



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 16 2009

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Patricio Martinez Lorenzo  
Attorney for Crop Protection Program  
Union Plaza Building, Suite 1200  
416 Ponce De Leon Avenue  
Hato Rey, Puerto Rico 00918-3424

Re: In the Matter of Crop Protection Program, Office of Agricultural Services and Development Administration, Docket No. FIFRA-02-2008-5301

Dear Mr. Martinez:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please assure that your client, the Crop Protection Program, Office of Agricultural Services and Development Administration, makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO. Please also assure the deadlines specified for the Supplemental Environmental Project are met in accordance with the time frames specified in the CA/FO.

Thank you for your cooperation in working with us to resolve this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours

Bruce H. Aber  
Assistant Regional Counsel

Enclosure

cc: Karen Maples, Region 2 Regional Hearing Clerk  
Julio Rodriguez, PREQB

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 SEP 16 PM 2:59  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2009 SEP 16 PM 2:58  
REGIONAL HEARING  
CLERK

In the Matter of:

Crop Protection Program, Office of  
Agricultural Services and  
Development Administration,

Respondent.

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

**CONSENT AGREEMENT  
AND FINAL ORDER**

**Docket No. FIFRA - 02-2008-5301**

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. Section 136l(a). The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, has been duly delegated the authority to institute this action. The Complainant issued a Complaint and Notice of Opportunity for Hearing to Respondent, Crop Protection Program, Office of Agricultural Services and Development Administration, of the Commonwealth of Puerto Rico Department of Agriculture, on or about September 13, 2008, bearing docket number FIFRA-02-2008-5301. The Complaint alleged that the Respondent committed violations of the Worker Protection Standard ("WPS") at 40 C.F.R. Part 170 and therefore Section 12(a)(2)(G) of FIFRA, 7 U.S.C. Section 136j(a)(2)(G), for the use of registered pesticides in a manner inconsistent with their labeling. Respondent filed an Answer on December 22, 2008, averred various affirmative defenses and requested a hearing.

During the winter and spring of 2009, the Respondent and Complainant exchanged information and entered into negotiations under the EPA Alternative Dispute Resolution process. On or about June 11, 2009, both parties reached an agreement in principle to settle this matter, subject to a memorialization of the terms and conditions of settlement in a Consent Agreement document. Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to Title 40 of the Code of Federal Regulations ("CFR"), Sections 22.18(b)(2) and (3), of the revised Consolidated Rules of Practice, is an appropriate means of resolving this administrative proceeding without further litigation.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent is the Crop Protection Program ("CPP"), Office of Agricultural Services and Development Administration ("ASDA"), Puerto Rico Department of Agriculture ("PRDA") (hereinafter "Respondent" or "CPP"), an entity that was organized pursuant to, and has existed under, the laws of the Commonwealth of Puerto Rico.
2. Respondent is a "person" as defined by FIFRA Section 2(s), 7 U.S.C. Section 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
3. Respondent is a "certified applicator" within the meaning of Section 2(e)(1) of FIFRA, 7 U.S.C. Section 136(e)(1).
4. Respondent is a "commercial applicator" within the meaning of Section 2(e)(3) of FIFRA, 7 U.S.C. Section 136(e)(3).
5. Respondent is an "agricultural employer," as that term is defined in 40 C.F.R. Section 170.3.

6. Respondent has employed “workers” and “handlers” as defined in 40 C.F.R. Section 170.3.
7. Respondent performs pesticide handling tasks, including pesticide application services, at agricultural establishments (ie., farms) located throughout the Commonwealth of Puerto Rico. The owners of said farms are “agricultural employers” in accordance with 40 C.F.R. Section 170.3.
8. EPA conducted inspections of the Respondent’s central and regional field offices on March 13, 2007, March 14, 2007, and in August 2007 and April 2008, in order to evaluate the compliance status of Respondent with respect to FIFRA and the WPS provisions, and evaluate application practices, particularly as related to application of restricted use pesticides.
9. PRDA provided copies of information required by 40 C.F.R. Section 170.224 to EPA for the time period January 1, 2008 through March 31, 2008.
10. Each of the pesticides identified below was applied by Respondent to farms it serviced in Puerto Rico:

Temik, EPA Reg. No. 264-330

Mocap 15%, EPA Reg. No. 264-457

Di-Syston 15%, EPA Reg. No. 264-723

Vydate L, EPA Reg. No. 352-372

Gramaxone Max, EPA Reg. No. 100-1074

Scala, EPA Reg. No. 264-788

11. The EPA-approved labels for each of the registered pesticides identified in paragraph 10 above, under Directions for Use, state the following: "It is a violation of Federal law to use the product in a manner inconsistent with its labeling."
12. The EPA-approved labels for each of the registered pesticides identified in paragraph 10 above, under "Agricultural Use Requirements," state the following: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 C.F.R. Part 170."
13. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with their labeling.
14. EPA conducted inspections of several farm owners (ie., agricultural employers) during April 2008, in order to obtain records supplied to them by Respondent.
15. Throughout this administrative proceeding, Complainant has maintained that upon application of registered pesticides to the farms it services, the Respondent has failed to provide agricultural employers with specific information of pesticide applications, and has used registered pesticides in a manner inconsistent with their labeling.
16. Based on the above-mentioned inspections and the documentation obtained during and subsequent to those inspections, EPA issued a Complaint against Respondent for alleged violations of FIFRA and WPS requirements with respect to application and use of pesticides. The violations cited include violations of FIFRA Section 12(a)(2)(G) and 40 C.F.R. Section 170.
17. As a result of negotiations over a period of several months, the parties have been able to reach an agreement to resolve this case.

18. The parties have further agreed that the settlement will include payment of a civil penalty, performance of a Supplemental Environmental Project (“SEP”) and injunctive tasks, as set forth below.

### CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties, and Respondent knowingly and voluntarily agrees as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondent (a) admits the jurisdictional allegations for this proceeding, as specified in this Consent Agreement and Final Order, and (b) neither admits nor denies any factual allegations of the Complaint or in the Findings of Fact and Conclusions of Law contained herein.
2. Respondent shall hereinafter maintain compliance with the statutory and regulatory provisions of the Federal Insecticide, Fungicide & Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.
3. Respondent’s signatory certifies, on behalf of the Respondent, that, as of the date of its execution of this Consent Agreement, with respect to the farms it services, the Respondent provides notice of specific pesticide information for agricultural employers.
4. Respondent’s signatory certifies, on behalf of the Respondent, that, as of the date of its execution of this Consent Agreement, if Mocap and/or Di-Syston are applied by Respondent to farms it services, the Respondent shall incorporate them into the soils upon application.

5. Respondent's signatory certifies, on behalf of the Respondent, that, as of the date of its execution of this Consent Agreement, with respect to the farms it services, the Respondent uses proper methods of application in accordance with the labels of the pesticides it applies.
6. Respondent's signatory certifies, on behalf of the Respondent, that, as of the date of its execution of this Consent Agreement, with respect to the farms it services, the Respondent applies pesticides on crops for which the pesticides have been specifically approved for use.
7. As of the date of its execution of this Consent Agreement, Respondent's signatory certifies, on behalf of the Respondent, that: A) in 2008 the Respondent applied the registered pesticide Mocap with the 2001 label, not the 2006 label. Additionally, the applicators were using gloves or other protective gear or equipment while applying the Mocap pesticide, in order to prevent contact with workers and handlers either directly or through drift; B) Respondent will substitute a liquid (and less toxic) registered pesticide, such as ADMIRE, for Di-Syston, in order to ensure better incorporation into the soil upon application to coffee crops; and C) Respondent will purchase and use a metering device (when metering devices become commercially available) to ensure incorporation of pesticides into the soil upon application.
8. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Thirty One Thousand Dollars (\$31,000.00)**, payable to the "Treasurer, United States of America," in accordance with the following schedule: i) \$15,000 due on or before forty-five (45) days after the date of signature of the Final Order at the end of this document;

and ii) \$16,000 due on or before one hundred and eighty (180) days after the date of signature of the Final Order at the end of this document.

