

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

REGIONAL HEARING  
CLERK

2014 APR -1 AM 10:10

U.S. Environmental  
Protection Agency-Reg 2

In the Matter of

Atlantic Paste and Glue Co., Inc,  
Respondent.

Proceeding under the Federal  
Insecticide, Fungicide and Rodenticide  
Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2014-5203

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by

entering into this CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Atlantic Paste and Glue Co., Inc.
2. Respondent's facility is located at 170 53<sup>rd</sup> Street, Brooklyn, New York 11232.
3. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
4. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
5. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
6. Section 2(h) of FIFRA, 7 U.S.C. Section 136(h), defines a pesticidal "device" as any instrument or contrivance ... which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life...
7. Respondent imports and distributes pesticidal devices.
8. Respondent sold the following pesticidal devices from its facility:
  - a. "Catchmaster Giant Fly Trap" and
  - b. "Catchmaster Bug and Fly Clear Window Trap."

9. On or about April 2012, EPA began an investigation into the sale and/or distribution of the “Catchmaster Giant Fly Trap” and the “Catchmaster Bug and Fly Clear Window Trap.”

10. EPA contacted Respondent by telephone and requested information and records from Respondent pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g regarding the sale or distribution of the “Catchmaster Giant Fly Trap” and the “Catchmaster Bug and Fly Clear Window Trap.”

11. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), as “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

12. In response to EPA’s request, Respondent provided documents, including invoices indicating the company’s sales and/or distributions of “Catchmaster Giant Fly Trap” from the period February 2, 2012 to March 8, 2012 to various retailers and/or distributors.

13. Respondent “distribute[s] or sell[s]” pesticides within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).

14. Respondent imported the “Catchmaster Giant Fly Trap” and the “Catchmaster Bug and Fly Clear Window Fly Trap” from China.

15. Both the “Catchmaster Giant Fly Trap” and “Catchmaster Bug and Fly Clear Window Fly Trap” are manufactured in China.



16. The packaging of the “Catchmaster Giant Fly Trap” contains a New York State Establishment registration number, EPA EST No 48377-1-NY.

17. The packaging of the “Catchmaster Giant Fly Trap” did not contain the registration number of the Chinese establishment in which it was produced.

18. Pursuant to Section 2(q) of FIFRA, 7 U.S.C. Section 136(q), a pesticide is misbranded if its label does not bear the registration number for each establishment in which it was produced

19. Therefore, “Catchmaster Giant Fly Trap” device was misbranded and Respondent’s distributions or sales of the device were in violation of FIFRA Sections 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

20. Each of Respondent’s sales or distributions of “Catchmaster Giant Fly Trap,” described in Paragraph 12, above, constitutes an unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E).

21. The “Catchmaster Bug and Fly Clear Window Trap” had been imported from China without submitting to the EPA a Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) prior to the product’s arrival in the United States.

22. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for any “registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports” required by FIFRA.

23. Based on further discussions with EPA, Respondent agreed to re-label the entire stock of “Catchmaster Giant Fly Trap” and provide notification to EPA upon completion of the re-labeling process.

24. Upon notification that its products were distributed in violation of FIFRA, Respondent worked quickly to re-label the entire stock of “Catchmaster Giant Fly Trap”.

25. On April 17, 2012, pursuant to Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g, duly authorized representatives of EPA conducted an inspection at the facility and confirmed that the “Catchmaster Giant Fly Trap” had been brought into full compliance with pertinent pesticide regulations at that time.

26. On October 30, 2013 the parties held a settlement meeting.

### **CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the CROP, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.

2. Respondent’s signatory certifies on behalf of the Respondent that as of the effective date of this Consent Agreement that the “Catchmaster Giant Fly Trap” has been brought into full compliance with FIFRA labeling requirements.

3. Respondent further certifies that it has implemented measures to ensure that all required paperwork, including but not limited to Notice of Arrival of Pesticides and Devices (EPA Form 3540-1) will be timely submitted for all future regulated imports of Respondent’s products.

4. If in the future EPA believes that any information certified to in paragraphs 2 or 3, above, of this Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA or correct any alleged untrue or inaccurate certification. If, after consideration of Respondent's reply, the Complainant determines that the certification(s) was untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$25,000 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

5. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of **Thirty-Six Thousand Seven Hundred Seventy-Four Dollars (\$36,774)** in settlement of this case on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.

6. Payment must be received at the address listed in Paragraph 7, below, or the EFT must be received by the Federal Reserve Bank of New York, on or before the due date specified above (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.



- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

7. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Atlantic Paste and Glue Co., Inc., Docket No. FIFRA-02-2014-5203.

Each such check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address:  
FRNYUS33  
33 Liberty Street  
New York, N.Y. 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment:  
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: "D 68010727  
Environmental Protection Agency"
- f. Name of Respondent: Atlantic Paste and Glue Co., Inc.
- g. Case Docket Number: FIFRA-02-2014-5203

Respondent shall also send proof of payment, whether by check or EFT, to:

Jeannie M. Yu  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866;

and

Karen Maples,  
Regional Hearing Clerk  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
Room 1631  
New York, New York 10007-1866

8. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 7, above. Penalties shall accrue as provided below regardless of whether EPA has notified the



Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or appropriate action.

9. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

10. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of

the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

11. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent admits (a) that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 136l(a), to commence a civil administrative proceeding for the violations described in the EPA's Findings of Fact and Conclusions of Law section above.

12. The civil penalty and any applicable stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.

13. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein, and the accuracy of the Respondent's certifications in this proceeding) the civil and administrative claims described in EPA's Findings of Fact and Conclusions of Law in this Consent Agreement. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

14. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any applicable stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any applicable stipulated penalties in accordance with the terms of this Consent Agreement.

15. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on EPA's Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

16. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO.

17. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

18. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce or seek compliance with this Consent Agreement and its accompanying Final Order.

19. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, Deputy Regional Administrator, or Regional Judicial Officer for Region 2, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

20. This Consent Agreement and Final Order does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or



local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

21. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.

22. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.

23. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondent, its officers/officials, agents, authorized representatives and successors or assigns.


24. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

25. Each party hereto agrees to bear its own costs and fees in this matter.

26. Respondent consents to service upon itself of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Atlantic Paste and Glue Co., Inc., FIFRA-02-2014-5203

RESPONDENT: Atlantic Paste and Glue Co., Inc.


BY:   
(Signature)

NAME: STEVEN FRISCH  
(Please Print)

TITLE: CEO

DATE: 3/27/14

COMPLAINANT:



Dore F. LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2

DATE: March 28, 2014

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order, pursuant to Section 14 of FIFRA and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. Section 22.31(b).

*Helen S Ferrara*

Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

DATE: March 31, 2014



CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order (“CA/FO”), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

Allison Lecker, Esq.  
Cozen O’Conner  
1900 Market Street  
Philadelphia, PA 19103

Dated: 3/31, 2014  
New York, New York

  
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