

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

M & P Pest Control Inc.

Respondent

Proceeding Under the Federal
Insecticide, Fungicide, and
Rodenticide Act, as amended, and
the Clean Air Act, as amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket No. FIFRA-02-2020-5303

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or the “Act”), as amended, 7 U.S.C. § 136I(a), Section 113(d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits (“CROP”), 40 C.F.R. Part 22.

On March 3, 2020, the Complainant in this proceeding, the Director of the Enforcement and Compliance Assurance Division (“ECAD”), United States Environmental Protection Agency, Region 2 (“EPA”), issued a Complaint and Notice of Opportunity to Request a Hearing (“the Complaint”), FIFRA-02-2020-5303, to the above-captioned Respondent. The Complaint alleged that Respondent committed violations of Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), involving the sale or distribution of a restricted use pesticide (“RUP”) for a purpose other than in accordance with its registration, and of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), involving the use of a methyl bromide-containing pesticide in a manner

inconsistent with its labeling. Additionally, the Complaint alleged that Respondent committed violations, in connection with its sale of a methyl bromide-containing pesticide, of the recordkeeping and reporting provisions of the CAA and its implementing regulations regarding ozone depleting substances.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter. This Consent Agreement is signed by the Complainant and the Respondent, and the Final Order is issued by the Acting Regional Administrator of Region 2.

Jurisdictional Allegations

1. Section 14(a)(1) of FIFRA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any dealer, retailer, or other distributor who violates any provision of FIFRA.
2. Pursuant to EPA Delegation of Authority 5-14 and EPA Region 2 Delegation of Authority 5-14, the Administrator has delegated to the Complainant, the Director of the Enforcement and Compliance Assurance Division, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue FIFRA § 14 administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for FIFRA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.
3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the CAA, or any requirement

or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters.

4. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

5. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Enforcement and Compliance Assurance Division, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA § 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

6. Pursuant to EPA Delegations of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA § 113(d) Final Orders.

7. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on September 14, 2018, the United States Department of Justice (“DOJ”) granted EPA’s request for a waiver of the CAA § 113(d) 12-month time limitation on EPA’s authority to initiate an administrative penalty action in this matter.

FIFRA Statutory and Regulatory Background

8. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5, define, in part, a “pest” as any insect.

9. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as written, printed, or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.

10. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines the term “labeling” to mean all labels and all other written, printed or graphic matter, accompanying the pesticide or device at any time.

11. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), defines the term “to use any registered pesticide in a manner inconsistent with its labeling” to mean “the use of any registered pesticide in a manner not permitted by the labeling.”

12. Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), states that it is unlawful for any person to distribute or sell, or to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 136a(d) of this title and any regulations thereunder.

13. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G) states that it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”

Clean Air Act (CAA) Statutory and Regulatory Background

14. Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), directs the Administrator of EPA to publish a list of class 1 substances, and to add to that list any other substance that the Administrator finds cause or contributes significantly to harmful effects on the stratospheric ozone layer.

15. Section 603 of the CAA, 42 U.S.C. § 7671b, sets forth monitoring and reporting requirements for producers, importers or exporters of class 1 controlled substances, and authorizes the EPA Administrator to amend the monitoring and reporting regulations of class 1 and class 2 substances.

16. Pursuant to the authority in Section 603 of the CAA, 42 U.S.C. § 7671b, the Administrator of EPA promulgated regulations governing stratospheric ozone depleting substances, which are set forth at 40 C.F.R. Part 82.

17. Appendix A to 40 C.F.R. Part 82, Subpart A, lists methyl bromide (CH₃Br) as a class I, Group VI controlled substance and ozone-depleting chemical.

18. Section 604 of the CAA, 42 U.S.C. § 7671c, provides for the phase-out of production and consumption of class 1 substances, with one exception, set forth at (d)(5), 42 U.S.C. § 7671c(d)(5), that the EPA Administrator shall exempt from the phase-out the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State for purposes of compliance with Animal and Plant Health Inspection Service (U.S. Department of Agriculture) requirements or other international, Federal, State or local food protection standards.

19. Pursuant to 40 C.F.R. § 82.3, “quarantine applications” are , with respect to class I, Group VI controlled substances, treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

20. Pursuant to 40 C.F.R. § 82.3, “preshipment applications” are, with respect to class I, Group VI controlled substances, non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country.