Each check shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Crop Protection Program, Office of Agricultural Services and Development Administration, Docket No. FIFRA-02-2008-5301. Each check shall be mailed to:

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

If overnight delivery is preferred, Respondent may mail the check to the following address:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
Attn: USEPA Box #979077  
St. Louis, MO. 63101

Respondent shall also send copies of each payment to:

Bruce Aber, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866



Each payment must be received at the payee address on or before the due date specified above (the date by which each payment must be received shall hereinafter be referred to as its “due date”).

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- b. Furthermore, if any payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the due date.
- d. The effective date of this CA/FO shall be the date of its filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
- e. If Respondent fails to pay any of the above payments within thirty (30) days of its due date, Respondent shall also be liable to the United States for an additional stipulated penalty of Nine Thousand Dollars (\$9,000) for each such failure, unless on or before the due date, Respondent has submitted to EPA a writing that demonstrates to EPA’s satisfaction good cause for such failure, as provided in paragraphs 22-24 of this Consent Agreement.

9. Respondent consents to the terms of this Consent Agreement and agrees to perform a Supplemental Environmental Project (“SEP”), as described herein. The total expenditure for the SEP shall not be less than \$106,000. Respondent shall provide EPA with documentation of the expenditures made in connection with the SEP. This documentation of expenditures shall be included as part of the SEP Completion Report, due on or before September 30, 2010. EPA will review the expenditures and determine whether they can be counted toward the required SEP expenditure which determination shall be reasonably made.

10. Respondent agrees to implement the SEP in accordance with the terms and the schedule set forth in this CA/FO. For purposes of this Consent Agreement, days shall mean calendar days. Any proposed changes to the SEP must be approved by EPA.

11. The following describes the requirements for the Supplemental Environmental Project, which consists, in part, of conducting compliance promotion training seminars:

(i) Objective: The goal of this SEP is to train farm workers and pesticide handlers employed by other agricultural employers (it may also incidentally educate CPP employees who apply pesticides on the farms they service). The training will educate attendees about the WPS set forth at 40 CFR Part 170, including the obligations of an agricultural employer to provide workers and handlers with specific information about pesticide applications, to provide decontamination supplies and to post pesticide safety and emergency medical care information. The training will also discuss the requirements under FIFRA to use pesticides in a manner consistent with their labels and the obligation of the agricultural employer to assure that handlers have knowledge of the pesticide labeling and site-specific information before the handler

performs any handling activity. The training will also discuss environmental risks resulting from violations of the WPS and pesticide safety and emergency medical care information. The contents of the training will satisfy the requirements of 40 CFR Section 170.130 and 40 CFR Section 170.230 (pesticide safety training for workers and handlers). This SEP should help protect workers and handlers from pesticide contamination by reducing their exposures thereto.

(ii) Description: The SEP has several different elements, including the following:

- (1) The Respondent shall identify between 800 and 1000 farm workers, and between 450 and 500 pesticide handlers, who have not received WPS training (as required by FIFRA regulations) during the past five years, and provide WPS training (also referred to as “seminars”) to said farm workers and pesticide handlers employed by other agricultural employers throughout Puerto Rico. Respondent will conduct training seminars in each of the following 8 regions in Puerto Rico during the period from January 1, 2010 through July, 2010: rural areas surrounding the townships of (i) Arecibo, (ii) Caguas, (iii) Lares, (iv) Lajas, (v) Mayaguez, (vi) Naranjito, (vii) Ponce and (viii) Utuado. Each seminar shall comprise at least two full days of training. The Respondent will select trainers and visual aids (powerpoint presentation), publications and other course materials to be distributed to attendees. Respondent will also provide attendees with evaluation forms to evaluate the training and will see that the forms are submitted. The training will be provided solely to farm workers and pesticide handlers employed by other agricultural employers, not to workers or handlers employed by Respondent.
- (2) The Respondent shall purchase approximately 900 sets of personal protection equipment (“PPE) for farm workers, and 475 sets for pesticide handlers, that are employed by agricultural employers other than the Respondent. The PPE shall include disposable overalls, half face respirators, rubber boots and gloves.

(3) The Respondent shall issue WPS Training Verification Cards to farm workers and pesticide handlers that complete the WPS training program.

