

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2025-0002
)	
The Pond Guy, Inc.)	Proceeding to Assess a Civil Penalty
Armada, Michigan)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)
_____)	

Consent Agreement and Final OrderPreliminary 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, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is The Pond Guy, Inc. (Pond Guy), a corporation doing business in the State of Michigan.

4. Pond Guy also does or has done business under names including, but not necessarily limited to, Airmax, Inc., Airmax Ecosystems, Inc., Crystal Clear, Jenlis, Jenlis, Inc. and TPG, Inc.

5. 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).

6. 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.

7. 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

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

9. 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. Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

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

Statutory and Regulatory Background

11. 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.

12. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states, in pertinent part, 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.

13. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states, in pertinent part, it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

14. The term “person” means “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

15. 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.” 7 U.S.C. § 136(gg).

16. A “pesticide” means, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

17. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states or implies (by labeling or otherwise) that the substance can or should be used as a pesticide. 40 C.F.R. § 152.15(a)(1).

18. A “pest” means 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 which the Administrator of U.S. EPA declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136(t).

19. A pesticide is “misbranded” if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced. 7 U.S.C. § 136(q)(1)(D).

20. A pesticide is “misbranded” if its label does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with,

together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(F).

21. A pesticide is “misbranded” if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment. 7 U.S.C. § 136(q)(1)(G).

22. A “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers. 7 U.S.C. § 136(p)(1).

23. The term “released for shipment” means “the producer has packaged and labeled it in the manner in which it will be distributed or sold, or has stored it in an area where finished products are ordinarily held for shipment. . . . Once a product becomes released for shipment, the product remains in the condition of being released for shipment unless subsequent activities, such as relabeling or repackaging, constitute production.” 40 C.F.R. § 152.3.

24. A “registrant” means a person who has registered any pesticide pursuant to the provisions of this Act. 7 U.S.C. § 136(y).

25. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$24,255 for each offense that occurred after November 2, 2015, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136/(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

27. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

28. At all times relevant to this CAFO, Respondent owned or operated a place of business at and about 15425 Chets Way, Armada, Michigan.

29. On or about August 17 and 26, 2021, inspectors employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's Armada, Michigan facility.

Algae Defense

30. On or about January 17, 2007, EPA registered a pesticide product, "Algae Defense," to Respondent, the registrant.

31. EPA assigned "Algae Defense" EPA Registration Number (EPA Reg. No.) 83742-1.

32. On or about May 24, 2011, EPA accepted a label for "Algae Defense," EPA Reg. No. 83742-1.

33. "Algae Defense," EPA Reg. No. 83742-1, is a "pesticide" as that term is defined in Section 2(u) of FIFRA.

34. During the 2021 inspection, the inspectors collected, among other things, shipping records, bin labels and an affidavit for the pesticide product "Algae Defense," EPA Reg. No. 83742-1.

35. The bin label collected during the inspection was a true and accurate representation of the product and the associated labels that were released for shipment on or about July 30, 2021 through August 13, 2021.

36. The bin label for "Algae Defense," EPA Reg. No. 83742-1, collected during the inspection did not match the label language on the accepted label, dated May 24, 2011, in that the bin label did not include the following:

- a. FISH NOTE Algae Defense is toxic to fish and other aquatic invertebrates. The risk of fish toxicity generally decreases as the hardness of the water increases.
- b. IRRIGATION WITH TREATED WATER Water treated with Algae Defense in accordance with label directions shall be used for irrigation immediately after treatment.

37. During the 2021 inspection, the inspectors observed and photographed a quantity of “Algae Defense,” EPA Reg. No. 83742-1, being held for distribution or sale at Respondent’s Armada, Michigan facility.

38. The containers of “Algae Defense,” EPA Reg. No. 83742-1, held for distribution or sale by Respondent bore a label that identified EPA Establishment Number (EPA Est. No.) 70815-GA-002.

39. The containers of “Algae Defense,” EPA Reg. No. 83742-1, held for distribution or sale by Respondent bore additional marking that stated or identified EPA Est. No. 072344-MO-004.

