

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kam Tham  
Name of Case Attorney

9/18/13  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number FIFRA-01-2013-0039

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Marc L. Badia  
Pharmasol Corporation  
1 Norfolk Avenue, Suite 1  
South Easton, MA 02375

Total Dollar Amount of Receivable \$ 4,455 Due Date: 10/18/13

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

1<sup>ST</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1 – New England  
5 Post Office Square - Suite 100  
Boston, Massachusetts 02109-3912

RECEIVED

SEP 18 2013

EPA ORC WS  
Office of Regional Hearing Clerk

**BY HAND**

September 18, 2013

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: *In the Matter of Pharmasol Corporation*  
Docket No. FIFRA-01-2013-0039

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order settling the matter referenced above pursuant to 40 C.F.R. § 22.18(b) and a certificate of service.

Please contact me at (617) 918-1872 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Kan Tham".

Kan Tham, FIFRA Enforcement Coordinator  
U.S. Environmental Protection Agency  
Region 1 (Mail Code OES 05-4)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Enclosures

cc: Marc L. Badia, President, Pharmasol Corporation  
Howard Katzen, Dir. of Project Management, Pharmasol Corporation  
Sharon Hayes, Manager, Toxics and Pesticides Unit, U. S. EPA, Region 1  
Lee Corte-Real, MA Department of Agricultural Resources

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 (NEW ENGLAND)

RECEIVED  
SEP 18 2013  
EPA ORC  
Office of Regional Hearing Clerk

In The Matter Of: )  
)  
Pharmasol Corporation )  
1 Norfolk Avenue, Suite 1 )  
South Easton, MA 02375 )  
)  
Respondent. )  
)

Docket No. FIFRA-01-2013-39

CONSENT AGREEMENT  
and  
FINAL ORDER

INTRODUCTION

1. The United States Environmental Protection Agency-Region 1 ("EPA"), as Complainant, and Pharmasol Corporation ("Pharmasol" or "Respondent"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondent of EPA's intention to assess a penalty against Pharmasol for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Part 167, Subpart E. The CAFO also informs Respondent of its right to request a hearing.

2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136l(a). Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.

3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

### **PRELIMINARY STATEMENT**

4. Respondent is a corporation organized under the laws of the Delaware; has its principal place of business at 1 Norfolk Avenue, South Easton, MA, at which it operates a pesticide-producing (the "Facility"); and is a "person" as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

5. Pursuant to Sections 7(a) and (b) of FIFRA, 7 U.S.C. §§ 136e(a) and (b), and 40 C.F.R. § 167.20, on or about August 29, 1988, Respondent registered the Facility as a pesticide-producing establishment. EPA's national office in Washington, DC ("EPA Headquarters") assigned the Office of Pesticide Program (OPP) company number 33590. Subsequently, EPA Region 1 assigned the EPA Establishment Number 33590-MA-003 to the Facility.

6. Section 7(c)(1) of FIFRA, 7 U.S.C. § 136e(c)(1), and the implementing regulations codified at 40 C.F.R. Part 167, Subpart E, require any producer operating a registered establishment to report to EPA the types and amounts of each pesticide product that it is currently producing, that it produced during the past year, and that it sold or distributed during the past year.

7. Under 40 C.F.R. § 167.85(d), a producer is responsible for obtaining, completing and reporting this information each year, even if it has not produced any pesticidal product for the reporting year. The information must be submitted to EPA, on

a form available from EPA Headquarters, on or before March 1 of the year subsequent to the calendar year which is the subject of the report.

8. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer or other distributor for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by EPA's 2008 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701, this amount was increased to \$6,500 for violations occurring after March 15, 2004, and to \$7,500 for violations occurring after January 12, 2009.

9. On or about September 21, 2011, EPA issued a Notice of Warning ("NOW") [No. FIFRA-NOW-2011-008] to Respondent, pursuant to Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), for failure to file its annual pesticide production report for calendar year 2010, as required by Section 7 of FIFRA, on or before the March 1, 2011 due date.

10. On or about September 28, 2011, EPA conducted a follow-up inspection of the Facility. During the inspection, EPA personnel reviewed the requirements for filing annual pesticide production reports with Respondent.

11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, Respondent consents to the terms of this CAFO.



12. Respondent acknowledges that it has been informed of the right to request a hearing and hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO. Respondent also waives its right to appeal the Final Order accompanying the Consent Agreement.

13. By signing this CAFO, Respondent certifies that it is presently operating in compliance with Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and has fully addressed the violations alleged by EPA herein.

#### **EPA FINDINGS**

14. EPA finds, based on its investigation of facts and circumstances underlying Pharmasol's participation as an owner or operator of a pesticide-producing establishment, that Respondent violated Section 7(c) of FIFRA, as further described.

15. During calendar year 2012, the Facility was registered with EPA as a pesticide-producing establishment under Section 7(b) of FIFRA, 7 U.S.C. § 136e(b), and 40 C.F.R. Part 167.

16. EPA Headquarters mails annual reminder notices to registered pesticide-producing establishments, including Respondent's Facility, of the FIFRA requirement to submit a production report. These reminders are mailed at least two months in advance of the March 1 reporting deadline. The reminder notices are sent as a courtesy to registered establishments, as there is no statutory or regulatory requirement for EPA to do so.

17. Notwithstanding the March 1, 2013 due date, the reminder notices from EPA, the inspection, and issuance of the NOW, as described in Paragraphs 9, 10 and 16, Respondent did not timely submit its pesticide production report for calendar year 2012.

