

Decision Set aside the decisions to issue recall notices dated 17 March 2004 with respect to the applicants Katali Pty Limited trading as Aquamatics and Questa Pool Products Pty Limited.

Remit the matter to the Authority for reconsideration in accordance with directions that the Authority, conditional upon the applicants' satisfying formalities including the payment of any fees, issue a permit to each of Katali Pty Ltd trading as Aquamatics and Monarch Pool Systems Pty Ltd in accordance with the draft permit attached to the letter from the Authority to the Tribunal dated 8 December 2004 varied in accordance with the reasons for decision and issued in accordance with the procedures set out in the reasons for decision.

.....[sgd Garry Downes].....
President

CATCHWORDS

PESTICIDES – Australian Pesticides and Veterinary Medicines Authority – compulsory recall notice – constructive refusal to issue permit – pool cleaning products containing silver and copper ions and oxidiser – efficacy of product not conclusive – further testing to be undertaken to seek registration – decision to issue recall notices set aside – permit to be issued with warning as to chlorine use – quantity of chlorine not specified

Agricultural and Veterinary Chemicals Code Act 1994 (Cth) Schedule

Agricultural and Veterinary Chemicals Code ss 10, 14, 75, 78, 100, 108, 112, 114, 115, 118, 119 and 167

Questa Pool Products Pty Ltd and Australian Pesticide and Veterinary Medicines Authority [2004] AATA 439

Questa Pool Products Pty Ltd and Australian Pesticide and Veterinary Medicines Authority [2004] AATA 687

JE Stout and VL Yu, “Experiences of the First 16 Hospitals Using Copper-Silver Ionization for Legionella Control: Implications for the Evaluation of Other Disinfection Modalities” (2003) 24(8) Infection Control and Hospital Epidemiology 563-568

REASONS FOR DECISION

23 December 2004

Justice Downes, President
Professor GAR Johnston AM, Member

Introduction

1. In this matter we are required to decide on what terms the suppliers of a system and products for the disinfection of swimming pools and spas should be permitted to market their products. We must decide whether chlorine should be required to be used in connection with the system and in what quantities. Alternatively, we must decide if a warning as to the desirability of using chlorine should be required. Finally, we must decide if the permit should be limited in time.

2. We have decided that the products should be sold with a warning that chlorine should be used as a supplement without stipulating any precise quantity and that the permit should extend to 31 October 2005. Our reasons follow.

3. The issue underlying this matter is the level of efficacy of the applicants' products. The limit on the length of the permit is to permit that matter to be further addressed so that if the products are shown to have a sufficient level of efficacy the products will be approved for sale without warning, while if they are shown not to have a sufficient level of efficacy permission for their further sale will be withdrawn.

4. Copper and silver ions have been shown to have disinfectant properties. These properties may be enhanced by oxidization. Silver ions have been shown to be effective in destroying Legionella bacteria. They may be more effective in this than chlorine.

Background

5. Some eleven years ago Katali Pty Ltd trading as Aquamatics began marketing a pool and spa disinfection system using copper and silver ions. The system was sold for use with a proprietary blend of peroxygen oxidizers. The system as a whole was called the Aquabrite system and the oxidizer was called Aquabrite. The copper and silver ions are delivered to the water by electrolysis using an electrical device, which Aquamatics calls an ionic water purifier, which powers a sacrificial electrode assembly coated with copper and silver. The oxidizer is added by hand.

6. From the beginning Questa Pool Products Pty Ltd marketed the same system under licence from Aquamatics using the trade name PoolFresh. That company recently sold its business to Monarch Pool Systems Pty Ltd which continues to market PoolFresh.

7. Both systems have been continuously marketed in Australia for at least eleven years. The systems are also exported. There have been no known health incidents arising from use of pools or spas disinfected by the products.

