



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590
September 25, 2014

REPLY TO THE ATTENTION OF:
LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 5000
RETURN RECEIPT REQUESTED

Mr. Mark Stroyanoff
Ohio Pool Equipment & Supply Co.
22350 Royalton Road
Strongsville, Ohio 44149

Consent Agreement and Final Order In the Matter of
Ohio Pool Equipment & Supply Co. Docket No. FIFRA-05-2014-0033

Dear Mr. Stroyanoff:

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 September 25, 2014 with the Regional Hearing Clerk.

The civil penalty in the amount of \$12,500 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letters and on the checks. Payment is due by October 24, 2014, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Terence Bonace".

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

Ohio Pool Equipment & Supply Company)

d/b/a O. P. Aquatics,)

Columbus, Ohio)

Respondent,)
_____)

Docket No. *FIFRA-05-2014-0033*

Proceeding to Assess a Civil Penalty
Under Section 14(a) of the Federal
Insecticide, Fungicide, and Rodenticide
Act, 7 U.S.C. § 136l(a)



Consent Agreement and Final Order

Preliminary Statements

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 the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is Ohio Pool Equipment & Supply Company, d/b/a O.P. Aquatics, 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. §§ 136-136y.

Statutory and Regulatory Background

10. 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 or whose registration has been cancelled or suspended.

11. 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).

12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t) defines “pest” 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 which the Administrator of EPA declares to be a pest under Section 25(c)(1) of FIFRA.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u) defines “pesticide” as, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

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

15. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), defines a pesticide as “misbranded” if its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.

16. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), defines a pesticide as “misbranded” if the labeling accompanying it 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 FIFRA, are adequate to protect health and the environment.

17. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), defines a pesticide as “misbranded” if the 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 FIFRA, is adequate to protect health and the environment. Also see 40 C.F.R. § 156.10(a)(1).

18. Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C), defines a pesticide as misbranded if there is not affixed to its container, 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 or measure of the content; and the registration number assigned to the pesticide under FIFRA.

19. 40 C.F.R. § 156.10(a)(4)(ii)(B) states that when pesticide products are stored in bulk containers, whether mobile or stationary, which remain in custody of the user, a copy of the label of [sic] labeling, including all appropriate directions for use, shall be securely attached to the container in the immediate vicinity of the discharge valve.

20. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a) states that no person shall produce any pesticide subject to FIFRA or active ingredient used in producing a pesticide subject to FIFRA in any state unless the establishment in which it is produced is registered with the Administrator.

21. 40 C.F.R. § 167.3 defines “produce” as “to manufacture, prepare, propagate, compound or process any pesticide, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.”

22. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), states that it is unlawful for any person who is a producer to violate any of the provisions of Section 7 of FIFRA.

23. The Administrator of EPA may assess a civil penalty against any distributor who violates any provision of FIFRA of 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.

General and Factual Allegations

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

25. Respondent owned or operated a place of business located at 775 Kaderly Drive, Columbus, Ohio during the calendar year 2011.

26. On October 24 and November 2, 2011, an inspector employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA, conducted an inspection at Respondent’s place of business in Columbus, Ohio.

27. During the October 24, 2011 inspection, the inspector collected 1) a physical sample of Pool Brite Sanitizer that was packaged, labeled or released for shipment and 2) photographs of a 10,000 gallon bulk pesticide container containing over 3,000 gallons of 12.5% Sodium Hypochlorite Solution, EPA Registration Number 75373-20001.

28. During calendar year 2011, Respondent produced 12.5% Sodium Hypochlorite Solution.

29. The label of Pool Brite Sanitizer stated, "liquid disinfectant" and provided directions for swimming pool water disinfection.

30. Pool Brite Sanitizer was a pesticide as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. Pool Brite Sanitizer was not registered with the EPA at the time of the inspection.

Alleged Violations

Count I-Misbranding

32. Complainant incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint.

33. Respondent distributed or sold 12.5% Sodium Hypochlorite Solution, EPA Reg. No. 75373-20001 from a 10,000 gallon bulk tank with no pesticide label or labeling.

34. Respondent's tank of 12.5% Sodium Hypochlorite Solution, EPA Reg. No. 75373-20001, bore no label or labeling or other information containing the EPA establishment number of where it was produced, the directions for use, a warning or caution statement, 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 or measure of the content; and the registration number assigned to the pesticide under FIFRA

35. Respondent's bulk tank of 12.5% Sodium Hypochlorite, EPA Reg. No. 75373-20001, was misbranded as defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D), Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), and Section 2(q)(2)(C) of FIFRA, 7 U.S.C. § 136(q)(2)(C),

36. Respondent's distribution or sale of the misbranded pesticide 12.5% Sodium Hypochlorite, EPA Reg. No. 75373-20001, constitutes an unlawful act pursuant to Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

Count II-Unregistered Pesticide

37. Complainant incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint.

38. Respondent distributed or sold the pesticide Pool Brite Sanitizer on October 24, 2011.

39. Pool Brite Sanitizer was not registered on October 24, 2011.

40. Respondent's distribution or sale of the unregistered pesticide Pool Brite Sanitizer constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Count III-Unregistered Establishment

41. Complainant incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint.

42. Respondent repackaged 12.5 % Sodium Hypochlorite, EPA Reg. No. 75373-20001, into bulk containers at customer locations.

43. Respondent produced 12.5% Sodium Hypochlorite.

44. Respondent's establishment at 775 Kaderly Drive, Columbus, Ohio was not a registered pesticide producing establishment.

45. Respondent's production of a pesticide at an unregistered establishment is an unlawful act under Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

Civil Penalty

46. 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 \$ 12,500. 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.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$12,500 civil penalty for the FIFRA violation by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

Or, for checks sent by express mail, the Respondent shall send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must state "In the Matter of Two Guys and a Grow Shop, LLC" and the docket number of this CAFO.

48. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

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

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

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

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

51. 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

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

53. 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.

54. This CAFO does not affect Respondent's responsibility to comply with FIFRA and

other applicable federal, state and local laws.

55. This CAFO is a “final order” for purposes of EPA’s FIFRA Enforcement Response Policy.

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

57. 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.

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

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

Ohio Pool Equipment & Supply Company d/b/a O. P. Aquatics, Respondent

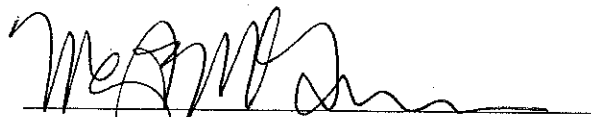
8-15-14
Date



Mark Stoyanoff
President
Ohio Pool Equipment & Supply Company

United States Environmental Protection Agency, Complainant

9/19/2014
Date



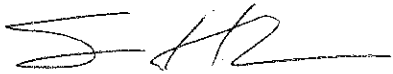
Margaret M. Guerriero
Director
Land and Chemicals Division

In the Matter of:
Ohio Pool Equipment & Supply Company d/b/a O. P. Aquatics
Docket No. FIFRA-05-2014-0033

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.

9/22/2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

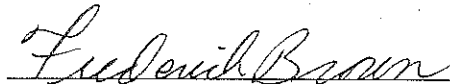
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Ohio Pool Equipment & Supply Company, was filed on September 25, 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 7674 5000, a copy of the original to the Respondent:

Mr. Mark Stroyanoff
Ohio Pool Equipment & Supply Co.
22350 Royalton Road
Strongsville, Ohio 44149

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Susan Perdomo, 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-05-2014-0033