



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2009 SEP 28 PM 4:09  
REGIONAL HEARING  
CLERK

SEP 28 2009

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Michael Troisi, Esq.  
Senior Counsel & Director Risk Management  
Samsung Electronics America, Inc.  
105 Challenger Road  
Ridgefield, N.J. 07660

Re: In the Matter of Samsung Electronics America, Inc., Docket No. FIFRA-02-2009-5106

Dear Mr. Troisi:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, Samsung Electronics America, Inc, makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

*Bruce H. Aber by CHP*  
Bruce H. Aber  
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk  
Marcedius Jameson, NJDEP

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II

2009 SEP 28 PM 4:09

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

AGENCY HEARING  
CHECK

In the Matter of:

Samsung Electronics America, Inc.,  
Respondent.

Proceeding Under the Federal  
Insecticide, Fungicide and  
Rodenticide Act, as amended.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. FIFRA-02-2009-5106

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a) (hereinafter referred to as "FIFRA" or the "Act"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22 (hereinafter "CROP"). Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. Sections 22.18(b)(2) and 22.18(b)(3). Complainant and Respondent agree that settling this matter by entering into this

CA/FO pursuant to 40 C.F.R. Sections 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

**EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is Samsung Electronics America, Inc. (hereinafter "Samsung" or "Respondent"), a New York corporation.
2. Respondent is a "person" as that term is defined in FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent maintains and/or operates an "establishment" as defined in Section 2 (dd) of FIFRA, 7 U.S.C. Section 136(dd), located at 105 Challenger Road, Ridgefield Park, N.J. 07660.
4. Section 2(t) of FIFRA, 7 U.S.C. Section 136(t), defines a "pest" as any insect, rodent, nematode, fungus, weed, or any form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism.
5. Section 2(u) of FIFRA, 7 U.S.C. Section 136(u), defines the term "pesticide" as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
6. Respondent is a "producer" within the meaning of Section 2(w), 7 U.S.C. Section 136(w).

7. Respondent is a “distributor or seller” within the meaning of Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg).
8. “To distribute or sell” is defined by Section 2(gg) of FIFRA, 7 U.S.C. Section 136(gg), 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.”
9. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A), states that it shall be 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. Section 136a.
10. EPA’s regulation at 40 C.F.R. Sections 152.15(a) and (c) state that a substance is intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:
  - (a) the seller or distributor of the substance claims, states or implies (by labeling or otherwise):
    - (1) that the substance can or should be used as a pesticide. . . ; and
    - (c) the seller or distributor of the substance has actual or constructive knowledge that the substance will be used or is intended to be used for a pesticidal purpose.

11. An EPA regulation at 40 C.F.R. Section 152.3 states that a “pesticidal product” means a pesticide in the particular form (including composition, packaging and labeling) in which the pesticide is, or is intended to be sold.
12. Section 7 of FIFRA, 7 U.S.C. Section 136e(a), states that no person shall produce any pesticide in any State unless the establishment in which it is produced is registered with EPA.
13. EPA’s investigation from January 2009 through March 2009 revealed that, between at least October 2008 and March 2009, Samsung distributed and/or sold computer laptops—Q Series and NC-Series multi-colored Notebooks and Mini-Notebooks—through direct sales to distributors and retail establishments throughout the United States, and through internet sales.
14. EPA’s investigation revealed that Samsung’s website, [www.samsung.com](http://www.samsung.com), made pesticidal claims in connection with the sale of the following Samsung computer laptops: i) NC 10-14GBK/NC 10 10.2-Inch Mini Notebook-Black; ii) NC 10-14GB/NC 10 10.2 Inch Mini Notebook-Blue; iii) NC 10 14GW/NC 10 10.2 Inch Mini Notebook—White; and iv) NC 10-11 GP/NC 10 10.2 Inch Mini Notebook-Pink. The specific pesticidal claims included among other things:  
  
“Antibacterial Keyboard.”  
  
“And they’re (computer Notebook) coated with an innovative coating that helps create a germ free environment.”

“The N Series use incredibly small, nano-sized silver ion powder to coat the keyboard making it virtually impossible for bacteria to live and breed creating a more hygienic personal computing environment.”

15. The pesticidal claims mentioned in paragraph 14, above, were also evident from the label of the computer laptops and tags attached to the products.
16. Each of the Samsung computer laptop products identified in paragraph 14, above, is a “pesticide” as defined in Section 2(u) of FIFRA, 7 U.S.C. Section 136(u).
17. Each of the Samsung computer laptop products is not a registered pesticide.
18. During 2008 and 2009, Samsung distributed or sold the computer laptop products to various persons on numerous occasions, in violation of section 12(a)(1)(A) of FIFRA, 7 U.S.C. Section 136j(a)(1)(A).
19. The computer laptops were produced in an unregistered establishment, in violation of Section 7 of FIFRA, 7 U.S.C. Section 136e(a).

## CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18, it is hereby agreed that:

1. Respondent's signatory certifies on behalf of the Respondent that, as of the date of its execution of this Consent Agreement, for purposes of FIFRA-regulated activity: (1) Respondent is no longer distributing or selling computer laptops (i.e., netbooks and notebooks, including keyboards) with pesticidal claims; and (2) Respondent's computer laptops (including keyboards) do not contain any nano-silver technology.
  
2. Additionally, Respondent's signatory certifies on behalf of the Respondent, that, as of the date of its execution of this Consent Agreement, for purposes of FIFRA-regulated activity: (1) Respondent has notified its distributors and manufacturing facility, which produces the subject Samsung computer laptops (i.e., netbooks and notebooks, including keyboards), to remove all pesticidal claims for all its computer laptops ; and (2) Respondent has revised all labels, internet website advertisements and other promotional materials for the Samsung computer laptops (including keyboards) identified in paragraph 14, above, to remove all pesticidal claims.

3. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits that EPA has jurisdiction pursuant to Section 14 of FIFRA, 7 U.S.C. Section 136l(a), to commence a civil administrative proceeding for the allegations in the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies specific factual allegations or conclusions of law contained in this CA/FO.
  
4. If in the future EPA believes that any information certified to, pursuant to paragraphs 1 and 2, above, in the Consent Agreement, is untrue or inaccurate, EPA will so advise the Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA or correct any alleged untrue or inaccurate certification. If, after consideration of Respondent's reply, EPA determines that the certification(s) is untrue or inaccurate, Respondent shall be liable to EPA for a stipulated penalty of \$7,500 for each certification that EPA determines was untrue or inaccurate. EPA may also initiate a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq., or any other applicable law.
  
5. Respondent shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of Two Hundred and Five Thousand Dollars (\$205,000) in settlement of this case. If payment is by cashier's or

certified check, such payment shall be payable to the "Treasurer, United States of America."

The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Samsung Electronics America, Inc., Docket No. FIFRA-02-2009-5106.

The check shall be mailed to:

United States Environmental Protection Agency  
Fines & Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

**WIRE TRANSFER**

If Respondent chooses to pay by electronic fund transfer ("EFT"), Respondent shall provide the following information to the remitter bank (Federal Reserve Bank of New York):

- A) Amount of Payment (\$205,000.00)
- B) SWIFT address = FRNYUS33  
33 Liberty Street  
New York, N.Y. 10045
- C) Account Code for Federal Reserve Bank of New York (receiving payment) = 68010727
- D) Federal Reserve Bank of New York ABA routing number = 021030004
- E) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- F) Name of Respondent (Samsung Electronics America, Inc.)
- G) Case Docket Number (FIFRA-02-2009-5106)

Respondent shall also send a proof of the payment to:

Bruce Aber  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866; and

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

The check must be received at the above address, or the EFT must be received by the Federal Reserve Bank of New York, on or before forty-five (45) calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the “due date”).

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30)

day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.
  - d. If Respondent fails to pay the civil penalty within thirty (30) days of its due date, Respondent shall also be liable to the United States for an additional stipulated penalty of Twenty Thousand Dollars (\$20,000) for such failure unless, on or before the due date, Respondent has submitted to EPA a writing that demonstrates to EPA's satisfaction good cause for such failure, as provided in paragraph 7 of this Consent Agreement.
  - e. Pursuant to 40 C.F.R. Section 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
6. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made in accordance with the payment instructions in paragraph 5. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other

paragraph of this CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

7. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate any stipulated penalty demanded by EPA, Complainant will notify Respondent in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of receipt.
8. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

9. Respondent explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
10. The civil penalty and any applicable stipulated penalties provided herein are penalties within the meaning of Title 26, Section 162(f) of the United States Code, 26 U.S.C. Section 152(f), and are not deductible expenditures for purposes of federal, state or local law.
11. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of the Respondent's representations in this proceeding) the civil and administrative claims alleged in this CA/FO. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.
12. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on this CA/FO or on any of the allegations herein asserted, including the EPA's Findings of Fact and Conclusions of Law herein.
13. Respondent waives its right to appeal the CA/FO.

14. The Respondent agrees not to contest the validity or any substantive requirement of this CA/FO in any action brought by the United States, including EPA, to enforce: a) this CA/FO; or b) a judgment relating to this CA/FO.
15. The provisions of this CA/FO shall be binding upon Respondent, its officials, agents, authorized representatives, successors or assigns.
16. This CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder. To the best of Respondent's knowledge, for the purpose of FIFRA-regulated activity, Respondent is in compliance with FIFRA and its implementing regulations as of the effective date of this CA/FO.
17. Each undersigned signatory to this CA/FO certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all the terms and conditions set forth in this CA/FO.
18. Respondent waives any right pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

19. Complainant and Respondent agree to bear their own costs and fees in this matter.
20. Respondent consents to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
21. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.



**In the Matter of Samsung Electronics America Inc., FIFRA-02-2009-5106**

RESPONDENT: Samsung Electronics America, Inc.

BY: Michelangelo Trasi  
(Signature)

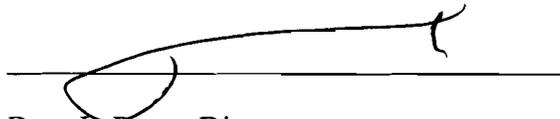
NAME: MICHELANGELO TRASI

TITLE: Senior Counsel & Dir. of Risk Mgmt.

DATE: September 18, 2009

**In the Matter of Samsung Electronics America, Inc., FIFRA-02-2009-5106**

COMPLAINANT:



Dore LaPosta, Director  
Division of Enforcement  
and Compliance Assistance  
U.S. Environmental Protection  
Agency - Region 2

DATE: SEPTEMBER 24, 2009

**In the Matter of Samsung Electronics America, Inc., FIFRA-02-2009-5106**

FINAL ORDER

The Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



George Pavlou  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, New York 10007

DATE: September 24, 2009



**In the Matter of Samsung Electronics America, Inc., FIFRA-02-2009-5106**

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, in the following manner to the respective addressees listed below:

Original and Copy  
By Hand Delivery:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

Copy by Certified Mail/  
Return Receipt Requested:

Michelangelo Troisi, Esq.  
Senior Counsel & Director of Risk Management  
Samsung Electronics America, Inc.  
105 Challenger Road  
Ridgefield Park, N.J. 07660

Robert E. Fabricant, Esq.  
Akerman Senterfitt, LLP  
335 Madison Avenue, Suite 2600  
New York, N.Y. 10017

Date SEP 28, 2009

New York, New York

