



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

JUL - 9 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Lcdo. Alberto L. Ramos Perez  
PO Box 750  
Mercedita, PR 00715-0750

**Re: In the Matter of Jose R. Martinez Coello**  
**Docket No. FIFRA-02-2008-5305**

Dear Mr. Ramos Perez:

Enclosed you will find 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, Region 2. Please have your client arrange payment of the civil penalty in accordance with the terms of the CA/FO.

Thank you in advance for your cooperation with this matter. If you have any questions, I may be reached by phone at (212) 637-3637, by facsimile at (212) 637-3199, or by e-mail at Taylor.Karen@epa.gov.

Sincerely,

Karen L. Taylor, Esq.  
Office of Regional Counsel

Enclosure

cc: Carmen H. Zayas  
Director, Agrological Laboratory  
Puerto Rico Department of Agriculture  
P.O. Box 10163  
Santurce, PR 00908-1163

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 JUL -9 AM 10:50  
REGIONAL HEARING  
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2008 JUL -9 AM 10:50  
REGIONAL HEARING  
CLERK

|                              |   |                               |
|------------------------------|---|-------------------------------|
| -----X                       | : |                               |
| In the Matter of             | : |                               |
|                              | : |                               |
| Jose R. Martinez Coello,     | : | <u>CONSENT AGREEMENT AND</u>  |
| Finca Los Tres Picachos,     | : | <u>FINAL ORDER</u>            |
|                              | : |                               |
| Respondent.                  | : | Docket No. FIFRA-02-2008-5305 |
|                              | : |                               |
| Proceeding Under the Federal | : |                               |
| Insecticide, Fungicide and   | : |                               |
| Rodenticide Act, as amended. | : |                               |
| -----X                       | : |                               |

**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. § 1361(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), Title 40 of the Code of Federal Regulations ("C.F.R.") Part 22. On October 26, 2007, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent, Jose R. Martinez Coello, the owner of Finca Los Tres Picachos, located at Carr 539, Km 2.7, Jayuya, Puerto Rico. The Complaint alleged that Respondent committed: one (1) violation of 40 C.F.R. § 170.130, involving the failure to assure pesticide safety training for workers; three (3) violations of 40 C.F.R. § 170.122, involving the failure to provide workers with specific information on pesticide applications; and

*J.R.M.*

three (3) violations of 40 C.F.R. § 170.222, involving the failure to provide the handler with specific information on pesticide applications, which are uses of a registered pesticide in a manner inconsistent with its labeling in violation of Section 12(a)(2)(G) of FIFRA. 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 Sections 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

**EPA’s FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**Failure to Assure Pesticide Safety Training for Workers**

1. On or about August 7, 14, and 15, 2006, Respondent’s handler applied the pesticide Gly Star Plus to plants at Finca Los Tres Picachos.

2. Title 40 C.F.R. § 170.130 requires agricultural employers to assure that each worker has been trained regarding pesticides before a worker enters any area on an agricultural establishment where, within the last 30 days, a pesticide subject to the Worker Protection Standard (“WPS”), codified at 40 C.F.R. Part 170, has been applied on the establishment or the restricted entry interval (“REI”) for such pesticide has been in effect.

3. Workers on Finca Los Tres Picachos did not receive pesticide training prior to or following the application of pesticides to the agricultural establishment.

4. Therefore, Respondent violated 40 C.F.R. § 170.130, by failing to assure that each worker received pesticides training, which constitutes use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

JAMC

**Failure to Provide Workers With Specific Information on Pesticide Applications**

1. After Respondent's handler applied the pesticide Gly Star Plus to plants at Finca Los Tres Picachos on or about August 7, 14, and 15, 2006, Respondent failed to display specific information about the pesticide applications.

2. Title 40 C.F.R. § 170.122 requires that when workers are on an agricultural establishment and, within the last 30 days, a pesticide subject to the WPS has been applied on the establishment or the REI has been in effect, the agricultural employer shall display specific information about the pesticide.

3. Respondent's failure to provide workers with specific information about the application of the pesticide Gly Star Plus following its application on August 7, 14, and 15, 2006 constitutes three (3) violations of 40 C.F.R. § 170.122, which constitute use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**Failure to Provide Handler With Specific Information on Pesticide Applications**

1. After Respondent's handler applied the pesticide Gly Star Plus to plants at Finca Los Tres Picachos on or about August 7, 14, and 15, 2006, Respondent failed to display specific information about the pesticide applications.

2. Title 40 C.F.R. § 170.222 requires that when handlers are on an agricultural establishment and, within the last 30 days, a pesticide subject to WPS has been applied on the establishment or the REI has been in effect, the handler's employer shall display specific information about the pesticide.

3. Respondent's failure to provide Respondent's handler with specific information about the application of the pesticide Gly Star Plus following its application on August 7, 14, and 15,

*J.R.M.C.*

2006 constitutes three (3) violations of 40 C.F.R. § 170.122, which constitute use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**CONSENT AGREEMENT**

Based upon the foregoing, and pursuant to Section 22.18 of 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, and accepted by Respondent that he shall hereafter the date of execution of this Consent Agreement comply with the following terms:

1. For purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies specific factual allegations in the Complaint; and (c) neither admits nor denies EPA's Findings of Fact and Conclusions of Law in this Consent Agreement.

2. Respondent shall comply with the applicable requirements of FIFRA and the Worker Protection Standard at his agricultural establishment, and will provide the required WPS training to workers and handlers and provide specific pesticide application information to workers and handlers by posting the information in the central posting area.

3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **Four Thousand Six Hundred and Twenty Dollars (\$4,620.00)**, payable to the "**Treasurer, United States of America.**" The check shall be identified with a notation of the name and docket number of this case as follows:

In the Matter of Jose R. Martinez Coello, Docket No. FIFRA-02-2008-5305

The check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties

Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 62197-9000


Respondent shall also send copies of this payment to each of the following:

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

and

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

The payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO (the date by which payment must be received shall hereafter be referred to as the "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 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 90 days of the due date.
- d. The effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.
- e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).

4. This Consent Agreement and Final Order shall not relieve Respondent of his obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This Consent Agreement and Final Order is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint in this matter. 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. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its 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.

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

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

8. 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.

9. The provisions of this CA/FO shall be binding upon Respondent, his agents, servants, authorized representatives and successors or assigns.

10. Respondent waives any right he may have pursuant to 40 C.F.R. § 22.8 to be present during discussion 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.

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

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

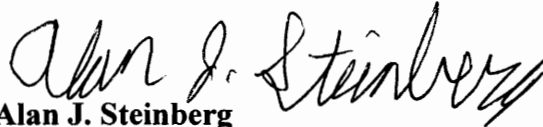




**In the Matter of Jose R. Martinez Coello**  
**Docket No. FIFRA-02-2008-5305**

**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. 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.



**Alan J. Steinberg**

Regional Administrator

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, NY 10007-1866

DATE: \_\_\_\_\_

5-24-09

**In the Matter of Jose R. Martinez Coello**  
**Docket No. FIFRA-02-2008-5305**

**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, 16<sup>th</sup> floor  
New York, NY 10007-1866

Copy by Pouch Mail:

Chief Judge Susan L. Biro  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Copy by Certified Mail,  
Return Receipt Requested:

Lcdo. Alberto L. Ramos Perez  
P.O. Box 750  
Mercedita, PR 00715-0750

Dated: JUL - 9 2008  
New York, NY

Smidreel N. Baez