



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 06 2018

REPLY TO THE ATTENTION OF:

LC-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Samuel R. Martillotta
Mansour, Gavin LPA
North Point Tower
1001 Lakeside Avenue, Suite 1400
Cleveland, Ohio 44114

Consent Agreement and Final Order In the Matter of Aquamark, Incorporated

FIFRA-05-2018-0014

Mr. Martillotta:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on **FEB 06 2018** with the Regional Hearing Clerk.

The civil penalty in the amount of \$40,000 is to be paid in the manner described in paragraphs 68-69. Please be certain that the docket number is written on both the transmittal letter and on the check or in the comments field if you are paying by electronic funds transfer. Payment is due by within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Abigail Wesley".

Abigail Wesley
Pesticides and Toxics Compliance Section

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2018-0014
)	
Aquamark, Incorporated)	
Chesterland, Ohio)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
<hr/>)	

Consent Agreement and Final Order

Preliminary Statement

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 Aquamark, Incorporated (Aquamark), a corporation doing business in the State of Ohio.

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. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), states that no person in any State may distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.

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

12. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires producers operating an establishment to inform the Administrator of the types and amounts of pesticides produced on an annual basis, as required by 40 C.F.R. § 167.85.

13. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states it is 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.

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

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

16. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” as “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.” Also see 40 C.F.R. §152.3.

17. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” Also see 40 C.F.R. §152.3.

18. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” as “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 ... which the Administrator [of the EPA] declares to be a pest” under Section 25(c)(1) of FIFRA. Also see 40 C.F.R. §152.5.

19. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines the term “producer” as a “person who manufactures, prepares, compounds, propagates, or processes any pesticide or active ingredient used in producing a pesticide.”

20. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty by EPA of not more than \$5,000 for each offense. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015, 28 U.S.C. § 2461, and its implementing regulations at 40 C.F.R. Part 19, increased the amount that can be assessed to \$18,750 for each offense occurring after November 2, 2015 and assessed on or after

August 1, 2016. See 81 Fed. Reg. 43091 (July 1, 2016).

21. The Administrator of the EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 and \$8,251 for each offense that occurred after November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19. See 73 Fed. Reg. 75340 (January 12, 2009) and 81 Fed. Reg. 43091 (July 1, 2016).

General Allegations

22. Respondent is a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

23. The Respondent is a “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

24. At all times relevant to the Complaint, Aquamark owned or operated a place of business located at 14910 Cross Creek Parkway, Newbury, Ohio 44065 (facility).

25. On or about March 17 and 21, 2016, an inspector with the Ohio Department of Agriculture (ODA), who is an authorized representative of the EPA, inspected the Aquamark facility.

26. During the inspection, the inspector learned that the Respondent produces **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** at its facility.

27. Respondent’s facility is an EPA registered establishment, where pesticides are produced, identified by EPA Establishment Number (EPA Est. No.) 085901-OH-002.

28. During the inspection, the inspector collected the label for **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** that Respondent affixes to the product before distribution or sale.

29. The label for **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** states that the EPA Registration Number (EPA Reg. No.) for the product is 75373-20001.

30. However, EPA Reg. No. 75373-20001 is assigned to a pesticide product identified as **BleachTech 12.5% Solution**.

31. The label for **Aquamark, Inc Sodium Hypochlorite 12.5%** also identifies sodium hypochlorite as an active ingredient in the product.

32. **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** is a “pesticide” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u) because its is intended for preventing, destroying, repelling, or mitigating certain pests.

33. **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** is not a registered pesticide as required by Section 3 of FIFIRA and its underlying regulations.

34. On or about February 25, 2016, Respondent distributed or sold **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** to a customer in Ohio.

35. On or about December 15, 2015, Respondent distributed or sold **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** to a customer in Ohio.

36. On or about December 8, 2015, Respondent distributed or sold **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** to a customer in Ohio.

37. On or about November 24, 2015, Respondent distributed or sold **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** to a customer in Indiana.

38. On or about November 24, 2015, Respondent distributed or sold **Aquamark, Inc Sodium Hypochlorite 12.5% Solution** to a customer in Ohio.

39. Aquamark submitted an annual pesticide production report for the 2016 calendar year, to EPA on or about January 25, 2017.

