



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

2009 10 15

4APT-PTSB

Certified Mail – Return Receipt Requested

Mr. Frank Hoff
President
Florida Aqua Farms, Inc.
33418 Old Saint Joe Road
Dade City, Florida 33525

SUBJ: Docket No. FIFRA-04-2009-3031(b)
Florida Aqua Farms, Inc.

Dear Mr. Hoff:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section IV of the CAFO, the initial payment of \$1,931.25 of the assessed penalty of \$7,500 is due within 30 days from the effective date. Section IV also provides information on when remaining payments are due. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or your compliance status in the future, please call me at (404) 562-8979 or Ms. Melba Table at (404) 562-9086.

**Chief
Pesticides and Toxic
Substances Branch**

Enclosures

**cc: Mr. Craig Bryant, FLDACS
State File No. 108-280-2102**

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ATLANTA, GEORGIA

In the Matter of:)
)
 Florida Aqua Farms, Inc.)
)
 Respondent.)
_____)

Docket No. FIFRA-04-2009-3031(b)

RECEIVED
EPA REGION 4
2009 MAY 19 PM 3:58
CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. § 136l(a) (FIFRA), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 CFR Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Florida Aqua Farms, Inc.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 CFR § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 CFR § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under FIFRA to EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994.
4. Pursuant to 40 CFR § 22.5(c)(4) the following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Melba L. Table
Pesticides Management Section
U.S. EPA - Region 4
61 Forsyth Street
Atlanta, Georgia 30303-8960
(404) 562-9086.

5. Respondent is Florida Aqua Farms, Inc., a Florida corporation, located at 33418 Old Saint Joe Road, Dade City, FL 33525.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

III. Specific Allegations

7. On or about May 19, 2008, an authorized representative of the EPA conducted an inspection at Florida Aqua Farms, Inc., 33418 Old Saint Joe Road, Dade City, FL 33525. During the inspection, "It's Clear" was identified as being produced, sold and distributed by the Respondent.
8. At the time of the inspection, "It's Clear" had the following phrases on the product's label which EPA considers to be pesticidal claims: "stop hair algae, helps control protozoan microalgae and bacteria blooms."

9. "It's Clear" is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
10. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), 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 (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c).
11. At the time of the aforementioned inspection, "It's Clear" was not registered as a pesticide with EPA.
12. Under Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), it is unlawful for any person in any State to distribute or sell any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.
13. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), by selling the unregistered pesticide "Its Clear" on at least five separate occasions between 2006-2008 and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
14. At the time of the inspection, Respondent produced the pesticide "It's Clear" in an establishment that was not registered with the Administrator of the EPA as a pesticide-producing establishment.

15. "Produce" is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w), to mean manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.
16. As set forth in Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), it is unlawful to produce a pesticide in any State unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.
17. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
18. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
19. Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent's ability to continue in business, and the gravity of the violation. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), the EPA proposes to assess a total civil penalty of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

III. Consent Agreement

20. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.

21. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed final order accompanying the consent agreement.
22. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
23. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
24. Compliance with this CAFO shall resolve the allegations of the violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States. Other than as expressed herein, neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.
25. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of FIFRA.

IV. Final Order

26. Respondent is assessed a civil penalty of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500), plus interest at three percent per annum which shall be paid according to the schedule agreed upon as shown in this section.
27. **The first installment payment of \$1,931.25 shall be made on July 1, 2009 or within 30 days from the date this CAFO is filed with the Regional Hearing Clerk, whichever is later. The remaining three installment payments will be made as set forth below:**

DATE	AMOUNT
January 1, 2010	\$1,931.25
July 1, 2010	\$1,931.25
January 1, 2011	\$1,931.25

28. Respondent shall remit the penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check via U.S. mail to the following address:

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

The check shall reference on its face the name of the Respondent and the Docket Number assigned to this CAFO.

29. At the time of payment, Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
 U.S. EPA - Region 4
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303-8960;

Melba Table
 Pesticides Management Section
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960; and

Saundi Wilson
 Office of Environmental Accountability
 U.S. EPA - Region 4
 61 Forsyth Street
 Atlanta, Georgia 30303-8960.

30. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
31. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.
32. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
33. This CAFO shall be binding upon the Respondent, its successors and assigns.
34. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

Remainder of Page Intentionally Left Blank

V. Effective Date

35. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Florida Aqua Farms, Inc.
Docket No. FIFRA04-2009-3031(b)

By: Autumn Hoff (Signature) Date: 4/1/09
Name: Autumn Hoff (Typed or Printed)
Title: Vice President (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol L. Kemker (Signature) Date: 4/24/2009
Carol L. Kemker, Acting Division Director
Air, Pesticides, and Toxics
Management Division
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

APPROVED AND SO ORDERED this 19th day of May 2009.

Susan B. Schub
Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Florida Aqua Farms, Inc., Docket Number: FIFRA-04-2009-3031(b), to the addressees listed below.

Mr. Frank Hoff
Florida Aqua Farms, Inc.
33418 Old Saint Joe Road
Dade City, Florida 33525

(via Certified Mail, Return Receipt Requested)

Ms. Melba Table
Pesticide Section
U.S. EPA Region 4
61 Forsyth S.W.
Atlanta, GA 30303

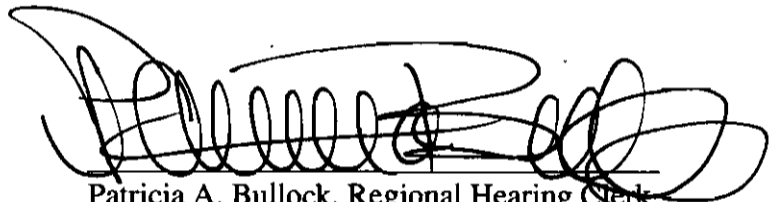
(via EPA's internal mail)

Mr. Robert Caplan
Office of Environmental Accountability
U.S. EPA Region 4
61 Forsyth S.W.
Atlanta, GA 30303

(via EPA's internal mail)

Date:

5-19-09



Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth St., SW
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 5/18/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Florida Aqua Farms Inc.
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 7500
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2009 3031 (b)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- | | |
|--|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD) |
| | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD) |