

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

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**U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR**

In the Matter of

Nature's Best, LLC

Respondent

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Docket No. FIFRA-07-2013-0007

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Nature's Best, LLC (Respondent) have agreed to a settlement of this action before filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Sections 3 and 12 of FIFRA, 7 U.S.C. §§ 136a and 136j.

Section II

Parties

3. The Complainant, by delegation from the Administrator of the EPA and the Regional Administrator, EPA, Region 7, is the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7.

4. The Respondent is Nature's Best, LLC, a pesticide distributor located at 311 South Main Street, P.O. Box 325, in Inwood, Iowa 51240.

Section III

Statutory and Regulatory Background

5. Congress enacted FIFRA in 1947 and amended it in 1972 and in 1996. The general purpose of FIFRA is to provide the basis for regulation, sale, distribution, and use of pesticides in the United States. 7 U.S.C. 136 et seq.

6. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. §152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this statute, except in certain circumstances which are not relevant to this case.

7. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

8. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines the term "person" to mean any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

9. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term "to distribute or sell" to mean "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.”

10. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” to include “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest,” and “any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.”

11. The term “plant regulator” is defined, in pertinent part, under Section 2(v) of FIFRA, 7 U.S.C. § 136(v), as “any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof...”

12. 40 C.F.R. § 152.15(a) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) that the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) that the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide.

13. 40 C.F.R. § 152.15(c) states that a substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

14. 40 C.F.R. § 152.25(f) lists the conditions under which certain products may be exempt from the requirements of FIFRA as minimum risk pesticides.

15. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states it shall be unlawful for any person to distribute or sell any pesticide which is misbranded.

16. Section 2(q)(D) of FIFRA, 7 U.S.C. § 136(q)(D), states that a pesticide is misbranded if its label does not bear a registration number assigned under Section 7 of FIFRA, 7 U.S.C. § 136e, to each establishment in which it was produced.

17. Section 2(q)(E) of FIFRA, 7 U.S.C. § 136(q)(E), states that a pesticide is misbranded if any word, statement, or other information required by or under authority of FIFRA to appear on the label or labeling is not prominently placed thereon.

Section IV

General Factual Allegations

18. Respondent is, and at all times referred to herein was, a “person” within the meaning of FIFRA.

19. At all times relevant to the allegations herein, Respondent owned or operated a place of business (the “facility”) located at 311 South Main Street, Inwood, Iowa 51240.

20. On or about August 27, 2011, the South Dakota Department of Agriculture (SDDA) conducted an investigation of Respondent and documented that the products Pam & Sam and Nature's Best 202 were being marketed as pesticides by Respondent. The SDDA issued a Notice of Warning to Respondent on or about October 19, 2011. Subsequently, the SDDA forwarded information from its investigation to the EPA.

21. On or about October 11, 2011, a representative of the Iowa Department of Agriculture and Land Stewardship (IDALS) inspected Respondent's facility pursuant to Section 9 of FIFRA, 7 U.S.C § 136g. During the inspection, the pesticide investigator documented

multiple products being marketed by Respondent with pesticidal claims and/or active pesticidal ingredients.

22. On or about October 17, 2011, IDALS forwarded the October 11, 2011 inspection report to the EPA, which reviewed the inspection report to determine Respondent's compliance with FIFRA and its implementing regulations.

23. On April 5, 2012, IDALS also notified the EPA of multiple products listed on Respondent's website (<http://www.naturesbestsupply.com/>) that were being marketed as pesticides, including the products Fruit Set Foliar, Growth Plus, Jackpot Plus, and Vita Gro Foliar. The EPA subsequently documented multiple other pesticide products offered for sale by Respondent, including the products Icelandic Kelp, Bloom Plus, Probiotic ALC Concentrate, K-35 Plus, Luna Cal 50 Plus, EarthStar, Crop Recycle, Foundation, Bonus Plus Foliar, Surplex, and Deflex.

24. On April 6, 2012, IDALS issued a Notice of Warning to Nature's Best president, Mr. Roger TeSlaa. The Notice of Warning addressed potential violations under Iowa law that arose from the distribution of multiple unregistered pesticide products.

