



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

September 27, 2012

Wanda I. Santiago, Regional Hearing Clerk
U.S. Environment Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

RECEIVED

SEP 28 2012

EPA ORC *WS*
Office of Regional Hearing Clerk

Re: In the Matter of Accu-Care Supply, Inc., Docket No. FIFRA-01-2012-0109

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a Complaint and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Peterson".

David M. Peterson
Senior Enforcement Counsel

Enclosures

cc: Pravin Shah, President, Accu-Care Supply, Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

SEP 28 2012

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)

Accu-Care Supply, Inc.)
109 King Philip Road)
East Providence, RI)

Respondent.)

Proceedings under Section)
14(a) of the Federal Insecticide,)
Fungicide, and Rodenticide Act,)
as amended, 7 U.S.C. § 136l(a).)

Docket No. FIFRA-01-2012-0109

**COMPLAINT and NOTICE OF
OPPORTUNITY FOR HEARING**

COMPLAINT

This Complaint and Notice of Opportunity for Hearing (the "Complaint") is being issued under Section 14(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §136l(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Part 22" or the "Consolidated Rules"). This Complaint alleges that the Respondent, Accu-Care Supply, Inc. ("Accu-Care" or the "Respondent"), has violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and the regulations promulgated pursuant to FIFRA at 40 C.F.R. Part 167. This Complaint provides written notice of the United States Environmental Protection Agency's ("EPA") proposal to assess administrative penalties for the violations alleged herein. This Complaint also provides notice of Respondent's opportunity to request a hearing on the proposed penalties. The Complainant is, by lawful delegation, the Legal Enforcement Manager in the Office of Environmental Stewardship, EPA

Region 1.

GENERAL ALLEGATIONS

1. The Respondent is Accu-Care, a company that formulates, packages, distributes and sells swimming pool chemicals. Respondent is a business incorporated under the laws of the State of Rhode Island and Providence Plantations (“Rhode Island”), doing business in Rhode Island. Respondent’s principal place of business is located at 109 King Philip Road, Rumford (within the City of East Providence), Rhode Island 02916 (the “Facility”).

2. Respondent is a “person” as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the regulations promulgated thereunder.

3. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines the term “pest” to mean, 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-organisms” declared by EPA to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136w(c)(1).

4. Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), defines the term “pesticide” to mean, in pertinent part, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

5. Prior to the violations alleged in this Complaint, Respondent sought and obtained registration of a product known as “Pool Clear” as a pesticide from EPA’s national office in Washington, D.C. (“EPA Headquarters”), pursuant to Section 3 of FIFRA, 7 U.S.C. § 136a. The Pool Clear product, identified by the EPA pesticide registration number assigned thereto (EPA Reg. No. 62032-20001), is a “pesticide,” as defined by Section 2(u)(1) of FIFRA.

6. Prior to the violations alleged in this Complaint, Respondent sought and obtained status as a supplemental registrant to produce, distribute, or sell as “distributor products” within the meaning of 40 C.F.R. § 152.132, each of the pesticide products listed below, identified by the supplemental registration numbers assigned thereto:

- i. “Accu-Clor,” EPA Reg. No. 550-198-62032;
- ii. “Robelle Shock Treatment,” EPA Reg. No. 550-198-53822;
- iii. “Aaron Super-Shock,” EPA Reg. No. 550-198-62032;
- iv. “Surfside Liquid Shock,” EPA Reg. No. 550-198-62032;
- v. “Poolman Pools Super-Shock,” EPA Reg. No. 550-198-62032;
- vi. “Islander Super-Shock,” EPA Reg. No. 550-198-62032;
- vii. “Target Super-Shock,” EPA Reg. No. 550-198-62032; and,
- viii. “Super-Shock,” EPA Reg. No. 550-198-62032.

Each of the pesticide products listed in Subparagraphs 6(i) through 6(viii), above, is a “pesticide,” as defined by Section 2(u)(1) of FIFRA.

