

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**



\_\_\_\_\_  
In re: )

Makhteshim Agan of North )  
America, Inc., d/b/a ADAMA )  
3120 Highwoods Blvd., Suite 100 )  
Raleigh, NC 27604 )

Respondent )  
\_\_\_\_\_

) Docket No. FIFRA-HQ-2016-5006

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.<sup>1</sup>

Date:

5/5/2016

  
\_\_\_\_\_  
Mary Beth Ward  
Environmental Appeals Judge

\_\_\_\_\_  
<sup>1</sup> The three-member panel ratifying this matter is composed of Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Makhteshim Agan of North America Inc., d/b/a ADAMA, Docket No. FIFRA-HQ-2016-5006, were filed and copies of the same were mailed to the parties as indicated below:

**Via Interoffice Mail:**

Susan Shinkman, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (Mail Code 2241A)  
Washington, DC 20460

Brian T. Dyer  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW (Mail Code 2249A)  
Washington, DC 20460

**Via U.S. Certified Mail:**

Tracy Heinzman  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006



Annette Duncan, Secretary  
U.S. Environmental Protection Agency  
Environmental Appeals Board

Dated: MAY - 5 2016 \_\_\_\_\_

2016 APR 26 PM 3:06

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD  
WASHINGTON, D.C.

<i>In the Matter of:</i>	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Makhteshim Agan of North	)	
America, Inc., d/b/a ADAMA	)	FEDERAL INSECTICIDE, FUNGICIDE,
3120 Highwoods Blvd., Suite 100	)	AND RODENTICIDE ACT
Raleigh, North Carolina 27604	)	
	)	Docket No. FIFRA-HQ-2016-5006
Respondent	)	
_____	)	

**CONSENT AGREEMENT**

Complainant, United States Environmental Protection Agency ("EPA") and Respondent, Makhteshim Agan of North America, Inc., d/b/a ADAMA ("ADAMA"), agree to this action and consent to the entry of this Consent Agreement and Final Order ("CAFO").

**I. NATURE OF ACTION**

1. This is a civil administrative action instituted under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA or the "Act"), as amended, 7 U.S.C. § 136l(a) and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R Part 22. This action imposes civil penalties pursuant to Section 14(a) of FIFRA.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R § 22.18, and desire to settle this action. Accordingly, before any testimony has been taken and without any admission of violation, or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CAFO. Respondent hereby agrees to comply with the terms of this CAFO.

**II. THE PARTIES**

3. Gregory Sullivan, Acting Director, Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative actions brought pursuant to Section 14(a) of FIFRA.

4. Respondent is a corporation incorporated in North Carolina and doing business in Raleigh, North Carolina, with revenues in excess of \$10,000,000 for the 2015 calendar year.

### **III. PRELIMINARY STATEMENT**

5. Respondent certifies that it is in full compliance with respect to the violations alleged in this Consent Agreement.
6. Respondent stipulates that Complainant has jurisdiction over the subject matter of this consent agreement.
7. Respondent waives any defenses it might have as to venue and jurisdiction.
8. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent waives its right to contest the allegations herein, its right to appeal the Final Order, and its right to request a judicial or administrative hearing on any issue of law or fact set forth in, and resolved by, this Consent Agreement.
9. Respondent neither admits nor denies the allegations and determinations set forth in Section V of this Consent Agreement.

### **IV. STATUTORY AND REGULATORY BACKGROUND**

10. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as “any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”
11. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” 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 micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section [25(c)(1) of FIFRA].” *See also* 40 C.F.R. § 152.5.
12. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide,” in part, as “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” *See also* 40 C.F.R. § 152.15.
13. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines “to distribute or sell” as “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.”

14. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), provides, subject to certain exceptions that are not relevant in this case, that no “person may distribute or sell . . . a pesticide that is not registered under [FIFRA].”
15. Section 3(c)(1) of FIFRA, 7 U.S.C. § 136a(c)(1), provides that each applicant for registration shall file a statement in support of its registration claims that includes, among other things, a full description of tests made and the results thereof upon which the claims are based.
16. FIFRA’s implementing regulations require an applicant for pesticide registration to submit materials required under FIFRA section 3(c)(1)(F) to enable the EPA to make a determination required by FIFRA section 3(c)(5)(B) that use of the pesticide will not generally cause unreasonable adverse effects on the environment. 40 C.F.R. § 152.50(f)(1).
17. Section 3(c)(5) of FIFRA, 7 U.S.C. § 136a(c)(5), provides that the EPA can only register a pesticide if the Administrator determines that its use will not cause unreasonable adverse effects on the environment.
18. These regulations also require that “[a]n applicant shall furnish with his application for registration any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA sec. 6(a)(2) if the product were registered.” 40 C.F.R. § 152.50(f)(3).
19. Section 6(a)(2) of FIFRA, 7 U.S.C. § 136d(a)(2), provides that if at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment, the registrant shall submit such information to the Administrator.
20. The EPA’s “Reporting Requirements for Risk/Benefit Information” set forth at 40 C.F.R. Part 159, Subpart D, provide that “[c]ompliance with this part will satisfy a registrant’s obligations to submit additional information pursuant to section 6(a)(2) [of FIFRA] and will satisfy an applicant’s obligation to submit additional information pursuant to § 152.50(f)(3) of this chapter.” 40 C.F.R. § 159.152(c).
21. The EPA’s regulations provide further that a registrant is required to report to the EPA “adverse effects” information that includes: toxicological and ecological studies; discontinued studies; human epidemiological and exposure studies; information on pesticides in or on food, feed or water; metabolites, degradates, contaminants, and impurities; toxic or adverse effect incident reports; and failure of performance information, as described in 40 C.F.R. §§ 159.165 through 159.188.
22. Pursuant to 40 C.F.R. § 159.195(a), a registrant is required to report to the EPA information other than that described in 40 C.F.R. §§ 159.165 through 159.188 “if the

registrant knows, or reasonably should know, that if the information should prove to be correct, the EPA might regard the information alone or in conjunction with other information about the pesticide as raising concerns about the continued registration of a product or about the appropriate terms and conditions of the registration of a product.”

23. The EPA regulations at 40 C.F.R. § 152.50(i), require that when the proposed labeling of a pesticide bears instructions for use on food or feed crops, a registrant must submit a statement indicating whether residues are authorized by a tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. § 346a(a). If not, the registrant must submit a petition for establishing an appropriate tolerance.
24. Section 408(a)(1) of the FFDCA, 21 U.S.C. § 346a(a)(1), provides that any pesticide chemical residue in food is unsafe unless the quantity of the pesticide chemical residue is within the limits of an established tolerance or an exemption from the requirement of a tolerance for those residues is in effect. The term food includes both raw agricultural commodities and processed foods. *Id.*
25. Section 408(b)(1) of the FFDCA, 21 U.S.C. § 346a(b)(1), authorizes the EPA to issue regulations establishing general procedures and requirements for establishing, modifying, or revoking pesticide tolerances. Those regulations are found at 40 C.F.R. Part 180.
26. The EPA’s regulations describe raw agricultural commodities to include fresh fruits and vegetables in their raw or natural state, but does not include foods that have been processed, fabricated, or manufactured by cooking, freezing, dehydrating, or milling. 40 C.F.R. § 180.1(d).
27. Section 201(gg) of the FFDCA, 21 U.S.C. § 321(gg), and the EPA’s regulations at 40 C.F.R. § 180.1(n)(2) define “processed food” to mean “any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling.”
28. Section 201(q)(1) of the FFDCA, 21 U.S.C. § 321(q)(1), and the EPA’s regulations at 40 C.F.R. § 180.1(i) define “pesticide chemical” to mean, *inter alia*, “any substance that is a pesticide within the meaning of [FIFRA] . . . including all active and inert ingredients of such pesticide.”
29. Section 201(q)(2) of the FFDCA, 21 U.S.C. 321(q)(2), and the EPA’s regulations at 40 C.F.R. § 180.1(m) define “pesticide chemical residue” to mean “a residue in or on raw agricultural commodity or processed food of — (A) a pesticide chemical; or (B) any other added substance that is present on or in the commodity or food primarily as a result of the metabolism or other degradation of a pesticide chemical.”
30. The EPA’s regulations require petitioners for pesticide tolerances to submit full reports of tests and investigations made with respect to (1) the safety of the pesticide chemical and