25. The label for the product Bug Zap that was collected by IDALS on or about October 11, 2011, states, in part:

- (i) "Bug Zap"
- (ii) "A natural approach for the control of insects in crops!"
- (iii) "for the use of controlling aphids, spider mites, weevil, hoppers, & etc.
in soybeans and alfalfa."

26. The label for the product Nature's Best Solution 202 that was collected by IDALS on or about October 11, 2011, states, in part:

- (i) "Plant Defense and Stimulation"
- (ii) "Organic Kelp"
- (iii) "Flower Stimulator"
- (iv) "Natural Plant Defense"
- (v) "Plant Growth Supplement"

27. A flyer collected by the SDDA advertising Respondent's product PAM & SAM states, in part:

- (i) "PAM & SAM Decreases Insect pest populations, Pathogenic bacteria numbers, and Fusarium and other harmful molds and fungus"
- (ii) "PAM & SAM enhances: . . . crop immune-system resistance to insect pests"
- (iii) "disease-suppressing"
- (iv) "In a potato field treated by Nature's Best Solution 202 which includes PAM & SAM, Colorado potato beetle numbers decreased by 70% after just one application"
- (v) "corn seed treated with Seed Treat," a Nature's Best product formulated with PAM & SAM, displayed emergence two days ahead of other seed treatment products, and greater tap root and feeder-root growth"

28. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Fruit Set Foliar with the following claims:

- (i) "Stimulates and supports a healthy reproductive cycle [in the plant] and assists in retaining the bloom set"

- (ii) "contains kelp"
- (iii) "will nurture and protect the plant form [sic] disease during this critical phase of growth insuring optimum results"

29. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Growth Plus with the following claims:

- (i) "Biocontrol agents designed to protect the plant from a wide range of bacterial and fungal diseases"

30. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Jackpot Plus with the following claims:

- (i) "Designed to move stored nutrition from leaves to seed or fruit, creating a better seed size and improved quality with faster maturity"
- (ii) "protect[s] the plants from late season bacterial and fungal diseases"

31. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Vita Gro Foliar with the following claims:

- (i) "Stimulates the growth cycle from seedling to pre-bloom"
- (ii) "formulated to protect against disease and insect invasion"

32. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Icelandic Kelp with the following claims:

- (i) "Unheated kelp has the highest levels of natural plant growth hormones as well as generous amounts of auxins and cytokines [sic]"

33. The fact sheet for the product Bloom Plus that was collected by IDALS on or about October 11, 2011, states, in part:

- (i) "Product stimulates bloom cycle"
- (ii) "helps to maintain the blossoms the plant has produced"
- (iii) "Soluble Kelp has natural Plant growth regulators"
- (iv) "Bloom Plus has a Guardian biota that protects the leaves from invading pathogenic microbes"
- (v) "The Spirulina (Cyanobacteria) assists in enhancing the Photosynthetic rate of plants"
- (vi) "with two kinds of Kelp to stimulate Bloom set and stimulate Bud break"
- (vii) "Cyanobacteria and Biocontrol agent to control a wide range of bacterial and fungal diseases"
- (viii) "kelp has plant growth hormones such as gibberellins, auxin and cytonines [sic]"

34. On or about September 21, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Bloom Plus with the following claims:

- (i) "This product is designed to set and save blooms from aborting by tempering the nitrogen temporarily to keep the plant in the bloom stage until bloom is secure"

- (ii) "The addition of diverse 1st generation lab cultures is designed to create a prophylactic barrier on the leaf surface"

35. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product Probiotic ALC Concentrate with the following claims:

- (i) "contains a wide range of powerful inoculums [...] to fight soil born [sic] disease"

36. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product K-35 Plus with the following claims:

- (i) "kelp strengthens the plant fiber"
- (ii) "easily absorbed nutrients also makes K-35 leaf friendly, drip or foliar application"

37. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product Luna Cal 50 Plus with the following claims:

- (i) "kelp base"
- (ii) "strengthening to the root frame"
- (iii) "easy to use for fertigation, drip tape or foliar nutrient application"

38. On or about September 4, 2012, Respondent's Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product EarthStar with the following claims:

- (i) “brings the plant into a rapid growth mode stimulating root frame development and a strong seedling stage”

39. On or about September 4, 2012, Respondent’s Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product Crop Recycle with the following claims:

- (i) “greatly reduces rotting stubble, the host environment for pathogenic activity”

40. On or about September 21, 2012, Respondent’s Internet site at <http://www.naturesbestsupply.com/soil.html> advertised the product Foundation with the following claims:

- (i) “this product will promote the formation of a healthy viable root mass and protect against disease pressures”

41. On or about September 21, 2012, Respondent’s Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Bonus Plus Foliar with the following claims:

- (i) “will optimize the important final growth stage”
- (ii) “assists in the translocation of plant sugars from the leaf blade to the fruiting body”
- (iii) “formulated to slow down excess nitrogen activity allowing the energy to move to the fruiting body for best results at this phase of growth”
- (iv) “will protect the plant against any last phase disease”

42. On or about September 30, 2011, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Surplex with the following claims:

- (i) "Insect Killer"
- (ii) "concentrated liquid insecticide works on all sucking, biting, insects, slugs and larvae"
- (iii) "spray must penetrate the underside of leaf and on the bug to kill it"
- (iv) "also works well as a repellent"
- (v) "Spray at the first appearance of damaging insects"

43. On or about September 30, 2011, Respondent's Internet site at <http://www.naturesbestsupply.com/crops.html> advertised the product Deflex with the following claims:

- (i) "bactericide and fungicide product"
- (ii) "has specific micro organisms that out compete and consume pathogenic anerobes, such as bacteria blights and fungal infections"
- (iii) "protects the leaves and stems with beneficial aerobes that ikll invading pathogens while stimulating the plants [sic] immune system creating an allopathic, allosteric barrier against foliar and soil born diseases"

Violations

44. The Complainant hereby states and alleges that Respondent has violated FIFRA and federal regulations promulgated thereunder, as follows:

Counts 1-3

45. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

46. Bug Zap is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

47. Bug Zap is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

48. The label for Bug Zap does not bear an EPA-assigned registration number for the establishment in which it was produced.

49. On or about November 2, 2010, and on or about September 1, 2011, Respondent distributed or sold a quantity of the unregistered pesticide Bug Zap.

50. On or about October 11, 2011, Respondent offered for sale the unregistered pesticide Bug Zap.

51. Each occasion of Respondent's distribution or sale, holding for distribution or sale, or offering for sale or distribution of the unregistered pesticide Bug Zap constitutes a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 4

52. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

53. Nature's Best Solution 202 is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

54. Nature's Best Solution 202 is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

55. The label for Nature's Best Solution 202 does not bear an EPA-assigned registration number for the establishment in which it was produced.

56. On or about October 11, 2011, and on or about April 2, 2012, Respondent offered for sale on the Internet the product Nature's Best Solution 202.

57. Respondent's offering for sale of the unregistered pesticide Nature's Best Solution 202 constitutes a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 5

58. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

59. Pam & Sam is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

60. Pam & Sam is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

61. On or about April 2, 2012, Respondent offered for sale on the Internet the product Pam & Sam.

62. Respondent's offering for sale of the unregistered pesticide Pam & Sam constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 6

63. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if

fully stated herein.

64. Fruit Set Foliar is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

65. Fruit Set Foliar is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

66. On or about April 2, 2012, and on or about May 3, 2012, Respondent offered for sale on the Internet the following products: Fruit Set Foliar.

67. Each occasion of Respondent's offering for sale of Fruit Set Foliar constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 7

68. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

69. Growth Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

70. Growth Plus is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

71. On or about April 2, 2012, and on or about May 3, 2012, Respondent offered for sale on the Internet the product Growth Plus.