The Statutory Scheme

8. In 1994 the Commonwealth, and states and territories enacted complementary legislation through Agricultural and Veterinary Chemicals Code Acts which now applies throughout Australia. The legislation gave effect to the Agriculture and Veterinary Chemicals Code. The Code is administered by the Australian Pesticides and Veterinary Medicines Authority.

9. The Code applies to agricultural chemical products. The electrodes and the oxidizer used in the system under consideration are agricultural chemical products (*Questa Pool Products Pty Ltd v Australian Pesticides and Veterinary Medicines Authority* [2004] AATA 687). This rather odd result is compelled by the fact that “agricultural chemical product” is defined in the Code, without reference to agriculture, to include substances used to destroy pests, i.e. pesticides. Pests are very widely defined. Chemical products as defined are either agricultural chemical products or veterinary chemical products or both.

10. We pause to note that swimming pool disinfectants would not ordinarily be regarded as agricultural chemical products and their sale would not ordinarily be expected to be regulated by an Australian Pesticides and Veterinary Medicines Authority pursuant to an Agricultural and Veterinary Chemicals Code. Assuming that it is intended that this should be the case it seems to us that urgent consideration should be given by the legislatures to the adoption of more meaningful names. We note that pesticides used to sanitize hot water systems and air conditioning cooling towers may also be covered by the Code although it would seem that the Authority has not yet sought to exercise any jurisdiction in this area.

11. Part 2 of the Code provides for approvals and registration. The Authority is authorised to approve active constituents of existing chemical products, to register chemical products and to approve container labels (s 10). Section 14 sets out matters of which the Authority must be satisfied before granting an application for registration. They include:

“14(3)(e) ... that the use of the constituent or product in accordance with the instructions for its use that the APVMA has approved or approves:

- (i) *would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and*
- (ii) *would not be likely to have an effect that is harmful to human beings;*

...

(f) ... that the use of the product in accordance with the instructions for its use that the APVMA has approved or approves would be effective according to criteria determined by the APVMA for the product”.

12. Part 6 of the Code deals with Recalls. As explained in s 100 this Part authorises the Authority to require suppliers of chemical products to cease supplying chemical products and to take other action including recalling products.

13. Part 7 of the Code deals with permits. The grant of permits is regulated by s 112. A permit may authorise activity with respect to chemical products that would otherwise be prohibited by the Code (subs 108(1)). Permits may be unconditional or subject to conditions (subs 114(3)). They may be limited to operate only for a period stated in the permit (subs 115(2)). Extensions may be granted (subs 115(3)). Permits may be suspended (s 118) or cancelled (s 119) where good reason exists.

14. Possession for sale of any unregistered chemical product (s 75) and supply of an unregistered chemical product (s 78) without a permit is an offence.

Status of the Products

15. As early as December 1998 the Authority was aware of the products, at least in their PoolFresh form. On 11 December 1998 a scientific officer of the Western Australian Department of Health sent the Authority a memorandum relating to “Questa PoolFresh”. A six page PoolFresh brochure was attached which showed that the product was based on the use of copper and silver with a blended peroxygen oxidizer, that it was for use as a swimming pool and spa disinfectant and that it was intended to be an alternative to chlorine. There was correspondence as to whether registration was required. Questa’s position that registration was not required continued to be taken right up until the determination by this Tribunal that the products were covered by the Code. This does not seem to us to be an unreasonable response, at least for a layperson. This is one of the reasons why we

have suggested that the title and descriptions in the legislation should be amended. That Questa claimed that registration was not required does not seem to us to be particularly significant. What is important is that the Authority had all the information it needed to decide for itself whether registration was required before the end of 1998.

16. On 10 April 2003 the Authority wrote to Aquamatics requiring it to immediately cease all promotion and sale of Aquabrite. Aquamatics responded that its product was not registrable because it was not a pesticide. Further correspondence followed. On 24 July 2003 Aquamatics made application for registration without prejudice to its claim that registration was not required. This application for registration has never been finally dealt with.