21. Pursuant to 40 C.F.R. § 82.3, “distributor of methyl bromide” means the person directly selling a class I, Group VI controlled substance to an applicator.

EPA’s Findings of Fact and Conclusions of Law

22. Respondent is M & P Pest Control Inc., (“Respondent.”)

23. Respondent is registered with the Puerto Rico Department of State as a “for-profit” corporation.

24. Respondent is and has been engaged in the sale and distribution of pesticides and agricultural products from a facility located at 1332 Jesús T. Piñero Avenue, San Juan, Puerto Rico (“Facility”).

25. Among the pesticides Respondent has sold and distributed is Meth-O-Gas® Q, EPA Reg. No.5785-41 (“MethQ”).

26. MethQ's active ingredient is 100% methyl bromide.

27. MethQ is a commodity fumigant produced by Great Lakes Chemical Corporation solely for QPS applications.

28. The MethQ Respondent has sold and distributed is a RUP subject to the provisions of FIFRA and a class 1, Group VI controlled substances subject to the provisions of the CAA, and its implementing regulations at 40 C.F.R. Part 82.

29. Respondent has been, and continues to be, a “person” as defined by FIFRA § 2(s), 7 U.S.C. § 136(s), and a “dealer, retailer, or other distributor” within the meaning of FIFRA § 14(a)(1).

30. Respondent is subject to FIFRA and the regulations promulgated thereunder.

31. Respondent has been and continues to be a “person” as that term is defined by Section 302(e) of the CAA, 42 U.S.C. §7602(e), and by 40 C.F.R. § 82.3.

32. Respondent has been a distributor of methyl bromide as that term is defined by 40 C.F.R. § 82.3.

33. Respondent has been and continues to be subject to the reporting and recordkeeping requirements of 40 C.F.R. Part 82.

34. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized Puerto Rico Department of Agriculture ("PRDA") and EPA inspectors conducted inspections of Respondent on the following dates: March 25-26, 2015, March 31, 2015, April 8, 2015, April 16, 2015, April 17, 2015, April 22, 2015, May 13, 2015, May 20, 2015, and October 19, 2015 (collectively "the Inspections").

35. During the March 26, 2015 Inspection, Respondent's representatives provided the inspectors with a copy of the MethQ Label and MethQ booklet which M & P asserted that it provided with the sale of each MethQ canister.

36. The MethQ label (MOGQ-8 REV.C) (the "Label") and MethQ booklet (MOGQ-2REV.GLK398F) (the "Booklet") (collectively the "MethQ Labeling") Respondent provided sets forth precautionary statements and specific directions regarding use, storage, handling, sale and disposal of MethQ.

37. The following statements are clearly displayed on the MethQ Label received from Respondent:

a. At the top of the label and in all bolded capital letters:

**"COMMODITY FUMIGANT
FOR QUARANTINE/REGULATORY USE ONLY"**

b. "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."

c. "This fumigant is a highly hazardous material ... Before using, read and follow all label precautions and directions."

- d. "MethQ may be used for quarantine/regulatory commodity fumigation only."
- e. "Store in a secure manner either outdoors under ambient conditions or indoors in a well-ventilated area."
- f. "You must carefully read and understand the accompanying use direction, GLK 398F [Booklet], in order to use MethQ."
- g. "Observe all safety and precautionary statements as set forth in the accompanying g use directions, GLK398F [Booklet]."

38. The directions for use in the MethQ Booklet [GLK398F] include:

- a. On page 1, in large bold letters - "METH0-0-GAS ®Q COMMODITY FUMIGANT FOR QUARANTINE/REGULATORY USE ONLY"
- b. "This is a limited use label for quarantine/regulatory purposes and is to be used by or under the supervision of a State or Federal agency."
- c. "STORAGE, HANDLING AND DISPOSAL"

Do not contaminate water, food or feed by storage or disposal.

Storage and Handling of Cylinders. Store in a secure manner either outdoors under ambient conditions or indoors in a well-ventilated area. Post as a pesticide storage area. Store cylinders upright, secured to prevent tipping, as allowed by design."

39. At the Inspections, the inspectors requested information regarding the storage of returned, empty, and used MethQ cylinders and observed the improper storage of new and full MethQ cylinders.

