



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

OCT 29 2008

Certified Mail – Return Receipt Requested

Mr. Howard Brener
Pool Wizard, LLC
3912 Upland Way
Marietta, Georgia 30066

SUBJ: Docket No. FIFRA-04-2009-3002(b)
Pool Wizard, LLC

Dear Mr. Brener:

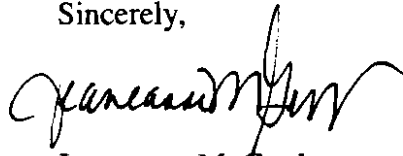
Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section IV of the CAFO, the initial payment of \$1,655.58 of the assessed penalty of \$6,500 is due within 30 days from the effective date. Section IV also provides information on when remaining payments are due. 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 U.S. Environmental Protection Agency (EPA), 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 Mr. Phillip Beard at (404) 562-9012.

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,

A handwritten signature in black ink, appearing to read "Jeaneanne M. Gettle". The signature is fluid and cursive, with a large initial "J" and "G".

Jeaneanne M. Gettle
Chief
Pesticides and Toxic
Substances Branch

Enclosures

cc: Tommy Gray, Georgia Department of Agriculture

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

RECEIVED
EPA REGION IV
2009 OCT 29 PM 12:39
HEARINGS CLERK

In the Matter of:)
)
Pool Wizard, LLC)
)
)
 Respondent.)
_____)

FIFRA Docket No. FIFRA-04-2009-3002(b)

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Pool Wizard, LLC.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein 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), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

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. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Phillip Beard
Pesticides Management Section
U.S. EPA Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9012.

III. Specific Allegations

5. Respondent is Pool Wizard, LLC, located at 3912 Upland Way, Marietta, Georgia 30066.
6. 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.
7. On or about August 27, 2006, an authorized representative of the EPA conducted an inspection at Pool Wizard, LLC, located at 3912 Upland Way, Marietta, Georgia 30066.
8. During the aforementioned inspection, Respondent repackaged, sold and distributed a mineral sanitation product for use in swimming pools known as "Pool Wizard" as follows:

Delivery Confirmation #78764112, ship date June 15, 2005

Delivery Confirmation #63008596, ship date June 16, 2005

Delivery Confirmation #22245659, ship date June 17, 2005

Delivery Confirmation #33711952, ship date June 18, 2005

Delivery Confirmation #44197714, ship date June 18, 2005

Delivery Confirmation #62301002, ship date July 22, 2005

Delivery Confirmation #36018829, ship date July 25, 2005

Delivery Confirmation #29424392, ship date August 15, 2005.

9. Pool Wizard 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.
10. 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).
11. At the time of the inspection, Pool Wizard was not registered as a pesticide with EPA.
12. According to FIFRA 12(a)(1)(A), it is unlawful to distribute or sell any pesticide that is unregistered.
13. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
14. At the time of the inspection, the pesticide Pool Wizard was misbranded in that the label did not bear a signal word and the net contents.
15. According to FIFRA 12(a)(1)(E), a pesticide is misbranded if its label is false or misleading in any particular.
16. Under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), it is unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.

17. Respondent violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), on at least eight occasions as described in paragraph number 8 and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. At the time of the inspection, Respondent produced the pesticide Pool Wizard in an establishment that was not registered with the Administrator of EPA as a pesticide-producing establishment.
19. Under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
20. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
21. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
22. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation.
23. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

IV. Consent Agreement

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
25. 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.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
29. 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.

V. Final Order

30. Respondent is assessed a civil penalty of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500), which is to be paid in four payments, the first due within thirty (30) days of the effective date of this CAFO and subsequent payments in quarterly intervals

thereafter. The total penalty amount is based on a penalty of \$6,500 plus interest associated with quarterly payments over a period of one year. Respondent shall make payments in accordance with the following schedule.

<u>Payment Due Date</u>	<u>Payment Due</u>
60 days of filing of CAFO	\$1,655.58
90 days of filing of CAFO	\$1,655.58
120 days of filing of CAFO	\$1,655.58.

31. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

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

At the time of payment, Respondent shall send a separate copy of each check or wire transfer and a written statement that the payments has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960;

Phillip Beard
Pesticides Management Section
U.S. EPA Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960;

and

Saundi Wilson
Office of Environmental Accountability
U.S. EPA - Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303-8960.

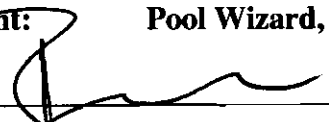
32. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
33. Pursuant 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 principal amount not paid within 90 days of the due date.
34. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
35. This CAFO shall be binding upon the Respondent, its successors and assigns.
36. 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.

VI. Effective Date


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

AGREED AND CONSENTED TO:

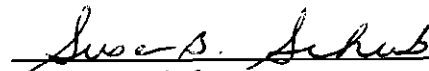
Respondent: Pool Wizard, LLC

By:  (Signature) Date: 9/19/08
Name: Howard Brenner (Typed or Printed)
Title: owner (Typed or Printed)

Complainant: U.S. Environmental Protection Agency

By:  Date: 10/22/08
Beverly H. Banister
Director
Air, Pesticides and Toxics
Management Division
61 Forsyth Street
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 29th day of October 2008.

By: 
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Pool Wizard, LLC, Docket Number: FIFRA-04-2009-3002(b), to the addressees listed below.

Mr. Howard Brener
Pool Wizard, LLC
3912 Upland Way
Marietta, GA 30066

(via Certified Mail, Return Receipt Requested)

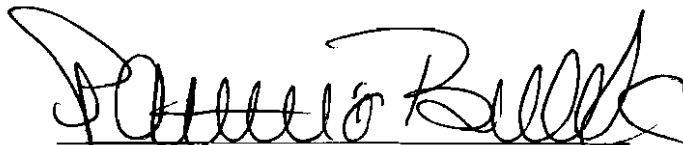
Phillip Beard
Pesticide
Management Section
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

(via EPA's internal mail)

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

(via EPA's internal mail)

Date: 10-29-08



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
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 10/28/08
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-99504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: Pool Wizard, LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 6,500 -
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2009 3002 (6)

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) |