- (2) the nature and amount of the pesticide chemical residue that is likely to remain in or on any food. 40 C.F.R. §§ 180.7(b)(5) and (6).
31. The EPA's regulations require that processing data be submitted before the Agency establishes a crop group tolerance. 40 C.F.R. § 180.40(f).
32. Section 408(a) of the FFDCA, 21 U.S.C. § 346a(a), and 40 C.F.R. § 180.1(e) of the EPA's regulations provide that where a pesticide chemical residue tolerance is established for a raw agricultural commodity, a separate tolerance for food processed from that commodity is not required if:
- (a) The pesticide chemical was used on the raw agricultural commodity in conformity with the tolerance (40 C.F.R. § 180.1(e)(1));
  - (b) The pesticide chemical residues have been removed to the extent possible in good manufacturing practice (40 C.F.R. § 180.1(e)(2)); and
  - (c) The concentration of the pesticide chemical residue in the processed food is not greater than the tolerance prescribed for the pesticide chemical residue on the raw agricultural commodity (40 C.F.R. § 180.1(e)(3)).
33. Section 402(a)(2)(B) of the FFDCA, 21 U.S.C. § 342(a)(2)(B), provides that any food that contains any unsafe pesticide chemical residue shall be deemed adulterated and as such is prohibited by section 301(a) of the FFDCA, 21 U.S.C. § 331(a), from being introduced (or delivered for introduction) into interstate commerce.
34. Section 2(bb) of FIFRA, 7 U.S.C. § 136(bb), defines "unreasonable adverse effects on the environment" to mean, "(1) any unreasonable risk to man or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. § 342(a)" (FFDCA).
35. Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), provides that a pesticide is "misbranded" if such pesticide's "labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements under section [3(d) of FIFRA], are adequate to protect health and the environment."
36. Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), provides that a pesticide is "misbranded" if such pesticide's "label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section [3(d) of FIFRA], is adequate to protect health and the environment."

37. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it shall be unlawful for any person in any State to sell or distribute to any person any pesticide that is misbranded.
38. Section 12(a)(2)(B)(ii), 7 U.S.C. § 136j(a)(2)(B)(ii), provides that it is unlawful for any person to refuse to submit any reports required by or under FIFRA section 6(a)(2).
39. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA.
40. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), provides that it shall be unlawful for any person to violate any regulation issued under section 3(a) or 19 of FIFRA.

#### **V. EPA ALLEGATIONS AND DETERMINATIONS**

41. Respondent is a “person” as that term is defined by FIFRA, 7 U.S.C. § 136(s).
42. Respondent is the registrant of Fluensulfone 480EC, a nematicide containing the active ingredient, Fluensulfone, which has been assigned the EPA Registration Number 66222-243. Fluensulfone 480EC was given the alternate brand name “Nimitz.”
43. Fluensulfone 480EC is intended to destroy, repel, or mitigate pests.
44. Fluensulfone 480EC is a “pesticide” as defined by FIFRA, 7 U.S.C. § 136 (u).
45. On September 11, 2014, the EPA approved the registration for the product Fluensulfone 480EC. The registration provided for end-use application on cucurbits and fruiting vegetables, including tomatoes.
46. Concurrently with approving the registration, the EPA established a tolerance for residues of Fluensulfone in or on cucurbits and fruiting vegetables. The EPA did not establish a separate tolerance to cover concentrated residues of Fluensulfone in foods processed from treated raw agricultural commodities, e.g., tomato paste, because the data provided to the EPA by the respondent did not indicate that a tolerance on processed foods might be necessary. 79 Fed. Reg. 56968 (Sept. 24, 2014).
47. On or about February 3, 2015, Health Canada, Government of Canada, informed the EPA that they had received from Respondent a tomato processing study involving Fluensulfone. The study, completed on October 4, 2013 and identified as “Study Number AA120702” (“Study”), showed pesticide chemical residues of Fluensulfone concentrating in tomato paste.