40. Specifically, during the April 17, 2015 Inspection (8 cylinders), the April 22, 2015 Inspection (7 cylinders), and the May 13, 2015 Inspection (9 cylinders), PRDA and EPA inspectors observed that, contrary to the directions in the MethQ Labeling, Respondent failed to

(1) secure cylinders in storage to prevent tipping; (2) store cylinders in a well-ventilated area; and/or (3) have the methyl bromide storage area properly identified as a pesticide storage area.

41. Each of Respondent's failures to store each of the Meth Q cylinders in a manner consistent with its labeling constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling and an unlawful act under FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), for which a penalty may be assessed.

42. Each of Respondent's failures to comply with the requirements of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), constitutes an independent violation of FIFRA, for which a civil penalty may be assessed under Section 14(a) of FIFRA, 7 U.S.C § 136l(a).

43. At the Inspections, the inspectors collected records and statements, including records and statements regarding Respondent's purchase and sale of MethQ during the period from January 2013 through April 2015.

44. On May 26, 2015, acting under the authority and pursuant to the provisions of Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), and of Section 114a of the CAA, 42 U.S.C. § 7414, EPA sent M & P an Information Request Letter ("IRL") requesting information and records regarding the import, distribution, and application of methyl bromide.

45. The IRL requested, along with other reporting and recordkeeping documents, that M & P provide copies of certifications that M & P received from applicators stating that the quantity of methyl bromide ordered would be used solely for quarantine and preshipment ("QPS") applications, as required by 40 C.F.R. § 82.13(y)(2).

46. The IRL also requested that M & P provide copies of its quarterly reports to EPA, stating the quantity of methyl bromide ordered and delivered to QPS applicators in the previous quarter, as required by 40 C.F.R. § 82.13(y)(4).

47. On July 17, 2015, Respondent provided a response (the "Response") to EPA's IRL.

48. In the Response, Respondent stated, as a response to the portion of the IRL discussed in Paragraphs 44, 45 and 46, that "We don't have any of these documents."

49. In the Response, Respondent provided EPA with evidence that it sold or otherwise distributed MethQ between January 2013 and April 2015.

50. During the October 19, 2015 Inspection, the EPA inspector asked Mr. Michael Pantoja, M & P's president, whether M & P collected any QPS forms from its customers. Mr. Pantoja stated that "no applicator gave any QPS documentation to M & P."

51. During the October 19, 2015 Inspection, Mr. Michael Pantoja stated that he "did not know" about reporting and recordkeeping requirements under the CAA.

52. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized Puerto Rico Department of Agriculture ("PRDA") and EPA inspectors conducted multiple inspections in 2015 of the purchasers of the MethQ Respondent sold between January 2013 and April 2015 ("Applicators' Inspections").

53. At the Applicators' Inspections, the inspectors collected records from the purchasers of MethQ sold by Respondent. Such records included sales receipts, application records, and documentation of returns of empty MethQ cylinders to Respondent. None of the applicators purchased MethQ from Respondent for a valid QPS purpose.

54. Between January 3, 2013 and April 17, 2015, Respondent sold MethQ to applicators in Puerto Rico and the U.S. Virgin Islands on more than one hundred occasions.

55. Respondent failed to collect the required certifications for any of the sales between January 3, 2013 and April 17, 2015.

56. Respondent did not comply with the requirement set forth in 40 C.F.R. § 82.13(y)(2) for each of the sales made between January 3, 2013 and April 17, 2015, in violation of Section 603 of the CAA, 42 U.S.C. § 7671b.

57. Each of Respondent's sales of a methyl-bromide containing RUP made without complying with the recordkeeping provisions in 40 C.F.R. § 82.13(y)(2) is also a separate unlawful act pursuant to Section 12(a)(2)(F) of FIFRA, 7 U.S.C. § 136j(a)(2)(F), for which a penalty may be assessed under Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

58. Between January 3, 2013 and April 14, 2015, Respondent failed to report to EPA within 45 days after the end of each quarter the amount of QPS methyl bromide it delivered to applicators.

59. Respondent did not comply with the reporting requirement set forth in 40 C.F.R. § 82.13(y)(4) for each of the sales made between January 3, 2013 and April 17, 2015, in violation of Section 603 of the CAA, 42 U.S.C. § 7671b.

60. Each of Respondent's failures to comply with recordkeeping and reporting requirements under the CAA as alleged herein constitutes a separate violation of 40 C.F.R. §§ 82.13(y)(2) and (4) for which a civil penalty may be assessed under Section 113(d)(1)(B) of the CAA.

