

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2023-0005
)	
)	
Aqua Science, Inc.)	Proceeding to Assess a Civil Penalty
Columbus, Ohio)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Respondent.)	
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Consent Agreement and Final Order

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. § 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 Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Aqua Science, 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. §§ 136-136y.

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.

11. Section 25(a)(1), 7 U.S.C. § 136w(a)(1), authorizes the EPA to prescribe regulations to carry out the provisions of FIFRA. Pursuant to this authority, EPA codified the Pesticide Registration and Classification Procedures at 40 C.F.R. Part 152.

12. 40 C.F.R. § 152.132 provides that a registrant may distribute or sell a registered product under another person's name and address (known as "supplemental distribution") if: (a) the registrant has submitted to the Agency for each distributor product a statement signed by both the registrant and the distributor listing the names and addresses of the registrant and the distributor, the distributor's company number, the additional brand name(s) to be used, and the registration number of the registered product; (b) the distributor product is produced, packaged and labeled in a registered establishment operated by the same producer who produces, packages, and labels the registered product; (c) the distributor product is not repackaged (remains

in the producer's unopened containers); (d) the label of the distributor product is the same as that of the registered product, except that (1) the product name of the distributor product may be different, (2) the name and address of the distributor may appear instead of that of the registrant, (3) the registration number of the registered product must be followed by a dash, followed by the distributor's company number, (4) the establishment number must be that of the final establishment at which the product was produced, and (5) specific claims may be deleted, provided that no other changes are necessary; and (e) voluntary cancellation of a product applies to the registered product and all distributor products distributed or sold under that registration number.

13. 40 C.F.R. § 152.132 also provides that a distributor is considered an agent of the registrant for all intents and purposes under FIFRA, and both the registrant and the distributor may be held liable for violations pertaining to the distributor product.

14. Section 8(a) of FIFRA, 7 U.S.C. § 136f(a), provides the EPA may prescribe regulations requiring producers to maintain records of production of pesticides. Pursuant to this authority, EPA codified the Books and Records of Pesticide Production and Distribution regulations at 40 C.F.R. Part 169.

15. 40 C.F.R. § 169.2(a) provides that all producers of pesticides shall maintain records showing, among other things, the name of the pesticide produced along with its EPA registration number.

16. Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i), provides that it is unlawful for any person to refuse to maintain any records required by Section 8 of FIFRA, 7 U.S.C. § 136f(a).

17. A "person" is defined as "any individual, partnership, association, corporation, or

any organized group of persons whether incorporated or not.” 7 U.S.C. § 136(s).

18. To “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).

19. A “pesticide” is, in pertinent part, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

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

21. A “producer” is the person who manufactures, prepares, compounds, propagates, or processes any pesticide. 7 U.S.C. § 136(w).

22. To “produce” means “to manufacture, prepare, propagate, compound or process any pesticide, including ... to package, repack, label, relabel, or otherwise change the container of any pesticide.” 40 C.F.R. § 167.3.

23. 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 \$21,805 for each offense occurring after November 2, 2015 and assessed after January 12, 2022, pursuant to Section 14(a)(1), of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

25. Respondent is a pesticide “producer” as defined at Section 2(w) of FIFRA, 7 U.S.C. § 136(w).

26. On or about September 14, 1983, EPA registered a pesticide product, A-261, to the registrant Walling Water Management (Walling), with EPA Registration (Reg.) Number 11659-12.

27. On or about August 24, 1993, EPA assigned EPA Reg. No. 11659-12-52823 to the supplemental distributor product, Aquacide 118, at the request of Walling of A-261, EPA Reg. No. 11659-12.

28. On or about October 24, 2003, EPA canceled the registration of A-261, EPA Reg. No. 11569-12.

29. On or about October 24, 2003, the registration of the supplemental distributor product Aquacide 118, EPA Reg. No. 11659-12-52823, was thereby also canceled by operation of law, as provided by 40 C.F.R. § 152.132(e).

30. On or about October 14, 2020, two inspectors employed by the Ohio Department of Agriculture and authorized to conduct inspections under FIFRA conducted an inspection at Respondent's place of business.

31. During the inspection, the inspectors collected documents relating to Aquacide 118, EPA Reg. No. 11659-12-52823, including but not limited to records of production and distribution.

32. According to distribution records, including a bill of lading, collected during the October 14, 2020 inspection, on or about March 13, 2018, Respondent distributed or sold Aquacide 118, EPA Reg. No. 11659-12-52823, to one of its customers.

33. According to distribution records, including a bill of lading, collected during the October 14, 2020 inspection, on or about November 9, 2018, Respondent distributed or sold Aquacide 118, EPA Reg. No. 11659-12-52823, to one of its customers.

34. Records of production of the quantities of Aquacide 118, EPA Reg. No. 11659-12-52823, produced on or about March 13, 2018 and on November 9, 2018 failed to include the EPA registration number for the pesticide.

35. Respondent's distribution or sale of Aquacide 118, EPA Reg. No. 11659-12-52823, a pesticide whose registration under FIFRA had been cancelled, on March 13, 2018, constitutes the sale or distribution of pesticides not registered under Section of FIFRA, in violation Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. Respondent's distribution or sale of Aquacide 118, EPA Reg. No. 11659-12-52823, a pesticide whose registration under FIFRA had been cancelled, on November 9, 2018, constitutes the sale or distribution of pesticides not registered under Section of FIFRA, in violation Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

37. Respondent's failure to maintain the EPA registration number for the pesticide, which is required information on the production records for Aquacide 118, EPA Reg. No. 11659-12-52823, violated Section 12(a)(2)(B)(i) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(i).

Civil Penalty

38. 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 \$17,886.00. 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 FIFRA Enforcement Response Policy, dated December 2009.

39. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,886.00 civil penalty for the FIFRA violations by an on-line payment. To pay on-line, go to

www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

40. Respondent must send a notice of payment that states Respondent's name and the case docket number to EPA at the following e-mail addresses when it pays the penalty:

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

Jamie D. Getz (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
getz.jamie@epa.gov

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

42. 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.

43. 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

44. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: getz.jamie@epa.gov (for Complainant), and sengel@aquascience.com (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

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

46. 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.

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

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

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


50. 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.

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

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


Aqua Science, Inc., Respondent

1/12/23
Date


[Person's name] Skyler Engel
[Person's title] VP
[Name of Respondent]

United States Environmental Protection Agency, Complainant

1/24/23
Date

**MICHAEL
HARRIS**
 Digitally signed by MICHAEL HARRIS
Date: 2023.01.24 09:31:01 -06'00'
Michael D. Harris
Director
Enforcement and Compliance Assurance Division

In the Matter of:
Aqua Science, Inc.
Docket No. FIFRA-05-2023-0005

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.

1/26/23

Date

ANN COYLE

Digitally signed by ANN COYLE
Date: 2023.01.26 15:04:57
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Ann L. Coyle
Regional Judicial Officer
United States Environmental Protection Agency
Region 5