17. On 11 March 2004 the Authority gave Aquamatics notice of its proposal to require prompt recall of the Aquamatics product. It invited comment. On the same day it sent a similar letter to Questa. It seems that there had been no recent communication with Questa. The last communication between the Authority and Questa, which ended the communications begun in 1998, was in January 1999. Questa furnished a detailed reply on 12 March 2004. The principal of Aquamatics rang the Authority on the same day. He was advised that the Authority had decided “that silver and silver/copper ... cannot meet stated claims”. Recall notices requiring immediate cessation of sale and recovery of all stock were issued to both Aquamatics and Questa on 17 March 2004.

Application to the Tribunal

18. Application to the Tribunal for review of the recall notices under s 167 of the Code was made by Questa on 17 March 2004 and Aquamatics on 6 April 2004. On 7 April 2004 the Tribunal granted a conditional stay of proceedings (*Questa Pool Products Pty Ltd and Australian Pesticide and Veterinary Medicines Authority* [2004] AATA 439). The conditions were:

- (1) All Poolfresh System and Aquabrite System products manufactured, sold and distributed by the Applicants will bear a notice stating that the products should not be used in spas until further notice.
- (2) The notice must also state that the APVMA is currently assessing the products to establish their efficacy as disinfectants for use in both spas and swimming pools and that the APVMA currently recommends these products be used in conjunction with chlorine. However, in the notice, the Applicants may state that they have confidence in the efficacy of the products when used in swimming pools which was approved by the New South Wales Department of Health in September 2003.
- (3) The Applicants will include a notice to this effect prominently displayed on their websites.

19. Monarch has effectively replaced Questa in the proceedings because Monarch now owns the PoolFresh business. Questa took no part in the hearing before us. Aquamatics and Monarch were represented by the same counsel.

20. On 28 July 2004 the Authority issued a *Guide for Demonstrating Efficacy of Pool and Spa Sanitisers*. The Guide was issued, in part, as a means of informing Aquamatics what it would need to show before the Authority would register its product. The Guide provided for both laboratory and field testing. Aquamatics proposed to see if it could satisfactorily complete the laboratory testing or at least part of it before the hearing.

21. Although the Authority says that their review processes generally include extensive consultation with the public and industry, there appears to have been no such consultation regarding the Guide or the issue of the use of copper/silver ionisation systems for the sanitization of swimming pools.

22. Steps were taken to enable laboratory testing. A water sample was sent from Sydney to a laboratory in Perth for testing. The tests did not establish efficacy. This appears to have been due to the loss of copper and silver ions from the water. The

copper and silver ions had been added to the water by electrolysis using the Aquabrite ionizer before the water was sent to Perth. A possible explanation is that the silver ions were adsorbed onto the inner surface of the plastic container in which the water was held. Why the tests failed is really speculation. We think that the tests should be put to one side as neutral. They certainly did not add any evidence of efficacy.

23. The matter proceeded before us on such material as was available outside the attempts to comply with the Authority's guidelines.

24. The evidence of efficacy is comprised in:

1. A paper by RL Chedzoy, EJ Caiger and F Hakimi entitled "The Aquabrite System" including mortality tests on the efficacy of the Aquamatic system with E. Coli and Pseudomonas aeruginosa sp.

2. The field testing of the Aquabrite system at the Forbes Carlile public swimming pool in Ryde which led to the New South Wales Department of Health stating that it had no objection to the use of the Aquabrite system in public swimming pools and spa pools subject to conditions set out in a letter of 17 September 2003 to Aquamatics. One of the conditions was occasional superchlorination.

3. Publications in the scientific literature.

25. The applicants' case is that in the context of use of the products for a significant time without adverse report the products ought to be permitted to be sold without special conditions at least until their efficacy has been satisfactorily determined. We must balance these considerations and come to a decision as to whether conditions should be imposed and, if so, what conditions.