(4) The Respondent shall provide EPA-approved publications to agricultural employers advising them of WPS training requirements for workers and handlers. The Respondent shall translate the EPA-approved publications from English to Spanish prior to distribution to agricultural employers (other than Respondent) in Puerto Rico.

(5) The Respondent shall: i) examine product labels of pesticide products maintained in CPP inventory and provided to agricultural employers as part of CPP services, ii) prepare a list of any pesticide products in inventory, identifying applicable PPE requirements for each such pesticide product, and iii) distribute to each agricultural employer who receives services from CPP, a copy of the list of pesticide products and the applicable PPE for said products.

(6) Other SEP activities, including the purchasing of PPE, mentioned in subparagraphs (ii)(2) through (5) immediately above, shall be satisfactorily completed by no later than July 31, 2010.

(iii) Plan: The Respondent shall provide to EPA for review and comment a Plan for the Compliance Promotion Training Seminars. The Plan shall describe the proposed content of the training, including the content descriptions in paragraph 11(ii)(1) through (5) above, as well as provide a schedule therefore. The Plan shall also:

- a) Identify the persons who will conduct the compliance promotion training seminars and include a copy of the instructors' resumes and qualification dossiers. (The seminars shall be taught by instructors who have the expertise required to present and cover the topics);
- b) Provide the dates and times and locations (address, building and room number) for the seminars;

- c) Provide a copy of the invitations and guest (invitee) list.
- d) Provide a copy of the course material (in English translation), including any brochure/literature that will be provided to the attendees (in Spanish); and
- e) Provide a copy of the seminar evaluation forms that will be distributed to attendees.

(iv) The Invitees:

Respondent shall invite farm workers and pesticide handlers employed by other agricultural employers throughout Puerto Rico to the training seminars. Respondent shall mail invitations, or solicit attendance using another method, to farm workers and pesticide handlers in the following eight (8) regions: i) Arecibo, ii) Caguas, iii) Lares, iv) Lajas, v) Mayaguez, vi) Naranjito, vii) Ponce, and viii) Utuado.

(v) Training Seminars Report:

Respondent shall provide a Report on the training seminars to EPA in English within 15 (fifteen) days after each seminar. The written report shall summarize the training performed, and include a list of the attendees and their association (name and location of agricultural employer, including the region where they work). With each Report, Respondent shall also provide the completed evaluation forms to EPA, so that EPA can gauge the effectiveness of the compliance promotion training seminars.

12. Respondent shall perform the SEP in accordance with the schedule set forth below.

<b>Activity</b>	<b>Date Due</b>
<p>SEP</p> <p>a) Respondent shall submit to EPA for EPA's review and comment a Plan for the Compliance Promotion Training Seminars concerning FIFRA Worker Protection Standard requirements and use of a pesticide in accordance with its labeling. The Plan shall include the information required in paragraph 11 (i), (ii) and (iii), above.</p>	<p>Date Due: Within 60 days after the Regional Administrator's signature of the Final Order.</p>
<p>b) Conduct Seminars.</p>	<p>Date Due: During the period between January 1, 2010 through July 2010, at dates and times acceptable to the parties (EPA and Respondent) signing this Consent Agreement.</p>
<p>c) Provide to EPA a copy of the Training Seminars Report, as described in Paragraph 11 (v) above, which shall also include an Attendance Sheet and Seminar Evaluation Forms</p>	<p>Date Due: Within 15 days after each Seminar</p>
<p>d) SEP Completion Report</p>	<p>Date Due: September 30, 2010</p>

13. Respondent shall provide to EPA a SEP Completion Report (in English) documenting the completion of the SEP and the expenditures made in connection with the performance of the SEP. The SEP Completion Report shall be submitted to EPA in English by no later than September 30, 2010. All SEP expenditures are subject to approval by EPA. Said documentation shall be mailed to:

Dr. Adrian Enache  
Division of Enforcement and Compliance Assistance  
Pesticide and Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue, Building 205, MS 500  
Edison, New Jersey 08837-3679

and

Bruce Aber, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency- Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866.

