EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh Martin 2 Name of Case Attorney	9/29/1/ Date
in the ORC (RAA) at 918-1113 Office & Mail Code Phone number	
Case Docket Number FIFRA 01-2011-0076	
Site-specific Superfund (SF) Acct. Number	
This is an original debt This is a modification	
Name and address of Person and/or Company/Municipality making the payment:	
Paul Forp, CEO	
60 Audubon ROAD	
Watefield, MA 01880	
Total Dollar Amount of Receivable \$ 180,000.00 Due Date: 9/29/13	
SEP due? Yes No Date Due	
Installment Method (if applicable)	
INSTALLMENTS OF:	
1 st \$80,000 on 11-28-11	
2 nd \$ 50,000 on 9-29-12	
3rd \$ 50,000 on 9-29-13	
4 th \$ on	
5 th \$ on	$v_{\geq 1}$
For RHC Tracking Purposes:	
Copy of Check Received by RHC Notice Sent to Finance	
TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:	
IFMS Accounts Receivable Control Number	
If you have any questions call: in the Financial Management Office Phone Number	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION I – New England

5 Post Office Square - Suite 100
Boston, Massachusetts 02109/3912 29 P 2: 17

EPA ORC OFFICE OF REGIONAL HEARING CLERK

BY HAND

September 29, 2011

Wanda I. Santiago, Regional Hearing Clerk EPA Region 1 – New England 5 Post Office Square, Suite 100 (ORA18-1) Boston, MA 02109-3912

Re:

In Re: AgION Technologies, Inc., SCIESSENT LLC, and Sinanen Zeomic Co., Ltd., EPA Docket No. FIFRA-01-2011-0076; Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) resolving the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were sent to each Respondent.

Thank you for your assistance in this matter.

Sincerely.

Hugh W. Martinez, Senior Enforcement Counsel

U.S. ERA Region 1

Enclosure

cc:

Paul C. Ford, CEO, SCIESSENT LLC

Joseph F. Geary, Vice President, AgION Technologies, Inc.

Javier Takahashi, Overseas Manager Regulatory and Quality, Sinanen Zeomic Co., Ltd.

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

7011 SEP 29 P 2: 17

In the Matter of: REGIONAL HEARING CLERK AgION Technologies, Inc. 60 Audubon Road Wakefield, MA 01880 Docket No. FIFRA-01-2011-0076 SCIESSENT LLC CONSENT AGREEMENT 60 Audubon Road and Wakefield, MA 01880 FINAL ORDER and Sinanen Zeomic Co., Ltd. 1-1 Nakagawa honmachi, Minato-ku Nagoya, Japan 455-0051 Respondents. Proceedings under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. Section 136l(a).

INTRODUCTION

1. The United States Environmental Protection Agency-Region 1 ("EPA"), as Complainant, and AgION Technologies, Inc. ("AgION"), SCIESSENT LLC ("SCIESSENT"), and Sinanen Zeomic Co., Ltd. ("Sinanen"), as collective Respondents, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent. The CAFO informs Respondents of EPA's intention to assess a penalty against AgION, SCIESSENT, and Sinanen for alleged violations of Section 12 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended

("FIFRA"), 7 U.S.C. § 136j, and implementing regulations at 40 C.F.R. Parts 150 – 180 and at 19 C.F.R. §§ 12.110 – 12.117 (collectively, "FIFRA Regulations"). The CAFO also informs Respondents of their right to request a hearing.

- 2. This CAFO simultaneously commences and concludes the cause of action described herein, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and Section 14(a) of FIFRA, 7 U.S.C. § 136*l*(a). Complainant and Respondents (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without litigation is the most appropriate means of resolving this matter.
- 3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

- 4. Respondent SCIESSENT is a limited liability company, incorporated under the laws of the State of Delaware, that *distributes or sells*¹ a variety of *pesticides* containing "silver ion" antimicrobial *active ingredients*. SCIESSENT does business relative to such *antimicrobial pesticides* in the Commonwealth of Massachusetts and maintains its headquarters at 60 Audubon Road in Wakefield, Massachusetts (the "Wakefield Establishment").
- 5. Respondent AgION is or was, at times relevant to the EPA findings of violation alleged herein, a company incorporated under the laws of the State of Delaware that distributes