Efficacy

26. The paper by Chedzoy, Caiger and Hakimi has been criticised in the evidence before us. The testing is confined to efficacy with respect to E. coli and

Pseudomonas aeruginosa sp. The testing method was also criticised, as was the way in which Aquabrite was compared with chlorine. Nevertheless the paper does provide some evidence of efficacy and that Aquabrite was more effective than chlorine under the conditions used.

27. The Aquabrite system has been used for some time in the Forbes Carlile public swimming pool in Ryde. Field tests at this pool led to the NSW Department of Health stating that it had no objection to the Aquabrite system being used in public swimming pools and spa pools. The field tests were scientifically conducted. However, higher levels of Aquabrite were used in the Carlile pool than is recommended in the product information for Aquabrite and it emerged during the hearing that small quantities of chlorine (two to three litres) were added to the pool several times each week during the tests. These quantities are now added each day and the pool is also regularly superchlorinated by the one off addition of a large quantity of chlorine. These matters cast doubt on the validity of the tests for the use of Aquabrite alone. However, the quantities of chlorine used were small compared with the amount of chlorine alone which would be needed to disinfect the pool, representing a reduction in chlorine use of 22 to 33 litres of chloride per day. It should also be noted that the Carlile pool is heated to 34° C. This is hot for a swimming pool. It is much more difficult to kill bacteria and viruses vigorously growing in a heated pool than in one which is not heated.

28. The scientific literature supports the conclusion that copper and silver ions have disinfectant properties in water. Silver ions seem particularly potent in destroying *Legionella* bacteria. The “16 Hospitals” study in the USA provides particularly strong evidence for the effectiveness of copper/silver ionisation compared to hyperchlorination in the control of *Legionella* (JE Stout and VL Yu, “Experiences of the First 16 Hospitals Using Copper-Silver Ionization for *Legionella* Control: Implications for the Evaluation of Other Disinfection Modalities” (2003) 24(8) *Infection Control and Hospital Epidemiology* 563-568). This long term evidence-based study lists the advantages of copper/silver ionisation in hospital hot water systems as “that it is more cost-effective than hyperchlorination, is easier to maintain, and does not corrode piping or plumbing” (p 567). And that “Copper-silver

ionization systems proved effective in 75% (12 of 16) of the institutions in which thermal eradication, hyperchlorination, or both had proven unsatisfactory” (p 567).

29. The applicants’ claim that the use of its peroxygen oxidizer with copper and silver released from electrodes has a synergistic effect so that the two combined are more than twice as efficient as each of them alone. However, there seems to be no scientific support for this at present. Nevertheless, the Carlile tests do provide evidence that a pool with a high risk for health problems because it is both heated and heavily used has performed satisfactorily with the addition of only small doses of chlorine.

30. The Aquabrite System and the PoolFresh System collectively have between 10,000 and 12,000 domestic pool users both locally and overseas. In addition there are approximately 150,000 children and adults who use public swimming pools that employ the Aquabrite System. There is no evidence of harm to humans arising out of the use of the Aquabrite in swimming pools or spas. The chlorine-free nature of the Aquabrite or PoolFresh Systems is seen as a major advantage of these systems over conventional chlorine-based sanitizing systems. There is significant public interest in minimising the use of chlorine-based systems in a variety of situations, eg. paper bleaching.

31. This is not the place or time for a definitive assessment of the Aquabrite and PoolFresh systems. The material before us does not establish whether or not the system is sufficiently efficacious for use alone in swimming pools. At most there is limited evidence of efficacy which is consistent with some of the scientific literature.

32. Derek Lightbody who is an Environmental Health Officer with the Victorian Department of Human Services was asked by the Authority to review the evidence furnished by Aquamatics in support of its application for Registration. He prepared a report which was sent to Mark Lewis, formerly of the Western Australian Department of Health, for comment. The resulting report was in evidence before us. The report contains the following recommendations:

“The reviewer does NOT SUPPORT registration of the products based on the evidence provided. This is due to the insufficient weight of evidence demonstrating the product’s broad-spectrum biocidal activity at/near the minimum levels of operation, and an inability to determine reasons for the unsatisfactory results from the field performance trials.”

