

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
)  
H & H Products, Inc. )  
)  
d/b/a )  
)  
CleanMart )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-04-2007-3038(b)

RECEIVED  
EPA REGION IV  
2007 OCT -9 PM 12:55  
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

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

## II. Preliminary Statements

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

Dawn Johnson  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9017.
5. Respondent is H & H Products, Inc., a North Carolina corporation, located at 3418 US Highway 301 N, Dunn, North Carolina 28334-8390.
6. Respondent is a "person" as defined by Section 2(s) of FIFRA, 7 U.S.C. §136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.
7. On or about February 9, 2006, an authorized representative of the EPA conducted an inspection at Respondent's facility located at 3418 US Hwy 301 N, Dunn, North Carolina 28334-8390.
8. During the aforementioned inspection, the product "Warewash Chlorine," was identified as being produced and distributed by the Respondent.
9. The inspector documented eleven shipments of the "Warewash Chlorine" product, from the Respondent to consignees in North Carolina in 2005 and 2006.
10. "Warewash Chlorine" is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

11. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. §136w(c)(1).
12. Respondent “distributes or sells” pesticides. The term “to distribute to sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
13. At the time of the inspection, the “Warewash Chlorine” was not registered as a pesticide with EPA.
14. It is unlawful according Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. §136a.
15. Respondent distributed or sold the pesticide on at least eleven occasions as described below:

July 21, 2005, Shipping Invoice No. 4887  
July 26, 2005, Shipping Invoice No. 4924  
August 18, 2005, Shipping Invoice No. 4888  
August 31, 2005, Shipping Invoice No. 4663  
September 2, 2005, Shipping Invoice No. 4673  
October 20, 2005, Shipping Invoice No. 5187  
November 15, 2005, Shipping Invoice No. 5714  
November 29, 2005, Shipping Invoice No. 5674  
December 19, 2005, Shipping Invoice No. 5770  
January 6, 2006, Shipping Invoice No. 6095  
March 10, 2006, Shipping Invoice No. 103796.

16. At the time of the February 9, 2006 inspection at Respondent's facility, the "Warewash Chlorine" product label did not contain the EPA establishment number assigned under section 7 of FIFRA and the percentage of all inert ingredients in the product. The "Warewash Chlorine" is also an imitation of another pesticide, "Warewash Sanitizer."
17. Pursuant to FIFRA 2(q)(1)(D), the "Warewash Chlorine" product was misbranded in that the label did not bear the registration number assigned under Section 7 of FIFRA. Further, pursuant to Section 2(q)(2)(A) of FIFRA, the "Warewash Chlorine" product was misbranded in that the label did not bear an ingredient statement on the immediate container which is presented or displayed under customer conditions of purchase. Pursuant to Section 2(q)(1)(C) of FIFRA, the "Warewash Chlorine" product was misbranded in that it is an imitation of, or is offered for sale under the name of, another pesticide.
18. Pursuant to Section 12(a)(1)(E) of FIFRA, it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
19. On or about August 24, 2006, an authorized representative of the EPA conducted an inspection at Johnson Food Service, located at 3290 Sumter Avenue, Fort Jackson, South Carolina 29207.
20. During the aforementioned inspection, the product "Warewash Sanitizer" was identified as being produced and distributed by the Respondent.
21. The inspector documented one shipment of the "Warewash Sanitizer" product, from the Respondent to Johnson Food Service, located at 3290 Sumter Avenue, Fort Jackson, South Carolina 29207.

22. “Warewash Sanitizer” is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. §136(u), which includes any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
23. A pest is defined in Section 2(t) of FIFRA, 7 U.S.C. §136(t), as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. §136w(c)(1).
24. Respondent “distributes or sells” pesticides. The term “to distribute to sell” as defined by Section 2(gg) of FIFRA, 7 U.S.C. §136(gg), includes to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, or release for shipment.
25. At the time of the February 9, 2006 inspection, the “Warewash Sanitizer” was not registered as a pesticide with EPA.
26. It is unlawful according Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), for any person to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. §136a.
27. Respondent distributed or sold the pesticide on at least two occasions as described below:
  - February 3, 2006, Shipping Invoice No. 8834
  - February 16, 2006, Order No. W9124C-06-F-0006.
28. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), on two separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. §136l.