¹ Words that appear in italics upon first use indicate terms that are defined in Section 2 of FIFRA, 7 U.S.C. § 136, and/or the FIFRA Regulations. Such terms are relevant to the EPA findings specified in this CAFO and, unless otherwise indicated, are intended to be used as so defined.

or sells (or at times relevant to the EPA findings of violation alleged herein, distributed or sold) pesticides containing "silver ion" antimicrobial active ingredients. At least until the date of AgION's corporate dissolution, on February 11, 2011, AgION did business in Massachusetts and maintained its headquarters at 60 Audubon Road in Wakefield, Massachusetts.²

- 6. Respondent SCIESSENT and/or AgION provides or provided, at times relevant to the violations alleged herein, products and services related to the pesticides listed in Paragraphs 20, 21, 22, and/or 23 of this CAFO for consumer, healthcare, and industrial markets.

 Respondent SCIESSENT/AgION's business includes entering into agreements with customers, called "Partners," interested in buying and/or using one or more of such pesticides for purposes of incorporating the pesticide(s) into the Partners' own products, goods, or materials (such as electronics, footwear and apparel, office products, personal care products, fixtures, lighting, HVAC systems, films and tubing, food- and water-related products, textiles, construction products, etc.).
- 7. Respondent Sinanen is a company incorporated under Japanese law that also distributes or sells pesticides containing "silver ion" antimicrobial active ingredients. Sinanen does business in the United States, including Massachusetts, and maintains its corporate headquarters at 1-1 Nakagawa honmachi, Minato-ku, Nagoya, Japan (the "Nagoya Establishment").

² Due to EPA's finding that Respondent SCIESSENT is corporate successor to AgION, references herein to AgION may also be references to SCIESSENT, as facts and circumstances, context and chronology, may warrant. For convenience and clarity, where appropriate, some references to Respondent SCIESSENT and/or Respondent AgION may appear as "SCIESSENT and/or AgION" or "SCIESSENT/AgION." Such references are not intended as, and in no way constitute, an admission by any Respondent of EPA's findings with respect to corporate successor issues.

- 8. Each Respondent —SCIESSENT, AgION, and Sinanen— is a *person* as defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s). Each such Respondent is also a *producer* as defined by Section 2(w) of FIFRA, 7 U.S.C § 136(w), and 40 C.F.R. § 167.3.
- 9. Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), provides that it is unlawful for any person in any *State* to distribute or sell to any person any pesticide which is adulterated or *misbranded*.
- 10. Section 12(a)(1)(B) of FIFRA, 7 U.S.C. § 136j(a)(1)(B), provides that it is unlawful for any person in any State to distribute or sell to any person any registered pesticide if any claims made for it as part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its *registration* under FIFRA Section 3, 7 U.S.C. § 136a. Forty C.F.R. § 168.22 extends the prohibition against substantially differing claims to advertisements in any advertising medium to which the general public has access.
- 11. The FIFRA prohibitions against the distribution or sale of misbranded pesticides and of pesticides bearing claims that are substantially different than those required claims made as part of the FIFRA registration process are important because they help ensure that pesticide end users and members of the public have the most accurate, up-to-date, and compliant information available regarding pesticides in the marketplace and the establishments in which they are produced.
- 12. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. § 136j(a)(2)(N), provides that it is unlawful for any person who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by FIFRA. Such reports include notices of arrival ("NOAs") regarding

the arrival of each shipment of pesticides or devices that are imported into the United States under Section 17 of FIFRA, 7 U.S.C. § 1360, and 19 C.F.R. §§ 12.112(a).