14. The SEP Completion Report shall contain the following information:

- a) Detailed description of the SEP as implemented;
- b) Description of any problems encountered and the solutions thereto;
- c) Itemization of costs incurred which Respondent feels are eligible for SEP credit, accompanied by copies of invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and services for which payment is being made (if the itemization and documentation have been previously provided with the Progress Report, it will suffice to refer to the prior submittal );
- d) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- e) Description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

15. Respondent shall provide EPA with bi-monthly Progress Reports, in English and in a form approved by EPA, starting 3 months after the effective date of the Final Order and continuing until the SEP is completed. The Progress Reports shall inform EPA of Respondent's

efforts to achieve milestones for the SEP, shall identify any issues or problems that have arisen in the implementation of the SEP and how any such issues or problems were addressed, and shall itemize and document the expenditures that Respondent has made in connection with the SEP. Unless otherwise approved by EPA, copies of all invoices and a copy of documents related to the SEP and created or paid or received by Respondent during the reporting period shall be enclosed with the Progress Reports when transmitted to EPA. Respondent shall send the Progress Reports to the addressees in paragraph 13, above.

16. Respondent agrees that failures to timely submit the Progress Reports or SEP Completion Report shall be deemed violations of this Consent Agreement and Final Order, and Respondent shall become liable for stipulated penalties pursuant to paragraph 22B, below.

17. Following receipt of a Progress Report and the SEP Completion Report, EPA will:

- a) accept the report;
- b) reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) days in which to correct any deficiencies. If EPA, after allowing Respondent thirty (30) days to correct any deficiencies, finds that the same type of deficiencies remain, then EPA may seek stipulated penalties in accordance with paragraph 22 B through E, below.

18. If EPA elects to exercise option 17(b) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within 10 days of receipt of such notification. EPA and Respondent will have an additional thirty (30) days (or such time as the parties may agree to) from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may ask that the Complainant or her representative review the matter. Thereafter, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent



agrees to comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 22 A, below.

19. In all documents or reports, including without limitation, Progress Reports, or the SEP Completion Report, which are submitted to EPA pursuant to this CA/FO, Respondent shall, by its official, sign and certify under penalty of law that the information contained in such certification(s), document(s) or report(s) is true, accurate and not misleading by signing the following statement.

“I certify under penalty of law that I have examined and am familiar with the information submitted in this certification, document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe, to the best of my knowledge and belief, that the information is true, accurate and complete. I am aware that there are significant potential penalties for knowingly submitting materially false information, including the possibility of fines and imprisonment.”

The certifications shall be signed by a person knowledgeable about the information provided in the certification(s) and report(s), and who is authorized by Respondent to make such certification. In addition, Respondent and its signatory hereto acknowledge that the Certifications in paragraphs 3 through 7, above, and paragraph 30, below, are made in accordance with the above statement. The certification(s) and certified report(s) shall be sent to Dr. Adrian Enache of EPA at the address in Paragraph 13.

20. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through the implementation of the SEP project as herein required, whether the SEP has been satisfactorily completed, whether the Respondent has made good faith, timely effort to implement the SEP, and whether costs expended are creditable to the SEP shall be the sole

determination of EPA. Should EPA have any concerns about the satisfactory completion of the SEP, EPA will communicate those concerns to Respondent and provide it with an opportunity to respond, and/or correct the deficiencies. If EPA makes a determination that the SEP has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

21. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation, and financing of the SEP and documentation supporting information in documents or reports submitted to EPA pursuant to this CA/FO, including the Plan for the SEP, the training seminar reports, bi-monthly Progress Reports and the SEP Completion Report. Respondent shall grant EPA and its authorized representatives access to such documentation and shall provide copies of such documentation to EPA within thirty (30) days of Respondent's receipt of a request by EPA for such information, or such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five (5) years from the effective date of this CA/FO or three (3) years from the satisfactory completion of the required SEP, whichever is later.

