



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

October 1, 2012

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

David Lyle Stern, Esq.
Attorney for New Jersey Cash & Carry
50 Court Street
Brooklyn, New York, 11201

Re: In the Matter of New Jersey Cash & Carry.
Docket No. FIFRA-02-2012-5118

Dear Mr. Stern:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that a representative of your client, New Jersey Cash and Carry, makes arrangement for payment of the civil penalty in accordance with the timeframes specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

A handwritten signature in black ink, appearing to read "B. Aber".

Bruce H. Aber
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk
Roy Meyer, NJDEP

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT -3 A 9:18
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

New Jersey Cash & Carry, LLC.
Respondent,

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

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. FIFRA-02-2012- 5118

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT - 3 A 9:18
REGIONAL HEARING
CLERK

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, 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 New Jersey Cash & Carry, (hereinafter "Respondent"), a New Jersey Corporation.
2. 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.
3. Respondent is a "distributor or seller" within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
4. "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."

5. Respondent maintains and/or operates an “establishment” as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 791 Paulison Avenue, Clifton, NJ 07011.
6. 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.
7. 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.
8. Pursuant to Section 3 of FIFRA, 7 U.S.C. Section 136a, all pesticides intended for distribution or sale must be registered with EPA.
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered with EPA.
10. 40 C.F.R. Section 152.15(a)(2)(b), states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if: the substance consists of one or more active ingredients that has no significant

commercially valuable use as distributed or sold other than (1) use for a pesticidal purpose.

11. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(E), states that it shall be unlawful for any person in any state to distribute or sell to any person any pesticide that is misbranded.
12. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. Section 136(q)(1)(E), states that a pesticide is misbranded if its labeling bears any statement, design or graphic representation which is false and misleading in any particular.
13. Section 2(q)(1)(D) of FIFRA, 7 U.S.C. Section 136(q)(1)(E), states that a pesticide is misbranded if its label does not bear the registration number assigned under section 136e under this section to each establishment in which it was produced.
14. Section 2(h) of FIFRA, 7 U.S.C. Section 136(v) and EPA regulation at 40 C.F.R. Section 152.500(a) define the term "device" as "... any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest. . ."

15. Pursuant to EPA's regulation at 40 C.F.R. Section 152.500(b), a device is subject to the requirements of FIFRA, including labeling, establishment registration and reporting.
16. Section 12(a)(1)(F) of FIFRA, 7 U.S.C. Section 136j(a)(1)(F), states that it shall be unlawful for any person in any state to distribute or sell to any person any device that is misbranded
17. EPA's regulations at 40 C.F.R. Sections 156.10(a)(1)(iv) states that the label must show clearly and prominently the product registration number as prescribed in 40 C.F.R. Section 156.10(e).
18. EPA's regulation at 40 C.F.R. Section 156.10(a)(1)(v) states that the label must show clearly and prominently the producing establishment number as prescribed in 40 C.F.R. Section 156.10(f).
19. On or about March 21, 2012, EPA conducted an inspection at Respondent's establishment located at 791 Paulison Avenue, Clifton, NJ 07011.
20. During the inspection, EPA's inspector found on a shelf a "Victory's Fly Catcher" product being held for distribution or sale.

21. EPA interprets the Victory's Fly Catcher product to be a "device" within the meaning of 40 CFR 152.500(a).
22. The label on the Victory's Fly Catcher Device did not bear an EPA producer establishment number.
23. The label on the Victory's Fly Catcher Device contained the following false and misleading statements: "No poisons," "No vapors," and "World's leader in non-poisonous pest control products."
24. During the inspection, EPA's inspector found on a shelf a "Dettol Antiseptic" Liquid product being held for sale or distribution.
25. The label on the Dettol Antiseptic product had the following pesticidal claims: "Epidemics... Treats linens, floors and for spraying rooms..." and "Surgical, Medical Midwifery."
26. The Dettol Antiseptic product was required to be registered with EPA.
27. The Dettol Antiseptic product did not have an EPA registration number on its label.
28. The label for the Dettol Antiseptic product made the following statement: "Effective protection"

29. During the inspection, EPA's inspector found on a shelf a "Quality Care Daily Bowl Cleaner" product being held for sale or distribution.
30. The label on the Quality Care Daily Bowl Cleaner had the following pesticidal claims: ". . . prevents mildew stains," along with an arrow pointing to a toilet bowl cleaner."
31. The Quality Care Daily Bowl Cleaner has the following active ingredients, "Chloroxylenol" and "Terpineol", which have no significantly commercially valuable use other than for a pesticidal purpose.
32. The Quality Care Daily Bowl Cleaner was required to be registered with EPA.
33. The Quality Care Daily Bowl Cleaner did not have an EPA registration number on its label.
34. The label on the Victory's Fly Catcher product did not include an EPA producer establishment registration number, as required by 40 CFR 152.500(b) and 40 CFR 156.10(f). Also, the label contained false and misleading statements. Therefore, the Victory's Fly Catcher device was misbranded within the meaning of Section 12(a)(1)(F) of FIFRA, 7 U.S.C. Section 136j(a)(1)(F).