- pesticide or device into the United States protects against unreasonable risks to human health or the environment by providing EPA with vital information about pesticides and devices before their arrival into the United States for distribution or sale. NOAs provide information including active ingredients, quantities, countries of origin, identity of producing establishments, carriers, and ports of entry— that enables EPA to make informed decisions about whether importation will pose unreasonable adverse risks to public health or the environment and, also, provide critical contact information in the event of an emergency related to the movement of potentially toxic pesticide materials.
- 14. Section 12(a)(2)(L) of FIFRA, 7 U.S.C. § 136j(a)(2)(L), provides that it is unlawful for any person who is a producer to violate any of the provisions of FIFRA Section 7, 7 U.S.C. § 136e, including the requirement to produce pesticides subject to FIFRA only in an establishment which has been registered with EPA as a pesticide-producing establishment.
- 15. The FIFRA requirement to register establishments at which pesticides are produced is important because it helps maintain the integrity of the federal pesticide program EPA implements, a primary purpose of which is to ensure that no pesticide or device is produced, imported, distributed, sold, or used in a manner that may pose an unreasonable risk to human health or the environment. The requirement to properly register pesticide-producing establishments helps EPA carry out compliance, risk assessment, and risk reduction functions

important for protecting human health and the environment because, without proper establishment registrations, EPA cannot determine where and in what manner pesticides are being produced, sold, and distributed.

- 16. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes the assessment of civil penalties of up to \$5,000 against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor for each violation of FIFRA and the FIFRA Regulations. Under the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 note, and EPA's Civil Monetary Penalty Inflation Adjustment Rule ("Penalty Inflation Rule") at 40 C.F.R. Part 19, this amount was increased to \$6,500 for violations occurring after March 15, 2004 and \$7,500 for violations occurring after January 12, 2009.
- 17. Under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 167.20, on or about February 1, 2000, Respondent AgION registered the Wakefield Establishment as a pesticide-producing establishment, subsequently identified as "EPA Est. No. 72854-MA-001."
- 18. On or about February 15, 2011, Respondent SCIESSENT registered the Wakefield Establishment under FIFRA Section 7(a) and 40 C.F.R. § 167.20, subsequently identified as "EPA Est. No. 88165-MA-001."
- 19. On or about May 21, 2009, Respondent Sinanen registered the Nagoya Establishment under FIFRA Section 7(a) and 40 C.F.R. § 167.20, subsequently identified as "EPA Est. No. 71227-JPN-001."
- 20. Respondent AgION sought and obtained registration from EPA Headquarters for the following pesticides under Section 3 of FIFRA, each such pesticide produced by Respondent

Sinanen at the Nagoya Establishment and identified by the EPA registration number assigned thereto:

- a. AgION Silver Antimicrobial Type AD, EPA Reg. No. 72854-1; and,
- b. AgION Silver Antimicrobial Type AL, EPA Reg. No. 72854-2.
- 21. Respondent Sinanen sought and obtained registration from EPA Headquarters for the following pesticides under Section 3 of FIFRA, each such pesticide produced by Sinanen at the Nagoya Establishment and identified by the EPA registration number assigned thereto:
 - a. ZEOMIC Type AJ Silver ZEOLITE A, EPA Reg. No. 71227-1;
 - b. ZEOMIC Type AK Silver ZEOLITE A, EPA Reg. No. 71227-4;
 - c. ZEOMIC Type AW Silver ZEOLITE A, EPA Reg. No. 71227-5;
 - d. ZEOMIC Type AV Silver ZEOLITE A, EPA Reg. No. 71227-6; and,
 - e. ZEOMIC Type AC Silver ZEOLITE A, EPA Reg. No. 71227-7.
- 22. Respondent SCIESSENT and/or AgION is or was, at times relevant to the violations alleged herein, authorized by Respondent Sinanen as its U.S. agent, to engage in *supplemental distribution*, as described in 40 C.F.R. § 152.132, of the pesticides listed in the preceding Paragraph 21. Accordingly, Respondent SCIESSENT/AgION is or was, at times relevant to the violations alleged herein, authorized by Respondent Sinanen to distribute and sell under the SCIESSENT/AgION name the following *distributor products*, each identified by the supplemental registration number assigned thereto:
 - a. AgION Silver Antimicrobial Type AJ, EPA Reg. No. 71227-1-72854;
 - b. AgION Silver Antimicrobial Type AK, EPA Reg. No. 71227-4-72854;
 - c. AgION Silver Antimicrobial Type AW, EPA Reg. No. 71227-5-72854;
 - d. AgION Silver Antimicrobial Type AV, EPA Reg. No. 71227-6-72854; and,
 - e. AgION Silver Copper Antimicrobial Type AC, EPA Reg. No. 71227-7-72854.

