



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590  
AUG 28 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7009 1680 0000 7668 0851

Ms. Diane Allemang  
Cheminova, Inc.  
1600 Wilson Boulevard  
Arlington, Virginia 22209

Consent Agreement and Final Order In The Matter of  
Cheminova, Inc. Docket No. **FIFRA-05-2012-0021**

Dear Ms. Allemang:

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 August 29, 2012 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 43 and 44. Please be certain that the number **BD 2751245P020** and the docket number are written on both the transmittal letter and on the check. Payment is due by September 28, 2012 (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

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: )

Cheminova, Inc. )  
Research Triangle Park, North Carolina )

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

Docket No. FIFRA-05-2012-0021

Proceeding to Assess a Civil Penalty  
Under Section 14(a) of the Federal  
Insecticide, Fungicide, and Rodenticide  
Act, 7 U.S.C. § 136l(a)

RECEIVED  
AUG 29 2012

Consent Agreement and Final Order

Preliminary Statement

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, U.S. Environmental Protection Agency, Region 5.
3. Respondent is Cheminova, Inc. (Cheminova), a corporation doing business in Research Triangle Park, 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 to 136y.

**Statutory and Regulatory Background**

10. The importation of pesticides into the United States is governed by Section 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 the EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.112 states, in pertinent 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).

12. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), states that it is unlawful for any person in any State to distribute or sell to any person a pesticide which is adulterated or misbranded.

13. Section 2(q)(1)(F) of FIFRA, 7 USC § 136(q)(1)(F), states that a pesticide is “misbranded” if the 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 imposed under Section 3(d) of FIFRA, 7 U.S.C. § 136a(d), are adequate to protect health and the environment.

14. 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.

15. 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 microorganism (except viruses, bacteria, or other living microorganisms 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. § 136w(c)(1).

16. 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.

17. 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.

18. The Administrator of EPA may assess a civil penalty against any registrant or other distributor 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), and 40 C.F.R. Part 19.

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

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

20. On or about June 21, 2012, Phoenix International Freight Services, Ltd., located at 4250 N. Sam Houston Parkway E #120, Houston, Texas 77032, was a broker/agent for Respondent for the import shipment under entry number 279-9771223-0.

21. On or about June 21, 2012, Phoenix International Freight Services, Ltd. submitted an NOA, on behalf of the importer of record, under entry number 279-9771223-0, to EPA for an import shipment of the pesticide "Accurate Herbicide," EPA Registration Number (EPA Reg. No.) 67760-68, from Germany.

22. The importer of record listed on the NOA for the shipment under entry number 279-9771223-0 was Cheminova.

23. On or about June 21, 2012, one shipment consisting of 675 cartons containing a total net weight of 2,703 pounds of "Accurate Herbicide," EPA Reg. No. 67760-68, entered into the United States at the Chicago, Illinois port of entry.

24. Respondent, as the importer of record of pesticide products, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

25. On June 25, 2009, the EPA's Office of Pesticide Programs, Registration Division issued a "label accepted with comments" for "Accurate Herbicide," EPA Reg. No. 67760-68 (the "accepted label").

26. On or about June 21, 2012, Respondent distributed or sold the pesticide product "Accurate Herbicide," EPA Reg. No. 67760-68, as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

27. The label affixed to the shipment of "Accurate Herbicide," EPA Reg. No. 67760-68, provided the following directions for use in Western Kansas West of Highway 183 and

Central Kansas, Generally East of Highway 183 and West of the Flint Hills under the heading

ROTATION INTERVALS FOR CROPS IN NON-IRRIGATED LAND:

County or Area	Crop	Soil pH	Minimum Cumulative Precipitation (inches)	Minimum Rotation Interval (months)
Western Kansas W. of Highway 183 and Central Kansas, Generally East of Highway 183 and West of the Flint Hills	Soybeans	7.5 or lower	22	22
		7.6-7.9	33	34
	Soybeans	7.9 or lower	15	12
	STS Soybeans	7.9 or lower	15	4

28. The accepted label includes the following directions for use in Western Kansas West of Highway 183 and Central Kansas, Generally East of Highway 183 and West of the Flint Hills under the heading ROTATION INTERVALS FOR CROPS IN NON-IRRIGATED LAND:

County or Area	Crop	Soil pH	Minimum Cumulative Precipitation (inches)	Minimum Rotation Interval (months)
Western Kansas W. of Highway 183	Soybeans	7.5 or lower	22	22
		7.6-7.9	33	34
Central Kansas, Generally East of Highway 183 and West of the Flint Hills	Soybeans	7.9 or lower	15	12
	STS Soybeans	7.9 or lower	15	4

29. The label affixed to the shipment of "Accurate Herbicide," EPA Reg. No. 67760-68, provided the following directions for use throughout the State of Texas under the heading ROTATION INTERVALS FOR CROPS IN NON-IRRIGATED LAND:

County or Area	Crop	Soil pH	Minimum Cumulative Precipitation (inches)	Minimum Rotation Interval (months)
Statewide	Grain sorghum, Proso millet	7.9 or lower	No restrictions	10
	Flax, Safflower, Soybean, Sunflower	7.9 or lower	No restrictions	22
Panhandle	Field corn	7.9 or lower	15	12
	Cotton (dry land only)	7.9 or lower	30	22
N. of Central Texas	Field corn	7.9 or lower	15	12
	Cotton (dry land only)	7.9 or lower	25	14