72. Each occasion of Respondent's offering for sale of Growth Plus constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 8

73. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

74. Jackpot Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
75. Jackpot Plus is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
76. On or about April 2, 2012, and on or about May 3, 2012, Respondent offered for sale on the Internet the product Jackpot Plus.
77. Each occasion of Respondent's offering for sale of Jackpot Plus constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 9

78. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.
79. Vita Gro Foliar is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
80. Vita Gro Foliar is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
81. On or about April 2, 2012, and on or about May 3, 2012, Respondent offered for sale on the Internet the product Vita Gro Foliar.
82. Each occasion of Respondent's offering for sale of Vita Gro Foliar constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 10

83. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

84. Icelandic Kelp is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
85. Icelandic Kelp is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
86. On or about May 3, 2012, Respondent offered for sale on the Internet the product Icelandic Kelp.
87. Each occasion of Respondent's offering for sale of the unregistered pesticide Icelandic Kelp constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 11

88. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.
89. Bloom Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
90. Bloom Plus is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
91. On or about September 4, 2012, Respondent offered for sale on the Internet the product Bloom Plus.
92. Each occasion of Respondent's offering for sale of the unregistered pesticide Bloom Plus constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 12

93. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

94. Probiotic ALC Concentrate is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

95. Probiotic ALC Concentrate is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

96. On or about September 4, 2012, Respondent offered for sale on the Internet the product Probiotic ALC Concentrate.

97. Each occasion of Respondent's offering for sale of the unregistered pesticide Probiotic ALC Concentrate constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 13

98. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

99. K-35 Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

100. K-35 Plus is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

101. On or about May 3, 2012, Respondent offered for sale on the Internet the product K-35 Plus.

102. Each occasion of Respondent's offering for sale of the unregistered pesticide K-35 Plus constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 14

103. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

104. Luna Cal 50 Plus is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

105. Luna Cal 50 Plus is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

106. On or about September 4, 2012, Respondent offered for sale on the Internet the product Luna Cal 50 Plus.

107. Each occasion of Respondent's offering for sale of the unregistered pesticide Luna Cal 50 Plus constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 15

108. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

109. EarthStar is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

110. EarthStar is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

111. On or about September 4, 2012, Respondent offered for sale on the Internet the product EarthStar.

112. Each occasion of Respondent's offering for sale of the unregistered pesticide EarthStar constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 16

113. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

114. Crop Recycle is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

115. Crop Recycle is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

116. On or about September 4, 2012, Respondent offered for sale on the Internet the product Crop Recycle.

117. Each occasion of Respondent's offering for sale of the unregistered pesticide Crop Recycle constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 17

118. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

119. Foundation is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

120. Foundation is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

121. On or about September 21, 2012, Respondent offered for sale on the Internet the product Foundation.

122. Each occasion of Respondent's offering for sale of the unregistered pesticide Foundation constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 18

123. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

124. Bonus Plus Foliar is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).

125. Bonus Plus Foliar is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

126. On or about September 21, 2012, Respondent offered for sale on the Internet the product Bonus Plus Foliar.

127. Each occasion of Respondent's offering for sale of the unregistered pesticide Bonus Plus Foliar constitutes a violation of Sections 3(a) and 12(a)(1)(A) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A).

Count 19

128. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

129. Surplex is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
130. Surplex is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
131. The label for Surplex fails to identify the name and percentage (by weight) of each active ingredient as required to meet the exemption from FIFRA requirements pursuant to 40 C.F.R. § 152.25(f).
132. The label for Surplex lists, *inter alia*, as active ingredients potassium bicarbonate, diatomaceous earth, and mineral oil, which are not included in the list of active ingredients that may render a product eligible for exemption as a minimum risk pesticide pursuant to 40 C.F.R. § 152.25(f).
133. The label for Surplex does not bear an EPA-assigned registration number for the establishment in which it was produced.
134. On or about September 30, 2012, Respondent offered for sale on the Internet the product Surplex.
135. Each occasion of Respondent's offering for sale of the unregistered pesticide Surplex constitutes a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 20

136. The facts stated in Paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.

137. Deflex is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), 40 C.F.R. §§ 152.3 and 152.15(a).
138. Deflex is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).
139. The label for Deflex fails to identify the name and percentage (by weight) of each active ingredient as required to meet the exemption from FIFRA requirements pursuant to 40 C.F.R. § 152.25(f).
140. The label for Deflex lists, *inter alia*, potassium bicarbonate, sulfur, mineral oil, zinc oxide, tea tree, and paul de arco [sic], which are not included in the list of active ingredients that may render a product eligible for exemption as a minimum risk pesticide pursuant to 40 C.F.R. § 152.25(f).
141. The label for Deflex does not bear an EPA-assigned registration number for the establishment in which it was produced.
142. On or about September 30, 2012, Respondent offered for sale on the Internet the product Deflex.
143. Each occasion of Respondent's offering for sale of the unregistered pesticide Deflex constitutes a violation of Sections 3(a) and 12(a)(1)(A) and (E) of FIFRA, 7 U.S.C. §§ 136a(a) and 136j(a)(1)(A) and (E).

