



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

AUG 06 2009

Certified Mail – Return Receipt Requested

Mr. Wesley Haigh, President
Guaranteed Pool and Spa, Inc.
2607 South Woodland Blvd. #151
Deland, Florida 32720

SUBJ: Docket No. FIFRA-04-2009-3015
Guaranteed Pool and Spa, Inc.

Dear Mr. Haigh:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the first payment of the assessed penalty is due within 30 days from the effective date with the remainder due in accordance with the schedule set forth in paragraph 21 of the CAFO. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. Environmental Protection Agency, Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Molly Freeman Miller at (404) 562-9684.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by EPA.

Sincerely,

Anthony G. Toney
Acting Chief
Pesticides and Toxic
Substances Branch

Enclosure

cc: Craig Bryant, FDACS

State File No. 205-020-2103

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
Guaranteed Pool and Spa, Inc.)
)
)
Respondent.)
_____)

Docket No. FIFRA-04-2009-3015

2009 JUN -5 PM 3:51
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.* (hereinafter "FIFRA"), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Guaranteed Pool and Spa, Inc., a Florida corporation, located at 2350 N. Volusia Avenue, Orange City, Florida 32763.
2. On February 4, 2009, EPA filed a Civil Complaint and Notice of Opportunity for Hearing (Docket No. FIFRA-04-2009-3015) against Respondent for alleged violations of FIFRA Section 12, 7 U.S.C. § 136j. On or about April 3, 2009, Respondent filed an Answer to the Complaint. In May 2009, the parties agreed to participate in Alternative Dispute Resolution (ADR). Subsequent to an ADR session conducted by Judge Nissen on June 5, 2009, the parties conferred and agreed to settle this case pursuant to 40 C.F.R. § 22.18 without a formal hearing. Therefore, without the taking of any

evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b)(2), this Consent Agreement and Final Order (CAFO) will conclude this matter.

II. EPA's Statement of Facts and Allegations of Violation

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14 dated May 11, 1994.
4. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
5. On or about October 4, 2005, an authorized representative of the EPA conducted an inspection at Guaranteed Pool and Spa, Inc., 1127 Ridgewood Avenue, Holly Hill, Florida 32117.
6. During the aforementioned inspection, the product "Sodium Hypochlorite Solution 10.5%" EPA Reg. No. 53257-6, was identified as being produced and distributed by the Respondent.
7. Sodium Hypochlorite Solution 10.5% is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
8. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t), as 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 microorganisms 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).

9. At the time of the inspection, Respondent “distributed or sold” the pesticide Sodium Hypochlorite 10.5%. The term “to distribute to sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
10. At the time of the inspection, at least twelve 2.5-gallon containers of the Sodium Hypochlorite Solution 10.5% that were being offered for sale by Respondent had no labels or had partial or torn labels.
11. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. 136(2)(q), a pesticide is misbranded if there is not affixed to its container, and to the outside container or wrapper of the retail package, a label bearing the name and address of the producer, registrant, or person for whom produced; the name, brand, or trademark under which the pesticide is sold; the net weight of the content; the registration number assigned to the pesticide; the registration number of the establishment in which the product was produced; directions for use, a warning or cautionary statement adequate to protect health and the environment, and an ingredient statement, among other requirements.
12. Respondent distributed, sold, and offered for sale the pesticide Sodium Hypochlorite Solution 10.5% in containers that were misbranded in that they had no labels, or with partial or torn labels, that did not display all the information that is required to be included in a label pursuant to Section 2(q) of FIFRA.
13. According to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person to distribute or sell to any person any pesticide which is adulterated or misbranded.

14. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.

III. Consent Agreement

15. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
16. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
17. Respondent consents to the assessment of a penalty and agrees to pay the civil penalty as set forth in this CAFO.
18. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
19. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
20. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

21. Respondent is assessed a civil penalty of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), plus interest at three per cent per annum, which is to be paid in

twelve (12) payments. The first payment is due within thirty (30) days of the effective date of this CAFO, and subsequent payments in one month intervals thereafter in the following amounts:

<u>Payment Number</u>	<u>Amount</u>
1-11	\$211.73
12	\$211.21.

22. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to the "Treasurer, United States of America," to the following address:

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

The check shall reference on its face the name of the Respondent and the Docket Number of this CAFO.

23. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303;

Molly Freeman Miller (APT-PS)
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303.

24. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
25. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date.
26. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
27. This CAFO shall be binding upon the Respondent, its successors and assigns.
28. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

The remainder of this page intentionally left blank.

V. Effective Date

29. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

In the Matter of:

Guaranteed Pool and Spa, Inc.
Docket No. FIFRA-04-2009-3015

AGREED AND CONSENTED TO:

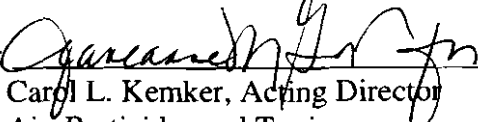
For Guaranteed Pool and Spa, Inc.

By:  Date: 7/20/09

Name: Wesley C Harz (Typed or Printed)

Title: President (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 8/06/09

Carol L. Kemker, Acting Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303

APPROVED AND SO ORDERED this 6th day of August 2009.



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original of the foregoing Consent Agreement and Final Order, In the Matter of: Guaranteed Pool & Spa, Inc., Docket No. FIFRA 04-2009-3015, and served a true and correct copy of the same on the date shown below, to the parties listed, in the manner indicated:

Molly Freeman Miller
APTMD
U.S. EPA, Region 4
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

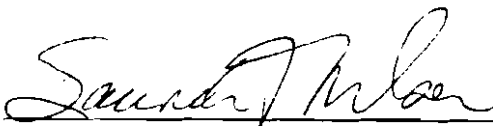
(Via EPA's internal mail)

(Respondent)

(Via Certified Mail, Return Receipt Requested)

Mr. Wesley Haigh, President
Guaranteed Pool & Spa, Inc.
2607 South Woodland Blvd., #151
Deland, FL 32720

Date: 8/6/09



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/11/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9904
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Guaranteed Pool + Spa Inc
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 2500
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2009 3015

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |