

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2007 JUL 17 AM 8:24  
HEARING CLERK

In the Matter of: )  
)  
Apyron Technologies, Inc. ) Docket No. FIFRA-04-2007-3024(b)  
)  
)  
Respondent. )  
\_\_\_\_\_ )

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 Apyron Technologies, Inc.
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:

Phillip Beard  
Pesticides Management Section  
U.S. EPA – Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9012.

5. The Respondent is Apyron Technologies, Inc., a Georgia corporation located at 3342 International Park Drive, Atlanta, Georgia 30316.
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 April 26, 2006, an authorized representative of the EPA conducted an inspection at Apyron Technologies, Inc., located at 3342 International Park Drive, Atlanta, Georgia 30316.
8. At the time of the inspection, the “Ice Wand” product was being sold and distributed by the Respondent.
9. The inspector documented ten shipments of the “Ice Wand” from the Respondent to Ice Equipment, LLC., Colliston, Louisiana, on March 23, 2006; Ohio EPA, Groveport, Ohio, on March 23, 2006; Park Grill, Gatlinburg, Tennessee, on March 24, 2006; Subway, Hot Springs, Arkansas, on March 28, 2006; Palm Restaurant, Atlanta, Georgia, on April 4, 2006; Park Grill, Gatlinburg, Tennessee, on April 4, 2006; McDonald’s-16157, Laredo, Texas, on April 4, 2006; Benjamin

R. Roach, Savannah, Georgia, on April 12, 2006; Blimpie Subs and Salads #342, Atlanta, Georgia, on April 17, 2006; and Barbary Cost Hotel and Casino, Las Vegas, Nevada, on April 25, 2006.

10. The “Ice Wand” is a pesticide as defined in Section 2(u) of FIFRA, 7 U.S.C. § 136(u). The definition of pesticide 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 as defined by Section 2(gg) of FIFRA 7 U.S.C. § 136(gg).
13. At the time of the inspection, the “Ice Wand” was not registered as a pesticide with EPA.
14. It is unlawful according to 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 violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least ten separate occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. Respondent is a “producer” as defined by Section 2(w) of FIFRA, 7 U.S.C. § 136(w), and 40 CFR § 167.3.

17. At the time of the inspection, Respondent's establishment was registered with EPA and was assigned EPA Establishment Number 73667-GA-001.
18. The inspection revealed that the *Pesticide Report for Pesticide-Producing Establishments* for reporting year 2005, submitted by Apyron Technologies, Inc., contained false information in that the report failed to include the correct amount of pesticides produced. Submission of an accurate annual pesticide production report is required by Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c).
19. It is a violation of Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for any producer to submit an annual pesticide production report containing false information or to violate any of the provisions at Section 7 of FIFRA.
20. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), on at least one occasion.
21. 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.
22. 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.
23. 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 THIRTY-ONE THOUSAND TWO HUNDRED DOLLARS (\$31,200), plus interest at four percent per annum, 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

24. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
25. 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.
26. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
27. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
28. 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.
29. 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

30. Respondent is assessed a civil penalty of THIRTY-ONE THOUSAND TWO HUNDRED DOLLARS (\$31,200), plus interest at four percent per annum, which shall be paid according to the schedule agreed upon, as shown as Attachment A.

31. **The first installment payment of \$2,656.68 shall be made on September 1, 2007, or within 30 days from the date this CAFO is filed with the Regional Hearing Clerk, whichever is later.** The remaining installment payments will be made as set forth in Attachment A.
32. 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 each 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.

**Each check shall reference the name and the Docket Number of the CAFO ("Apyron Technologies, Inc., FIFRA-04-2007-3024(b)").**

33. At the time of payment, Respondent shall send a separate copy of each 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  
Atlanta, Georgia 30303-8960;

Phillip Beard  
Pesticides Management Section  
U.S. EPA – Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and

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

34. 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.
35. 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.
36. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
37. This CAFO shall be binding upon the Respondent, its successors and assigns.
38. 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.

**The remainder of this page was intentionally left blank.**

V. Effective Date

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

**AGREED AND CONSENTED TO:**

**Apyron Technologies, Inc.**

By: Leslie J. Story (Signature) Date: July 2, 2007  
Name: Leslie J. Story (Typed or Printed)  
Title: President/COO (Typed or Printed)

**U.S. Environmental Protection Agency**

By: [Signature] Date: 7/12/07  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division  
61 Forsyth Street  
Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 16<sup>th</sup> day of July, 2007.

[Signature]  
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: Apyron Technologies, Inc., Docket No. FIFRA-04-2007-3024(b), on the parties listed below in the manner indicated.

Phillip Beard, 4APT-PTSB  
Pesticide Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960

(Via EPA's internal mail)

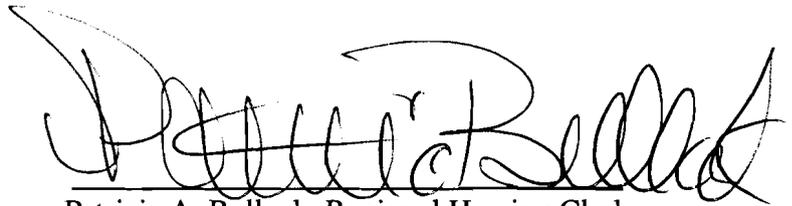
Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303-8960

(Via EPA's internal mail)

Mr. Leslie J. Story  
Apyron Technologies, Inc.  
3342 International Park Drive  
Atlanta, GA 30316

(Via Certified Mail - Return Receipt Requested)

Date: 7-17-07



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

# Loan Amortization Schedule

# Attachment A

Enter values	
Loan amount	\$ 31,200.00
Annual interest rate	4.00 %
Loan period in years	1
Number of payments per year	12
Start date of loan	8/1/2007
Optional extra payments	\$ -

Loan summary	
Scheduled payment	\$ 2,656.68
Scheduled number of payments	12
Actual number of payments	12
Total early payments	\$ -
Total interest	\$ 680.12

Lender name: case for Phillip Beard

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance	Cumulative Interest
1	9/1/2007	\$ 31,200.00	\$ 2,656.68	\$ -	\$ 2,656.68	\$ 2,552.68	\$ 104.00	\$ 28,647.32	\$ 104.00
2	10/1/2007	28,647.32	2,656.68	-	2,656.68	2,561.19	95.49	26,086.14	199.49
3	11/1/2007	26,086.14	2,656.68	-	2,656.68	2,569.72	86.95	23,516.41	286.44
4	12/1/2007	23,516.41	2,656.68	-	2,656.68	2,578.29	78.39	20,938.12	364.83
5	1/1/2008	20,938.12	2,656.68	-	2,656.68	2,586.88	69.79	18,351.24	434.63
6	2/1/2008	18,351.24	2,656.68	-	2,656.68	2,595.51	61.17	15,755.74	495.80
7	3/1/2008	15,755.74	2,656.68	-	2,656.68	2,604.16	52.52	13,151.58	548.32
8	4/1/2008	13,151.58	2,656.68	-	2,656.68	2,612.84	43.84	10,538.74	592.16
9	5/1/2008	10,538.74	2,656.68	-	2,656.68	2,621.55	35.13	7,917.19	627.28
10	6/1/2008	7,917.19	2,656.68	-	2,656.68	2,630.29	26.39	5,286.90	653.67
11	7/1/2008	5,286.90	2,656.68	-	2,656.68	2,639.05	17.62	2,647.85	671.30
12	8/1/2008	2,647.85	2,656.68	-	2,647.85	2,639.02	8.83	0.00	680.12