61. On February 16, April 14, and June 1st, 2021, Respondent submitted documentation of its current financial status in support of settlement.

CONSENT AGREEMENT

Based upon the foregoing and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed that:

1. Respondent shall hereinafter maintain compliance with the statutory provisions of
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the CAA and its implementing regulations at 40 C.F.R. § 82.13(y).

2. Respondent shall hereinafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 et seq., and its implementing regulations.

3. Respondent certifies that as of the date of execution of this CA/FO by Respondent:

a. Respondent is in compliance with the statutory provisions of Title VI of the CAA, 42 U.S.C. §§ 7671-9671q, and its implementing regulations with regard to the reporting and recordkeeping requirements for the purchase, sale and distribution of methyl bromide;

b. Respondent is in compliance with the statutory provisions of Section 12 of FIFRA, 7 U.S.C. § 136j, and its implementing regulations with regard to the sale, use, and distribution of RUPs containing methyl bromide;

c. Respondent is no longer selling methyl bromide-containing pesticides and the company does not presently intend to sell methyl bromide-containing pesticides; and

d. Respondent is aware of the additional Puerto Rico requirements regarding the sale of methyl bromide, including but not limited to PRDA's Administrative Order 2014-15 ("Para Establecer el Procedimiento para la Notificacion y Fiscalizacion de Entidades Licenciadas para Vender el Producto Bromuro de Metilo").

4. For the purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the EPA's Findings of Fact or Conclusions of Law set forth above.

5. Respondent shall pay, either by cashier's or certified check or electronically by Fedwire or online payment, a civil penalty of **One Hundred Twenty-Six Thousand and One Hundred and Eight Dollars (\$126,180)** plus accrued interest of 1,524.68 (for a total amount of

\$127,704.68), according to the following schedule:

- a payment of \$5,321.03 shall be received by EPA on or before 30 days from the effective date (due date #1);
 - a payment of \$5,321.03 shall be received by EPA on or before 60 days from the effective date (due date #2);
 - a payment of \$5,321.03 shall be received by EPA on or before 90 days from the effective date (due date #3);
 - a payment of \$5,321.03 shall be received by EPA on or before 120 days from the effective date (due date #4);
 - a payment of \$5,321.03 shall be received by EPA on or before 150 days from the effective date (due date #5);
 - a payment of \$5,321.03 shall be received by EPA on or before 180 days from the effective date (due date #6);
 - a payment of \$5,321.03 shall be received by EPA on or before 210 days from the effective date (due date #7);
 - a payment of \$5,321.03 shall be received by EPA on or before 240 days from the effective date (due date #8);
 - a payment of \$5,321.03 shall be received by EPA on or before 270 days from the effective date (due date #9);
 - a payment of \$5,321.03 shall be received by EPA on or before 300 days from the effective date (due date #10);
 - a payment of \$5,321.03 shall be received by EPA on or before 330 days from the effective date (due date #11);
 - a payment of \$5,321.03 shall be received by EPA on or before 360 days from the effective date (due date #12);
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- effective date (due date #12);
- a payment of \$5,321.03 shall be received by EPA on or before 390 days from the effective date (due date #13);
 - a payment of \$5,321.03 shall be received by EPA on or before 420 days from the effective date (due date #14);
 - a payment of \$5,321.03 shall be received by EPA on or before 450 days from the effective date (due date #15);
 - a payment of \$5,321.03 shall be received by EPA on or before 480 days from the effective date (due date #16);
 - a payment of \$5,321.03 shall be received by EPA on or before 510 days from the effective date (due date #17);
 - a payment of \$5,321.03 shall be received by EPA on or before 540 days from the effective date (due date #18);
 - a payment of \$5,321.03 shall be received by EPA on or before 570 days from the effective date (due date #19);
 - a payment of \$5,321.03 shall be received by EPA on or before 600 days from the effective date (due date #20);
 - a payment of \$5,321.03 shall be received by EPA on or before 630 days from the effective date (due date #21);
 - a payment of \$5,321.03 shall be received by EPA on or before 660 days from the effective date (due date #22);
 - a payment of \$5,321.03 shall be received by EPA on or before 690 days from the effective date (due date #23); and
 - a final payment of \$5,321.03 shall be received by EPA on or before 720 days from

the effective date (due date #24).