33. The reference to the field performance trial is a reference to the trials at the Carlile pool. Mr Lightbody recognised that that pool “presents the highest challenge in terms of bather loading and pollution type.” Nevertheless he was concerned that the results showed that the pool had a *Pseudomonas aeruginosa* problem which required further investigation. However, this apparent problem did not cause the NSW Department of Health to object to the pool being disinfected by the Aquabrite system.

34. Dr David Cunliffe, who is the Principal Water Quality Adviser to the South Australian Department of Health, concurred with most of the comments, conclusions and recommendations in Mr Lightbody’s report. This general evidence was supported by the Authority’s own expert, Dr David Loschke who is the Principal Scientist, Pesticides at the Authority.

35. Particular attention was given in the evidence before us to an event which occurred in February this year in South Australia. On 27 February 2004 a case of Legionnaires’ disease was reported. The subject subsequently died. Investigations showed that the likely source of the *Legionella* bacteria was a spa in a private house disinfected by a system which used silver. The system was neither the Aquabrite nor the PoolFresh system. However it had its similarities. The differences were that the system may not have used copper but zinc and the copper and silver ions were not delivered by electrolysis.

36. While this event raises concerns, particularly with respect to the disinfection of spas, which are usually heated, it is by no means directly referable to the Aquabrite and PoolFresh systems. Oddly enough, there is evidence that silver is more effective than chlorine in killing *Legionella* bacteria. Although the spa was the most likely cause of infection, because it certainly contained *Legionella* bacteria, and the spa owner maintained that he disinfected the pool strictly in accordance with the

recommendations with the product, there are some uncertainties with respect to the relevance of this incident to the Aquabrite and PoolFresh products.

37. In our opinion the evidence overall does not show the Aquabrite and PoolFresh systems alone provide adequate disinfection for swimming pools and spas. Neither does the evidence show that they are not satisfactory. The evidence is not conclusive one way or the other.

38. Chlorine is undoubtedly the benchmark product. However, chlorine is not without its problems. It can have an unpleasant odour when used in enclosed spaces. In high concentrations it is an irritant. In these circumstances it is highly desirable that if there is possibly an alternative product which has sufficient efficacy then it will be in the public interest for that to be explored. This is particularly so if that product is more effective than chlorine against Legionella bacteria. Such a property may open up much wider matters of public interest, namely, the potential use of the product in the disinfection of air conditioning cooling towers and hospital hot water systems which are prone to harbouring Legionella bacteria and which are notoriously difficult to disinfect.

The Issue and Terms of a Permit

39. The applicants' products were marketed prior to the Act coming into force. However, they had no registration, permit or licence to market issued pursuant to any prior legislation, federal or state. There was no suggestion before us that any such prior approval of the system was required. However, the result is that the marketing of the products did not receive any protection from provisions in the Act protecting products registered under previous legislation such as pursuant to par 75(1)(c) of the Code.

40. When the Act came into force the sale of the products became unlawful. Nevertheless, for more than 10 years the applicants were allowed to sell their products although for at least half of that time the Authority was aware of the products, at least in their PoolFresh form, and did nothing about them.

41. Enforcement of the recall notices requiring all products to be recovered and all sales and marketing to cease would involve substantial cost and would have a significant impact on the businesses of Aquamatics and now Monarch. It would also have an impact on users of the products who will have incurred cost in acquiring the system and installing it. It may not be easy for some users immediately to change. Many of them may object to a requirement to cease using their system altogether, particularly if they have found it to be satisfactory at least from a superficial point of view.

