



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

FEB 07 2017

REPLY TO THE ATTENTION OF:

LC-8J

VIA EMAIL

J. Mark Hough  
General Counsel and Corporate Secretary  
Makhteshim Agan of North America, Inc.  
d/b/a ADAMA  
3120 Highwoods Boulevard, Suite 100  
Raleigh, North Carolina 27604

Mark.Hough@adama.com

Consent Agreement and Final Order In the Matter of Makhteshim Agan of North America, Inc., d/b/a ADAMA, Docket Number FIFRA-05-2017-0009

Mr. Hough:

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 2/7/2017 with the Regional Hearing Clerk.

The civil penalty in the amount of \$8,251 is to be paid in the manner described in paragraphs 37 and 38. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due within 30 calendar days of the filing date.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess  
Pesticides and Toxics Compliance Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )  
)  
**Makhteshim Agan of North America, Inc.** )  
**d/b/a ADAMA** )  
**Raleigh, North Carolina** )  
**Respondent.** )  
\_\_\_\_\_ )

**Docket No. FIFRA-05-2017-0009**

**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**

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 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 Minnesota.
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 in compliance with FIFRA, 7 U.S.C. §§ 136-136y, as of the effective date of this CAFO.

#### **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. Federal regulations at 19 C.F.R. § 12.111 state, in part, that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, before being permitted entry into the United States.

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

13. 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.

14. Federal regulations at 40 C.F.R. Part 156 delineate labeling requirements for pesticides and devices.

15. 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.

16. Federal regulations at 40 C.F.R. § 156.159 provides 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.

17. 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.

18. 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.

19. 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).

20. 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.

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 of U.S. 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 \$8,251 for each offense that occurred after November 2, 2015. *See* Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), and 40 C.F.R. Part 19.

#### **EPA’s Factual Allegations and Legal Conclusions**

24. At all times relevant to this CAFO, Respondent was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. 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).

26. On or about December 3, 2013, Respondent submitted to EPA an NOA under entry number 791-0959852-9 for an import shipment of “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130.

27. The NOA stated that Respondent was the importer of record.

28. Respondent, as the importer of “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

29. The import shipment associated with entry number 791-0959852-9 entered the United States on or about December 16, 2016.

30. “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

31. The imported quantity of “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130, associated with entry number 791-0959852-9, 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.

32. On or about December 16, 2016, Respondent “distributed or sold” the pesticide “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), at the Port of Minneapolis in the state of Minnesota.

### **Alleged Violations**

#### **Count 1**

33. Complainant incorporates by reference paragraphs 1 through 32 of this CAFO.

34. On or about December 16, 2016, in an import shipment associated with entry number 791-0959852-9, Respondent distributed or sold the pesticide “Parazone 3SL Herbicide,” EPA Reg. No. 66222-130, in violation of the labeling requirements at 40 C.F.R. § 156.140.

35. Respondent’s violation of the labeling requirements at 40 C.F.R. § 156.140 constitutes an unlawful act pursuant to 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).

**Civil Penalty**

36. 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 \$8,251. 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.

37. Within 30 days of the effective date of this CAFO, Respondent must pay a \$8,251 civil penalty for the FIFRA violations by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note "In the Matter of Makhteshim Agan of North America, Inc. d/b/a ADAMA" and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent's name 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 Blvd.  
Chicago, IL 60604

Claudia Niess (LC-8J)  
Pesticides and Toxics Compliance Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

James Morris (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

40. If Respondent does not timely pay 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.

41. Pursuant to 40 C.F.R. § 13.11 and 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**

42. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: morris.james@epa.gov (for Complainant) and



Mark.Hough@adama.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

44. 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.

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

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

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

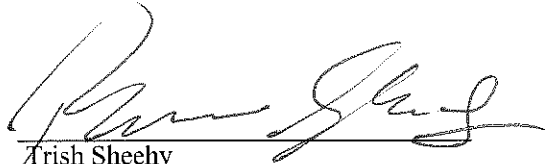
48. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

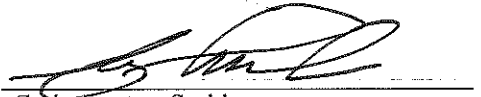
50. This CAFO constitutes the entire agreement between the parties.

**Makhteshim Agan of North America, Inc. d/b/a ADAMA, Respondent**

1-23-2017  
Date

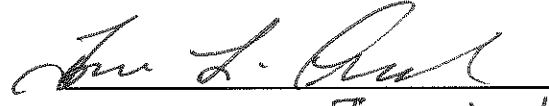
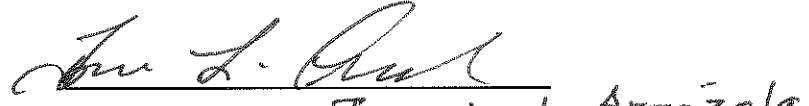
  
Trish Sheehy  
Regulatory Leader  
Makhteshim Agan of North America, Inc.  
d/b/a ADAMA

1/23/2012  
Date

  
Craig Lupton-Smith  
Chief Financial Officer  
Makhteshim Agan of North America, Inc.  
d/b/a ADAMA

**United States Environmental Protection Agency, Complainant**

January 30, 2017  
Date

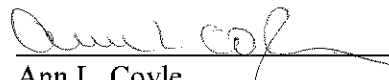
  
*Acting* Margaret M. Guerriero   
Director  
Land and Chemicals Division  
United States Environmental Protection Agency Region 5

**In the Matter of:**  
**Makhteshim Agan of North America, Inc., d/b/a ADAMA**  
**Docket No. FIFRA-05-2017-0009**

**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.

February 3, 2017  
Date

  
\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

Consent Agreement and Final Order  
In the matter of: Makhteshim Agan of North America, Inc., d/b/a ADAMA  
Docket Number: **FIFRA-05-2017-0009**

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **FIFRA-05-2017-0009**, which was filed on 2/7/2017, in the following manner to the following addressees:

Copy by E-mail to  
Attorney for Respondent:

J. Mark Hough  
Mark.Hough@adama.com


Copy by E-mail to  
Attorney for Complainant:

James Morris  
morris.james@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
coyle.ann@epa.gov

Dated: February 7, 2017



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5