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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA

In the Matter of:)	
)	
Makhteshim Agan of North America, Inc.)	Docket No. FIFRA-09- <u>2017-0003</u>
d/b/a ADAMA)	
)	CONSENT AGREEMENT AND FINAL
)	ORDER PURSUANT TO
)	40 C.F.R. §§ 22.13 AND 22.18
Respondent.)	
_____)	

I. CONSENT AGREEMENT

The United States Environmental Protection Agency, Region IX (“EPA”), and Makhteshim Agan of North America, Inc. d/b/a ADAMA (“Respondent”) agree to settle this matter and consent to the entry of this Consent Agreement and Final Order (“CAFO”), which simultaneously commences and concludes this matter in accordance with 40 C.F.R. §§ 22.13 and 22.18.

A. AUTHORITY AND PARTIES

1. This is a civil administrative action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or “the Act”), as amended, 7

U.S.C §§ 136 et seq., for the assessment of a civil administrative penalty against Respondent for violations of Section 12 of the Act.

2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has been duly delegated the authority to bring this action and to sign a consent agreement settling this action.
3. Respondent is Makhteshim Agan of North America, Inc., doing business as ADAMA (“ADAMA”), a corporation based in the state of North Carolina and doing business in the state of California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Section 17(c) of FIFRA and regulations promulgated at 19 C.F.R. Part 12 pursuant to Section 17(e) of FIFRA by the Secretary of the Treasury in consultation with the EPA Administrator govern the importation of pesticides into the United States.
5. 19 C.F.R. § 12.111 provides that “[c]ertain imported pesticides are required to be registered under the provisions of section 3 of the Act . . . before being permitted entry into the United States.”
6. 19 C.F.R. § 12.112 provides that “[a]n importer or the importer’s agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices. . . .”
7. 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.

8. Federal regulations at 40 C.F.R. Part 156 delineate labeling requirements for pesticides and devices.
9. Federal regulations at 40 C.F.R. § 156.140 state, in pertinent part, that – other than for plant-incorporated protectants – statements containing certain, prescribed language must be placed on the label or container of products subject to Subpart H in order to, among other things, identify the container as either a nonrefillable container (40 C.F.R. § 156.140(a)) or a refillable container (40 C.F.R. § 156.140(b)), as applicable.
10. Federal regulations at 40 C.F.R. § 156.159 provide that any pesticide product released for shipment by a registrant after August 16, 2011, must bear a label that complies with, among other things, 40 C.F.R. § 156.140.
11. 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.
12. 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.
13. 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 living 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, 7 U.S.C. § 136 w(c)(1).

14. 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.
15. 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.
16. 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.
17. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of FIFRA of up to \$19,057 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1); 40 C.F.R. Part 19; and Civil Monetary Penalty Inflation Adjustment Rule at 82 Fed. Reg. 3633, 3636 (January 12, 2017).

C. ALLEGATIONS

18. At all times relevant to this CAFO, Respondent was a corporation and therefore a “person” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
19. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

Count 1

20. On or about January 27, 2017, Respondent submitted to EPA an NOA under entry number 791-09974605 for an import shipment of “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130.
21. The NOA stated that Respondent was the importer of record.

22. Respondent, as the importer of “Parazone 3SL Herbicide,” and by doing business in the United States is subject to the requirements of FIFRA and the regulations promulgated thereunder.
23. The import shipment associated with entry number 791-09974605 entered the United States at the Port of Los Angeles, California, on or about January 15, 2017.
24. “Parazone 3SL Herbicide” is intended to prevent and/or destroy weeds.
25. “Parazone 3SL Herbicide,” is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).
26. The imported quantity of “Parazone 3SL Herbicide” associated with entry number 791-09974605, failed to bear a label on the immediate containers of the pesticide product that identified the containers as being either “refillable” or “non-refillable,” as required by 40 C.F.R. § 156.140.
27. On or about January 15, 2017, Respondent “distributed or sold” the pesticide “Parazone 3SL Herbicide,” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at the Port of Los Angeles in the state of California.
28. On or about January 15, 2017, Respondent distributed or sold the pesticide “Parazone 3SL Herbicide” in violation of the labeling requirements set forth at 40 C.F.R. § 156.140.
29. Respondent’s violation of the labeling requirements set forth at 40 C.F.R. § 156.140 constitutes a violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), and subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

30. On or about January 27, 2017, Respondent submitted to EPA an NOA under entry number 791-09974613 for an import shipment of “Parazone 3SL Herbicide.”
31. The NOA stated that Respondent was the importer of record.
32. The import shipment associated with entry number 791-09974613 entered the United States at the Port of Los Angeles, California, on or about January 15, 2017.
33. The imported quantity of “Parazone 3SL Herbicide” associated with entry number 791-09974613, failed to bear a label on the immediate containers of the pesticide product that identified the containers as being either “refillable” or “non-refillable,” as required by 40 C.F.R. § 156.140.
34. On or about January 15, 2017, Respondent “distributed or sold” the pesticide “Parazone 3SL Herbicide,” as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at the Port of Los Angeles in the state of California.
35. On or about January 15, 2017, Respondent distributed or sold the pesticide “Parazone 3SL Herbicide” in violation of the labeling requirements set forth at 40 C.F.R. § 156.140.
36. Respondent’s violation of the labeling requirements set forth at 40 C.F.R. 156.140 constitutes a violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), and subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

D. RESPONDENT’S ADMISSIONS

37. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained

in the CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any right to contest the allegations contained in Section I.C of the CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. CIVIL ADMINISTRATIVE PENALTY