48. The Study was not submitted by Respondent as part of the original registration and tolerance petition application package or as an amendment to that application package prior to the EPA approving the registration on September 11, 2014, as required under section 12(a)(2)(N), 7 U.S.C. 136j(a)(2), and FIFRA's implementing regulations at 40 C.F.R. §§ 152.50(f); 159, Subpart D; and 180.7(b).
49. Tests associated with the Study indicated that the concentration of the pesticide chemical residues for Fluensulfone in tomato paste and other tomato processed products would be greater than the tolerance established by the EPA for residues of Fluensulfone in or on fruiting vegetables.
50. Where residues of Fluensulfone in processed tomato products exceed the established tolerance for residues of Fluensulfone in fruiting vegetables, a separate pesticide tolerance for processed tomato products is required in order for those products not to be considered unsafe or adulterated. 21 U.S.C. § 346a(a) and 40 C.F.R. § 180.1(e)(3).
51. Based on the test data contained in the Study, the EPA issued a Stop Sale, Use, or Removal Order (SSURO) to the Respondent on April 23, 2015, prohibiting the sale, use, or removal of Fluensulfone 480EC.
52. Subsequently, Respondent petitioned for, and was granted, a pesticide tolerance for pesticide chemical residues of Fluensulfone 480EC in tomato paste. 80 Fed. Reg. 56393 (Sept. 18, 2015).
53. On October 5, 2015, the EPA approved an amended FIFRA label for Fluensulfone 480EC, allowing it to be applied on tomatoes intended for processing into tomato paste.

#### **COUNT 1**

54. The allegations of the preceding paragraphs are incorporated herein by reference, as fully set forth below.
55. Respondent was required by FIFRA and its implementing regulations to submit the Study (described above in Paragraph 47) to enable the EPA to make a determination that the use of Fluensulfone 480EC would not generally cause unreasonable adverse effects on the environment.
56. Respondent failed to submit the Study to the EPA as part of its registration package as required by FIFRA §§ 3(a) and 3(c)(5)(B) and by its implementing regulations set forth in 40 C.F.R. § 152.50(i).
57. Respondent's failure to submit the Study to the EPA in compliance with these requirements is a violation of sections 12(a)(2)(N) and (S) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(N) and (S).

**COUNT 2**

58. The allegations of the preceding paragraphs are incorporated herein by reference.
59. Once the pesticide product, Fluorosulfone 480EC was registered, Respondent was obligated under section 6(a)(2) of FIFRA and its implementing regulations at 40 C.F.R. Part 159, Subpart D, to submit this factual information regarding unreasonable adverse effects on the environment to the EPA.
60. Respondent failed to submit the Study (described above in Paragraph 47) to the EPA after the pesticide product Fluensulfone 480EC was registered.
61. Respondent's failure to submit the Study to the EPA in compliance with these requirements is a violation of section 12(a)(2)(B)(ii) of FIFRA, 7 U.S.C. § 136j(a)(2)(B)(ii).

**COUNTS 3 THROUGH 32**

62. The allegations of the preceding paragraphs are incorporated herein by reference, as fully set forth below.
63. Prior to Respondent's receipt of the SSURO described above, Respondent distributed and sold Fluensulfone 480EC with a FIFRA label allowing it to be used on tomatoes and that did not contain directions for use that would prohibit use on tomatoes destined for processing. The label does not provide any other warnings, precautionary language, or relevant caution statements to limit its use to tomatoes not destined for processing.
64. Tests associated with the Study (described above in Paragraph 47) indicate that the use of Fluensulfone 480EC on tomatoes destined for processing would result in pesticide residue levels in tomato paste in exceedance of the tolerance established for non-processed tomatoes.
65. Under section 408(a) of the FFDCA, 21 U.S.C. § 346(a), and 40 C.F.R. § 180.1(e), this exceedance of the tolerance required that Fluensulfone 480EC have a separate tolerance for tomatoes destined to be processed into tomato paste if pesticide chemical residues from that pesticide are not to be considered unsafe.
66. Without the separate tolerance described above, any levels of pesticide chemical residues of Fluensulfone 480EC in tomato paste would be considered to be unsafe, and food with those residues would be considered adulterated under section 402(a)(2)(B) of the FFDCA, 21 U.S.C. § 342(a)(2)(B), and as such, would be prohibited by section 301(a) of the FFDCA, 21 U.S.C. § 331(a), from being introduced (or delivered for introduction) into interstate commerce.

67. Dietary risk presented by adulterated food is inconsistent with the standard in section 408 of the FFDCA and presents an unreasonable adverse effect on the environment as defined at section 2(bb) of FIFRA, 7 U.S.C. § 136(bb).
68. The economic costs posed by any potential seizure of this food or by the imposition of civil penalties for introducing this adulterated food into interstate commerce also presents an unreasonable adverse effect on the environment as defined at section 2(bb) of FIFRA, 7 U.S.C. § 136(bb).
69. Use of Fluensulfone 480EC, as registered without a separate tolerance for pesticide chemical residues of Fluensulfone in tomato paste and without directions for use that would prohibit its use on tomatoes destined for processing, is likely to result in use on tomatoes destined for processing into tomato paste which would be expected to contain Fluensulfone residues that would exceed established tolerances for the raw tomato commodity. Tomato paste containing those excessive residues would be considered adulterated and unsafe pursuant to section 402(a)(2)(B) of the FFDCA, 21 U.S.C. § 342(a)(2)(B).
70. The Fluensulfone 480EC product label contained directions for use on tomatoes but did not contain any restrictions or prohibitions to prevent its use on tomatoes destined for processing. The label also did not contain any warning or precautionary statements that might provide a warning about its use on processing tomatoes could result in unsafe residue levels in tomato paste.
71. Therefore, Fluensulfone 480EC was misbranded in accordance with section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F), because the labeling accompanying the pesticide did not contain directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, were adequate to protect health and the environment.
72. Fluensulfone 480EC was also misbranded in accordance with section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G), because its label did not contain a warning or caution statement which may have been necessary and, if complied with, was adequate to protect health and the environment.
73. Based on information provided by Respondent, the EPA concluded that prior to April 2015, quantities of Fluensulfone 480EC were distributed or sold on thirty (30) separate occasions with misbranded labeling.
74. Each of those distributions or sales of the misbranded pesticide, Fluensulfone 480EC, is a violation of section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

## **VI. TERMS OF SETTLEMENT**

75. Respondent consents to issuance of this Consent Agreement and to its terms, and consents, for the purposes of settlement, to the payment of the civil penalty set forth in Section VII.
76. Respondent's compliance with the terms of this CAFO shall fully settle all civil claims or civil causes for the thirty-two (32) violations alleged in Section V.
77. Compliance with this CAFO shall not be a defense to any subsequent action the EPA may commence pursuant to federal law or regulation for violations occurring after the date of this Consent Agreement, or any violations of FIFRA not alleged in this Consent Agreement that may have occurred prior to the date that this Consent Agreement is fully executed by both Parties.
78. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to, resolve any criminal liability of Respondent.