7. At all times relevant to the violations alleged in this Complaint, Respondent produced, distributed, and sold each of the pesticide products described in Paragraphs 5 and 6, above, at the Facility and was a “producer” within the meaning of that term, as defined at 40 C.F.R. § 167.3.

8. Section 2(dd) of FIFRA, 7 U.S.C. § 136(dd), defines the term “establishment” as “any place where a pesticide or device or active ingredient used in producing a pesticide is produced, or held, for distribution or sale.” Accordingly, Respondent’s Facility is an “establishment” under Section 2(dd) of FIFRA.

9. On or about August 25, 2010, duly-authorized EPA inspectors (the “EPA Inspectors”) conducted a FIFRA inspection at the Facility pursuant to Sections 8 and 9 of FIFRA,

7 U.S.C. §§ 136f and 136g, to investigate whether Respondent was in compliance with FIFRA and its implementing regulations (the “August 2010 Inspection”).

10. During the August 2010 Inspection, the EPA Inspectors collected documentary samples (e.g., photographs and/or photocopies) of documents, including labels, inventory documents, and Notices of Supplemental Distribution of Registered Products regarding the pesticides listed in Paragraphs 5 and 6 of this Complaint.

11. During the August 2010 Inspection, the Inspectors also collected a sworn statement, signed by Respondent’s President, Mr. Pravin Shah, providing detailed information about Respondent’s business operations, including but not limited to the production, distribution, and sale of the pesticide products listed in Paragraphs 5 and 6, above.

12. On or about September 8, 2010, at EPA’s request, Respondent mailed EPA a copy of a sales report for the period between August 25, 2009 and August 25, 2010 for sales of pesticide products listed in Paragraphs 5 and 6, above.

13. Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and the implementing regulations at 40 C.F.R. Part 167, Subpart B, provide that no person shall produce any pesticide subject to FIFRA (or any active ingredient used to produce such a pesticide) unless the establishment in which it is produced is registered with EPA.

14. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, that it produced during the past year, and that it sold or distributed during

the past year. A producer is also responsible, under 40 C.F.R. § 167.85(d), for obtaining, completing, and submitting this information annually to EPA, even if the establishment did not produce any pesticide products.

15. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any of the provisions of FIFRA Section 7, 7 U.S.C. § 136e, including but not limited to the requirement to produce pesticides subject to FIFRA only in an establishment which has been registered with EPA as a pesticide-producing establishment.

16. Based upon the August 2010 Inspection and further investigation by EPA, at no time prior to the August 25, 2010 EPA Inspection had Respondent registered the Facility as a pesticide-producing establishment, pursuant to Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20. Upon information and belief, due to Respondent's failure to register the Facility as a pesticide-producing establishment, for all time periods relevant to the violations alleged in this Complaint, no EPA Establishment Number had been assigned to the Facility by EPA under FIFRA Section 7.

17. Based upon the Inspection and further investigation by EPA, at no time prior to August 25, 2010 did Respondent submit to EPA any annual reports required of registered establishments under FIFRA Section 7(c) and 40 C.F.R. Part 167, Subpart E.

COUNT 1
(Production in Unregistered Establishment – Pool Clear)

18. Paragraphs 1 through 17 are realleged and incorporated by reference.

19. On or before August 25, 2010, on at least one (1) occasion, Respondent produced the Pool Clear pesticide product identified in Paragraph 5, above, at the Facility.

20. Respondent's production of the Pool Clear product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations, at 40 C.F.R. Part 167, Subpart B.

21. Accordingly, on at least one (1) occasion with respect to the Pool Clear product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

COUNT 2

(Production in Unregistered Establishment – Accu-Clor)

22. Paragraphs 1 through 21 are realleged and incorporated by reference.

23. On or before August 25, 2010, on at least one (1) occasion, Respondent produced the Accu-Clor pesticide product identified in Paragraph 6, above, at the Facility.

