



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 OCT 30 PM 2:41  
REGIONAL HEARING  
CLERK

OCT 30 2007

**OVERNIGHT DELIVERY**

Mr. Jose R. Martinez Coello  
Finca Los Tres Picachos  
Carr 539, Km 2.7  
Jayuya, Puerto Rico 00664

**Re: In the Matter of Finca Los Tres Picachos**  
**Docket No. FIFRA-02-2008-5305**

Dear Mr. Coello:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of Section 12(a)(2)(G) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 136j (a)(2)(G).

You have the right to a hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer within **thirty (30)** days of your receipt of the enclosed Complaint to the Environmental Protection Agency's ("EPA") Regional Hearing Clerk at the following address:

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you and the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty.

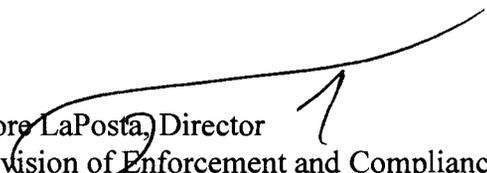
EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have an informal conference with EPA. However, a request for an informal conference *does not* substitute for a written Answer, affect what you may choose to say in an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Worker Protection Standard," 40 C.F.R. Part 170, "Consolidated Rules of Practice," 40 C.F.R. Part 22, which govern this proceeding, and the "FIFRA Enforcement Response Policies." For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects Policy." Please note that these are only available as part of a negotiated settlement and are not available if this case has to be resolved by a formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: (w/o enclosures)  
Karen Maples, Regional Hearing Clerk

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

Carmen Oliver Canabal  
Deputy Secretary  
Special Services Area  
Puerto Rico Department of Agriculture  
P.O. Box 10163  
San Juan, Puerto Rico 00908-1163

**bcc:** Mike Kramer, 2DECA-PTSB  
Adrian Enache, 2DECA-PTSB  
Karen L. Taylor, 2ORC-WTS  
Coles H. Phinizy, 2ORC-WTS  
Rich Cahill, 2PAD-POB  
Linda Hall, 2DECA-PTSB  
D. Fidler, HQ-OECA-SLPD  
K. Clark, HQ-OECA-WCED  
C. Soderberg, 2CEPD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2007 OCT 30 PM 2:41  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
 :  
 Jose R. Martinez Coello : COMPLAINT AND NOTICE OF  
 Finca Los Tres Picachos : OPPORTUNITY FOR HEARING  
 Carr 539, Km 2.7 :  
 Jayuya, Puerto Rico, : Docket No. FIFRA-02-2008-5305  
 :  
 Respondent. :  
-----X

**INTRODUCTION**

This Complaint and Notice of Opportunity for Hearing (“Complaint”) is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136j(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 (“Consolidated Rules of Practice” or “CROP”), Title 40 of the Code of Federal Regulations (“C.F.R.”) Part 22, a copy of which is attached to this Complaint.

Respondent is hereby notified of EPA’s determination that Respondent has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §136j(a)(2)(G), and the worker protection regulations at 40 C.F.R. Part 170, a copy of which is attached to this Complaint. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty against any person determined to be in violation of any requirement of FIFRA or EPA’s regulations thereunder.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency (“EPA”), Region 2, who has been duly delegated the authority to institute this action, upon information and belief, hereby alleges:

**COMPLAINT**

1. Respondent is Jose R. Martinez Coello.
2. Respondent is a “person” as defined by FIFRA Section 2(s), 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder, including the Worker Protection Standard (“WPS”), codified at 40 C.F.R. Part 170.

3. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a facility known as Finca Los Tres Picachos, located at Carr. 539, Km 2.7, Jayuya, Puerto Rico for the commercial production of bananas and coffee.
4. Therefore, Respondent produces and at all times pertinent to this Complaint has produced “agricultural plants” at Finca Los Tres Picachos, as that term is defined by 40 C.F.R. § 170.3.
5. Respondent engages and at all times pertinent to this Complaint has engaged in the outdoor production of agricultural plants at Finca Los Tres Picachos.
6. Therefore, Respondent’s facility, Finca Los Tres Picachos, is and at all times pertinent to this Complaint has been a “farm,” as that term is defined by 40 C.F.R. § 170.3.
7. Therefore, Respondent’s facility, Finca Los Tres Picachos, is and at all times pertinent to this Complaint has been an “agricultural establishment,” as that term is defined by 40 C.F.R. § 170.3.
8. Therefore, Respondent is and at all times pertinent to this Complaint has been an “owner” of an agricultural establishment covered by the regulations at 40 C.F.R. Part 170, as that term is defined by 40 C.F.R. § 170.3.
9. Respondent hires and compensates and at all times pertinent to this Complaint has hired and compensated persons to perform activities related to the production of agricultural plants on the farm.
10. Therefore, Respondent has and at all times pertinent to this Complaint has employed “workers,” as that term is defined by 40 C.F.R. § 170.3.
11. Therefore, Respondent is and at all times pertinent to this Complaint has been an “agricultural employer,” as that term is defined by 40 C.F.R. § 170.3.
12. At all times relevant to this Complaint, Respondent has employed and compensated a person to mix, load, transfer, and apply pesticides, handle opened containers of pesticides, and assist with the application of pesticides.
13. Therefore, Respondent has and at all times pertinent to this Complaint has employed a “handler” and is thus a “handler employer” as those terms are defined by 40 C.F.R. § 170.3.
14. The handler employed by Respondent is certified by EPA under FIFRA Section 11 as authorized to use or supervise the use of any pesticide which is classified for restricted use, and Respondent’s handler uses and/or supervises the use of registered pesticides for

the production of agricultural plants at Finca Los Tres Picachos.

15. An authorized Puerto Rico Department of Agriculture (“PRDA”) Pesticides Inspector visited Respondent’s Finca Los Tres Picachos facility with the consent of Respondent on April 24, 2006, to inspect it for compliance with the FIFRA statute and regulations.
16. On June 9, 2006, PRDA issued, and Respondent subsequently received, a Violation Notification to Respondent for violating FIFRA at the Finca Los Tres Picachos facility for using a registered pesticide in a manner inconsistent with its labeling. The violations identified involved the application of a pesticide without complying with FIFRA and several requirements of the WPS. The provisions violated included FIFRA Section 12(a)(2)(G) and 40 C.F.R. §§ 170.110, 170.120, 170.122, 170.130, 170.135, 170.150, 170.160, 170.210, 170.222, 170.230, 170.235, 170.250, and 170.260.
17. An authorized EPA Pesticides inspector visited Respondent’s Finca Los Tres Picachos facility with the consent of Respondent and/or Respondent’s representative on August 23, 2006 and March 13, 2007, to inspect it for compliance with FIFRA and its implementing regulations.
18. During the August 23, 2006 and March 13, 2007 inspections, a handler and workers were present at the Finca Los Tres Picachos.
19. EPA Pesticide Product Registration Numbers are composed of an initial number, representing the manufacturer of the product, followed by a dash and a second number, representing the particular product.
20. The pesticide described below is a registered pesticide and has an EPA-accepted label setting forth specific directions regarding its use. The label for this pesticide that was in effect at all times relevant to this Complaint requires, among other things, compliance with the WPS codified at 40 C.F.R. Part 170:

Gly Star Plus, EPA Reg. No. 42750-61

21. Gly Star Plus was applied to agricultural plants at Finca Los Tres Picachos on the following dates: August 7, 2006, August 14, 2006, and August 15, 2006.
22. Failure to follow the WPS requirements described in each of the counts below constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling and is a violation of FIFRA Section 12(a)(2)(G).