22. Stipulated penalties will be calculated as follows:

A. In the event that EPA determines, in its sole discretion, that Respondent failed to comply with any of the terms or provisions of this Consent Agreement and Final Order relating to the performance of the SEP described in paragraph 11, above (but excluding violations described in paragraph 22 B.), and/or to the extent that the actual allowable expenditures for the SEP does not equal or exceed the required minimum expenditure for the SEP identified in paragraph 9, above, Respondent shall be liable for stipulated penalties (except as provided in subparagraph (iii) (c), immediately below) according to the following provisions:

i) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, Respondent shall pay a stipulated penalty in the amount of **Ninety-One Thousand Two Hundred and Thirty Two Dollars (\$91,232)**. Payment shall be transmitted using one of the procedures specified in paragraph 8, above.

ii) If EPA determines, in its sole discretion, that the SEP has not been completed satisfactorily, but:

(a) EPA determines that Respondent made good faith and timely efforts to complete the project; and

(b) Respondent certifies, with supporting documentation, that at least ninety (90) percent of the amount of money which was required pursuant to paragraph 9 to be spent was expended on the SEP, and EPA accepts that such expenditures are creditable for the specific SEP, then Respondent shall not pay any stipulated penalty.

iii) If EPA determines, in its sole discretion, that the SEP is satisfactorily completed, but:

(a) Respondent spent less than ninety (90) percent of the amount of money required to be spent for the SEP, and

(b) Respondent certifies, with supporting documentation, the costs that were expended on the SEP, and EPA accepts that such expenditures are creditable for the specific SEP, then:

Respondent shall, unless the provisions of subparagraphs C. and D. (immediately below) are applicable, pay a stipulated penalty in an amount equal to two (2) times the difference between the required expenditure for the SEP as set forth in Paragraph 9 above, and the amount the Respondent has expended that EPA determines is properly credited toward the SEP.

(c) Where Respondent completes the SEP to EPA's satisfaction, but spends less than the required amount for the SEP, Respondent may, with written EPA approval, spend unexpended monies for a closely-related activity whose nature and purposes are determined by EPA to be consistent with the approved SEP.

B. Notwithstanding any other provision of this Consent Agreement, stipulated penalties shall accrue per day per violation for the following types of matters: failure to comply with any schedule to submit records and documentation, including but not limited to reports and work plans; failure to include the required certifications or public statements; providing certification that EPA determines is untrue or inaccurate; and/or failure to revise any documents on schedule following receipt of comments; and/or failure to maintain and/or provide records. If deviation from the due dates/schedule in this Consent Agreement for the documents/reports/records described in this paragraph, has not been approved by EPA in writing pursuant to paragraph 29, below, and if Respondent is determined by EPA to be liable to EPA for a stipulated penalty, such liability shall commence on the first day of noncompliance and continue through the final date of completion of the activity for which compliance is achieved. Simultaneous penalties shall accrue for separate violations of the Consent Agreement. The stipulated penalties shall accrue as follows:

**STIPULATED PENALTY AMOUNTS**

<u>Period of Failure to Comply</u>	<u>Penalty Per Day</u>
1st to 20th day	\$100
21st to 60th day	\$300
Each day in excess of 60 days	\$1000

C. Unless Respondent provides EPA with a written explanation in accordance with subparagraph D., below, all stipulated penalties are due and payable within sixty (60)

calendar days of the Respondent's receipt from EPA of a written demand for payment of the penalties. Respondent agrees that such demand, as well as other notifications required or permitted under this Consent Agreement, shall be mailed to Respondent and to its counsel, Patricio Martinez Lorenzo, Esq., Union Plaza Building, Suite 1200, 416 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00918-3424. All stipulated penalty payments shall be made using one of the procedures specified in Paragraph 8, above. Penalties shall accrue as provided above 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 CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable law.

D. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have thirty (30) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant). Pursuant to paragraph 23, below, EPA shall evaluate the written explanation provided by the Respondent.

E. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.

23. Complainant at her discretion may reduce or eliminate any stipulated penalty due 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 the paragraph 22 D., above. 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 sixty (60) calendar days of its receipt of such written notice from EPA.

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

25. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of FIFRA and WPS requirements, including the use of pesticides inconsistent with their labeling."

26. Force Majeure:

a) If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing not more than fifteen (15) days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay,

the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

b) If the parties agree that the delay or anticipated delay in compliance with this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

c) In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delay in completion of the SEPs shall not be excused.

d) The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of actions called for by this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

27. The civil penalties and stipulated penalties provided for herein are penalties within the meaning of Title 26, Section 162(f), of the United States Code, 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal, Commonwealth or local law.