18. On or about June 7, 2013, EPA issued an Opportunity to Show Cause to Respondent; noting the missing production report for calendar year 2012. Respondent submitted the report to EPA on or about June 15, 2013, 106 days after the March 1 due date.

19. Respondent's failure to submit the required information to EPA for calendar year 2012 on or before March 1, 2013 constitutes a violation of Section 7(c)(1) of FIFRA and 40 C.F.R. Part 167, Subpart E. Such failure is unlawful pursuant to Section 12(a)(2)(L) of FIFRA and a violation for which penalties may be assessed pursuant to Section 14(a) of FIFRA.

#### **TERMS OF SETTLEMENT**

20. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, EPA's May 2010 "Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements" (the "Penalty Policy"), the Monetary Penalty Inflation Adjustment Rule promulgated in accordance with the DCIA and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$4,455 in settlement of the violations alleged herein.

21. Respondent shall pay the penalty of \$4,455 within thirty (30) days of the effective date of the Final Order.

22. Respondent shall make payment by submitting a bank or certified check, to the order of the "Treasurer, United States of America" in the amount of \$4,455 to:

U.S. EPA-Region 1  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

and shall provide copies of the check to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (Mail Code ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and:

Kan S. Tham, FIFRA Enforcement Coordinator  
U.S. Environmental Protection Agency  
Region 1 (Mail Code OES 05-4)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Respondent shall include the case name and docket number (*In re: Pharnasol Corporation*, FIFRA-01-2013-0039) on the face of the check.

23. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).



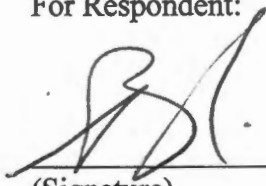
24. The civil penalty due and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

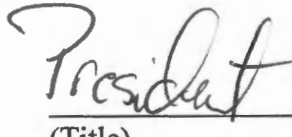
25. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA, for the specific violations alleged in this CAFO. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

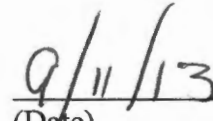
26. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives its right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

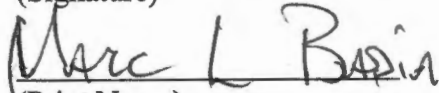
27. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

For Respondent:

  
\_\_\_\_\_  
(Signature)

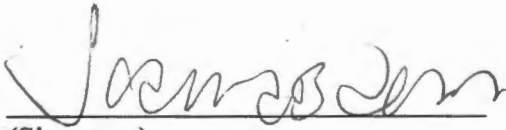
  
\_\_\_\_\_  
(Title)

  
\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
(Print Name)

Pharnasol Corporation  
1 Norfolk Avenue, Suite 1  
South Easton, MA 02375

For EPA Region 1:

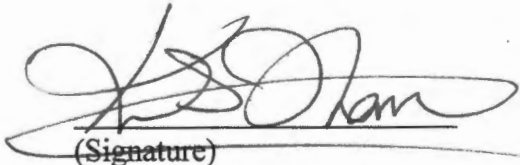


(Signature)

Joanna B. Jerison, Legal Enforcement Manager  
Office of Environmental Stewardship  
EPA-Region 1

9/16/13  
(Date)

and:



(Signature)

Kan Tham, FIFRA Enforcement Coordinator  
Toxics and Pesticides Unit  
Office of Environmental Stewardship  
EPA-Region 1

9/13/2013  
(Date)

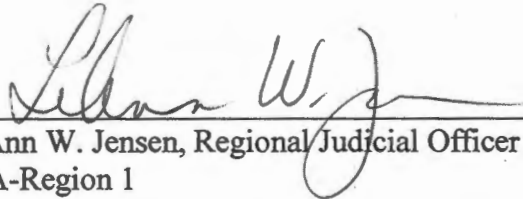
Of Counsel:

Karen McGuire, Manager  
Regulatory Legal Office  
Office of Environmental Stewardship  
EPA-Region 1

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent, Pharmasol Corporation, is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

9/17/13  
(Date)

  
\_\_\_\_\_  
LeAnn W. Jensen, Regional Judicial Officer  
EPA-Region 1

**CERTIFICATE OF SERVICE**

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER (Docket No. FIFRA-01-2013-0039) was sent to the following persons, in the manner specified on the date below:

Original and one copy  
hand delivered:

Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Sq., Suite 1100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

Copy, via Certified Mail,

Marc L. Badia, President  
Pharnasol Corporation  
One Norfolk Avenue  
Easton, MA 02375

Copy, via First Class Mail,

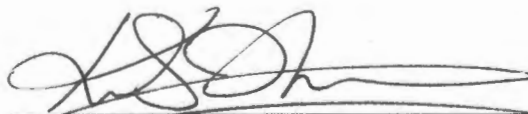
Howard Katzen, Dir. of Project Management  
Pharnasol Corporation  
One Norfolk Avenue  
Easton, MA 02375

Copy, via First Class Mail,

Lee Corte-Real, Director  
Massachusetts Department of Agricultural Resources  
Division of Corp Inspectional Services and Pest Management  
250 Causeway Street  
Suite 500  
Boston, MA 02114-2151

Date:

Sep 18, 2013



Kan S. Tham, FIFRA Enforcement Coordinator  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region I  
5 Post Office Sq., Suite 100  
Mail Code: OES05-4  
Boston, MA 02109-3912  
tel: (617) 918-1872  
email: tham.kan@epa.gov