40. The annual pesticide production report for calendar year 2016, for the Aquamark facility, submitted to EPA, on or about January 25, 2017, failed to contain certain required data for reported production as required by 40 C.F.R. § 167.85(c).

41. On November 9, 2017, Aquamark submitted a corrected and complete annual pesticide production report for calendar year 2016, as required by 40 C.F.R. § 167.85(c).

Count 1

42. All preceding paragraphs are incorporated by reference.

43. From on or about February 25, 2016, Respondent distributed or sold the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, to a customer in Ohio.

44. Respondent's distribution or sale of the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

45. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 2

46. All preceding paragraphs are incorporated by reference.

47. From on or about December 15, 2015, Respondent distributed or sold the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, to a customer in Ohio.

48. Respondent's distribution or sale of the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, constitutes an unlawful act pursuant to Section

12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

49. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 3

50. All preceding paragraphs are incorporated by reference.

51. From on or about December 8, 2015, Respondent distributed or sold the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, to a customer in Ohio.

52. Respondent's distribution or sale of the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

53. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 4

54. All preceding paragraphs are incorporated by reference.

55. From on or about November 24, 2015, Respondent distributed or sold the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, to a customer in Indiana.

56. Respondent's distribution or sale of the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

57. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 5

58. All preceding paragraphs are incorporated by reference.

59. From on or about November 24, 2015, Respondent distributed or sold the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, to a customer in Ohio.

60. Respondent's distribution or sale of the unregistered pesticide, **Aquamark, Inc Sodium Hypochlorite 12.5% Solution**, constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

61. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count 6

62. All preceding paragraphs are incorporated by reference.

63. For calendar year 2016, respondent submitted an incomplete pesticide production report as required by Section 7 of FIFRA, 7 U.S.C. § 136e.

64. Respondent's submittal of an incomplete pesticide production report for calendar year 2016 constitutes an unlawful act pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

65. Respondent's violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty

under Section 14(a) of the FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty and Other Relief

66. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

67. Based on an evaluation of the facts alleged in this CAFO, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$40,000.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$40,000 civil penalty for the FIFRA violations. Respondent must pay the penalty by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Aquamark, Incorporated, and the docket number of this CAFO.

69. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Abigail Wesley (LC-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi K. O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

70. This civil penalty is not deductible for federal tax purposes.

71. If Respondent does not pay the civil penalty in a timely manner, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

72. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

73. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the

Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses for their respective attorneys: Ms. Nidhi K. O'Meara at omeara.nidhi@epa.gov (for Complainant), and by certified mail to Mr. Samuel R. Martillotta at Mansour Gavin, LPA, 1001 Lakeside Avenue, Suite 1400, Cleveland, Ohio 44114 (for Respondent).

74. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO.

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

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

77. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

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

79. 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.

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

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

In the Matter of:
Aquamark, Incorporated FIFRA-05-2018-0014

Aquamark, Incorporated, Respondent

1-15-18
Date

Mark Chambers
Mark Chambers, President
Aquamark, Incorporated

In the Matter of:
Aquamark, Incorporated FIFRA-05-2018-0014

United States Environmental Protection Agency, Complainant

01/30/2018
Date

Michael D. Harris *for M.G.*
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Aquamark, Incorporated
Docket No. FIFRA-05-2018-0014



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.

2/2/18
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the matter of: Aquamark, Incorporated
Docket Number: **FIFRA-05-2018-0014**



CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number FIFRA-05-2018-0014, which was filed on Feb 6, 2018, in the following manner to the following addressees:

Copy by Certified Mail
Return Receipt Requested
Sent to Attorney for Respondent:

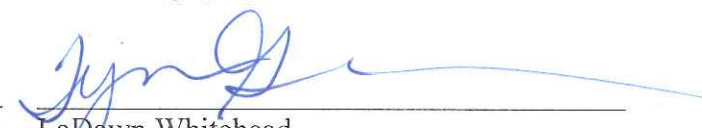
Mr. Samuel R. Martillotta
Mansour Gavin, LPA
1001 Lakeside Avenue
Suite 1400
Cleveland, Ohio 44114

Copy by E-mail to
Attorney for Complainant:

Ms. Nidhi K. O'Meara
omeara.nidhi@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: Feb 6, 2018 
for LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPTS NUMBER(S): 7009 1680 0000 7662 7191