



## CropLife America and Three Registrants Give Notice that They Are Prepared to Sue EPA Over Endangered Species Act Restrictions

In concert with CropLife America; Makhteshim Agan of North America; and Cheminova, Inc.; Dow AgroSciences has filed notice that it is prepared to sue the U.S. Environmental Protection Agency over the Agency's failure to fulfill its statutory obligations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Endangered Species Act (ESA).

### Rationale For the Notice Letter

CLA and the companies providing this notice have a strong interest in ensuring that EPA conforms its FIFRA responsibilities with actions under the Endangered Species Act.

In recent years, EPA's response to this challenge has been thoroughly hijacked by activist litigation. A particular focus has been on the protection of salmon and their critical habitat in western states. In fact, the Agency is now preparing to impose new use restrictions on three crop protection products important to farmers (chlorpyrifos, diazinon and malathion) based on a hastily contrived National Marine Fisheries Service (NMFS) assessment that, contrary to specific requirements of the ESA, fails to consider the best scientific and commercial information available.

In commenting on NMFS' draft of that assessment, EPA strongly criticized the same analysis that it now proposes to enforce. For example, EPA objected that the assessment had not considered high quality scientific information, such as data from extensive surface water monitoring in relevant areas – which showed that salmon are already protected under current use directions – but instead relied on older data that did not reflect contemporary labels. EPA also questioned whether the NMFS assessment had demonstrated that labeled uses of the three pesticides equally impacted all of the two dozen salmon species in question or adversely modified their critical habitats.

Despite its misgivings, EPA is now moving forward to implement NMFS' recommended restrictions. It is doing so without seriously considering the input of agricultural stakeholders, state regulators or agricultural experts in Washington, Oregon, California and Idaho, many of whom have strongly objected both to the restrictions and the way in which EPA plans to put them into effect.

EPA is also proposing to impose these restrictions miles from actual salmon habitat – on more than 112 million acres in the Western U.S., including some of America's most valuable and productive farm and forest land – without an economic assessment of the impact on agriculture. This ignores a Congressional directive that EPA give particular attention to avoiding disruption of food and fiber production as it considered ESA-related actions.

More broadly, throughout the more than 35 years in which the Endangered Species Act been on the books, EPA has never devised a successful approach for working with NMFS and other involved federal agencies to integrate its FIFRA responsibilities with ESA requirements.

As a result, notwithstanding the absence of demonstrated threats to species, FIFRA-related implementation of the ESA to date has been largely driven by litigation brought by environmental organizations focusing on alleged EPA procedural failures, while giving little consideration for food and fiber production or the impact of these court decisions on American agriculture.

For all of these reasons, CropLife America and the registrants of these three products have advised EPA that they are prepared to file suit to compel EPA to use a more rational and lawful approach to integrating FIFRA and ESA concerns.

For further information on issues relating to salmon and the Endangered Species Act, visit <http://www.chlorpyrifos.com/news/>.

Also visit <http://www.chlorpyrifos.com/pdf/Comments-BiOp.pdf> to read excerpts of EPA's criticism of the NMFS assessment.

**About Dow AgroSciences**

Dow AgroSciences LLC, based in Indianapolis, Indiana, USA, is a top-tier agricultural company that combines the power of science and technology with the "Human Element" to constantly improve what is essential to human progress. Dow AgroSciences provides innovative technologies for crop protection, pest and vegetation management, seeds, traits, and agricultural biotechnology to serve the world's growing population. Global sales for Dow AgroSciences, a wholly owned subsidiary of The Dow Chemical Company, are \$4.5 billion. Learn more at [www.dowagro.com](http://www.dowagro.com).

**About Makhteshim-Agan of North America**

MANA is a North American subsidiary of Makhteshim Agan Industries, Ltd. (MAI) Israel, the global leader in the manufacturing and distribution of crop protection products. With 2008 sales over US\$ 2.5 billion, MAI ranks seventh in global agrochemical companies. For more information, visit [www.manainc.com](http://www.manainc.com).

**About Cheminova**

Cheminova, Inc., headquartered in Research Triangle Park, North Carolina, is the United States subsidiary of Cheminova A/S, a global leader in the production, development and sale of fine chemicals. Cheminova A/S is located in Lemvig, Denmark. Cheminova, whose focus and expertise is in the area of plant protection products, is one of the world's largest producers of organophosphate insecticides. The U.S. insecticide offerings include malathion, chlorpyrifos, dimethoate, gamma-cyhalothrin and imidacloprid. Supported by its extensive corporate resources, Cheminova, Inc. is dedicated to bringing high quality chemical products to the U.S. market at significant value to its customers. For more information on Cheminova A/S, visit [www.cheminova.com](http://www.cheminova.com).