



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

April 30, 2013

REPLY TO THE ATTENTION OF:  
LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7641 4500

Ms. Paula Bodey  
Cheminova, Inc.  
One Park Drive, Suite 150  
Research Triangle Park  
Durham, North Carolina 27709

Consent Agreement and Final Order In the Matter of Cheminova, Inc.  
Docket No. **FIFRA-05-2013-0008**

Dear Ms. Bodey:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on April 30, 2013 with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 48 and 49. Payment is due by May 30, 2013 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Dunn".

Meghan Dunn  
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )  
)  
Cheminova, Inc. )  
Durham, North Carolina, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. FIFRA-05-2013-0008  
Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

Consent Agreement and Final Order

Preliminary Statement

RECEIVED

APR 30 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Cheminova, Inc., a corporation doing business in the State of North Carolina.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices (NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, in part, that it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA.

14. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states, in pertinent part, that the Administrator may require under Section 3 that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

15. Section 19(e)(1)(B) of FIFRA, 7 U.S.C. § 136q(e)(1)(B), states, in pertinent part, that the Administrator shall promulgate regulations that facilitate the safe disposal or refill and reuse of pesticide containers.

16. 40 C.F.R. § 156.140 provides, in pertinent part, that for products other than plant-incorporated protectants, a statement must be on the label or container identifying the container as nonrefillable or refillable. 40 C.F.R. § 156.140(a), (b).

17. Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(c)(iii), states that “the container of a pesticide must have the net weight or measure of the content, except that the Administrator may permit reasonable variations.”

18. Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), states, in pertinent part, that a pesticide is misbranded if “its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular.”

19. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “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.

20. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

21. 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.

22. Section 2(y) of FIFRA, 7 U.S.C. § 136(y), defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

23. The Administrator may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and 40 C.F.R. Part 19.

#### **Factual Allegations and Alleged Violations**

24. Respondent’s broker/agent, Phoenix International Freight Services, Ltd., submitted a NOA for the import of 60 units of 125 gallon containers of “Bolton Insecticide,” having EPA Registration Number 67760-112, to EPA on or about February 14, 2013.

25. Respondent’s broker/agent, Phoenix International Freight Services, Ltd., submitted a NOA for the import of 28 units of 250 gallon containers of “Bolton Insecticide,” having EPA Registration Number 67760-112, to EPA on or about February 14, 2013.

26. At all times relevant to this CAFO, Phoenix International Freight Services, Ltd., located at 4250 North Sam Houston Parkway E, Suite 120, Houston, Texas, is the broker/agent for Respondent.

27. At all times relevant to this CAFO, Respondent is the importer of record for the NOAs in paragraphs 24 and 25.

28. Respondent, as the importer of record of “Bolton Insecticide,” EPA Reg. No. 67760-112, and by doing business in the United States, is subject to the requirements of FIFRA

and the regulations promulgated thereunder.

29. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

30. Respondent is a “registrant” as defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

31. “Bolton Insecticide” is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

32. “Bolton Insecticide” is an EPA registered pesticide under Section 3 of FIFRA, 7 U.S.C. § 136a.

33. The import shipments associated with entry number 279-9871320-3 entered the United States on or about February 21, 2013.

34. On March 4, 2013, EPA conducted an inspection of the pesticide import shipment at Channel Distribution Corporation, located at 925 West Thorndale Avenue, Itasca, Illinois.

35. During the March 4, 2013 inspection, the inspector collected photographs of “Bolton Insecticide” containers and labeling.

36. The imported quantities of “Bolton Insecticide,” EPA Reg. No. 67760-112, associated with entry number 279-9871320-3 and the February 14, 2013 NOAs, failed to bear a statement on the labels or containers of the pesticide product that identified the containers as being *one* of the following: “refillable” or “nonrefillable,” as required by 40 C.F.R. § 156.140.

37. As observed and photographed during the March 4, 2013 inspection, the outside of the label on one 125 gallon container of “Bolton Insecticide” incorrectly stated “NET CONTENTS: 2.5 Gallons.”

38. As observed during the March 4, 2013 inspection, the inside of the labels on the containers incorrectly stated “NET CONTENTS: 2.5 Gallons.”

39. On or about February 21, 2013, Respondent “distributed or sold” the misbranded

pesticide “Bolton Insecticide,” EPA Reg. No. 67760-112, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

40. Respondent’s distribution or sale of the misbranded pesticide “Bolton Insecticide” constitutes an unlawful act pursuant to Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

### **Specific Allegations**

#### **Count 1**

41. Complainant incorporates by reference paragraphs 1 through 40 of this CAFO.

42. On or about February 21, 2013, in an import shipment of 60 units of “Bolton Insecticide” associated with entry number 279-9871320-3, Respondent distributed or sold the pesticide “Bolton Insecticide,” EPA Reg. No. 67760-112, in violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

43. Respondent’s violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### **Count 2**

44. Complainant incorporates by reference paragraphs 1 through 40 of this CAFO.

45. On or about February 21, 2013, in an import shipment of 28 units of “Bolton Insecticide” associated with entry number 279-9871320-3, Respondent distributed or sold the pesticide “Bolton Insecticide,” EPA Reg. No. 67760-112, in violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).

46. Respondent’s violation of Sections 12(a)(1)(E) and 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty

under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

**Civil Penalty**

47. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$15,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the FIFRA violations by online payment. To pay on-line, go to [www.pay.gov](http://www.pay.gov). Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

49. Respondent must send a notice of payment that states Respondent's name, complete address and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Meghan Dunn (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Boulevard.  
Chicago, Illinois 60604

Mark Koller (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

50. This civil penalty is not deductible for federal tax purposes.



51. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

52. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

#### **General Provisions**

53. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

54. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

55. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

56. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

57. The terms of this CAFO bind Respondent, its successors and assigns.

58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorneys fees, in this action.

60. This CAFO constitutes the entire agreement between the parties.

**Cheminova, Inc., Respondent**

3-29-2013  
Date

*Diane Allemang / AB*  
Diane Allemang  
Executive Vice President  
Cheminova, Inc.

**United States Environmental Protection Agency, Complainant**

4/25/2013  
Date


*Margaret M. Guerriero*  
Margaret M. Guerriero  
Director  
Land and Chemicals Division

**In the Matter of:**  
**Cheminova, Inc.**  
**Docket No. FIFRA-05-2013-0008**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

4-29-13  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection Agency  
Region 5

  
APR 30 2013  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**CERTIFICATE OF SERVICE**

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Cheminova, Inc., was filed on April 30, 2013, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed no by Certified Mail, Receipt No. 7009 1680 0000 7641 4500, a copy of the original to the Respondent:

Ms. Paula Bodey  
Cheminova, Inc.  
One Park Drive, Suite 150  
Research Triangle Park  
Durham, North Carolina 27709

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Mark Koller, Regional Judicial Officer, ORC/C-14J  
Eric Volck, Cincinnati Finance/MWD



Frederick Brown  
Pesticides and Toxics Compliance Section  
U.S. EPA - Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Docket No. FIFRA-05-2013-0008