- 23. Respondent SCIESSENT and/or AgION is or was, at times relevant to the violations alleged herein, authorized by the registrant ETI H2O, Inc. of El Cajon, California (EPA Est. No. 72977-CA-001) to engage in supplemental distribution by distributing and selling under the SCIESSENT/AgION name the following distributor product, identified by the supplemental registration number assigned thereto:
 - a. AgION SilverClene24, EPA Reg. No. 72977-3-72854.
- 24. On February 18, 2009, EPA conducted a compliance inspection (the "February 2009 Inspection") at the Wakefield Establishment under Sections 8 and 9 of FIFRA, 7 U.S.C. §§ 136f and 136g.
- 25. On April 10, 2009, EPA conducted a compliance inspection (the "April 2009 Inspection") at the Boston Freight Terminal near Logan International Airport in Boston, Massachusetts, under Sections 8 and 9 of FIFRA.
- 26. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CAFO. For the purposes of this proceeding, each Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying EPA's factual findings or allegations of violation herein, each consents to the terms of this CAFO. EPA's factual findings and allegations of violation herein are not intended as, and do not constitute, an admission of the same by Respondents.
- 27. Respondents acknowledge that they have been informed of their right to request a hearing and hereby waive their right to request a judicial or administrative hearing on any issue

of law or fact set forth in this CAFO. Respondents also waive their right to appeal the Final Order accompanying the Consent Agreement.

28. By signing this CAFO, each respective Respondent certifies that it is presently operating, or will be operating within twelve (12) months of the effective date³ of this CAFO, in compliance with FIFRA and the regulations promulgated thereunder and that it has fully addressed the violations alleged by EPA herein.

EPA FINDINGS

- 29. Upon information and belief, Respondent SCIESSENT is the corporate successor to Respondent AgION.
- 30. At all times relevant to the violations alleged herein, Respondent SCIESSENT and/or AgION produced and/or imported into the United States, distributed, sold, offered for sale, shipped, and/or delivered for shipment one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 of this CAFO.
- 31. At all times relevant to the violations alleged herein, Respondent SCIESSENT and/or AgION distributed, sold or offered for sale or distribution over the internet one or more of the pesticides listed in the preceding Paragraphs 20, 21, 22, and/or 23 of this CAFO using AgION's website at www.agion-tech.com and/or SCIESSENT's website at www.sciessent.com (collectively, the "Websites").
 - 32. At all times relevant to the allegations herein, Respondent Sinanen produced,

³ The term "effective date" refers to the date that EPA files the final CAFO, signed by the Parties and the Regional Judicial Officer, with the Regional Hearing Clerk.

imported, distributed and/or sold one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 of this CAFO.

- 33. During the February 2009 Inspection, EPA collected documentary samples of one or more of the pesticides listed in Paragraphs 20, 21, 22, and/or 23 herein which, at that time, were packaged, labeled, and released for shipment. During the February 2009 Inspection, EPA also documented the import into the United States, and/or the intended distribution or sale of, one or more of the pesticides listed in Paragraphs 20, 21, 22, and/or 23 herein.
- 34. During the April 2009 Inspection, EPA collected documentary samples of one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 which, at that time, were packaged, labeled, and released for shipment. EPA also collected documentary information from U.S. Customs Border Patrol officials ("U.S. Customs Import Records") regarding the import of such pesticides into the United States by Respondent SCIESSENT/AgION, and their distribution or sale by Respondents SCIESSENT/AgION and Sinanen.

