

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

Interpet LLC
d/b/a Aquarium Products Corporation

Respondent

Interpet LLC
d/b/a Aquarium Products Corporation
3775 Old Columbia Pike
Ellicott City, Maryland 21043-4642

Facility.

:
: Docket No. FIFRA-03-2009-0179

:
: **CONSENT AGREEMENT**

:
: Proceeding under FIFRA § 14, 7 U.S.C. § 136f

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by the Director, Land and Chemicals Division, U.S. Environmental Protection Agency, Region III ("Complainant"), and Interpet LLC d/b/a Aquarium Products Corporation ("Respondent"), pursuant to Section 14 of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136f, and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22.

Pursuant to Sections 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the *Consolidated Rules*, this Consent Agreement and attached Final Order (collectively "CAFO") resolve Complainant's claims for civil penalties against Respondent arising from the violations of FIFRA and EPA's regulations promulgated thereunder, alleged herein.

General Provisions

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.

2. Except as provided in Paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest the U.S. Environmental Protection Agency's jurisdiction with respect to the execution or the enforcement of this CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives any right to contest any issue of law or fact set forth in this CAFO or to appeal the Final Order accompanying this Consent Agreement.
5. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
6. Respondent agrees not to deduct for civil taxation purposes the civil penalty to be paid in settlement of this action as specified in this CAFO.
7. Respondent shall bear its own costs and attorney's fees.
8. The provisions of this CAFO shall be binding upon Complainant, Respondent and Respondent's officers, directors, successors and assigns.
9. By signing this Consent Agreement, Respondent certifies that it is currently in compliance with all applicable requirements of FIFRA and its implementing regulations at the Establishment described in this CAFO.
10. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14 of FIFRA, 7 U.S.C. § 136f, for the specific violations alleged herein and as more fully set forth in Paragraph 18 of this CAFO. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violations of the federal laws and regulations administered by EPA.
11. The settlement embodied in this Consent Agreement is based in part upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information contained in copies of Respondent's U.S. Corporate Income Tax Returns (Form F-1120) for 2004, 2005, 2006 and 2007, submitted to Complainant by Respondent. Respondent and its undersigned representative, by such representative's signature to this Consent Agreement, certify that the information submitted to Complainant regarding Respondent's ability to pay is accurate and not misleading.
12. Respondent is aware that the submission of false or misleading information to the United States government may subject it to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant

regarding the matters at issue in the Findings of Fact and Conclusions of Law are false or, in any material respect, inaccurate.

13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state and local law. Furthermore, EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following entry of this CAFO. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules*.
14. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare or the environment.
15. The undersigned representative of Respondent certifies that she or he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
16. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.
17. The effective date of this Consent Agreement and the accompanying Final Order is the date upon which the Final Order, after signature by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

EPA's Findings of Fact and Conclusions of Law

18. In accordance with Section 22.18(b)(2) of the *Consolidated Rules*, Complainant adopts the following findings of fact and conclusions of law.

COUNT I

- a. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” to include any corporation.
- b. Respondent is a Maryland corporation.
- c. Respondent is, and was at all times relevant to this CAFO, a “person” within the meaning of Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

- d. Respondent owned and operated an “establishment”, within the meaning of Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), located at 180 Penrod Court, Glen Burnie, Maryland 21061 (“Establishment”), at the time of the violations alleged herein.
- e. On July 12, 2007, an inspector from the Maryland Department of Agriculture, duly authorized to conduct inspections under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, conducted an inspection of the Establishment.
- f. During the inspection referenced above, the inspector collected a physical sample of the labeling, promotional and sales information for the product owned, controlled and/or in the custody of Respondent, called “*Eco-Librium*.”
- g. Pursuant to Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §152.3, the term “pesticide” includes “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest”, with exceptions not relevant to this matter.
- h. Pursuant to 40 C.F.R. § 152.15, “a pesticide is any substance (or mixture of substances) intended for a pesticidal purpose . . .”.
- i. Pursuant to 40 C.F.R. § 152.15(c), a substance is considered to be intended for a pesticidal purpose, and thus a pesticide, if, among other things, the person who distributes or sells the substance “claims, states or implies (by labeling or otherwise) . . . [t]hat the substance . . . can or should be used as a pesticide” or if the person who distributes or sells the substance “has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.”
- j. Pursuant to Section 2(t) of FIFRA, 7 U.S.C. § 136(t), the term “pest” includes fungus, bacteria and other microorganisms.
- k. Respondent’s promotional materials for “*Eco-Librium*” bear the following pesticidal claim: “ECO-LIBRIUM creates the perfect biological and chemical balance that encourages optimum growth while at the same time *not encouraging string algae to multiply.*” (Emphasis added.)
- l. The product, “*Eco-Librium*,” is a “pesticide” as that term is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 and .15, and has never been registered with EPA.
- m. Pursuant to Section 3(a) of FIFRA, 7 U.S.C. § 136a, no pesticide may be sold or distributed to any person in any state unless it is registered with EPA.

- n. Respondent sold and/or distributed to other persons the unregistered pesticide, "*Eco-Librium*," on nineteen occasions from April 1, 2006, through December 31, 2007.
- o. On the nineteen occasions identified in Paragraph 16.n., above, Respondent sold and/or distributed to other persons the unregistered pesticide, "*Eco-Librium*," in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).
- p. Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), provides that any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor who violates any provision of FIFRA may be assessed a civil penalty of not more than \$5,000 for each offense.
- q. Pursuant to the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of FIFRA occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$6,500 per violation.

