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2011 SEP 22 PM 3:21

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 HAWTHORNE STREET  
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of:	)	Docket No. FIFRA-09-2011-00 <u>20</u>
Aqualine Warehouse, LLC,	)	COMPLAINT AND NOTICE OF
Respondent	)	OPPORTUNITY FOR HEARING
	)	

AUTHORITY AND PARTIES

This is a civil administrative action brought pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136(a), for the assessment of a civil administrative penalty against Aqualine Warehouse, LLC, for the distribution and sale of an unregistered pesticide in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A); distribution and sale of a misbranded pesticide in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E); and production of a pesticide at an unregistered producing establishment in violation of Section 12(a)(2)(L) of FIFRA; 7 U.S.C. § 136j(a)(2)(L).

Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency (“EPA”), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHG1, dated June 9, 2005.

Respondent is Aqualine Warehouse, LLC. (“Respondent”).

#### GENERAL ALLEGATIONS

1. Respondent, an Arizona corporation, is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.
2. Respondent owns and/or operates a facility located at 2505 E. Williams Field #1051, Gilbert, Arizona (the “Facility”).
3. Respondent “distributes or sells” various swimming pool products at the Facility as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).
4. On or about April 9 and June 3, 2010, Respondent distributed or sold the swimming pool product, “Trichlor Tablets,” to Cactus Valley Pool Supply (“CVP”) in Gilbert, Arizona.
5. The labeling of “Trichlor Tablets” claims that it “controls growth of bacteria and algae.”
6. Bacteria and algae are “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).
7. Consequently, “Trichlor Tablets” is a “pesticide” as that term is defined by Section 2(u) of

FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3(s) in that it is a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating pests.

### ALLEGED VIOLATIONS

#### COUNTS 1-2: Sale or Distribution of an Unregistered Pesticide, 7 U.S.C. § 136j(a)(1)(A)

8. Paragraphs 1 through 7 are realleged and incorporated herein by reference.
9. At all times relevant to this action, “Trichlor Tablets” was not registered with EPA under Section 3 of FIFRA.
10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA.
11. Accordingly, Respondent’s distribution or sale of “Trichlor Tablets” to CVP on or about April 9 and June 3, 2010 constitute two (2) violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A).

#### COUNTS 3-4: Sale or Distribution of a Misbranded Pesticide, 7 U.S.C. § 136j(a)(1)(E)

12. Paragraphs 1 through 7 are realleged and incorporated herein by reference.
13. At all times relevant to this action, the label of “Trichlor Tablets” did not bear a registration number assigned under Section 7 of FIFRA to the establishment in which it was produced.
14. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1), states that a pesticide is “misbranded” if “its label does not bear the registration number assigned under section 7 to each establishment in which it was produced.”
15. Thus, the “Trichlor Tablets” that Respondent distributed or sold to CVP on or about April

9 and June 3, 2010, was “misbranded” at that term is defined in Section 2(q)(1)(D) of FIFRA. 7 U.S.C. § 136(q)(1).

16. 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 that is adulterated or misbranded.
17. Accordingly, Respondent’s distribution or sale of “Trichlor Tablets” to CVP on or about April 9 and June 3, 2010 constitute two (2) violations of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNT 5: Production of Pesticide at an Unregistered Producing Establishment, 7 U.S.C. § 136j(a)(2)(L)

18. Paragraphs 1 through 7 are realleged and incorporated herein by reference.
19. On or about June 1, 2010, Respondent relabeled containers of “Trichlor Tablets” at CVP.
20. “Produce” means “to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.” 40 C.F.R. § 167.3. See also 7 U.S.C. § 136(w).
21. “Producer” means “any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).” 40 C.F.R. § 167.3. See also 7 U.S.C. § 136(w).
22. On or about June 1, 2010, Respondent “produced” “Trichlor Tablets” at CVP as that term is defined in Section 2(w) of FIFRA and 40 C.F.R. § 167.3.
23. Section 7 of FIFRA, 7 U.S.C. § 136e, provides that “no person shall produce any pesticide subject to this Act in any States unless the establishment in which it is produced

is registered with the Administrator.”

24. At all times relevant to this action, CVP was not registered with EPA as a producing establishment as required under Section 7 of FIFRA.
25. 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].”
26. Accordingly, Respondent’s production of “Trichlor Tablets” at CVP on or about June 1, 2010 constitutes a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L).

#### PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (40 C.F.R. § 19.4; 73 Fed. Reg. 75340), authorizes the assessment of a civil administrative penalty of up to \$7,500 for each violation of FIFRA after January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$7,500 for each violation of the Act set forth above.

#### NOTICE OF OPPORTUNITY FOR HEARING

##### Answer and Administrative Hearing

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Renovation or Suspension of Permits (“Consolidated Rules of Practice”), 40

C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty

shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

#### Settlement Conference

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region IX. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

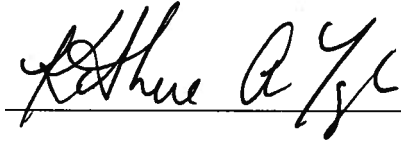
David H. Kim  
Assistant Regional Counsel (ORC-3)  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

His telephone number is (415) 972-3882.

Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, you may choose to pay the proposed penalty. In order to do this, please contact Mr. Kim to arrange for the preparation of a Consent Agreement and Final Order.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

Dated at San Francisco, California on this 22 day of September, 2011.

A handwritten signature in black ink, appearing to read "Katherine A. Taylor", written over a horizontal line.

Katherine A. Taylor  
Associate Director for Agriculture  
Communities and Ecosystems Division  
USEPA, Region IX



CERTIFICATE OF SERVICE

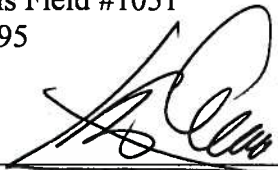
I certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

The Regional Hearing Clerk  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were hand delivered to:

Chad Kennedy  
Aqualine Warehouse, LLC  
2505 E. Williams Field #1051  
Gilbert, AZ 85295

Dated: SEP 22 2011

By: 

Ekho Lim  
U.S. Environmental Protection Agency, Region IX