Allegations of Violation

Count 1 - FIFRA Sections 2(q)(1)(A) and 12(a)(1)(E) [Improper Claims]

- 35. Beginning in or around May 2006 through May 2011, the labels and/or labeling, including Internet advertising by Respondent SCIESSENT/AgION through the Websites, for the pesticides listed in Paragraphs 20, 21, 22, and/or 23 of this CAFO included the following statements or claims, among others:
 - a. "Instead of using unsafe chlorinated or synthetic chemicals, AgION's antimicrobial technology makes products cleaner and safer with silver – nature's antimicrobial;"

- b. "Why silver? Because it is a naturally occurring element that when used as directed has been proven safe and effective in fighting a wide range of microbes. With no toxic effects on people, animals or plants, it is truly 'Nature's Antimicrobial;"
- c. "Some antimicrobial products use unsafe synthetic chemical or volatile organic substances, but these can be potentially toxic and dangerous at inappropriate levels. No such dangers are known to exist for silver;"
- d. "AgION's zeolite carrier provides many benefits over other antimicrobials that are alcohol-, chlorine-, or ammonium-based;"
- e. "AgION SilverClene24, a liquid disinfectant and virucide that harnesses the natural protection of silver;"
- f. "AgION provides hospitals with state of the art antimicrobial surfaces;" and,
- g. "Products containing safe, long lasting, and effective antimicrobials."
- 36. The statements or claims referenced in the preceding Paragraph 35 are considered "false and misleading" as defined under Section 2(q)(1)(A) of FIFRA, 7 U.S.C. § 136(q)(1)(A), and 40 C.F.R. § 156.10(a)(5) because they include safety-related claims, comparative statements, implied public health claims, efficacy claims, and/or claims that are overbroad. Accordingly, each distribution or sale of the pesticides listed in Paragraphs 20, 21, 22, and/or 23 herein that are made by Respondent SCIESSENT and/or AgION while SCIESSENT/AgION labeling included such claims is a violation of Section 12(a)(1)(E) of FIFRA.
- 37. Respondent SCIESSENT and/or AgION distributed or sold pesticides on at least twenty-seven (27) separate occasions between October 26, 2006 and May 2011 in violation of Section 12(a)(1)(E) of FIFRA and the FIFRA regulations at 40 C.F.R. Part 152 *et seq.*, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136*l*(a)(1).

Count 2 – FIFRA Section 12(a)(1)(B) [Differing Claims]

- 38. Beginning in or around May 1, 2006 through May 2011, the labels and/or labeling, including a brochure and Internet advertising by Respondent SCIESSENT/AgION through the Websites, for the "SilverClene24" pesticide listed in Paragraph 23 herein made one or more of the following statements or claims:
 - a. "When used as directed, AgION SilverClene24 instantly disinfects surfaces and keeps them 99.999% sanitized for up to 24 hours after application;"
 - b. ""Kills bacteria in 30 seconds;"
 - c. "With SilverClene24 you can now instantly sanitize and continue sanitizing up to proven 24 hours after application;"
 - d. "It sanitizes hard surfaces 20 times faster than most disinfectants;"
 - e. "Kills bacteria in 30 seconds; viruses and fungi in 10 minutes;"
 - f. "24 hour active surface kill;"
 - g. "24 hour active surface kill: 1. Contaminated surface, 2. Apply AgION SilverClene24 to kill surface microbes (when used as directed), 3. SilverClene24 provides 24 hour active surface protection against microbes;" and
 - h. "AgION SilverClene24 has been shown to reduce bacterial populations 6 log, or 99.999%, within 30 seconds."
- 39. The claims referenced in the preceding Paragraph 38 differ substantially from those claims made for the SilverClene24 pesticide as part of the statement required in connection with its registration under FIFRA Section 3. Accordingly, each distribution or sale of the SilverClene24 pesticide made by Respondent SCIESSENT and/or AgION while SCIESSENT/AgION labeling included such claims is a violation of Section 12(a)(1)(B) of FIFRA.
- 40. Respondent SCIESSENT and/or AgION distributed or sold the SilverClene24 pesticide on at least eight (8) separate occasions between May 1, 2006 and May 2011 in violation of Section 12(a)(1)(B) of FIFRA and the FIFRA Regulations, each of which is a violation for

which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

Count 3 – FIFRA Section 12(a)(2)(N) [Importation Reports]

