



UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 DALLAS, TEXAS

FILED  
 2012 SEP 27 PM 2:42  
 REGIONAL HEARING CLERK  
 EPA REGION VI

<p><b>In the Matter of:</b></p> <p><b>Samsill Corporation,</b></p> <p><b>Respondent</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>DOCKET NO. FIFRA 06-2012-0301</b></p> <p><b>COMPLAINT,</b></p> <p><b>CONSENT AGREEMENT, AND</b></p> <p><b>FINAL ORDER</b></p>
---	--	---

---

**COMPLAINT**  
**CONSENT AGREEMENT AND FINAL ORDER**

The Director, Multimedia Planning and Permitting Division, United States Environmental Protection Agency, Region 6 (EPA) as Complainant, and Samsill Corporation located in Fort Worth, Texas (Respondent) in the above referenced action, have consented to the terms of this Complaint, Consent Agreement, and Final Order (Complaint/CAFO).

NOW THEREFORE, before the taking of any testimony, without any adjudication of any issues of law or fact herein, the parties agree to the terms of this Complaint/CAFO.

**I.**  
**PRELIMINARY STATEMENT**

1. This enforcement proceeding is instituted by EPA pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), which authorizes the Administrator to bring an administrative action to assess a penalty of up to \$7,500<sup>1</sup> for each violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) (sold or distributed

---

<sup>1</sup>The Civil Penalty Inflation Adjustment Rule (62 Fed Reg. 13514, March 20, 1997 and 69 Fed Reg. 7121, February 13, 2004) provides for increases in the statutory penalty provisions for violations which occur after the date the increases take effect. For violations after March 14, 2004, the potential maximum penalty for such violations changed from \$5,500 to \$6,500. The Agency is required to review its penalties once every four years and adjust them for inflation. The Final Rule published at 73 Fed Reg. 75340 raised the FIFRA penalty to \$7,500 for violations

unregistered pesticide). This proceeding is initiated by the issuance of a Complaint and Notice of Opportunity for Hearing (Complaint) incorporated herein and concluded by the Consent Agreement and Final order (CAFO).

2. The Complaint alleges Respondent violated regulations promulgated pursuant to FIFRA.

3. For purposes of this proceeding, Respondent admits to the jurisdiction of this Complaint; however, Respondent neither admits nor denies the specific factual allegations contained in this Complaint.

4. Respondent consents to the issuance of this Complaint/CAFO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out in this Complaint/CAFO in settlement of the violations alleged in this Complaint/CAFO.

5. By signature on this Complaint/CAFO, Respondent waives any right to a hearing and/or any appeal of any matter in this proceeding.

6. Respondent represents that it is duly authorized to execute this Complaint/CAFO and that the party signing this Complaint/CAFO on behalf of the Respondent is duly authorized to bind the Respondent to the terms and conditions of this Complaint/CAFO.

7. Respondent agrees that the provisions of this Complaint/CAFO shall be binding on its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns, including but not limited to, subsequent purchasers.

**II.**  
**STATUTORY AND REGULATORY BACKGROUND**

---

occurring after December 11, 2008.

8. Section 2(s) of FIFRA defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(u) of FIFRA defines the term “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

10. Section 2(t) of FIFRA defines the term “pest” as “(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism

10. Section 2(gg) of FIFRA defines the term “to distribute or sell” as distribute, sell, offer for sale, hold for distribution, hold for shipment, or receive and (having so received) deliver or offer to deliver.

11. Pursuant to Section 12(a)(1)(A) of FIFRA “...it shall be unlawful for any person in any State to distribute or sell to any person any pesticide that is not registered under section 3.”

12. Pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA may be assessed a civil penalty by the Administrator of not more than \$7,500<sup>2</sup> for each offense.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. The Respondent is Samsill Corporation located at 5740 Hartman Road, Fort Worth, Texas 76119.

14. As a corporation, the Respondent is a “person” as that term is defined in Section 2(s) of FIFRA.

---

<sup>2</sup>See footnote 1.

15. Respondent is a registrant, wholesaler, dealer, retailer or other distributor subject to the civil penalty provisions of Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

16. Respondent's product, Clean Touch Binders, was a pesticide as defined in FIFRA Section 2(u).

17. Respondent's product, Clean Touch Binders, was not registered as a pesticide.

18. The Respondent was a "distributor," as that term is defined at Section 2(gg) of FIFRA, of the pesticide, Clean Touch Binders.

19. The advertising and product information for Clean Touch Binders made claims, such as "fights the growth of bacteria, fungus, mold and mildew," "antimicrobial," "safe and non-toxic," "bug fighters," and that "[b]uilt in protection fights the growth of bacteria, mold, and mildew; promoting cleaner schools, offices, homes, and hospitals." In particular, advertising and product information for Clean Touch Binders contained a handprint in conjunction with the above descriptions.

