inform the Administrator . . . 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 during the past year; and (C) which the producer has sold or distributed during the past year. The information required by this Paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.”
59. 40 C.F.R. § 167.85(a) similarly provides that “[e]ach producer operating an establishment must submit the reports required by this section [40 C.F.R. § 167.85] concerning any pesticide, active ingredient, or device produced at each establishment. Custom blenders are not required to report production to the Agency.”
60. 40 C.F.R. § 167.85(b) further provides, in relevant and applicable part, that “[t]he pesticide report shall include the following: (1) Name and address of the establishment; (2) amount of each pesticidal product: (i) Produced during the past year; (ii) sold or distributed during the past year; (iii) estimated to be produced during the current year. . . .”
61. 40 C.F.R. § 167.85(c) additionally provides that “[t]he reports required by this section [40 C.F.R. § 167.85] must be made on forms supplied by the Agency. It is the ultimate responsibility of companies to obtain, complete, and submit the form each year.
62. 40 C.F.R. § 167.85(d) subsequently provides, in relevant and applicable part, that “[a] producer operating an establishment must submit . . . an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.”
63. During the period from at least November 20, 2012 through November 7, 2013, Respondent was a producer, and not a custom blender, of pesticides and of a pesticidal device that was operating its Facility as an “establishment,” within the meaning and definition of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), and of 40 C.F.R. § 167.3.

64. During the period from at least November 20, 2012 through November 7, 2013, Respondent was, therefore, subject to the annual pesticide reporting requirements of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and of 40 C.F.R. § 167.85(a) – (d).
65. Respondent failed to submit to EPA annual pesticide reports for each of calendar years 2012 and 2013 that contained the information required pursuant to 40 C.F.R. § 167.85(b), in the manner specified pursuant to 40 C.F.R. § 167.85(c), and by the respective March 1, 2013 and March 1, 2014 deadlines specified in 40 C.F.R. § 167.85(d).
66. Respondent's failure to submit to EPA annual pesticide reports for each of the calendar years 2012 and 2013 that contained the information required pursuant to Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), and 40 C.F.R. § 167.85(b), in the manner specified pursuant to 40 C.F.R. § 167.85(c), and by the respective March 1, 2013 and March 1, 2014 deadlines specified in 40 C.F.R. § 167.85(d), constitute two (2) separate violations of Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and of 40 C.F.R. § 167.85, and two (2) separate unlawful acts under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

VI. CIVIL PENALTY

67. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)**, which Respondent agrees to pay in accordance with the payment terms set forth in Paragraph 71, below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CAFO, fully executed by the parties, signed by the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
68. The Parties find and represent that the aforesaid settlement amount is reasonable and is based upon Complainant's consideration of a number of factors, including the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), *i.e.*, the size of Respondent's business, the effect of the penalty on the Respondent's ability to continue in business, and the gravity of the violation. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *FIFRA Enforcement Response Policy*, dated December 2009 ("*ERP*"), which reflect the statutory penalty criteria and factors set forth at Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the

appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, the November 16, 2009 Memorandum by EPA Office of Civil Enforcement, Waste and Chemical Enforcement Division Director Rosemarie A. Kelly, entitled *Adjusted Penalty Matrices based on the 2008 Civil Monetary Penalty Inflation Adjustment Rule* and the subsequent December 6, 2013 Memoranda by EPA Assistant Administrator Cynthia Giles, entitled *Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)*. The Parties further acknowledge and represent that the aforesaid settlement is based, in part, upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon the following information submitted to Complainant by Respondent:

- a. Financial Statement Corporations, Business or Other Organizations Ability To Play Claim, signed by Brian Kling, President, Clean-Flo International, LLC;
- b. 2012 Clean-Flo International, LLC U.S. and Pennsylvania Partnership Income Tax Returns, Pennsylvania Corporate Tax Report and Pennsylvania Directory of Nonresident Owners Return;
- c. 2013 U.S. Income Tax Return, Clean-Flo International, LLC, prepared by William B. Gowie, Jr., CPA, MT, Steger, Gowie & Company, Inc., dated February 21, 2014;
- d. 2014 U.S. Income Tax Return, Clean-Flo International, LLC, prepared by William B. Gowie, Jr., CPA, MT, Steger, Gowie & Company, Inc., dated February 11, 2015;
- e. 2015 U.S. Income Tax Return, Clean-Flo International, LLC, prepared by William B. Gowie, Jr., CPA, MT, Steger, Gowie & Company, Inc., dated February 08, 2016;
- f. 2016 U.S. Income Tax Return, Clean-Flo International, LLC, prepared by William B. Gowie, Jr., CPA, MT, Steger, Gowie & Company, Inc., dated March 09, 2017;
- g. Clean-Flo International, LLC – Aged Payables as of May 31, 2017;
- h. Clean-Flo International, LLC – Aged Payables as of May 31, 2017;
- i. Clean-Flo International, LLC Income Statement for the Five Months Ending May 31, 2017;

- j. Commercial Leave Agreement between Clean-Flo Partners LP and Clean-Flo International, LLC, dated May 24, 2016; and
 - k. Memo - Steger, Gowie & Co., Inc., dated 07/13/2017.
69. Complainant has relied upon the financial information provided by Respondent and identified in the preceding Paragraph. Based upon an analysis of the same, and in consideration and application of a number of factors to the particular facts and circumstances of this case, including the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4) (*i.e.*, the size of Respondent's business, the effect of the penalty on the Respondent's ability to continue in business, and the gravity of the violations), EPA's December 2009 *ERP*, the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and applicable implementing guidance, it is Complainant's conclusion that the Respondent has established that it is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 67, above, in settlement of the above-captioned action.
70. By the signature below, Respondent's representative certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information 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 provided and/or representations made by the Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any of other matter herein at issue, are false or, in any material respect, inaccurate.
71. The civil penalty of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** set forth in Paragraph 67, above, may be paid in two (2) separate installments, with applicable interest at the rate of one per cent (1%) per annum on the outstanding principal balance, in accordance with the payment schedule instructions and illustrative chart set forth immediately below:
- a. **First Payment:** The first payment, in the amount of **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500.00)**, consisting of a principal payment of \$12,500.00 and an interest payment of \$0.00, shall be paid within thirty (30) days of the date on which this CAFO is mailed or hand-delivered to Respondent; and

- b. **Second Payment:** The second payment, in the amount of **TWELVE THOUSAND FIVE HUNDRED THIRTY-FOUR DOLLARS AND TWENTY-FIVE CENTS (\$12,534.25)**, consisting of a principal payment of \$12,500.00 and an interest payment of \$34.25, shall be within one hundred (100) days of the date on which this CAFO is mailed or hand-delivered to Respondent.

Pursuant to the above schedule, and as illustrated in the chart below, Respondent will remit total civil penalty principal payments in the amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** and total interest payments in the amount of **THIRTY-FOUR DOLLARS AND TWENTY-FIVE CENTS (\$34.25)**.

| Payment Number | Principal Amount | Interest | Due Date -- Total Payment Due |
|----------------|------------------|----------|--|
| 1 | \$12,500.00 | \$0.00 | <i>within 30 days of CAFO mailing or hand-delivery</i> \$12,500.00 |
| 2 | \$12,500.00 | \$34.25 | <i>within 100 days of CAFO mailing or hand-delivery</i> \$12,534.25 |

72. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the schedule set forth in the preceding Paragraph, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, administrative handling charges and late payment penalty charges as described in Paragraphs 77, 78 and 79, below, in the event of any such failure or default.
73. Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.

74. Respondent shall remit payment for the civil penalty set forth in Paragraph 67, above, and/or any administrative fees and late payment penalties due, in accordance with Paragraphs 77, 77 and 79, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, *i.e.*, **FIFRA-03-2017-0199**;
 - b. All checks shall be made payable to "**United States Treasury**";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

Primary Contact: Craig Steffen, 513-487-2091
Secondary Contact: Contact: Heather Russell, 513-487-2044

- d. All payments made by check and sent by overnight delivery service shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

75. Respondent may also pay the civil penalty amount described in Paragraph 67, above, electronically or on-line as follows:

a. All payments made by electronic wire transfer shall be directed to:

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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

b. All electronic payments made through the automated clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
or Remittance Express (REX): 1-866-234-5681

c. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

d. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

76. A copy of Respondent's check or a copy of Respondent's electronic transfer payment shall be sent simultaneously to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
5th Floor
Philadelphia, Pennsylvania 19103-2029;

and

A.J. D'Angelo
Senior Assistant Regional Counsel (3RC50)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

77. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and the attached Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
78. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
79. A late penalty payment of six percent (6%) per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
80. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

81. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have against Respondent under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), for the specific violations alleged in Section V (“Violations Alleged”), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

VIII. OTHER APPLICABLE LAWS

82. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

83. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is complying with all applicable provisions of FIFRA, 7 U.S.C. § 136 et seq. and its implementing regulations.