40. On 16 occasions on or about July 31, 2021 through August 17, 2021, Respondent distributed or sold “Algae Defense,” EPA Reg. No. 83742-1.

ClearPAC Plus Complete Pond Care Program

41. During the August 2021 inspection, the MDARD inspectors collected, among other records, shipping records, bin labels and affidavits regarding “ClearPAC Plus Complete Pond Care Program.”

42. The bin label of “ClearPAC Plus Complete Pond Care Program” collected during the August 2021 inspection states:

- a. “KILLS ALGAE”

b. “Do you have algae? Yes: Treat with Algae Defense.”

c. “Algae Defense Kills All Forms of Algae”

43. The contents of the pesticide product “ClearPAC Plus Complete Pond Care Program” are not visible through the packaging in which the pesticide product distributed or sold.

44. “ClearPAC Plus Complete Pond Care Program” contained, among other products, “Algae Defense,” EPA Reg. No. 83742-1.

45. The pesticide product “ClearPAC Plus Complete Pond Care Program” is a “pesticide” as that term is defined by Section 2(u) of FIFRA.

46. At all times relevant to this CAFO, the pesticide product “ClearPAC Plus Complete Pond Care Program” was not registered under Section 3 of FIFRA.

47. On five occasions on or about August 12 and 13, 2021, Respondent distributed or sold “ClearPAC Plus Complete Pond Care Program.”

Counts 1 through 16

48. Paragraphs 1 through 47 are incorporated by reference.

49. On 16 occasions on or about July 31, 2021 through August 17, 2021, Respondent distributed or sold the pesticide “Algae Defense,” EPA Reg. No. 83742-1, which was misbranded as that term is defined at Sections 2(q)(1)(D), (F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G), because the label on the container did not include required directions for use and/or precautionary statements and did not identify the establishment in which the pesticide was produced.

50. Respondent's 16 distributions or sales of the misbranded pesticide, "Algae Defense," EPA Reg. No. 83742-1, constitute 16 unlawful acts pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Counts 17 through 21

51. Paragraphs 1 through 47 are incorporated by reference.

52. On five occasions on or about August 12 and 13, 2021, Respondent distributed or sold an unregistered pesticide, "ClearPAC Plus Complete Pond Care Program."

53. Respondent's five distributions or sales of an unregistered pesticide, "ClearPAC Plus Complete Pond Care Program," constitute five unlawful acts pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

54. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$162,246. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

55. Respondent agrees to pay a civil penalty in the amount of \$162,246 ("Assessed Penalty") within thirty (30) days after the effective date of this CAFO.

56. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

57. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this CAFO, FIFRA-05-2025-0002,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
r5hearingclerk@epa.gov

Claudia Niess (ECP-17J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
niess.claudia@epa.gov and R5lecab@epa.gov

Kris Vezner (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
vezner.kris@epa.gov

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

58. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, the entire unpaid

balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the effective date of this CAFO. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days.

59. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this CAFO, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency pursuant to 40 C.F.R. §§ 13.13 and 13.14.

- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the amount outstanding pursuant to 7 U.S.C. § 1361(a)(5).

60. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

61. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

62. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts

paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of a TIN issued by the IRS.

General Provisions

63. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: vezner.kris@epa.gov (for Complainant), and jblake@thepondguy.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

64. The Respondent's full compliance with this CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

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

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

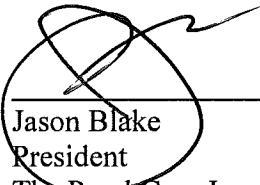
68. The terms of this CAFO bind Respondent, its successors and assigns.

69. Each person signing this CAFO 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.

70. Each party agrees to bear its own costs and attorneys fees, in this action.

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

The Pond Guy, Inc., Respondent



Jason Blake
President
The Pond Guy, Inc. 11/18/24

United States Environmental Protection Agency, Complainant

Michael D. Harris
Director
Enforcement and Compliance Assurance Division

**In the Matter of:
The Pond Guy, Inc.
Docket No. FIFRA-05-2025-0002**

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.

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