6. Respondent shall make the payments in accordance with the payment terms and according to one of the payment transmittal methods in subparagraph a, b, or c, below. Payments shall be received by EPA (if made by check) or effected by Respondent (if implemented electronically).

a. If Respondent chooses to pay by check, each check shall be made payable to “Treasurer of the United States of America” and shall be mailed by one of the following two methods:

STANDARD DELIVERY

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O Box 979077
St. Louis, MO 63197-9000

SIGNED RECEIPT CONFIRMATION DELIVERY (FedEx, DHL, UPS, USPS, Certified, Registered, etc.)

United States Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check(s) shall be identified with a notation thereon listing the following: *In the Matter of M & P Pest Control Inc.* and shall bear the Docket No. FIFRA-02-2020-5303.

b. If Respondent chooses to make payments electronically through Fedwire, Respondent shall provide the following information to its remitter bank (Federal Reserve Bank of New York) when each payment is made:

1) Amount of Payment;

- 2) SWIFT address: **FRNYUS33, 33 Liberty Street, New York, NY 10045;**
- 3) Account Code for Federal Reserve Bank of NY receiving payment: **68010727;**
- 4) ABA number: **021030004;**
- 5) Field Tag 4200 of the Fedwire message should read: **“D68010727Environmental Protection Agency”;**
- 6) Name of the Respondent: **M & P Pest Control Inc.;** and
- 7) Docket Number: **FIFRA-02-2020-5303**

c. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under “EPA Miscellaneous Payments – Cincinnati Finance Center;” and open the form and complete the required fields. Every time a payment is effected, Respondent shall email proof of payment to lugo.lizette@epa.gov, jordan-garcia.carolina@epa.gov and wise.milton@epa.gov with *In the Matter of M&P Pest Control Inc., FIFRA-02-2020-5303* as the subject line.

7. Failure to pay the full amount of the penalty, according to the above provisions, will result in a referral of this matter to the United States Department of Justice and/or the United States Department of the Treasury for collection and/or other appropriate action.

8. If timely payment is not received on or before a due date, then pursuant to 31 U.S.C. § 3717, Respondent shall also pay the following amounts:

a. Interest. If Respondent fails to make payment, on or before a due date, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the date said payment was required to have been made through the date said payment has been received.

b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be assessed for each thirty (30) day calendar day

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period or any portion thereof, following the date the payment was to have been made, in which payment of the amount remains in arrears.

c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each calendar quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent (10%) of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

9. Respondent has submitted financial information and documentation to EPA demonstrating limited ability to pay. EPA has relied on the accuracy of the financial information submitted by Respondent in negotiating this settlement. Respondent certifies that the information submitted to EPA regarding Respondent's ability to pay and regarding any other matter at issue in this proceeding, is complete, accurate and not misleading. Respondent and its officers, directors and principals are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding any matter herein at issue, are false or, in any material respect, inaccurate.

10. If in the future, EPA believes that the information certified, pursuant to Paragraphs 3 and 9 of this Consent Agreement, was inaccurately or falsely certified, and EPA

relied upon such information for purposes of settlement, EPA will so advise Respondent of its belief and basis, and will afford the Respondent thirty (30) days to submit comments to EPA. After review of any comments submitted, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees that false certification shall constitute a violation of this CA/FO and Respondent shall be liable to EPA for a lump stipulated penalty of \$10,000 for each false certification. Such payment shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. §§1001 et seq. or any other applicable law.

11. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this Consent Agreement if Respondent has, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission pursuant to Paragraph 10 of this Consent Agreement, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA and following the payment instructions of Paragraph 6 of this section. Penalties shall accrue regardless of whether EPA has notified the Respondent of the violation or made a demand for payment but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this Consent Agreement. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.

12. At any time prior to Respondent's payment of stipulated penalties, the Complainant may, for good cause as independently determined, reduce or eliminate the stipulated penalty(ies). If the Complainant makes such determination, EPA shall notify Respondent in writing of any such action.

13. Any responses, documentation, and communication submitted to EPA in connection with this Consent Agreement shall be sent via e-mail to lugo.lizette@epa.gov and jordan-garcia.carolina@epa.gov. Unless these EPA contacts are later advised otherwise in writing, Respondent agrees that EPA shall address any written future correspondence (including any correspondence related to payment of the penalty or stipulated penalties) to Michael Pantojas, President of M & P Pest Control, Inc., at the following address: P.O. Box 360910, San Juan, Puerto Rico, 00936-0910, with a copy to Respondent's counsel e-mail: jhansel.nunez@hotmail.com, and address: 313 Ave. Domenech Ste. 204, San Juan, Puerto Rico, 00918.