Count 21

144. The facts stated in paragraphs 18 through 43 are realleged and incorporated as if fully stated herein.
145. Respondent engaged in the production of the pesticide products Bug Zap and Nature's Best Solution 202.

146. At the time it engaged in the production of the pesticide products Bug Zap and Nature's Best Solution 202, Respondent was not registered as a pesticide producing establishment pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

147. Respondent violated Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), by engaging in production of the pesticide products Bug Zap and Nature's Best Solution 202 without registration as a pesticide-producing establishment pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e.

Section V

Consent Agreement

148. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

149. Respondent neither admits nor denies the factual allegations set forth above.

150. Respondent waives its right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

151. Respondent and the EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

152. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

153. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

154. By signing this CAFO, Respondent certifies that it is presently in compliance with FIFRA, 7 U.S.C. § 136 et seq., and all regulations promulgated thereunder, and that it is no longer selling, distributing, or offering for sale or distribution any unregistered products that are required to be registered with the EPA by the statute.

155. The effect of settlement described in paragraph 157 below is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in the preceding paragraph.

156. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.

157. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of FIFRA alleged in this document. Complainant reserves the right to take any enforcement action with respect to any other violations of FIFRA or any other applicable law.

Late Payment Provision

158. Under 31 U.S.C. § 3717, the 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. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an

additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Section VI

Final Order

Pursuant to Section 14 of FIFRA, as amended, 7 U.S.C. §136f, and according to the terms of the Consent Agreement set forth above, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of Nineteen Thousand Six Hundred and Sixty-Nine Dollars (\$19,669.00) plus interest for eighteen months of One Hundred Thirty-Nine Dollars and Twenty-Eight Cents (\$139.28). The civil penalty will be paid in six (6) quarterly payments of Three Thousand Three Hundred and One Dollars and Thirty-Eight Cents (\$3,301.38) each. The first payment must be received at the address below on or before 30 days after the effective date of the Final Order. Each succeeding payment will be due 90 days after the previous payment. Each payment shall identify Respondent by name and docket number and shall be by online payment, certified or cashier's check, or wire transfer, as directed below.

2. Payment of the penalty may be submitted on-line at www.pay.gov by entering "SFO 1.1" in the "Search Public Forms" field. Open the on-line form and complete required fields to complete payment. Respondent shall print a copy of the payment receipt and mail a copy of the receipt to the contacts listed below.

3. Payments by certified or cashier's check shall be made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

4. Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

5. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and

Chris R. Dudding, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

6. Respondent and Complainant shall each bear its own costs and attorneys' fees incurred as a result of this matter.

7. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

8. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for the EPA, Region 7. Unless otherwise stated, all time periods stated in this CAFO shall be calculated in calendar days from such date.

**RESPONDENT
NATURE'S BEST, LLC**


Date: 6-28-13

By: 


Roger-Je SLAA mgr
Print Name Title

COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7-2-2013


Karen Fluornoy
Director
Water, Wetlands and Pesticides Division

Date: 7/2/13


Chris R. Dudding
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: July 9, 2013 Karina Borromeo
KARINA BORROMEO
Regional Judicial Officer

IN THE MATTER OF Nature's Best, LLC, Respondent
Docket No. FIFRA-07-2013-0007

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

dudding.chris@epa.gov

Copy by email and First Class Mail to Respondent:

Mr. Roger TeSlaa
President
Nature's Best, LLC
311 South Main
Inwood, Iowa 51240

Dated: 7/9/13



Kathy Robinson
Hearing Clerk, Region 7