**COUNT 1**  
**Failure to Assure Pesticide Safety Training for Workers**

23. Paragraphs 1 through 22 are realleged and incorporated herein.
24. 40 C.F.R. § 170.130 requires agricultural employers to assure that each worker has been trained, including providing general pesticide safety information, before a worker enters any area on an agricultural establishment and, within the last 30 days, a pesticide subject to the WPS has been applied on the establishment or the restricted entry interval (“REI”) for such pesticide has been in effect.
25. On August 7, 14, and 15, 2006, Respondent’s handler applied Gly Star Plus to plants at Finca Los Tres Picachos.
26. During the August 23, 2006 inspection, Respondent acknowledged to the inspector that the workers had no formal pesticide training.
27. During the August 23, 2006 interviews with the workers, the workers stated that they did not receive any training regarding pesticides.
28. During the March 13, 2007 inspection, Respondent’s representative acknowledged to the inspector that the workers had no formal pesticide training.
29. During the March 13, 2007 interviews with the workers, most of the workers stated that they did not receive any training regarding pesticides.
30. Respondent’s failure to assure that each worker has been trained constitutes a violation of 40 CFR § 170.130.
31. Respondent’s failure to assure that each worker has been trained constitutes the use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA Section 12(a)(2)(G).

**COUNTS 2-4**  
**Failure To Provide Workers With Specific Information On Pesticide Applications**

32. Paragraphs 1 through 22 are realleged and incorporated herein.
33. 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.

34. 40 C.F.R. § 170.122(c) states that required pesticide application information shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s) of the pesticide; (c) the time and date the pesticide is to be applied; and, (d) the REI for the pesticide.
35. On August 7, 14, and 15, 2006, Respondent's handler applied Gly Star Plus to agricultural plants at Finca Los Tres Picachos farm.
36. During the August 23, 2006 inspection, the EPA inspector observed that specific information on the pesticide applications was not displayed.
37. Respondent did not display the required specific information about the pesticide applications on the farm for 30 days following the applications of Gly Star Plus.
38. Respondent's failure to display specific information about the applications of the pesticide Gly Star Plus constitutes three (3) violations of 40 C.F.R. § 170.122.
39. Respondent's failure to display specific information about the applications of the pesticide Gly Star Plus constitutes the use of a registered pesticide in a manner inconsistent with its labeling, which constitutes three (3) violations of FIFRA Section 12(a)(2)(G).

#### **COUNTS 5-7**

##### **Failure To Provide Handler With Specific Information On Pesticide Applications**

40. Paragraphs 1 through 22 are realleged and incorporated herein.
41. 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 the WPS has been applied on the establishment or the REI has been in effect, the handler employer shall display specific information about the pesticide.
42. 40 C.F.R. § 170.222(c) states that required pesticide application information shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s) of the pesticide; (c) the time and date the pesticide is to be applied; and, (d) the REI for the pesticide.
43. On August 7, 14, and 15, 2006, Respondent's handler applied Gly Star Plus to agricultural plants at Finca Los Tres Picachos farm.
44. During the August 23, 2006 inspection, the EPA inspector observed that specific information on the pesticide applications was not displayed.

- 45. Respondent did not display the required specific information about the pesticide applications on the farm for 30 days following the applications of Gly Star Plus.
- 46. Respondent's failure to display specific information about the applications of the pesticide Gly Star Plus constitutes three (3) violations of 40 C.F.R. § 170.222.
- 47. Respondent's failure to display specific information about the applications of the pesticide Gly Star Plus constitutes the use of a registered pesticide in a manner inconsistent with its labeling, which constitutes three (3) violations of FIFRA Section 12(a)(2)(G).

