



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

In Reply Refer To Mail Code: 3LC62

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

AUG 14 2008

Mr. Patrick Mathews, Managing Director  
Mareva, Inc.  
840 Juniper Crescent, Suite 101  
Chesapeake, VA 23320

Re: Consent Agreement and Final Order  
DOCKET NO: FIFRA-03-2008-0357

Dear Mr. Mathews:

Enclosed is a copy of the CONSENT AGREEMENT AND FINAL ORDER filed today with the Regional Hearing Clerk settling the matter referenced above. For your file, I am also enclosing a copy of the supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Should you have any questions or concerns, please feel free to contact me at (215) 814-2066.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Abramson".

Jennifer M. Abramson  
Assistant Regional Counsel

Enclosures

cc: Carolyn Bernota (w/o attachments)

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

**IN THE MATTER OF** )  
)  
Mareva, Inc. )  
840 Juniper Crescent, Suite 101 )  
Chesapeake, VA 23320 )  
Respondent. )  
\_\_\_\_\_ )

DOCKET NO: FIFRA-03-2008-0357  
CONSENT AGREEMENT

RECEIVED  
MAY 14 2008  
FIFRA-03

CONSENT AGREEMENT

Preliminary Statement

1. This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("EPA" or "Complainant") and by Mareva, Inc. ("Respondent") pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), *as amended*, 7 U.S.C. § 136l(a), and Sections 22.13(b) and .18(b) of 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. §§ 22.13(b) and .18(b). 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 arising from the violations of FIFRA alleged herein.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.
3. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CAFO.
4. For the 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.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent shall bear its own costs and attorney's fees.

EPA's Findings of Fact and Conclusions of Law

7. In accordance with the Consolidated Rules of Practice at Sections 22.13(b) and .18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law:

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

9. At all times relevant to the violations alleged herein, Respondent owned and operated a business, located at 1119 Cavalier Boulevard in Chesapeake, Virginia, that retailed swimming pool supplies.

10. Respondent is a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

11. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 define “pesticide”, in pertinent part, to mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or for use as a plant regulator, defoliant or desiccant, with exceptions not relevant to this case.

12. 40 C.F.R. § 152.3 defines “pesticide product”, in pertinent part, to mean a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold.

13. Pursuant to 40 C.F.R. § 152.15, “[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) That the substance . . . can or should be used as a pesticide, . . . (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), . . . 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.”

14. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines “pest” to mean any insect, rodent, nematode, fungus, weed, or 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).

15. During the time period between September 2003 and April 2006, Respondent sold a product with labels that identified it as REVASTOP – MUSTARD ALGAE (“REVASTOP”) and included directions for use of the product for “[m]ustard algae control” (“REVASTOP”).

16. By including directions for use of the product for “[m]ustard algae control”, the REVASTOP label made a pesticidal claim.

17. REVASTOP is a “pesticide” and a “pesticide product” as those terms are defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3.

18. Pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C § 136j(a)(1)(A), it shall be 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, or whose registration has been canceled or suspended, with exceptions not relevant to this matter.

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

20. Section 2(gg) of FIFRA, 7 U.S.C § 136(gg), provides, in pertinent part, that 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.

21. During the time period between September 2003 and April 2006, Respondent sold and/or distributed containers of REVASTOP to various individuals, partnerships, associations, corporations and/or organized groups of persons on approximately forty nine (49) separate occasions. Of these, Respondent sold and/or distributed containers of REVASTOP on three (3) separate occasions on or before March 15, 2004, and sold and/or distributed containers of REVASTOP on forty six (46) separate occasions after March 15, 2004.

22. Each occasion on which Respondent sold and/or distributed containers of REVASTOP, as described in the preceding paragraph, constitutes a “distribution or sale” of a “pesticide” and “pesticide product” to a “person” as those terms are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and 40 C.F.R. § 152.3.

23. At all times relevant to this CAFO, REVASTOP was not registered with EPA as a pesticide pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a, and had never been so registered.

24. By selling and/or distributing the unregistered pesticide product REVASTOP, Respondent violated Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

25. Each of the 49 sales and/or distributions of the unregistered pesticide product REVASTOP during the time period between September 2003 and April 2006, constitutes a separate unlawful act 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).

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

27. Pursuant to Section 2(q)(1) of FIFRA, 7 U.S.C § 136(q)(1), a pesticide is "misbranded" if *inter alia* its label does not bear the registration number of the establishment in which it was produced.

28. At the time of the sales and/or distributions described in paragraph 21., above, the REVASTOP label did not bear the registration number of the establishment in which it was produced, EPA Est. No. 69461-FRA-001, and therefore was misbranded as defined by Section 2(q)(1) of FIFRA, 7 U.S.C. § 136(q)(1).

29. Each of the 49 occasions on which Respondent distributed or sold containers of misbranded REVASTOP during the time period between September 2003 and April 2006 constitutes a separate unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

30. Respondent is a "distributor" subject to the assessment of a civil penalty under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

#### Civil Penalty

31. In settlement of the action referenced in the caption above, Respondent consents to the assessment of a civil penalty of twenty seven thousand dollars (\$27,000) and agrees to pay such penalty in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. In order to avoid the assessment of interest, administrative costs, and late payment penalties 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 executed CAFO is mailed or hand-delivered to the Respondent.

