



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

NOV 09 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8932 9034

Mr. Dave Ouwinga
Stoney Creek Fisheries & Equipement, Inc.
4385 East 110th
Grant, Michigan 49327

Consent Agreement and Final Order, Docket No. FIFRA-05-2007-0006

Dear Mr. Lucke:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order concerning violations of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), 7 §§ U.S.C.136 et seq., in resolution of the above case. This document was filed on November 9, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,800 is to be paid in the manner prescribed in paragraphs 42, 43 and 44. Please be certain that the number BD 2750745P008 and the docket number are written on both the transmittal letter and on the check. Payment is due by December 11, 2006 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

Terence Bonace
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Nidhi K. O'Meara, ORC/C-14J (w/Encl.)
Ray Marasigan, Finance/MF-10J (w/Encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

STONEY CREEK FISHERIES &
EQUIPMENT, INC.
GRANT, MICHIGAN
Respondent.

) Docket No. FIFRA-05-2007-0006
)
)
) Proceeding to Assess a Civil Penalty
) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. § 136l(a)
)

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REGION 5 CLERK
[Signature]

Consent Agreement and Final Order Commencing and Concluding A Proceeding

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 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 (2005).

2. Complainant, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, United States Environmental Protection Agency (EPA), Region 5, brings this administrative action seeking a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

3. Respondent is Stoney Creek Fisheries & Equipment, Inc. (Stoney Creek), a corporation organized under the laws of the State of Michigan, with a place of business located at 4385 East 110th, Grant, Michigan 49327.

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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Stoney Creek admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Stoney Creek waives any 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.

Statutory and Regulatory Background

9. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act, except in certain circumstances which are not relevant to this case.

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.

11. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide, 40 C.F.R. § 152.15(a)(1).

12. 40 C.F.R. § 168.22(a) states: “FIFRA sections 12(a)(1)(A) and (B) make it unlawful for any person to ‘offer for sale’ any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale differ substantially from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. The EPA interprets these provisions as extending to advertisements on any advertising medium to which pesticide users or the general public have access.”

13. The term “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s) “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

14. The term “distribute or sell” is defined, in Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg) and 40 C.F.R. § 152.3, as “to distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.”

15. The term “pests” is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t) and further defined in 40 C.F.R. § 152.5(c) “as any insect, rodent, nematode, fungus, weed,…”

16. The term “pesticide” is defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3 and is generally regarded as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

17. The Administrator of EPA may assess a civil penalty of up to \$5,500 for each offense of FIFRA that occurred on or after January 31, 1997 through March 15, 2004 and may assess a

civil penalty of \$6,500 for each offense of FIFRA that occurred after March 15, 2004 under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and 40 C.F.R. Part 19 (2005).

Factual Allegations

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

19. Respondent offers a 2006 Pond Supply Catalog that lists a variety of products that are offered for sale by the Respondent.

Barley Straw

20. Page 18 of Respondent's 2006 Pond Supply Catalog states, in reference to **Barley Straw**, "Barley straw, as it rots, produces low levels of hydrogen peroxide. Although harmless to fish and plants, the hydrogen peroxide is effective at reducing algae growth."

21. Respondent's catalog claims, states or implies that **Barley Straw** is a pesticide by its action of reducing algae growth.

22. **Barley Straw** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

23. Respondent is a "distributor" of **Barley Straw** pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

24. **Barley Straw** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Baraclear

25. Page 62 of Respondent's 2006 Pond Supply Catalog states, in reference to **Baraclear**, "Keeps ponds clean and clear by binding phosphates which otherwise fuel algae growth." and "A blend of alum-not an algaecide."

26. Respondent's catalog claims, states or implies that **Baraclear** is a pesticide by its action of destroying or preventing the growth of algae.

27. **Baraclear** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

28. Respondent is a "distributor" of **Baraclear** pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

29. **Baraclear** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Water Wych

30. Page 62 of Respondent's 2006 Pond Supply Catalog states, in reference to **Water Wych**, "Innovative, organic algae control" and "The Water Wych is a revolutionary way to keep ponds clear and greatly reduce algae problems. Algae grows off minerals and nutrients found in pond water. The Water Wych is a natural blend of volcanic rocks, carbons and silicates which absorb large amounts of nutrients and minerals from the water thereby greatly reducing the available 'food' that algae needs to thrive."

31. Respondent's catalog claims, states or implies that **Water Wych** is a pesticide by its action of destroying or preventing the growth of algae.

32. **Water Wych** is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

33. Respondent is a "distributor" of **Water Wych** pesticide product as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

34. **Water Wych** is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

Alleged Violations

Count I

35. Through its 2006 Pond Supply Catalog , Respondent distributes or sells an unregistered pesticide, **Barley Straw**, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count II

37. Through its 2006 Pond Supply Catalog , Respondent distributes or sells an unregistered pesticide, **Baraclear**, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

38. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Count III

39. Through its 2006 Pond Supply Catalog , Respondent distributes or sells an unregistered pesticide, **Water Wych**, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

40. Respondent's violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

41. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the appropriateness of the size of the penalty to the size of the business, the effect on Stoney Creek's ability to continue in business, and the gravity of the violation, EPA has determined that an appropriate civil penalty to settle this action is \$7,800.

42. Respondent must pay the \$7,800 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

43. Respondent must send the check to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

44. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Terrence Bonace
Waste, Pesticides and Toxics Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Nidhi K. O'Meara, ORC (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

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

46. If Respondent does not timely pay 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).

47. Pursuant to 31 C.F.R. § 901.9, Respondent shall pay the following on any amount overdue under this CAFO:

(a) **Interest.** Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury.

(b) **Monthly Handling Charge.** Respondent will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due.

(c) **Non-Payment Penalty.** Respondent will pay a six percent per annum penalty on any principal amount 90 days past due. This non-payment penalty is in addition to charges that accrue under subparagraphs (a) and (b).

Final Statement

48. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Factual Allegations and Alleged Violations sections of this CAFO.

49. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

51. Respondent certifies that it is complying fully with Section 12 (a) of FIFRA, 7 U.S.C. § 136j(a).

52. The terms of this CAFO bind Stoney Creek, and its successors, and assigns.

53. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

54. Each party agrees to bear its own costs and attorneys' fees in this action.

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

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Stoney Creek Fisheries & Equipment, Inc.
Docket No *FIFRA-05-2007-0006*

(Signature)

Stoney Creek Fisheries & Equipment, Inc., Respondent

10/13/06

Date

(Signature)

Dave Ouwinga, Vice President
Stoney Creek Fisheries & Equipment, Inc.

U. S. Environmental Protection Agency, Complainant

10/27/06

Date

(Signature)

for Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

11-1-06

Date

(Signature)

for Margaret M. Guerriero, Director
Waste, Pesticides and Toxics Division

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CONSENT AGREEMENT AND FINAL ORDER
In the Matter of: Stoney Creek Fisheries & Equipment, Inc.
Docket No *FIFRA-05-2007-0006* *SBW*

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

11 | 03 | 06

Date

Mary A. Gade

Mary A. Gade
Regional Administrator
U. S. Environmental Protection Agency
Region 5

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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 Spectrum Brands, Inc., was filed on November 9, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8932 9034, a copy of the original to the Respondents:

Mr. Dave Ouwinga
Stoney Creek Fisheries & Equipement, Inc.
4385 East 110th
Grant, Michigan 49327

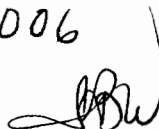
and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi K. O'Meara, Counsel for Complainant/C-14J
Ray Marisigan, Finance/MF-10J



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *FIFRA-05-2007-0006*



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