



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

**AUG 16 2012**

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Trace Atkinson  
General Counsel  
Law Offices of Atkinson and Associates  
P.O. Box 233  
Ellijay, Georgia 30540

Re: Nature's Pharmacy, Inc.  
Ratified Consent Agreement and Final Order  
Docket No.: FIFRA-04-2012-3014(b)

Dear Mr. Atkinson:

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 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the respondent name and docket number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the EPA. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you have any questions about this matter or your compliance status in the future, please contact Mrs. Melba Table of the EPA Region 4 staff at (404) 562-9086.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannette M. Gettle".

Jeannette M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )  
 )  
Nature's Pharmacy, Inc. )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No.: FIFRA-04-2012-3018(b)

RECEIVED  
EPA REGION IV  
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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) (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 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, United States Environmental Protection Agency, Region 4. Respondent is Nature's Pharmacy, Inc.
2. The authority to take action under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), is vested in the Administrator of the Environmental Protection Agency. The Administrator of the EPA has delegated this authority under FIFRA to the EPA Region 4 by EPA Delegation 5-14, dated May 11, 1994. The Regional Administrator, Region 4, has redelegate this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 5-14, dated September 7, 2005. Pursuant to that Delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter, and has the authority

to sign Consent Agreements memorializing settlements between the EPA and Respondents.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without formal hearing. Therefore, without the taking of any evidence or testimony, the making of an argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## II. Preliminary Statements

4. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for the EPA in this proceeding:

Melba Table  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-9086.

5. Respondent, Nature's Pharmacy, Inc., is a Georgia corporation, located at 166 High Knoll Road, Jasper, Georgia 30143.
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.

## III. Specific Allegations

7. On December 12, 2010, an authorized representative of the EPA conducted an inspection at the Respondent's facility located at 166 High Knoll Road, Jasper, Georgia 30143 .
8. During the inspection, a product labeled "Diatomaceous Earth," which also included "D.E." as an abbreviated form of the name, was observed at the facility.

9. The label on the Diatomaceous Earth contained phrases such as, “To control fleas, ticks and other pests year around, use D.E. on a regular basis” and “For flea control, be sure to apply before flea season begins.”
10. The label on the Diatomaceous Earth displayed the Respondent’s name.
11. During the inspection, the inspector observed and Respondent confirmed that the Diatomaceous Earth sold or distributed by Respondent is labeled by Respondent at its facility.
12. During the inspection, the inspector obtained copies of six packing slips containing ship to dates, ground tracking numbers and listing various products, including Diatomaceous Earth.
13. The term “pesticide” is defined in Section 2(u)(1) of FIFRA, 7 U.S.C. § 136(u)(1), to mean “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”
14. Therefore, Diatomaceous Earth is a pesticide as that term is defined in Section 2(u)(1) of FIFRA.
15. The term “to distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), to mean “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.”
16. Therefore, Diatomaceous Earth was distributed or sold by Respondent, as those terms are defined in Section 2(gg) of FIFRA, on at least six different occasions.
17. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), prohibits the distribution or sale of any pesticide that is not registered under FIFRA.

18. The Diatomaceous Earth distributed or sold by Respondent was not registered as a pesticide under FIFRA.
19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any pesticide that is not registered under FIFRA.
20. Therefore, Respondent violated Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), on at least six different occasions and is therefore subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
21. Section 2(w) of FIFRA, 7 U.S.C. § 136(w), defines “producer” and “produce.” “The term ‘producer’ means the person who manufactures, prepares compounds, propagates, or processes any pesticide or device or active ingredient used in producing a pesticide.” The term ‘produce’ means to manufacture, prepare, compound, propagate, or process any pesticide or device or active ingredient used in producing a pesticide.”
22. By applying labels to the Diatomaceous Earth packaging at its facility, Respondent “produced” Diatomaceous Earth as that term is defined in Section 2(w) of FIFRA, 7 U.S.C. § 136(w).
23. Respondent produced Diatomaceous Earth in an establishment that was not registered with the Administrator of EPA as a pesticide producing establishment.
24. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), makes it unlawful to produce a pesticide in any state unless the establishment is registered with the Administrator of EPA as set forth in Section 7 of FIFRA, 7 U.S.C. § 136e.