29. At the time of the August 24, 2006, inspection of Johnson Food Service, the “Warewash Sanitizer” product label contained an EPA registration number for a cancelled pesticide product that falsely represented that the product was registered when in fact it was not.
30. Pursuant to Section 2(q)(1)(A) of FIFRA, the “Warewash Sanitizer” product was misbranded in that the label had a statement, design, or graphic representation which was false or misleading.
31. Pursuant to Section 12(a)(1)(E) of FIFRA, it shall be unlawful for any person in any State to distribute or sell to any person any pesticide which is misbranded.
32. Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(a) and Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. §136l.
33. Section 14(a) of FIFRA, 7 U.S.C. §136l(a), in conjunction with the Debt Collection Improvement Act of 1996, authorizes the assessment of a civil penalty.
34. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), requires EPA to consider the appropriateness of the assessed penalty to the size of business of the Respondent, the effect on Respondent’s ability to continue in business, and the gravity of the violation.
35. After consideration of the factors set forth in Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(a)(4), the EPA proposes to assess a total civil penalty of ten thousand dollars (\$10,000) against the Respondent for the above-described violations. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. §136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

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

## IV. Final Order

42. **Respondent is assessed a civil penalty of TEN THOUSAND DOLLARS (\$10,000) which shall be paid in accordance with one of the following options:**

**Option A:** Penalty shall be paid within 30 days from the effective date of this CAFO; or

**Option B:** Penalty shall be paid in eight (8) equal payments of \$1,293.96, which includes interest at 4%. The first payment of \$1,293.96 shall be paid within 30 days after the effective date of this CAFO.

The remaining seven (7) installment payments will be made as set forth below:

DATE	AMOUNT
January 30, 2008	\$1,293.96
April 30, 2008	\$1,293.96
July 30, 2008	\$1,293.96
October 30, 2008	\$1,293.96
January 30, 2009	\$1,293.96
April 30, 2009	\$1,293.96
July 30, 2009	\$1,293.96

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

U.S. Environmental Protection Agency  
 Cincinnati Accounting Operations  
 Mellon Lock Box 371099M  
 Pittsburgh, PA 15251-7099.



**The check shall reference the name and the Docket Number of the CAFO [“H & H Products, Inc., FIFRA-04-2007-3038(b)”].**

44. At the time of payment (or each separate quarterly payment if Respondent chooses Payment Option B), Respondent shall send a separate copy of the check and a written statement that the payment is being made in accordance with this CAFO, to the following persons at the following addresses:

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

Dawn Johnson  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

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

45. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
46. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also

be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principle amount not paid within 90 days of the due date, or if Respondent chooses to pay quarterly, such late payment penalty charge shall be applied on the amount not paid within 30 days of the due date.

47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
48. This CAFO shall be binding upon the Respondent, its successors and assigns.
49. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

V. Effective Date

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

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**AGREED AND CONSENTED TO:**

**H & H Products, Inc.**

By: *Jerry M. Hartman* (Signature)

Date: 09-10-07

Name: JERRY M. HARTMAN (Typed or Printed)

Title: Pres. (Typed or Printed)

**U.S. Environmental Protection Agency**

By: *Beverly H. Banister*

Date: 10/3/07

Beverly H. Banister  
Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 9<sup>th</sup> day of October, 2007.

*Susan B. Schub*

Susan B. Schub  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: H & H Products, Inc., FIFRA Docket No. 04-2007-3038(b), on the parties listed below in the manner indicated.

For Complainant:

Dawn Johnson  
Pesticides Management Section  
U.S. EPA - Region 4, 4APT-PTSB  
61 Forsyth Street  
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Nancy Tommelleo  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960

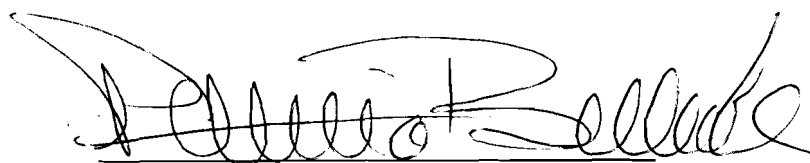
(Via EPA's internal mail)

For Respondent:

Jerry Hartman  
H & H Products, Inc.  
3418 US 301 North  
Dunn, NC 28334

(Via Certified Mail - Return Receipt  
Requested)

Date: 10-9-07



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303-8960  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

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

This form was originated by: Saundi J Wilson on 10/4/07  
(Name) (Date)

in the OEH at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Other Receivable

Not sent with bill

This is an original debt

Oversight Billing - Cost Package not required

This is a modification

PAYEE: H & H Products Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 10,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIERA 04 2007-3038(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

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

**DISTRIBUTION:**

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

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

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

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



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

**OCT 09 2007**

4APT-PTSB

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Jerry Hartman  
H & H Products, Inc.  
3418 US 301 North  
Dunn, NC 28334

SUBJ: Docket No. FIFRA-04-2007-3038(b)  
H & H Products, Inc.

Dear Mr. Hartman:

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

Please make note of the provisions in the Final Order, with respect to payment of the assessed penalty of \$10,000. The initial payment in the amount of \$1,293.96 is due within 30 days from the effective date of the CAFO. Remaining payments are due as set forth in Section IV of the CAFO.

Also enclosed, please find a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document notifies you of your potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at the U.S. EPA, Cincinnati Accounting Operations address identified in Section IV of the CAFO. Should you have any questions about your company's compliance status in the future, please do not hesitate to call me or Dawn Johnson (404) 562-9017.

Sincerely,



Joanne Benante  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures (2)

cc: Flo Lamphier  
North Carolina Department of Agriculture  
and Consumer Services