30. The accepted label includes the following directions for use throughout the State of Texas under the heading ROTATION INTERVALS FOR CROPS IN NON-IRRIGATED LAND:

County or Area	Crop	Soil pH	Minimum Cumulative Precipitation (inches)	Minimum Rotation Interval (months)
Statewide	Grain sorghum, Proso millet	7.9 or lower	No restrictions	10
	Flax, Safflower, Soybean, Sunflower	7.9 or lower	No restrictions	22
Panhandle	Field corn	7.9 or lower	15	12
	Cotton (dry land only)	7.9 or lower	30	22
N. of Central Texas	Field corn	7.9 or lower	15	12
	Cotton (dry land only)	7.9 or lower	25	14

31. The label affixed to the shipment of "Accurate Herbicide," EPA Reg. No. 67760-68, failed to identify the title of the Rotation Intervals in Pasture or Rangeland for Overseeding and Renovation chart as identified in the accepted label.

32. The label affixed to the shipment of "Accurate Herbicide," EPA Reg. No. 67760-68, included the following directions for use under the heading Rotation Intervals for Crops in

Non-Irrigated Land Following Use of Accurate at 0.05 (1/20) oz. per acre on Wheat That Will Be Grazed Out: “The minimum rotation interval is 22 months with at least 18” of cumulative precipitation during the period: to any crop not listed on the rotation intervals table above if the soil pH is not in the specified range.”

33. The accepted label includes the following directions for use under the heading Rotation Intervals for Crops in Non-Irrigated Land Following Use of Accurate at 0.05 (1/20) oz. per acre on Wheat That Will Be Grazed Out: “The minimum rotation interval is 22 months with at least 18” of cumulative precipitation during the period:

- to any crop not listed on the rotation intervals table above
- if the soil pH is not in the specified range”

34. The label affixed to the shipment of “Accurate Herbicide” failed to include the following directions for use under the heading Application Information: “Use cultivation prior to Accurate + 2,4-D amine treatment to cover exposed brace roots of grain sorghum to minimize injury from 2,4-D amine.”

35. The label affixed to the shipment of “Accurate Herbicide,” EPA Reg. No. 67760-68, under the heading WITH LIQUID NITROGEN FERTILIZER includes, in part, the following directions for use: “Consult your agricultural dealer...for a specific recommendation before adding an adjuvant to these tank mixtures.”

36. The accepted label includes, in part, the following directions for use under the heading WITH LIQUID NITROGEN FERTILIZER: “Consult your agricultural dealer...for specific information before adding an adjuvant to these tank mixtures.”

37. The shipment of “Accurate Herbicide,” EPA Reg. No. 67760-68, that entered into the United States on or about June 21, 2012 was misbranded because its label did not contain



directions for use that were adequate to protect health and the environment.

### **Specific Allegations**

38. Complainant incorporates by reference the allegations contained in paragraphs 1 through 37 of this Complaint.

39. On or about June 21, 2012, Respondent distributed or sold the misbranded pesticide product "Accurate Herbicide," EPA Reg. No. 67760-68, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

40. Respondent's violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a) for each separate unlawful act.

### **Civil Penalty And Other Relief**

41. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

42. Based on an evaluation of the facts alleged in this complaint, the factors in Section 14(a)(4) of FIFRA and EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009, Complainant has determined the appropriate penalty to settle this action is \$7,500.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. Respondent must pay the penalty 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 Cheminova, Inc.," the docket number of this CAFO and the billing document (BD) number.

44. A transmittal letter, stating, Respondent's name, the case title, Respondent's complete address, the case docket number and the BD number must accompany the payment.

Respondent must send a copy of the check and transmittal letter to:

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

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

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

46. If Respondent does not pay the civil penalty timely, 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. § 136/(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

47. 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.

48. Respondent will relabel all violative pesticide product identified, above, as required by FIFRA before the product can be further distributed or sold.

49. Respondent agrees to prepare and implement a Compliance Plan. The purpose of the Compliance Plan is to prevent or eliminate all future violations of Section 12(a)(1)(E) of FIFRA. A copy of the Compliance Plan will be provided to EPA within 30 days after the effective date of this CAFO.

#### **General Provisions**

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

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

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

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

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

55. 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.

56. Each party agrees to bear its own costs and attorney's fees, in this action.

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

**In the Matter of:  
Cheminova, Inc.**

**Cheminova, Inc., Respondent**

8-10-12  
Date

Diane Allemang PCB  
Diane Allemang  
Executive VP, Global Regulatory Affairs  
Cheminova, Inc.

**United States Environmental Protection Agency, Complainant**

8/23/2012  
Date


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

**In the Matter of:**  
**Cheminova, Inc.**  
**Docket No. FIFRA-05-2012-0021**

**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.

8-27-12  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**RECEIVED**  
AUG 29 2012  
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 the resolution of the civil administrative action involving Cheminova, Inc., was filed on August 29, 2012 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 by Certified Mail, Receipt No. 7009 1680 0000 7668 0851, a copy of the original to the Respondent:

Ms. Diane Allemang  
Cheminova, Inc.  
1600 Wilson Boulevard  
Arlington, Virginia 22209

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J  
Reza Bagherian, 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-05-2012-0021

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