32. The aforesaid settlement amount is based upon Complainant's consideration of a number of factors, including, but not limited to, 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 Respondent's ability to continue in business, and the gravity of the violations. These factors were applied to the particular facts and circumstances of this case with specific reference to the *FIFRA Enforcement Response Policy* ("ERP"), dated July 2, 1990, and the *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule (Pursuant to the Debt Collection Improvement Act of 1996, Effective October 1, 2004)*, dated September 21, 2004.

33. Payment of the civil penalty amount required under the terms of paragraph 31., above, shall be made as follows:

a. Mailing (*via first class U.S. Postal Service Mail*) a certified or cashier's check, made payable to the "United States Treasury" to the following address:

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

Contact: Natalie Pearson  
314-418-4087

b. Via Overnight Delivery of a certified or cashier's check, made payable to the "United States Treasury", sent to the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

c. By electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York  
ABA 021030004  
Account No. 68010727  
SWIFT Address FRNYUS33  
33 Liberty Street  
NY, NY 10045

(Field tag 4200 of Fedwire message should read "D  
68010727 Environmental Protection Agency")

d. By automatic clearinghouse ("ACH") to the following account:

PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074

ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

Contact: Jesse White  
301-887-6548

e. Online payments can be made at [WWW.PAY.GOV](http://WWW.PAY.GOV) by entering "sfo 1.1" in the search field, and opening the form and completing the required fields.

All payments shall also reference the above case caption and docket number, DOCKET NO.: FIFRA-03-2008-0357. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or provide written notification confirming any electronic wire transfer, automated clearinghouse or online payment to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Carolyn Bernota (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

34. 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 CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this executed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The cost of 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.

A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for 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).

35. Respondent agrees not to deduct for civil taxation purposes the civil penalty paid pursuant to this CAFO.

Certifications

36. Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA, 7 U.S.C. §§ 136 *et seq.*

Other Applicable Laws

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

Reservation of Rights

38. This CAFO resolves only EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. 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. Further, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated there under, and any other Federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

Full and Final Satisfaction

39. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 14(a) of FIFRA, 7 U.S.C. § 136(a), for the specific violations alleged in this CAFO. 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.

Parties Bound

40. This CAFO shall apply to and be binding upon EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to



the terms and conditions of this CAFO.

Effective Date

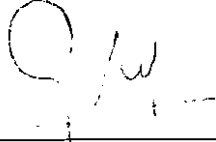
41. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

Entire Agreement

42. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the action referenced in the caption above, and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

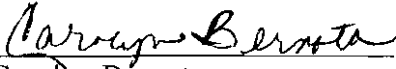
For Respondent:

July 20, 2008  
Date

  
\_\_\_\_\_  
Gerard LeGrand, President  
Mareva, Inc.

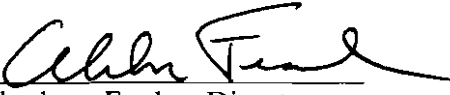
For Complainant:

7/21/08  
Date

  
\_\_\_\_\_  
Carolyn Bernota  
U.S. EPA, Region III

Accordingly, I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

8/5/08  
Date

  
\_\_\_\_\_  
Abraham Ferdas, Director  
Land and Chemicals Division

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

**IN THE MATTER OF** )  
 )  
 Mareva, Inc. )  
 840 Juniper Crescent, Suite 101 )  
 Chesapeake, VA 23320 )  
 Respondent. )  
 \_\_\_\_\_ )

DOCKET NO: FIFRA-03-2008-0357

FINAL ORDER

RECEIVED  
 11/10/08  
 11/12/08  
 11/12/08

FINAL ORDER

The Director, Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondent, Mareva, Inc., 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, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"). 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, *as amended*, 7 U.S.C. § 136l(a) ("FIFRA"), and the Consolidated Rules of Practice, and having determined, based on the parties' representation in the Consent Agreement, that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent pay a penalty of twenty seven thousand dollars (\$27,000),

and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

8/14/08  
Date



Renée Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF )

Mareva, Inc. )  
840 Juniper Crescent, Suite 101 )  
Chesapeake, VA 23320 )

Respondent. )

DOCKET NO: FIFRA-03-2008-0357

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

**Original and one copy by hand-delivery:**

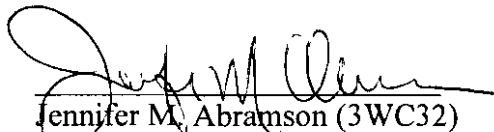
Lydia Guy, Regional Hearing Clerk

**Copy by Certified Mail**

Mr. Patrick Mathews, Managing Director  
Mareva, Inc.  
840 Juniper Crescent, Suite 101  
Chesapeake, VA 23320

**AUG 14 2008**

Date



Jennifer M. Abramson (3WC32)  
Assistant Regional Counsel  
U.S. EPA, Region III

