



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
May 21, 2014

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7649 6582

Mr. Luther Liggett Jr.  
Luper Neidenthal & Logan  
1200 LeVeque Tower  
50 W. Broad St.  
Columbus, Ohio 43215

Consent Agreement and Final Order In the Matter of  
Quality Swimming Pools, Inc. Docket No. FIFRA-05-2014-0017

Dear Mr. Liggett Jr.:

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 May 21, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,250.00 is to be paid in the manner described in paragraphs 31 and 32. Please be certain that the docket number is written on both the transmittal letters and on the checks. For payment due dates, see payment schedule in paragraph 31 of this CAFO.

Thank you for your cooperation in resolving this matter.

Sincerely,

*Terence Bonace*  
Terence Bonace  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5



In the Matter of:	)	Docket No. FIFRA-05-2014-0017
	)	
Quality Swimming Pools, Inc.,	)	Proceeding to Assess a Civil Penalty
Columbus, Ohio,	)	Under Section 14(a) of the Federal
	)	Insecticide, Fungicide, and Rodenticide
Respondent.	)	Act, 7 U.S.C. § 136/(a)
<hr/>		

Consent Agreement and Final Order Commencing and Concluding the Proceeding

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. § 136/(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, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Quality Swimming Pools, Inc., 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 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.

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

12. 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).

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

14. A “pest” is 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 EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

15. 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).

16. The Administrator of EPA may assess a civil penalty against any wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$6,500 for each offense that occurred after March 15, 2004 through January 12, 2009 and up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

#### **Factual Allegations**

17. Respondent was a corporation in the State of Ohio.

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

19. During calendar years 2009 and 2010, Respondent owned or operated a place of business located at 3120 East 17<sup>th</sup> Avenue, Columbus, Ohio.

20. On June 3, 2009, Respondent did “hold for distribution or sale” six bulk tanks of “Sodium Hypochlorite Solution Pool Sanitizer.”

21. “Sodium Hypochlorite Solution Pool Sanitizer” was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

22. Two of the six bulk tanks failed to include a label.

23. Four of the six bulk tanks had a “BleachTech 12.5% Solution,” label (EPA Registration No. 7537320001) placed over the former invalid “Sodium Hypochlorite Solution Pool Sanitizer,” label (EPA Registration No. 278-64-55238).

24. The label for “BleachTech 12.5% Solution” failed to include any net content.

25. Therefore, Respondent did distribute or sell the misbranded pesticide “Sodium

Hypochlorite Solution Pool Sanitizer,” in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

26. On August 26, 2010, Respondent did “hold for distribution or sale” 27 5-gallon containers labeled “Sodium Hypochlorite Solution ,” EPA Registration No. 278-64-55238, and 27 5-gallon containers of “Sodium Hypochlorite Solution,” EPA Registration No. 278-43-55238,

27. “Sodium Hypochlorite Solution” was a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. Neither EPA Registration No. 278-64-55238 nor EPA Registration No. 278-43-55238 were valid EPA Registration Numbers.

29. Therefore, Respondent did distribute or sell the unregistered pesticides “Sodium Hypochlorite Solution Pool Sanitizer” and “Sodium Hypochlorite Solution” in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

#### Civil Penalty

30. 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 \$7,250.00. 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 *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act*, dated December 2009.

31. Respondent must pay the \$7,250.00 civil penalty in four separate payments with interest pursuant to the following schedule. 1<sup>st</sup> Payment of \$1,881.25 due June 1, 2014; 2<sup>nd</sup> Payment of \$1,884.38 due August 1, 2014; 3<sup>rd</sup> Payment of \$1884.38 due September 1, 2014, 4<sup>th</sup> Payment of \$1,879.69 due December 1, 2014. Respondent must pay each payment by sending a

cashier's or certified check, payable to "Treasurer, United States of America," and sent to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

Each check must note "Quality Swimming Pools, Inc.," and the Docket No. of this action.

32. Respondent must send a copy of each check and a transmittal letter to:

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

Terence Bonace (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Jeffery M. Trevino (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604]

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

34. If Respondent does not pay the civil penalty timely, 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.

35. 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**

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

37. 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.

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

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

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

41. 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.

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

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

44. The CAFO is effective the date it is filed with the Regional Hearing Clerk.

**In the Matter of Quality Swimming Pools, Inc., Columbus, Ohio.  
Docket No.**

**Quality Swimming Pools, Inc., Respondent**

APRIL 21, 2014  
Date

John R. Hayes  
John R. Hayes, President  
Quality Swimming Pools, Inc.

**United States Environmental Protection Agency, Complainant**

5/12/2014  
Date

Margaret M. Guerriero  
Margaret M. Guerriero  
Director  
Land and Chemicals Division



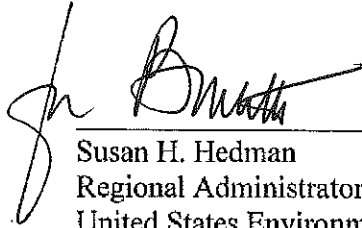
In the Matter of Quality Swimming Pools, Inc., Columbus, Ohio.  
Docket No. FIFRA-05-2014-0017

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.

Date

5/14/14



Susan H. Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Quality Swimming Pools, Inc., was filed on May 21, 2014 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7649 6582, a copy of the original to the Respondent:

Mr. Luther Liggett Jr.  
Luper Neidenthal & Logan  
1200 LeVeque Tower  
50 W. Broad St.  
Columbus, Ohio 43215

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Jeffery M. Trevino, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2014-0017