38. Respondent agrees to the assessment of a penalty in the amount of SIXTEEN THOUSAND AND FOUR HUNDRED DOLLARS (\$16,400) as final settlement of the civil claims against Respondent arising under the Act as alleged in Section I.C of the CAFO.
39. Respondent shall pay the assessed penalty no later than thirty (30) days from the effective date of this CAFO. Payment shall be made by cashier's or certified check payable to the "Treasurer, United States of America," or be paid by one of the other methods listed below:

a. Regular or Certified Mail:

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

b. Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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."

c. Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

d. ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 — checking
Environmental Protection Agency
Account 31006
CTX Format

e. On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfo1.1" in the search field
Open form and complete required fields

If any clarification regarding a particular method of payment remittance is needed, Please contact the EPA Cincinnati Finance Center at 513-487-2091. The payment shall be accompanied by a transmittal letter identifying the case name, the case docket number, and this CAFO. Concurrent with delivery of the payment of the penalty, Respondent shall send a copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, and transmittal letter to the following addresses:

Regional Hearing Clerk
Office of Regional Counsel (ORC-1)

U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Allison Watanabe
SDWA/FIFRA Section (ENF-3-3)
U.S. Environmental Protection Agency, Region IX
Southern California Field Office
600 Wilshire Blvd., Suite 1460
Los Angeles, CA 90017

40. Payment of the above civil administrative penalty shall not be used by Respondent or any other person as a tax deduction from Respondent's federal, state, or local taxes.
41. If Respondent fails to pay the assessed civil administrative penalty as specified in Paragraph 38, then Respondent shall pay to EPA the stipulated penalty of FIVE HUNDRED DOLLARS (\$500.00) for each day the default continues, in addition to the assessed penalty upon written demand by EPA. In addition, failure to pay the civil administrative penalty by the deadline specified in Paragraph 39 may lead to any or all of the following actions:
 - a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.
 - b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

- c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; or (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.
- d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalties charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 39. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

F. RETENTION OF RIGHTS

- 42. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts specifically alleged in Section I.C of the CAFO. Nothing in this CAFO is intended to or shall be construed to resolve (i) any

civil liability for violations of any provision of any federal, state, or local law, statute, regulation, rule, ordinance, or permit not specifically alleged in Section I.C of the CAFO; or (ii) any criminal liability. EPA specifically reserves any and all authorities, rights, and remedies available to it (including, but not limited to, injunctive or other equitable relief or criminal sanctions) to address any violation of this CAFO or any violation not specifically alleged in Section I.C of the CAFO.

43. This CAFO does not exempt, relieve, modify, or affect in any way Respondent's duty to comply with all applicable federal, state, and local laws, regulations, rules, ordinances, and permits.

G. ATTORNEY'S FEES AND COSTS

44. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

H. EFFECTIVE DATE

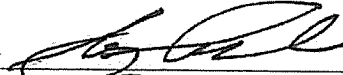
45. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CAFO shall be effective on the date that the final order contained in this CAFO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

I. BINDING EFFECT

46. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.
47. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

FOR RESPONDENT, MAKHTESHIM AGAN OF NORTH AMERICA, INC. D/B/A ADAMA

2/17/17
DATE

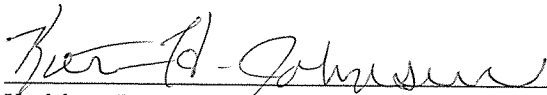

NAME: CR16 CUPSW-54154
TITLE: CFU



Patricia A. Gandy, PhD
Regulatory Leader
Feb 17, 2017

FOR COMPLAINANT, EPA REGION IX:

3/21/17
DATE


Kathleen H. Johnson
Director
Enforcement Division

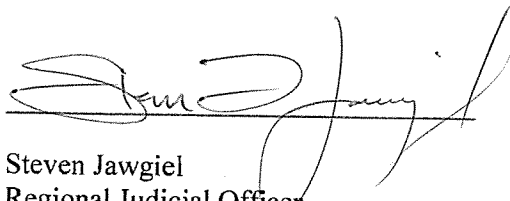
II. FINAL ORDER

Complainant and Respondent, Makhteshim Agan of North America, Inc. d/b/a ADAMA, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2017-₀₀₀₃) be entered, and that Respondent shall pay a civil administrative penalty in the amount of SIXTEEN THOUSAND AND FOUR HUNDRED DOLLARS (\$16,400) and comply with the terms and conditions set forth in the Consent Agreement.

03/21/17

DATE



Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. FIFRA-09-2017-~~0003~~) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

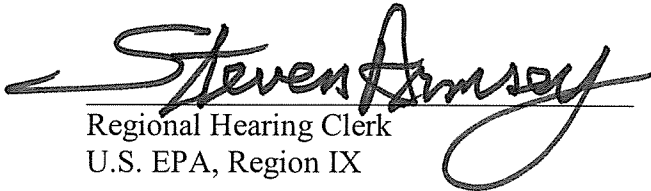
A copy was mailed via CERTIFIED MAIL to:

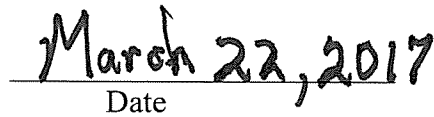
Fernando Arias
Trade Compliance Leader
Makhteshim Agan of North America, Inc. d/b/a ADAMA
3120 Highwoods Blvd, Suite 100
Raleigh, NC 27604

Certified Mail Number:

An additional copy was hand-delivered to the following U.S. EPA case attorney:

David Kim
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date