42. The first matter we must decide is whether we affirm the decision to issue the recall notices. We have decided that those decisions should be set aside. There have been considerable developments so far as those decisions are concerned since the recall notices were issued. Indeed, we do not understand the Authority to be asking that the recall notices should be affirmed. The Authority accepts that the systems and products can continue to be marketed provided that users are required to use the system with a chlorine regime which would be satisfactory alone. As we understand the Authority's position it would only seek decisions affirming the recall notices if the applicants would not accept the conditions it seeks relating to the use of chlorine. However, merely withdrawing the recall notices will not make the sale and marketing of the products lawful. That requires either registration or a permit.

43. The Authority is not at present prepared to register the product. It requires further laboratory and field tests before it can finally determine this. Because the Authority has made no decision about registration that matter cannot be before us. However, the question of whether the Authority should grant permits to the applicants is before us. The Authority will not oppose decisions by us to grant permits with the condition relating to chlorine which it requires. The result is that the ultimate question for us is what should be the terms of permits granted to the applicants to continue selling the products.

44. The Authority has provided us with a draft form of permit which it would not oppose. The applicants have indicated what amendments they seek to this draft. However, before we come to the detail we should attend to the substance.

45. Because we do not consider there is sufficient scientific evidence to determine the efficacy or otherwise of the products we think that there should be a limitation on the length of the permit. The purpose of this is to enable the applicants to carry out sufficient testing to evaluate the efficacy of the product. We would expect that this testing should be carried out in accordance with the Guide. However, we have not considered the adequacy of the Guide or whether its goals are fully achievable. Accordingly, it does not follow that registration should be refused merely because not all of the Guide requirements have been satisfied. We note that a permit can be extended or terminated. Although we cannot bind the Authority we would expect that the permit would be extended if promising evidence was being produced and, of course, terminated if there was conclusive evidence of lack of efficacy.

46. In these circumstances the permit should be for a term. Both parties have suggested a term concluding in June 2005. Because swimming pools are not used extensively in most parts of Australia in winter and because six months may not be long enough for sufficient testing to be completed we propose that the permit shall continue until 31 October 2005. The Act does not expressly provide for retrospective permits. It seems unlikely to us that such a power could be implied. We propose that the permit should commence from the date of this decision.

47. Permits should be issued to both Aquamatics and Monarch. They should be in similar form. Aquamatics has been actively pursuing registration. Monarch and its predecessor, Questa, have not. The purpose of the permits is to permit the businesses to continue to operate pending the carrying out of necessary testing to achieve registration. If Monarch does not join in this it can expect the Authority to give consideration to cancelling the permit. If either of Aquamatics or Monarch fail to comply with the permit it can expect the Authority to consider issuing further recall notices.

48. In considering the substantive form of the permits and, in particular, whether full doses of chlorine should be required, we have considered and balanced the potential health risks against the length of time the products have been marketed without incident. We accept that pool owners will not necessarily link family health problems, particularly those which are not serious, with pool use. Medical

practitioners may not consider the possibility of pool involvement with a number of illnesses. However, most people would consider the possible involvement of eye irritations and infections, for example, with pool use. The absence of any adverse health reports from the use of the Aquabrite / PoolFresh systems cannot be ignored. We have not ignored the fact that bacteria and viruses in pools can cause serious illness and even death. The South Australian incident is an example. However that risk has now been present for more than ten years and the Authority has known of it for much of that time. Nevertheless we have taken the risk into account in coming to our final decision.

49. When we take into account the existing history together with the fact that the proposed permit is limited notwithstanding the risk that exists we think that the appropriate warning does not need to be mandatory nor to recommend use of a full chlorine dose.

50. Requiring a full dose of chlorine is tantamount to requiring the use of two independent systems. There is no logic in this. Such a condition does not seem to us to be required in the light of the results of testing at the Carlile pool where small quantities of chlorine were used. Even if mandatory words were used it would still be for each user to make the ultimate decision. A warning is what is required.