14. It is the responsibility of the Respondent to comply with applicable Commonwealth of Puerto Rico tax laws and regulations concerning the civil penalty assessed by EPA or any applicable stipulated penalties that may be assessed under the CA/FO. Any such penalties are not deductible expenditures under Commonwealth of Puerto Rico tax laws or regulations.

15. This Consent Agreement, which is being voluntarily and knowingly entered into by the Complainant and Respondent, resolves (conditional upon full payment of the civil penalty herein and any applicable stipulated penalty that becomes due Respondent's liability for federal civil penalties for the violations described in Paragraphs 41, 42, 56, 57, 59, and 60, in the above Findings of Fact and Conclusions of Law.

16. Respondent has read the Consent Agreement, understands its terms, finds it to be
In the Matter of M&P Pest Control Inc., Docket No. FIFRA-02-2020-5303

reasonable and consent to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

17. Respondent explicitly and knowingly consents to the assessment of the civil penalty and any stipulated penalties as set forth in this Consent Agreement and agrees to pay the civil penalty and any stipulated penalties in accordance with the terms of this Consent Agreement.

18. The Respondent agrees not to contest the validity or any term of this CA/FO in any action brought by the United States, including EPA, to enforce this CA/FO or to enforce a judgment relating to this CA/FO. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

19. Respondent explicitly waives its right to seek or obtain a hearing pursuant to Subpart D of 40 C.F.R. Part 22 or other judicial proceeding on this Consent Agreement or the Final Order included herein, including any right to contest allegations or Findings of Fact or Conclusions of Law and Final Order.

20. Respondent waives any right it may have to appeal this Consent Agreement and the accompanying Final Order.

21. The CA/FO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This CA/FO does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of the CAA and FIFRA and the regulations promulgated thereunder and other environmental laws. It is the responsibility of the Respondent to comply with such laws or regulations.

22. Nothing in this CA/FO shall be construed as a release from any other action under any law and/or regulation administered by EPA.

23. Nothing in this CA/FO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation(s) of this CA/FO or for Respondent's violation(s) of any other applicable provision of law or regulation, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s) or to contest liability or raise appropriate defenses in any subsequent proceeding filed by EPA for such purposes.

24. Each party to this Consent Agreement shall bear their own costs and attorneys' fees in this matter.

25. The Consent Agreement and attached Final Order shall be binding upon both EPA and the Respondent, its officers/officials, agents, authorized representatives and its successors or assignees.

26. Signatory for the Respondent certifies that: a) he is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he is duly and fully authorized to bind the party on behalf of whom (which) he is entering this Consent Agreement to comply with and abide by all the terms, conditions and requirements of this Consent Agreement.

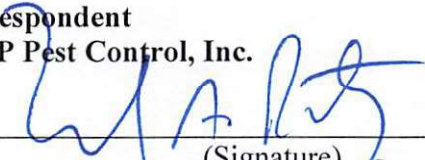
27. Respondent consents to the use of electronic signatures in this matter and to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk via electronic mail to the addressee identified in paragraph 16 of this Consent Agreement. Receipt of the fully executed CA/FO by said designated representative shall constitute Respondent's receipt and acceptance of said CA/FO.

Complainant:

For Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 2

Date: _____, 2021

For Respondent
M & P Pest Control, Inc.

By: 
(Signature)

Name: Michael A. Pawtupa

Title: President

Date: 7/23/2021, 2021

FINAL ORDER

The Acting Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. This Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified, incorporated into, and issued as this Final Order. This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 113(d) of the CAA and an assessment of penalty under Section 14 of FIFRA. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, NY.

Walter Mugdan
Acting Regional Administrator
United States Environmental Protection Agency, Region 2

Date: _____

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order, bearing docket number FIFRA-02-2020-5303, in the following manner to the respective addressees listed below:

OAL E-Filing System: Ms. Mary Angeles, Headquarters Hearing Clerk
OAL E-Filing System

OAL E-Filing System: Hon. Christine D. Coughlin, Judge
OAL E-Filing System2

Copy by E-Mail: Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy by E-Mail: Jhansel Núñez-Salcé, Esq.
313 Ave. Domenech Ste. 204
San Juan, PR 00918
jhansel.nunez@hotmail.com

Dated: _____, 2021
Guaynabo, Puerto Rico