41. On at least twenty-seven (27) separate occasions from May 4, 2006 to April 13, 2009, Respondent AgION imported into the United States for distribution or sale one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 of this CAFO without filing a report (i.e., NOA) with EPA, as required by Section 17 of FIFRA and 19 C.F.R. § 12.112(a). Accordingly, on at least 27 separate occasions, Respondent AgION violated Section 12(a)(2)(N) of FIFRA and the regulations at 19 C.F.R. §§ 12.110 – 12.117, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

Count 4 – FIFRA Sections 2(q)(1)(D) and 12(a)(1)(E) [Establishment Registration]

42. On at least twenty-eight (28) separate occasions prior to May 6, 2009, Respondents AgION and Sinanen imported into the United States for distribution or sale one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 of this CAFO when the pesticide label(s) did not bear a correct and valid establishment registration number assigned under FIFRA Section 7 to the establishment in which the pesticide(s) was produced (i.e., the Nagoya Establishment), as required under Section 7(a) of FIFRA, 7 U.S.C. § 136e(a), and 40 C.F.R. § 156.10(f). See also Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D). Accordingly, on at least 28 separate occasions Respondents AgION and Sinanen violated FIFRA Section 12(a)(1)(E) and 40 C.F.R. § 156.10(f), each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

Count 5 - FIFRA Section 12(a)(2)(L) [Pesticide Production]

43. On at least twenty-eight (28) separate occasions prior to May 6, 2009, Respondent Sinanen produced one or more of the pesticides listed in Paragraphs 20, 21, and/or 22 of this CAFO in the Nagoya Establishment. Accordingly, by producing pesticides in an establishment that was not appropriately registered as a pesticide-producing establishment under Section 7(a) of FIFRA, Respondent Sinanen violated FIFRA Section 12(a)(2)(L) and the regulations at 40 C.F.R. Part 167, Subpart E on at least 28 separate occasions, each of which is a violation for which penalties may be assessed pursuant to Section 14(a)(1) of FIFRA.

TERMS OF SETTLEMENT

- 44. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 "FIFRA Enforcement Response Policy" ("FIFRA ERP") issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, the DCIA and Penalty Inflation Rule, and other factors as justice may require (including financial ability to pay), EPA has determined that it is fair and appropriate that Respondent SCIESSENT/AgION pay a civil penalty in the amount of \$180,000 in settlement of the violations alleged herein against SCIESSENT/AgION.
- 45. Respondent SCIESSENT/AgION shall pay the penalty of \$180,000 according to the following schedule: a.) payment of \$80,000 shall be made within sixty (60) days of the effective date of this CAFO; b.) payment of \$50,000 (with accrued interest) shall be made within one (1) year of the effective date; and c.) payment of \$50,000 (with accrued interest) shall be made within two (2) years of the effective date. Interest at a rate of four percent (4%) per annum shall be included in any and all payments made beyond 60 days from the effective date and shall

accrue from the effective date until the date of payment.

- 46. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the FIFRA ERP, the DCIA and Penalty Inflation Rule, and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent Sinanen pay a civil penalty in the amount of \$40,000 in settlement of the violations alleged herein against Sinanen. Respondent Sinanen shall pay the \$40,000 penalty within sixty (60) days of the effective date of this CAFO.
- 47. Respondents shall make each payment due under this CAFO by submitting a bank or certified check, to the order of the "Treasurer, United States of America," in the appropriate amount to:

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

Or, Respondents may make payment by electronic funds transfer via:

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"

Respondents shall simultaneously submit <u>copies</u> of each penalty payment check or confirmation of electronic wire transfer to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Hugh W. Martinez, Senior Enforcement Counsel U.S. EPA, Region 1 5 Post Office Square Suite 100 (OES 04-3) Boston, MA 02109-3912

Respondents shall include the case name and docket number (*In re: AgION Technologies, Inc. et al.*, FIFRA-01-2011-0076) on the face of each check or wire transfer confirmation.

48. If any Respondent fails to pay all or any portion of the civil penalty amount owed by that Respondent under this CAFO, such Respondent will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty or any portion thereof on the date it is due under this CAFO if such penalty or portion thereof is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt which remains delinquent more

than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d). In any action to compel payment of civil penalties owed under this CAFO, the validity, amount, and appropriateness of the penalty shall not be subject to review.