51. The draft permit contains two attachments. The Authority asks that the contents of one be included in operating instructions supplied with the system including the electrodes. The contents of the other is to be on a label attached to containers of the oxidizer. Both attachments contain a statement in identical terms relating to chlorine. In terms it is mandatory. It requires full chlorination. The statement is as follows:

“CHLORINE LEVELS MUST BE MAINTAINED. PLEASE NOTE:

The Australian Pesticides and Veterinary Medicines Authority, a federal government authority that regulates pool product safety, has issued a warning that it is not satisfied of the effectiveness of copper and silver ion systems in sanitising pool water, and that owners must at all times use chlorine or another approved pool sanitiser in their pools in the proportions specified by the manufacturer on the approved label.”

52. We think the following should be substituted:

“USE OF CHLORINE

The Australian Pesticides and Veterinary Medicines Authority, a federal government authority that regulates pool product safety, has issued a warning that it is not satisfied of the effectiveness of copper and silver ion systems in sanitising pool water. Use of chlorine will enhance their sanitising properties. It is recommended that chlorine not exceeding the stand alone dose should be used. Add chlorine to the skimmer box with the filter pump running.”

The recommendation relating to skimmer boxes is based on evidence before us and is consistent with the Aquabrite instructions relating to its oxidizer. Perhaps the instruction should refer to the chlorine not being added at the same time as the oxidizer. We will leave it to the Authority to determine this.

53. Otherwise we intend that the permit for Aquamatics should largely be in the form proposed by the Authority. However, all but the first sentence of the third paragraph can be deleted. In the fourth paragraph the statement that registration has been sought should be appropriately varied for Monarch. We see no reason why the formula for the oxidizer should not be disclosed if that would be required after registration is achieved. If Aquamatics' competitors do not know the composition of the oxidizer they will probably be able to discover it. However, because this matter was not properly ventilated before us, and because some intellectual property protection may be gained by registration, we will leave the final decision to the Authority after hearing any further submissions the applicants wish to make. Further, we agree that the chlorine statement (as we have determined it) should be on the operating instructions for the system as well as on packets of the oxidizer. However, we do not consider that the operating instructions should be required to be included with each container of oxidizer. But we do think that the requirement for the oxidizer container to be labelled should extend to anything in which that container is packaged. The clause should read:

“(b) Supply or cause to be supplied Aquabrite in a packet, box or other container with the label set out in Attachment 1 to this permit firmly attached so that it cannot be easily detached and to so attach the same label to any packet box or other container in which more than one primary container is supplied.”

54. It will be noted that, based on the evidence, we have required boxes in which packets of oxidizer are supplied to be labelled and we have imposed a requirement that the labels should be firmly affixed. Stapling will not be adequate. Gluing the whole surface of the label to the packet or printing on the packet itself will be adequate.

55. To avoid future difficulties the form of the package labelling to be used should be prior approved by the Authority in accordance with these reasons for decision. Stick on labels on existing packaging will be satisfactory, as will the use of new packages with new labels. The new labelling should be put in use as soon as possible. Supplies taking place without the new labelling will not be made under the permit. Because of the time of year we will not say anything about when deliveries under the new labelling should commence. That can be discussed between the Authority and the applicants. Existing supplies need not be recalled.

Decision

56. We accordingly decide to set aside the decisions to issue the recall notices with respect to the applicants Katali and Questa and remit the matter to the Authority for reconsideration in accordance with directions that the Authority, conditional upon the applicants' satisfying the formalities including the payment of any fees, issue a permit to each of Katali Pty Ltd trading as Aquamatics and Monarch Pool Systems Pty Ltd in accordance with the draft permit attached to the letter from the Authority to the Tribunal dated 8 December 2004 varied in accordance with these reasons for decision and issued in accordance with the procedures set out in these reasons for decision.

I certify that the 56 preceding paragraphs are a true copy of the reasons for the decision herein of Justice Downes, President, and Professor Johnston, Member

Signed:.....[sgd Shamus Toomey].....

Associate

Dates of Hearing	29 & 30 November, 1, 2 & 3 December 2004
Date of Decision	23 December 2004
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Counsel for the Respondent	Dr JG Renwick
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