**PROPOSED CIVIL PENALTY**

In view of the above-cited findings and pursuant to the authority of Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in the Complaint:

Count 1: Use of registered pesticides in a manner inconsistent with labeling (Failure to provide pesticide safety training to workers).....	\$880
Counts 2-4: Use of registered pesticides in a manner inconsistent with labeling (Failure to provide workers with specific information of pesticide applications).....	\$2,640
Counts 5-7: Use of registered pesticides in a manner inconsistent with labeling (Failure to provide handler with specific information of pesticide applications).....	\$2,640
<b>Total Proposed Civil Penalty.....</b>	<b>\$6,200*</b>

\*This aggregate penalty amount has been rounded up to the nearest \$100 unit after calculating and summing the gravity-based penalties for each count in this case.

The proposed civil penalty has been determined in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), which authorizes the assessment of a civil penalty of up to \$1,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, *see* 61 Fed. Reg. 69360 (December 31, 1996); 69 Fed. Reg. 7121 (February 13, 2004), this amount was increased to \$1,200. This amount was revised to \$1,100. *See* Memorandum from Stephanie P. Brown, Acting Director of Toxics and Pesticides Enforcement Division, "Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule," dated June 5, 2006.

For purposes of determining the amount of any penalty to be assessed, Section 14 requires EPA to take into account the gravity of the violations. As to the violator, Section 14 requires EPA to take into account the appropriateness of the penalty to the size of the business of the person charged, and the effect of the penalty on the person's ability to continue in business.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of the filing of the Complaint, with specific reference to EPA's "Enforcement Response Policy For The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)," dated July 2, 1990, and "Worker Protection Standard Penalty Policy," Interim Final, dated September 1997, copies of which are attached to this Complaint. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors enumerated above to particular cases.

### **PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint and Notice of Opportunity for Hearing ("Complaint").

#### **A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written answer to the Complaint, and such Answer must be filed within 30 days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

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

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40

C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

#### C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

#### D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. § 22.30, and that initial decision thereby becomes a final

order pursuant to the terms of 40 C.F.R. § 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within thirty (30) days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. § 22.7(c), where service is effected by mail, "5 days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. § 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. § 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

**Karen L. Taylor, Esq.**  
**Office of Regional Counsel**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16<sup>th</sup> floor**  
**New York, New York 10007-1866**  
**(212) 637-3637**

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not

prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of a Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

### **RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

**U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000**

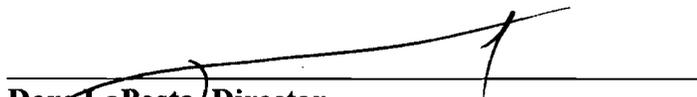
The check shall be identified with a notation of the name and docket number of this case as follows:

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

Pursuant to 40 C.F.R. Section 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. Section 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: OCTOBER 21, 2007  
New York, New York

COMPLAINANT:

  
\_\_\_\_\_  
**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2

TO: Jose R. Martinez Coello  
Finca Los Tres Picachos  
Carr 539, Km 2.7  
Jayuya, Puerto Rico 00664

**ENCLOSURES**

Attachment A: Worker Protection Standard, 40 C.F.R. Part 170

Attachment B: Consolidated Rules of Practice, 40 C.F.R. Part 22

Attachment C: FIFRA Enforcement Response Policy

Attachment D: Worker Protection Standard Penalty Policy

**WORKER PROTECTION STANDARD (40 C.F.R. PART 170)**

**ATTACHMENT A**

**ATTACHMENT B**

**CONSOLIDATED RULES OF PRACTICE (40 C.F.R. PART 22)**

**ATTACHMENT C**

**“ENFORCEMENT RESPONSE POLICY FOR THE FEDERAL INSECTICIDE,  
FUNGICIDE, AND RODENTICIDE ACT (FIFRA), JULY 2, 1990”**

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be sent a copy of the foregoing Complaint, bearing docket number FIFRA-02-2008-5305, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by overnight delivery, to:

Jose R. Martinez Coello  
Finca Los Tres Picachos  
Carr 539, Km 2.7  
Jayuya, Puerto Rico 00664

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: OCT 30, 2007  
New York, New York

Handwritten signature of Mildred N. Bae in cursive script.