49. If any Respondent fails to pay all or any portion of the civil penalty amount owed by that Respondent by the date required under this CAFO, files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, is adjudicated as bankrupt under such Code, is the subject of a petition filed in Federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, then the full balance of all outstanding civil penalties, together with all interest and penalties accrued at the rates specified herein, shall immediately become due to EPA. Upon the occurrence of any of the events or conditions described in the preceding sentence, the affected Respondent shall give immediate notice to EPA at the following address:

U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912
Attention: Hugh W. Martinez, Senior Enforcement Counsel

50. The civil penalty due and any interest, non-payment penalties or charges that arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations,

including 26 C.F.R. § 1.162-21, and further agree not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

- 51. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 14(a) of FIFRA for the specific violations alleged in this CAFO. Except as otherwise provided herein, EPA reserves all civil and criminal enforcement authorities, and specifically reserves its authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of each Respondent to comply with said laws and regulations.
- 52. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both parties, and approval of a Regional Judicial Officer.
- 53. Each Party shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondents specifically waive their right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.
- 54. Each undersigned representative of the respective Respondents certifies that he or she is fully authorized to entire into the terms and conditions of this CAFO and to execute and legally bind the applicable represented Respondent to it.

For Respondent, SCIESSENT LLC:

(Signature)

Paul C. Ford, CEO 60 Audubon Road Wakefield, MA 01880 CEO

9/22/11 (Date)

For Respondent, AgION Technologies, Inc.:

(Signature)

Joseph F. Geary, Vice President

60 Audubon Road

Wakefield, MA 01880

President Sep. 27. 2011
Title) (Date)

For Respondent, Sinanen Zeomic Co., Ltd.:

(Signature)

Tetsuhiko Masuda, President

1-1 Nakagawa honmachi, Minato-ku

Nagoya, Japan 455-0051

For Respondent, AgION Technologies, Inc.:

(Signature)

Joseph F. Geary, Vice President

60 Audubon Road

Wakefield, MA 01880

President Sep, 27, 2011
(Date)

For Respondent, Sinanen Zeomic Co., Ltd.:

(Signature)

Tetsuhiko Masuda, President

1-1 Nakagawa honmachi, Minato-ku

Nagoya, Japan 455-0051

For U.S. EPA - Region 1:

(Signature)

Joanna B. Jerison, Legal Enforcement Manager

Office of Environmental Stewardship

U.S. EPA - Region 1

(Data)

(Signature)

Hugh W. Martinez, Senior Enforcement Counsel

Regulatory Legal Office

Office of Environmental Stewardship

U.S. EPA - Region 1

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Each of the Respondents, SCIESSENT LLC, AgION Technologies, Inc., and Sinanen Zeomic Co., Ltd., is hereby ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

(Date)

Jill T. Metcalf, Acting Regional Judicial Officer

U.S. EPA - Region

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order was delivered in the following manner to the addresses listed below:

Original and One Copy by

Hand Delivery to:

Wanda I. Santiago

Regional Hearing Clerk

Environmental Protection Agency

5 Post Office Square, Suite 100 (DRA 18-1)

Boston, MA 02109-3912

One Copy Each by Certified Mail

Return Receipt Requested to:

Paul C. Ford, CEO SCIESSENT LLC 60 Audubon Road Wakefield, MA 01880

Joseph F. Geary, Vice President

AgION Technologies, Inc.

60 Audubon Road Wakefield, MA 01880

and

Tetsuhiko Masuda, President Sinanen Zeomic Co., Ltd.

1-1 Nakagawa honmachi, Minato-ku

Nagoya, Japan 455-0051

Date ·

Signed:

Hugh W. Martinez, Senior Enforcement Counsel

U.S. Environmental Protection Agency

Region 1 (Mail Code: OES 04-3) 5 Post Office Square, Suite 100

Boston, MA 02109-3912

Phone (617) 918-1867 Fax (617) 918-0867

martinez.hugh@epa.gov