24. Respondent's production of the Accu-Clor product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

25. Accordingly, on at least one (1) occasion with respect to the Accu-Clor product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated

pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 3

(Production in Unregistered Establishment – Robelle Shock Treatment)

26. Paragraphs 1 through 25 are realleged and incorporated by reference.

27. On before August 25, 2010, on at least one (1) occasion, Respondent produced the Robelle Shock Treatment pesticide product identified in Paragraph 6, above, at the Facility.

28. Respondent's production of the Robelle Shock Treatment product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

29. Accordingly, on at least one (1) occasion with respect to the Robelle Shock Treatment product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 4

(Production in Unregistered Establishment – Aaron Super-Shock)

30. Paragraph 1 through 29 are realleged and incorporated by reference.

31. On before August 25, 2010, on at least one (1) occasion, Respondent produced the Aaron Super-Shock pesticide product identified in Paragraph 6, above, at the Facility.

32. Respondent's production of the Aaron Super-Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and

136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

33. Accordingly, on at least one (1) occasion with respect to the Aaron Super-Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 5

(Production in Unregistered Establishment – Surfside Liquid Shock)

34. Paragraph 1 through 33 are realleged and incorporated by reference.

35. On or before August 25, 2010, on at least one (1) occasion, Respondent produced the Surfside Liquid Shock pesticide product identified in Paragraph 6, above, at the Facility.

36. Respondent's production of the Surfside Liquid Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

37. Accordingly, on at least one (1) occasion with respect to the Surfside Liquid Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 6

(Production in Unregistered Establishment – Poolman Pools Super-Shock)

38. Paragraph 1 through 37 are realleged and incorporated by reference.

39. On or before August 25, 2010, on at least one (1) occasion, Respondent produced

the Poolman Pools Super-Shock pesticide product identified in Paragraph 6, above, at the Facility.

40. Respondent's production of the Poolman Pools Super-Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

41. Accordingly, on at least one (1) occasion with respect to the Poolman Pools Super-Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 7

(Production in Unregistered Establishment – Islander Super-Shock)

42. Paragraphs 1 through 41 are realleged and incorporated by reference.

43. On before August 25, 2010, on at least one (1) occasion, Respondent produced the Islander Super-Shock pesticide product identified in Paragraph 6, above, at the Facility.

44. Respondent's production of the Islander Super-Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

45. Accordingly, on at least one (1) occasion with respect to the Islander Super-Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations

promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 8
(Production in Unregistered Establishment – Target Super-Shock)

46. Paragraph 1 through 45 are realleged and incorporated by reference.

47. On or before August 25, 2010, on at least one (1) occasion, Respondent produced the Target Super-Shock pesticide product identified in Paragraph 6, above, at the Facility.

48. Respondent's production of the Target Super-Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

49. Accordingly, on at least one (1) occasion with respect to the Target Super-Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

COUNT 9
(Production in Unregistered Establishment – Super-Shock)

50. Paragraph 1 through 49 are realleged and incorporated by reference.

51. On before August 25, 2010, on at least one (1) occasion, Respondent produced the Super-Shock pesticide product identified in Paragraph 6, above, at the Facility.

52. Respondent's production of the Super-Shock product at the Facility without that establishment being registered with EPA as a pesticide-producing establishment constituted a

violation of Sections 7(a) and 12(a)(2)(L) of FIFRA, 7 U.S.C. §§ 136e(a) and 136j(a)(2)(L), and the FIFRA regulations at 40 C.F.R. Part 167, Subpart B.

53. Accordingly, on at least one (1) occasion with respect to the Super-Shock product, Respondent Accu-Care violated Section 12(a)(2)(L) of FIFRA and the regulations promulgated pursuant to FIFRA, for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

PROPOSED CIVIL PENALTY

54. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes EPA to assess a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto. Pursuant the Debt Collection Improvement Act of 1996 (“DCIA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and EPA’s Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder and codified at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

55. The requirement for pesticide-producing establishments to be registered with EPA and to report annual pesticide production, distribution, and sales is central to FIFRA’s purpose of ensuring public and environmental safety by tracking such production, distribution, and sales. The reports are used by EPA for compliance, risk assessment, and risk reduction activities to protect human health and the environment and to maintain the integrity of the federal pesticide program. The reports are EPA’s only source of such information so that, without proper registration of, and reporting by, pesticide-producing establishments, EPA has no reliable means with which to determine what (and where) pesticides are being produced, distributed, and sold.