35. The label on the Dettol Antiseptic product had pesticidal claims and a false and misleading statement. Therefore, the Dettol Antiseptic product was an unregistered and misbranded pesticide within the meaning of Section 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A) & (E).
36. The label on the Quality Care Daily Bowl Cleaner product had pesticidal claims and had active ingredients that had no significantly valuable use other than for a pesticidal purpose. Therefore, the Quality Care Daily Bowl Cleaner product was an unregistered pesticide within the meaning of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, 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: (1) Respondent, as of the date of its execution of this Consent Agreement, has ceased

the sale or distribution of the Victory's Fly Catcher device, the Dettol Antiseptic pesticide product and the Quality Care Daily Bowl Cleaner pesticide product.

3. If in the future EPA believes that any information certified to, pursuant to paragraph 2, above, of the 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, EPA determines that the certification(s) is untrue or inaccurate, EPA may initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

4. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of Seventeen Thousand Dollars (\$17,000), payable to the "Treasurer, United States of America," in accordance with the following payment schedule:
 - i) \$4,250 due on or before forty-five (45) days after the date of signature of the EPA Regional Judicial Officer's signature of the Final Order at the end of this document; and

 - ii) \$4,250 due on or before March 1, 2013; and

 - iii) \$4,250 due on or before June 1, 2013; and

iv) \$4,250 on or before September 1, 2013.

Each check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of New Jersey Cash & Carry, LLC, Docket No. FIFRA-02-2012- 5118.

Each check shall be mailed to:

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

Respondent shall also send copies of each payment to both:

Bruce Aber
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866; and

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

Each payment must be received at the above address on or before the due date(s) specified above (the date by which each payment must be received shall hereafter be referred to as its "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.
5. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 1361(a), to commence a civil administrative proceeding for the violations described in the EPA

Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies the EPA Findings of Fact and Conclusions of Law contained herein.

6. The civil penalties provided for herein are the 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, state or local law.
7. 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) the civil and administrative claims described in this Consent Agreement, subject only to the limitations set forth in 40 C.F.R. Section 22.31(a).
8. 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.

9. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the civil penalty in accordance with the terms of this Consent Agreement.
10. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
11. 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.
12. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.
13. 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.
14. 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.

15. 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.
16. 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.

17. 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.
 18. 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.
 19. Each party hereto agrees to bear its own costs and fees in this matter.
 20. 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.
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In the Matter of New Jersey Cash & Carry LLC, FIFRA-02-2012- 5118

RESPONDENT: New Jersey Cash & Carry LLC

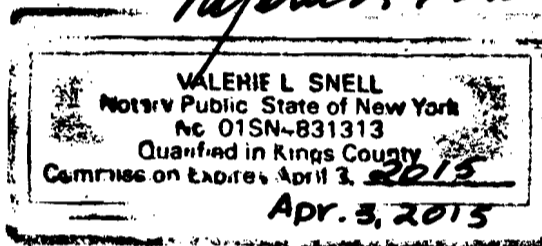
BY: Chanc Park
(Signature)

NAME: PARK, Chanc

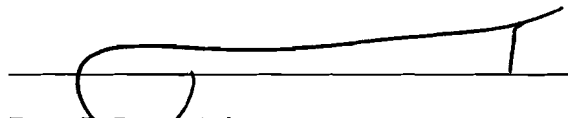
TITLE: president

DATE: 9/25/2012

Valerie L. Snell



COMPLAINANT:

A handwritten signature in black ink, appearing to read "Dore LaPosta", is written over a horizontal line.

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

DATE: September 27, 2012

In the Matter of New Jersey Cash & Carry LLC, FIFRA-02-2012-5118

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 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.



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

DATE: September 28, 2012

In the Matter of New Jersey Cash & Carry LLC, FIFRA-02-2012-5118

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, 16th Floor
New York, N.Y. 10007-1866

Copy by Certified Mail/
Return Receipt Requested:

Mr. Chanhil Park, owner
New Jersey Cash & Carry, LLC
791 Paulison Avenue
Clifton, NJ 07011

David Lyle Stern, Esq.
Counsel for New Jersey Cash & Carry, LLC
50 Court Street
Brooklyn, NY 11201

Dated: 9/9, 2012
New York, New York