20. The Treated Article Exemption of FIFRA allows a product to make claims that the product itself is treated and, hence, is protected against damage or destruction. However, advertising for the product may not go further and make implied or explicit public health pesticidal claims to protect the public against harmful microorganisms.

21. Clean Touch Binders were not registered with EPA under Section 3 of FIFRA and did not meet the Treated Article Exemption.

#### **IV.** **VIOLATIONS**

22. Complainant incorporates by reference the allegations contained in paragraphs 1-21 of this Complaint/CAFO.

23. Section 12(a)(1)(A) of FIFRA states that “it is unlawful for any person in any State to distribute or sell to any person any pesticide which is not registered under Section 3 of FIFRA.”

24. Under the circumstances described above, Respondent’s distribution or sale of the unregistered pesticide product Clean Touch Binders constituted an unlawful act in violation of Section 12(a)(1)(A) of FIFRA.

**V.**  
**CIVIL PENALTY AND**  
**TERMS OF SETTLEMENT**

25. For the reasons set forth above, Respondent has agreed to pay a civil penalty, which has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Penalty Inflation Adjustment Rule<sup>3</sup> which authorizes EPA to assess a civil penalty of up to SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00)<sup>3</sup> for each violation of FIFRA. Upon consideration of the entire record herein, including the Findings of Fact and Conclusions of Law, which are hereby adopted and made a part hereof, and upon consideration of (1) the size of the Respondent's business, (2) the effect upon Respondent's ability to continue in business, and (3) the gravity of the alleged violation, the parties agree to the terms of this settlement. To develop the proposed penalty in this Complaint, the Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA’s “Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)” dated December 3, 2009.

It is ORDERED that Respondent be assessed a civil penalty of **TWENTY THOUSAND DOLLARS AND NO CENTS (\$20,000.00)**.

---

<sup>3</sup> See footnote 1.

26. Within thirty (30) days of Respondent's receipt of this fully executed Complaint/CAFO, Respondent shall pay the assessed civil penalty by cashier's or certified check, made payable to "Treasurer, United States of America, EPA - Region 6."

Payment shall be remitted in one of the alternatives provided in the collection information section below:

### **COLLECTION INFORMATION**

#### **CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

#### **OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

#### **ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

[WWW.PAY.GOV](http://WWW.PAY.GOV)

Enter "sfo 1.1" in the search field;

Open form and complete required fields following directions for EPA Miscellaneous payments.

PLEASE NOTE: Docket number **FIFRA-06-2012-0301** shall be clearly typed on the check to ensure proper credit. Respondent shall send a simultaneous notice of such payment, including a copy of the money order or check to the following:

Kristin Dunbar  
Pesticides Section (6PD-P)  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

The check shall reference the Respondent's name and address, the case name and the docket number of the administrative complaint, and the check shall be accompanied by a transmittal letter. A photocopy of each check and its accompanying transmittal letter shall be mailed to:

Region 6 Hearing Clerk  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Respondent's adherence to this request will ensure proper credit is given to the mater at hand.

27. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

28. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11 unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

29. The EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In

In the Matter of Samsill Corporation Fort Worth, Texas Docket No. FIFRA 06-2012-0301

addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11 (c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

**VI.**  
**COSTS**

30. Each party shall bear its own costs and attorneys fees.


IT IS SO AGREED:

Date: 9/27/12

  
\_\_\_\_\_

FOR THE COMPLAINANT:  
Samsill Corporation  
5740 Hartman Road  
Fort Worth, Texas 76119

Date: 9/27/12

  
\_\_\_\_\_

Carl Edlund  
Division Director  
Multimedia Planning and Permitting Division



**FINAL ORDER**

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case 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. This Final Order shall resolve only those causes of action and/or violations alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Dated

9/27/12



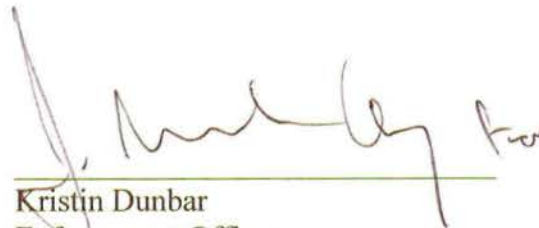
Pat Rankin  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29 day of September, 2012, the original and one copy of the foregoing Complaint, Consent Agreement, and Final Order ("Complaint/CAFO") was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was delivered to the following individual by method indicated below:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ms. Patti Casey  
Samsill Corporation  
5740 Hartman Road  
Fort Worth, Texas 76119



Kristin Dunbar  
Enforcement Officer  
Pesticides Section