28. The SEP to be completed by Respondent, described in paragraphs 9, 10, 11 and 12 of this Consent Agreement, has been accepted by Complainant solely for purposes of settlement of this civil administrative proceeding.

29. EPA Region 2 may grant an extension of the date(s) of performance or such other dates as are established in this Consent Agreement with regard to the SEP components, if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fifteen (15) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. Such extension, if any, shall be approved in writing.

30. Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP described in paragraphs 9 through 12, above, by any federal, Commonwealth, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or in compliance with Commonwealth or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other



enforcement action for the SEP. Respondent certifies that it had not committed to perform the SEP prior to the commencement of this action.

31. Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

32. If in the future EPA believes that any of the information certified to, pursuant to this Consent Agreement is inaccurate, EPA will advise Respondent of its belief and its basis for such, and will afford Respondent an opportunity to respond to EPA. If the certification is materially inaccurate with respect to compliance with the requirements set forth in the Compliance Order and/or the SEP, EPA may, in addition to seeking stipulated penalties pursuant to paragraph 22 B. under this CA/FO for noncompliance, initiate a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or any other applicable law.

33. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondent to resolve the civil and administrative claims alleged in the Complaint in this matter (conditional upon full payment of the penalty and any stipulated penalty that comes due, and upon the accuracy of Respondent's certifications in this proceeding). Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents 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.

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

36. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or any of the allegations therein asserted, on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

37. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative proceeding, except in an action or proceeding to enforce the terms of this Consent Agreement and its accompanying Final Order.

38. Respondent explicitly waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

39. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.

40. Nothing in this document is intended or shall be construed to be a ruling on or determination of any issue related to a federal or Commonwealth permit.

41. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

42. The provisions of this Consent Agreement and Final Order shall be binding upon Respondent, its officials, agents, authorized representatives and successors or assigns.

43. Each party hereto agrees to bear its own costs and fees in this matter.

44. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

45. Pursuant to 40 C.F.R. § 22.31(b), the effective date of the Final Order herein shall be the date when filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2.

In the Matter of Crop Protection Program, Office of Agricultural Services and Development  
Administration, Docket No. FIFRA-02-2008-5301

**RESPONDENT: Crop Protection Program, Office of the Agricultural Services and  
Development Administration**

BY:   
(Authorized Signature)

NAME: JAVIER RIVERA AQUINO

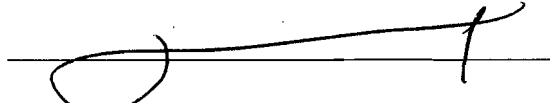
(Please Print)

TITLE: SECRETARIO DEPTO. AGRICULTURA

DATE: 03 de septiembre de 2009

In the Matter of Crop Protection Program, Office of Agricultural Services and Development  
Administration, Docket No. FIFRA-02-2008-5301

COMPLAINANT:

A handwritten signature in black ink, appearing to read "Dore LaPosta", is written over a horizontal line.

**Dore LaPosta, Director**

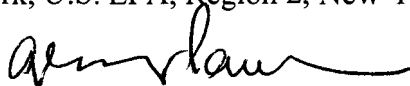
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: SEPTEMBER 15, 2009

In the Matter of Crop Protection Program, Office of Agricultural Services and Development  
Administration, Docket No. FIFRA-02-2008-5301

**FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 14(a) of FIFRA and 40 C.F.R. Section 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



**George Pavlou**  
Acting Regional Administrator  
U.S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

DATE: 9/15/09

In the Matter of Crop Protection Program, Office of Agricultural Services and Development  
Administration, Docket No. FIFRA-02-2008-5301

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy  
by Hand:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection  
Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866

Copies by Certified Mail,  
Return Receipt Requested:

Honorable Susan L. Biro  
Chief, Administrative Law Judge  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Patricio Martinez Lorenzo, Esq.  
Attorney for Respondent CPP/ASDA  
Union Plaza Building, Suite 1200  
416 Ponce De Leon Avenue  
Hato Rey, Puerto Rico 00918-3424

SEP 16 2009

*Mildred N. Baez*