56. Based on the forgoing findings of violations of FIFRA, EPA seeks to assess a civil penalty of up to \$7,500 per violation for each of the violations alleged in Counts 1 through 9, above. The assessment of a penalty for the violations is warranted because the violations are serious and involve the production of pesticides in an establishment not registered with EPA as a pesticide-producing establishment subject to reporting and other requirements applicable to such facilities, under Section 7 of FIFRA, and the FIFRA regulations at 40 C.F.R. Part 167.

57. In determining the amount of the penalty to be assessed under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), EPA will take into account the statutory factors listed in Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), which include the appropriateness of the penalty to the size of the business of the person charged, the effect of the penalty on the person's ability to continue in business, and the gravity of the violations. EPA will also take into account the "FIFRA Enforcement Response Policy" issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, dated December 2009 (the "Penalty Policy"), a copy of which is enclosed with this Complaint.

58. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty based on the number of violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules (enclosed).

59. Neither assessment nor payment of any administrative penalty shall affect Respondent's continuing obligation to comply with FIFRA, including obtaining a valid establishment registration number for Respondent's Facility and its implementing regulations.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

60. As provided in Section 14(a)(3) of FIFRA, 7 U.S.C. § 136l(a)(3), and in accordance with 5 U.S.C. § 554 and 40 C.F.R. § 22.14, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty. To avoid being found in default and having a penalty assessed without further proceedings, Respondent must file a written Answer within thirty (30) days of receipt of this Complaint. The Answer should (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) briefly state all facts and circumstances, if any, which constitute grounds for a defense, and (3) specifically request an administrative hearing (if desired). The denial of any material fact or raising any affirmative defense(s) shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint will constitute an admission of the undenied allegations. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

61. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action to David M. Peterson, the attorney assigned to represent EPA and designated to receive service on behalf of Complainant in this matter at:

David M. Peterson
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Office of Environmental Stewardship
5 Post Office Square, Suite 100 (Mail Code: OES04-4)
Boston, MA 02109-3912
(617) 918-1891
(617) 918-0891 fax

62. The hearing that will be held upon Respondent's request will be conducted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 *et seq.*) and the Consolidated Rules.

63. If Respondent fails to file a written Answer within thirty (30) days of the service of this Complaint, pursuant to 40 C.F.R. § 22.17(a) Respondent may be found in default, which constitutes an admission of all the facts alleged in this Complaint and a waiver of the right to a hearing, and the above-referenced penalties may be assessed without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

64. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the facts of this case, or the proposed penalties, and/or the possibility of settlement. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement reached with Respondent in an informal conference. The terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent Agreement and Final Order, signed by Complainant and Respondent, would be binding as to all terms and conditions specified therein.

65. A request for an informal settlement conference does not extend any deadline in

65. A request for an informal settlement conference does not extend any deadline in this proceeding, including the thirty (30) day period for the submission of a written Answer to this Complaint.

66. If Respondent has any questions concerning the settlement process, or wishes to arrange for an informal conference, Respondent should contact David M. Peterson at (617) 918-1891.



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship

Date: 9/27/12

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint and Notice of Opportunity for Hearing was delivered in the following manner to the addresses listed below:

Original and One Copy by
Hand Delivery to:

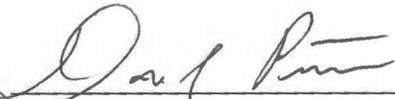
Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)
Boston, Massachusetts 02109-3912

One Copy by Certified Mail
Return Receipt Requested to:

Pravin Shah, President
Accu-Care Supply, Inc.
109 King Philip Road
Rumford, Rhode Island 02916

Date : 9/28/2012

Signed: _____


David M. Peterson
Senior Enforcement Counsel
Office of Environmental Stewardship (OES04-4)
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912