## **VII. CIVIL PENALTY**

79. Complainant has calculated a civil penalty pursuant to the statutory penalty factors listed in Section 14(a)(3) of FIFRA, 7 U.S.C. §136l(a)(3), and the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (December 2009)("FIFRA ERP").
80. Based upon information provided by Respondent, referenced in Section V, and in accordance with the penalty adjustments allowed under the FIFRA ERP, Complainant has derived a civil penalty of two hundred and sixteen-thousand dollars (\$216,000).
81. The penalty agreed upon by the Parties for settlement purposes is two hundred and sixteen-thousand dollars (\$216,000).
82. Not more than sixty (60) calendar days following execution of the Final Order by the Environmental Appeals Board, Respondent shall either:
  - a) Dispatch a cashier's or certified check payable to the order of the "Treasurer of the United States of America" in the amount of two hundred and sixteen-thousand dollars (\$216,000) and bearing the notation, "Mahkteshim Agan of North America, Inc., d/b/a ADAMA, Civil Penalty Docket No. FIFRA-HQ-2016-5006" to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Docket No. FIFRA-HQ-2016-5006

Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

or

- b) Make an electronic payment by wire transfer in the amount of two hundred and sixteen-thousand dollars (\$216,000) with the notation, "Mahkteshim Agan of North America, Inc., d/b/a ADAMA, Civil Penalty Docket No. FIFRA-HQ-2016-5006," by using the following instructions:

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

83. To ensure a record of compliance with this Consent Agreement, Respondent shall forward a copy of the check or wire transfer to the EPA to the attention of:

Brian Dyer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 2249A)  
Washington, DC 20460-0001

and

Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (Mail Code 1900R)  
Washington, DC 20460-0001

84. If Respondent fails to pay the civil penalty of two hundred and sixteen-thousand dollars (\$216,000) within sixty (60) calendar days of the execution of the Final Order, then Respondent shall pay an additional stipulated penalty of five thousand dollars (\$5,000) per calendar day, plus interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, as in effect on the date of execution of the Final Order, unless Complainant in writing excuses or mitigates the stipulated penalty. Complainant may excuse or mitigate the stipulated penalty if Complainant determines in its sole discretion, that failure to comply occurred despite Respondent's exercise of good faith and due diligence. If additional stipulated penalties are due, Complainant will dispatch to Respondent a demand letter via certified mail, return receipt requested, which specifies the total amount

due and owed by Respondent, including any interest allowed by law. Within fourteen (14) calendar days following Respondent's receipt of such demand letter, Respondent shall pay the stipulated penalty in the manner specified in this Section.

85. Failure to remit the civil penalty, or any stipulated penalty plus interest provided herein, may result in this matter being forwarded to the United States Department of Justice to recover such amount by action in federal court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 1361(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.
86. This civil penalty is not deductible for federal tax purposes.

### **VIII. OTHER MATTERS**

87. This CAFO resolves only the EPA's civil claims for penalties for the specific violations of FIFRA alleged in this Consent Agreement. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the *Consolidated Rules of Practice*. Further, the EPA reserves any rights and remedies available to it under FIFRA, the regulations promulgated thereunder, and any other Federal laws or regulations for which the EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Environmental Appeals Board.
88. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA and with other federal, state, tribal, and local laws and regulations.
89. This CAFO shall bind both Parties. This includes each Party's officers, directors, employees, successors, and assigns. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized to represent and bind the Party whom he or she claims to represent.
90. This CAFO shall bind the Parties in full effect upon execution of the Final Order by the EPA's Environmental Appeals Board.
91. Respondent's obligations under this CAFO shall terminate when Respondent has paid the civil penalty, and any applicable interest or late charges, as specified in Section VII of the Consent Agreement in accordance with the Final Order.
92. Each Party agrees to bear its own costs and attorney fees in this matter.

**WE AGREE TO THIS:**

**FOR COMPLAINANT:**

[REDACTED]

Gregory Sullivan, Acting Director  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

4/15/16  
Date

[REDACTED]

Thomas Charlton, Attorney  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

4/11/16  
Date

**FOR RESPONDENT:**

[REDACTED]

Rob Williams, President  
Makhteshim Agan of North America, Inc.,  
d/b/a ADAMA

8/9/2016  
Date

[REDACTED]

Tracy Heinzman, Attorney  
Wiley Rein LLP  
Counsel for:  
Makhteshim Agan of North America, Inc.,  
d/b/a ADAMA

3/9/16  
Date