25. Therefore, Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L) and is therefore subject to the assessment of civil penalties under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).
26. 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.
27. 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.
28. 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 **FIFTEEN THOUSAND NINE HUNDRED AND TWENTY DOLLARS (\$15,920)** 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.

#### IV. Consent Agreement

29. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.
30. 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.
31. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
32. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of FIFRA.

33. 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.
34. 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.

V. Final Order

35. Respondent is assessed a civil penalty of **FIFTEEN THOUSAND NINE HUNDRED AND TWENTY (\$15,920)**. Eight payments will be made to complete payment of the entire civil penalty including interest. The first installment shall be paid within 30 days of the effective date of this CAFO. The subsequent seven payments shall be due in 90-day intervals thereafter. Including civil penalty and interest, the total amount that will be paid upon completion will be **SIXTEEN THOUSAND SIXTY ONE DOLLARS AND NINETY TWO CENTS (\$16,061.92)**. Respondent shall make payments in accordance with the following schedule:

<u>Payment Number</u>	<u>Payment Due Date</u>	<u>Payment Due</u>
1	within 30 days of filing of CAFO	\$2,007.74
2	within 120 days of filing of CAFO	\$2,007.74
3	within 210 days of filing of CAFO	\$2,007.74
4	within 300 days of filing of CAFO	\$2,007.74
5	within 390 days of filing of CAFO	\$2,007.74
6	within 480 days of filing of CAFO	\$2,007.74
7	within 570 days of filing of CAFO	\$2,007.74
8	within 660 days of filing of CAFO	\$2,007.74

36. Respondent shall remit each penalty payment 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  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

**The check shall reference on its face the name of the Respondent and the Docket Number assigned to this CAFO.**

37. At the time each payment is made, 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  
Atlanta, Georgia 30303-8960;

Melba Table  
Pesticides Section  
U.S. EPA - Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960; and

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

38. If Respondent fails to make payment as set forth above, and if such payment is not within 30 days after the due date, that payment and accrued interest shall become immediately due and payable on the 31<sup>st</sup> day from such due date. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described below in the event of any such failure or default.



39. Further, if Respondent fails to make payment as set forth above, EPA may refer the debt to a collection agency, a credit reporting agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
40. 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. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to the Respondent. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within 30 calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). 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 principal amount not paid within 90 days of the due date.
41. 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.
42. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
43. This CAFO shall be binding upon the Respondent, its successors and assigns.

44. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and hereby legally binds that party to it.

VI. Effective Date

45. 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:**

**Respondent:** Nature's Pharmacy, Inc.  
**Docket No.:** FIFRA-04-2012-3014(b)

By: L. L. Pickett (Signature)

Date: 7/12/2012

Name: L. L. Pickett (Typed or Printed)

Title: President (Typed or Printed)

**Complainant:** U.S. Environmental Protection Agency

By: Douglas Neelley for  
Beverly H. Banister, Director  
Air, Pesticides and Toxics  
Management Division

Date: 8/8/12

**APPROVED AND SO ORDERED** this 15 day of August 2012.

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

**CERTIFICATE OF SERVICE**


I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Nature's Pharmacy, Inc., Docket Number: FIFRA-04-2012-3014(b), to the addressees listed below.

Mr. Trace Atkinson (via Certified Mail, Return Receipt Requested)  
Law Offices of Atkinson & Associates, LLC  
General Counsel  
1199 Hudson- Martin Rd  
Ellijay, Georgia 30536

Melba Table (via EPA's internal mail)  
Pesticides Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Robert Caplan (via EPA's internal mail)  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Date: 8-16-12

  
\_\_\_\_\_  
Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9511