X. RESERVATION OF RIGHTS

84. This Consent Agreement and the accompanying Final Order resolve only EPA’s claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*, 40 C.F.R. § 22.18(c). Further, EPA reserves any rights and remedies available to it under FIFRA and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

85. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the EPA, the Respondent and the Respondent’s successors, agents and assigns.

XII. EFFECTIVE DATE

86. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the *Consolidated Rules of Practice*.

XIII. ENTIRE AGREEMENT

87. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIV. EXECUTION

88. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent:

Date: 9/21/17


By: Brian Kling
Brian Kling, President
Clean-Flo International, LLC

In the Matter of:
Clean-Flo International, LLC

Consent Agreement
Docket No. FIFRA-03-2017-0199


For Complainant:

Date: 9/21/2017

By: 
A.J. D'Angelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch (3RC50)
U.S. Environmental Protection Agency, Region III

After reviewing the foregoing Consent Agreement and other pertinent information, the Land and Chemicals Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 9-25-2017

By: 
Martha Shimkin, Acting Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region III

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III
1650 Arch Street

2017 SEP 26 PM 1:55

Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARINGS OFFICE
EPA REGION III, PHILA., PA

| | | |
|----------------------------------|---|---|
| In the Matter of: |) | Docket No. FIFRA-03-2017-0199 |
| |) | |
| Clean-Flo International, LLC |) | |
| 827 Lincoln Avenue, Suite 1 |) | Proceeding Under Section 14(a) of the |
| West Chester, Pennsylvania 19380 |) | Federal Insecticide, Fungicide and |
| |) | Rodenticide Act, <i>as amended</i> , 7 U.S.C. |
| RESPONDENT. |) | § 136l(a) |

FINAL ORDER


Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Clean-Flo International, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("*Consolidated Rules of Practice*"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), as amended, 7 U.S.C. § 136l(a), and the *Consolidated Rules of Practice*, after having determined, based on the representations of the Parties set forth in the Consent Agreement, that the civil penalty of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** and applicable interest agreed to therein was based upon a consideration of, *inter alia*, the statutory factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), EPA's *FIFRA Enforcement Response Policy*, dated December 2009, the

appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and applicable implementing guidance, **IT IS HEREBY ORDERED** that Respondent pay a civil monetary penalty of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** and applicable interest in accordance with the provisions of the foregoing Consent Agreement, and comply timely with each of the additional terms and conditions thereof.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or his designee, the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 26, 2017



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029


In the Matter of:) Docket No. FIFRA-03-2017-XXXX
)
Clean-Flo International, LLC)
827 Lincoln Avenue, Suite 1) Proceeding Under Section 14(a) of the
West Chester, Pennsylvania 19380) Federal Insecticide, Fungicide and
) Rodenticide Act, *as amended*, 7 U.S.C.
RESPONDENT.) § 136l(a)

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused to be hand-delivered to the Regional Hearing Clerk (3RC00), U.S. EPA Region III, 1650 Arch Street, 5th Floor, Philadelphia, PA 19103-2029, the original and one copy of the foregoing Consent Agreement and of the accompanying Final Order (collectively, "CAFO"), Docket No. FIFRA-03-2017-0199. I further certify that on the date set forth below, I caused true and correct copies of the same to be mailed via Certified Mail, Return Receipt Requested, Postage Prepaid (Article No. 7001 2510 0001 1042 7296), to the following person at the following address:

Ms. Suzanne Ilene Schiller, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

9/26/2017
Date


A.J. D'Angelo
Sr. Assistant Regional Counsel
UST, Asbestos, Lead & Pesticides Branch
Office of Regional Counsel (3RC50)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Tel. (215) 814-2480