



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

4APT-PTSB

**JUN 21 2007**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Michael A. Slavin  
McHale & Slavin P.A.  
2855 PGA Boulevard  
Palm Beach Gardens, FL 33410-02910

SUBJ: Docket No. FIFRA-04-2007-3016(b)  
Norcross Industries, Inc.

Dear Mr. Slavin:

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. Since the Agency has received payment of the assessed penalty of \$1,000 as set forth in Section IV of the CAFO, the filing of the signed, approved CAFO concludes matters with the Agency pertaining to FIFRA-04-2007-3016(b).

Also, enclosed is 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 your client of the potential duty to disclose to the Securities and Exchange Commission (SEC) any environmental enforcement actions taken by the EPA. Please note that the contact phone number on page three of the Notice has been changed to (202) 551-3115.

Should you have any questions about your company's compliance status in the future, please do not hesitate to call me or Cheryn Jones at (404) 562-9006.

Sincerely,

A handwritten signature in cursive script that reads "Joanne Benante".

Joanne Benante  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures (2)

cc: Craig Bryant, FL Dept. of  
Agriculture & Consumer Services

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

RECEIVED  
EPA REGION IV  
2007 JUN 21 PM 4:08  
HEARING CLERK

In the Matter of: )  
)  
Norcross Industries, Inc. ) Docket No. **FIFRA-04-2007-3016(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 Norcross Industries, 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:

Cheryn L. Jones  
Pesticides Management Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9006.

5. Respondent is Norcross Industries, Inc., a Florida corporation, located at 1500 A Elizabeth Avenue, West Palm Beach, FL 33401.
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 August 13, 2003, an authorized representative of the EPA conducted an inspection at Norcross Industries, Inc., located at 1500 A Elizabeth Avenue, West Palm Beach, FL 33401.
8. During the aforementioned inspection, the product "Norcross 'Works Like Magic' Mildew Shield," was identified as being distributed or sold by the Respondent.
9. The term "to distribute or sell" as defined in 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.

10. The inspector documented shipment of Norcross “Works Like Magic” Mildew Shield from the Respondent on four occasions.
11. Norcross “Works Like Magic” Mildew Shield, 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.
12. 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).
13. At the time of the inspection, the Norcross “Works Like Magic” Mildew Shield 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 violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on four occasions and is therefore subject to the assessment of civil penalties under Section 14 of FIFRA, 7 U.S.C. § 136l.
16. 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.

17. 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.
18. 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 ONE THOUSAND DOLLARS (\$1000) against the Respondent for the above-described violation. Civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), may be assessed by Administrative Order.

### III. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations.
20. 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.
21. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.
23. 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.

24. 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

25. **Respondent is assessed a civil penalty of ONE THOUSAND DOLLARS (\$1000) which shall be paid on or before July 31, 2007 or within 30 days from the effective date of this CAFO, whichever is later.**
26. 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**

**[“Norcross Industries, Inc., FIFRA-04-2007-3016(b)”].**

27. At the time of payment, 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;

Cheryn L. Jones  
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.

28. 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.
29. 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.
30. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
31. This CAFO shall be binding upon the Respondent, its successors and assigns.

32. 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

33. 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:**

**Norcross Industries, Inc.**

By:  (Signature)

Date: **MAY 07 2007**

Name: Charles Norcross (Typed or Printed)

Title: President (Typed or Printed)

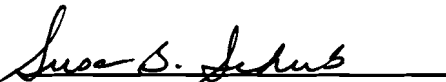
**U.S. Environmental Protection Agency**

By: 

Date: 6/19/07

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

**APPROVED AND SO ORDERED** this 21<sup>st</sup> day of June, 2007.

  
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: U.N.X. Incorporated, FIFRA Docket No. 04-2007-3013(b), on the parties listed below in the manner indicated.

For Complainant:

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

(Via EPA's internal mail)

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

(Via EPA's internal mail)

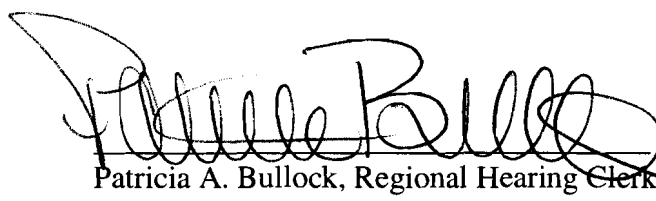
For Respondent:

Mr. Michael A. Slavin  
McHale & Slavin P.A.  
2855 PGA Boulevard  
Palm Beach Gardens, FL 33410-02910

Certified Mail – Return Receipt Requested

Date:

6-21-07



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 Wilson on 4/22/07  
(Name) (Date)

in the DEA, OATGL 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

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Norcross Industries Inc  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: FIFRA 04 2007 3016(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)  |
|  | 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     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

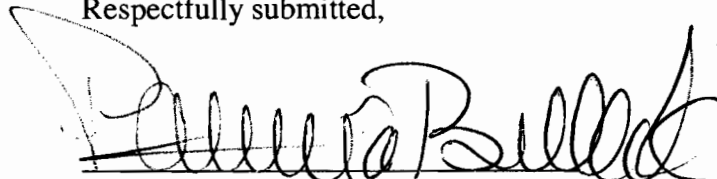
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HEARING CLERK

In the Matter of: )  
)  
Norcross Industries, Inc. ) Docket No. FIFRA-04-2007-3016(b)  
)  
Respondent. )  
\_\_\_\_\_ )

NOTICE OF CORRECTION OF DOCKET NUMBER

Pursuant to 40 C.F.R. 122.5(c), the Presiding Officer and the Respondent are hereby notified of an error in the docket number as shown on the Certificate of Service for the Consent Agreement and Final Order filed on June 21, 2007. The correct docket number for the above referenced matter is FIFRA-4-2007-3016(b).

Respectfully submitted,



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

6-25-07  
date

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: Norcross Industries, Inc., Docket No. FIFRA-04-2007-3016(b), on the parties listed below in the manner indicated:

Cheryn Jones  
U.S. EPA, Region 4  
Air, Pesticides, and Toxics  
Management Division  
61 Forsth St. SW  
Atlanta, GA 30303

(Via EPA's internal mail)

Robert Caplan  
U.S. EPA, Region 4  
Office of Environmental  
Accountability  
61 Forsyth St.,SW  
Atlanta, GA 30303

(Via EPA's internal mail)

(Respondent)

(Via Certified Mail - Return Receipt Requested)

Mr. Michael A. Slavin  
McHale & Slavin P.A.  
2855 PGA Boulevard  
Palm Beach Gardens, FL 33410-02910

Date: 6-25-07



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