Civil Penalty

- 19. Complainant has determined the appropriate penalty for the violations identified and described in this Consent Agreement upon consideration of a number of factors, including the penalty criteria set forth in Section 136l(a)(4) of FIFRA, 7 U.S.C. § 14(a)(4), *i.e.*, the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, and in accordance with the *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*, dated July 2, 1990 ("*ERP*"). Respondent has provided EPA with financial information identified in Attachment A hereto regarding Respondent's ability to pay a civil penalty. Based on such information and representations made to EPA by Respondent, and subject to Paragraphs 11 and 12 herein, Complainant has determined that Respondent is able to pay a civil penalty of \$500.00.
- 20. Respondent agrees to pay a civil penalty of Five Hundred Dollars (\$500.00) in full satisfaction of EPA's claims for civil penalties based upon the violations alleged in Paragraph 18 of this CAFO. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of the CAFO.
- 21. Respondent shall remit the full civil penalty described in Paragraph 20, above, by either cashier's check or certified check payable to the "United States Treasury" or electronic wire transfer, automated clearinghouse or other means as specified below:
 - a. Check payments sent via regular mail shall be addressed and mailed to:

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

Contact: Eric Volck 513-487-1028

- b. Check payments sent via overnight delivery shall be addressed and sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: 314-418-4087

- c. Check payments in currency drawn on banks with no United States branches shall be addressed and sent to:

Cincinnati Finance
U.S. EPA, MS-NWD
26 West Martin Luther King Drive
Cincinnati, OH 45268-0001

- d. Electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

Customer service: 212-720-5000

- e. Automated clearinghouse (ACH) (or Remittance Express (REX)) payments shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account No. 310006, Environmental Protection Agency
CTX Format Transaction Coe 22 - Checking

Physical location of U.S. Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- f. Debit or credit payments may be made online at: www.pay.gov
Enter sfo 1.1 in the search field. Open and complete the form.
- g. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment_cin.htm
- h. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (FIFRA-03-2009-0179). A paper copy of Respondent's payment (whether by check, EFT, ACH or other means) shall be sent simultaneously to:

Janet E. Sharke (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

- 22. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. EPA will

not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of the civil penalty not paid within 30 calendar days will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

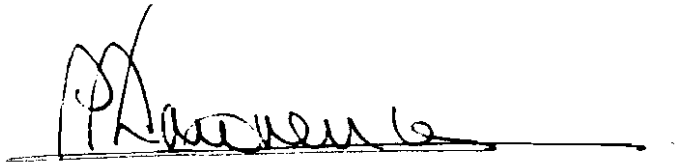
A late payment penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

23. Having determined that this Consent Agreement is in accordance with law and that the civil penalty amount was determined after consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), dated July 2, 1990, the parties hereto agree that payment of the civil penalty shall be in full and final satisfaction of EPA's claims for civil penalties arising from the violations alleged in this Consent Agreement.

For Respondent

3 June 2009

Date



Name Peter Lawrence

Title Director

Interpet LLC d/b/a Aquarium Products

For Complainant

6/16/09
Date

Janet E. Sharke
Janet E. Sharke
Sr. Assistant Regional Counsel

After reviewing the Findings of Fact and Conclusions of Law and other pertinent matters, the Land and Chemicals Division of the U.S. Environmental Protection Agency, Region III, hereby recommends that the Regional Administrator or his designee, the Regional Judicial Officer, issue the attached Final Order.

6/24/09
Date

Abraham Ferdas
Abraham Ferdas
Director
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

IN THE MATTER OF:

:
: Docket No. FIFRA-03-2009-0179

Interpet LLC
d/b/a Aquarium Products Corporation

Respondent

:
: **FINAL ORDER**
:

Interpet LLC
d/b/a Aquarium Products Corporation
3775 Old Columbia Pike
Ellicott City, Maryland

:
: Proceeding under FIFRA § 14, 7 U.S.C. § 136l
:

Facility.

FINAL ORDER

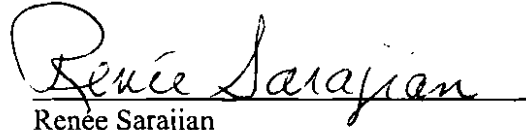
Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, and Respondent, Interpet LLC d/b/a Aquarium Products Corporation, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated herein as if set forth fully herein.

NOW, THEREFORE, PURSUANT TO Section 22.18(b)(3) of the *Consolidated Rules of Practice* and Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l, which authorizes the assessment of a civil penalty for violations of FIFRA, and having determined on the basis of the representation of the parties hereto that the civil penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in FIFRA § 14(a)(4), 7 U.S.C. § 136l(a)(4), IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the attached Consent Agreement and pay a civil penalty of Five Hundred Dollars (\$500.00), as specified in the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA, Region III, or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA, Region III.

6/24/09

Date

A handwritten signature in cursive script that reads "Renee Sarajian". The signature is written in black ink and is positioned above a horizontal line.

Renee Sarajian

Regional Judicial Officer

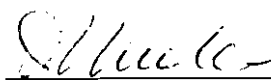
U.S. Environmental Protection Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order, EPA Docket No. FIFRA-03-2009-0179, were filed today with the Regional Hearing Clerk, EPA, Region III, and that one copy of the Consent Agreement and Final Order was sent via fax and federal express, to:

Peter Lawrence
Director
Interpet LLC d/b/a/ Aquarium Products Corporation
c/o ECO ANIMAL HEALTH plc
78 Coombe Road New Malden
Surrey KT3 4QS
ENGLAND

11/24/09
Date



Janet E. Sharke (3RC30)
Counsel for Complainant
U.S. Environmental Protection Agency, Region III
(215) 814-2689 (phone)
(215) 814-2601 (fax)