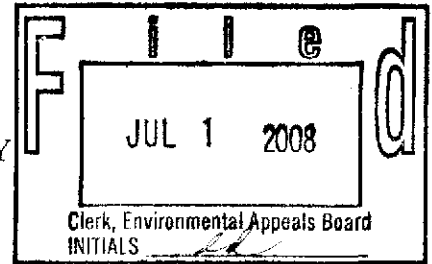


BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



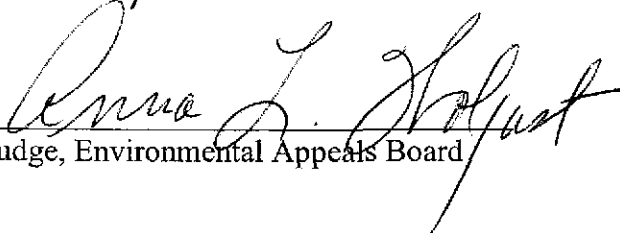
IN THE MATTER OF:)
)
Anibal Torres Sepulveda)
Anthuriums de Puerto Rico)
Road 526, Km. 2.4)
Bo. Yayales)
Adjuntas, Puerto Rico,)
Respondent)

Docket No. FIFRA-02-2008-5304

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Consent Order.

So ORDERED, this 1st day of July, 2008.



Judge, Environmental Appeals Board

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:)

Anibal Torres Sepulveda)
Anthuriums de Puerto Rico)
Road 526, Km. 2.4)
Bo. Yayales)
Adjuntas, Puerto Rico,)
Respondent)

Docket No. FIFRA-02-2008-5304

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency ("EPA") and Respondent, Anibal Torres Sepulveda, having agreed to settle this matter, consent to the terms of this Consent Agreement ("Agreement"), and before the taking of any testimony and without the adjudication of issues of law or fact herein, agree to comply with the terms of this Agreement and attached proposed Final Order hereby incorporated by reference.

II. JURISDICTION

2. Respondent, Anibal Torres Sepulveda, owns and operates a commercial coffee, citrus fruit, and ornamental flower production facility known as Anthuriums de Puerto Rico, located at Carr. 526, Km. 2.4, Adjuntas, Puerto Rico, and is therefore a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s).
3. The Agency initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a)(2), by issuing an administrative Complaint and Notice of Opportunity for Hearing ("Complaint"), dated October 26, 2007.
4. The Complaint, incorporated herein by reference, alleged that Respondent failed to comply with the Worker Protection Standard ("WPS"), codified at 40 C.F.R. Part 170, in violation of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and proposed a penalty of \$11,500.
5. Respondent filed a Motion Requesting Extention [sic] of Time to Answer the Complaint, incorporated herein by reference, dated December 3, 2007, requesting a hearing pursuant to FIFRA Section 14(a)(3), 7 U.S.C. § 1361(a)(3), and 40 C.F.R. § 22.15(c), and filed an

A.T.S.

Answer, incorporated herein by reference, dated January 15, 2008.

6. To avoid the disruption of orderly business activities and expense of protracted and costly litigation, Respondent, for purposes of this proceeding: (1) admits that EPA has jurisdiction over the subject matter alleged in the Complaint; and (2) waives his right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement and his right to appeal the proposed Final Order accompanying this Agreement.
7. Respondent neither admits nor denies the findings of fact and conclusions of law set forth in Section III of this Agreement.
8. In recognition of the cooperation shown to the government by Respondent and his willingness to settle this matter without further litigation, EPA agrees to mitigate the civil penalty assessment, set forth in the Complaint, as described in Section V below.

III. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Paragraphs 1 through 90 of the Complaint are incorporated herein by reference as EPA's Findings of Fact in this matter.
10. EPA asserts that EPA's Findings of Fact in this matter constitute violations of FIFRA Section 12(a)(2)(G), 7 U.S.C. § 136j(a)(2)(G), for which a civil penalty may be assessed pursuant to FIFRA Section 14(a)(1), 7 U.S.C. § 1361(a).

A.T.S.

IV. CONDITIONS OF SETTLEMENT

11. Respondent has agreed to provide Complainant, within sixty (60) days of issuance of a Final Order, a report providing the detailed steps he has taken to come into full compliance with FIFRA § 12(a)(2)(G) and the Worker Protection Standard ("WPS") at 40 C.F.R. Part 170. This report shall explain Respondent's practices and procedures for ensuring compliance with all aspects of the WPS regulations as set forth in the Worker Protection Standard Compliance Report template attached hereto as Appendix A.
12. Respondent has agreed to provide Complainant, within sixty (60) days of issuance of a Final Order, an affirmation by Respondent that he has personally read and understands the following documents, provided by Complainant: (a) WPS regulations at 40 CFR Part 170; (b) "How to Comply with the Worker Protection Standard for Agricultural Pesticides; and (c) "Patrono! Trabajador Agricola! Como Puede Protegerse de los Plaguicidas?" A template for Respondent's Affirmation is attached hereto as Appendix B.
13. Respondent has agreed to provide Complainant, within sixty (60) days from the date of

issuance of a Final Order, documentation of the most recent pesticide application done at Respondent's farm and provide evidence of how the application complied with FIFRA and the WPS, which shall include documentation of: (a) what pesticide application information was displayed for workers and for handlers; (b) where on the farm it was displayed; (c) when the pesticide application information was displayed; (d) all decontamination supplies that were provided to workers and handlers during the pesticide application and where they were supplied (including information on decontamination supplies provided at the mixing site and the decontamination site); and (e) the personal protective equipment that was provided to the handlers. This requested information will demonstrate that Respondent has, in good faith, taken measures to fully comply with requirements of FIFRA and the WPS.

14. Respondent shall submit the information requested in paragraphs 11-13 to the following persons:

Danielle C. Fidler
U.S. Environmental Protection Agency
Office of Special Litigation and Projects
1200 Pennsylvania Avenue, NW
MC-2248A, Ariel Rios South Room 4150F
Washington, DC 20460

and

Adrian Enache
U.S. Environmental Protection Agency
USEPA Facilities - Mail Code 500MS500
Raritan Depot
2890 Woodbridge Avenue
Edison, NJ 08837-3679

15. Should the information provided by Respondent under Paragraph 13 indicate a new violation of FIFRA or the WPS, Respondent shall be liable for a stipulated penalty of \$800 per violation.
16. Respondent shall pay any stipulated penalties to Complainant within sixty (60) days of receipt of written demand to Respondent from Complainant. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that Complainant is demanding for each violation, and the grounds upon which the demand is based. Payment of any stipulated penalties shall follow the procedures set forth in Paragraphs 22 and 23.

V. CIVIL PENALTY

17. Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), authorizes a civil penalty of up to \$1,000.00 (one thousand dollars) 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* 69 Fed. Reg. 7121 (February 13, 2004), this amount was increased 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. Pursuant to the July 2, 1990 *Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)* (hereinafter "FIFRA ERP") and the October 21, 1997 *Interim Final Penalty Policy for the FIFRA Worker Protection Standard (WPS)* (hereinafter "WPS Penalty Policy"), the Agency proposed in its Complaint in this case a \$11,500 gravity-based civil penalty.
18. The FIFRA ERP permits a reduction in civil penalties for settlements for cooperation by the respondent and good faith efforts to comply with FIFRA, where such a reduction would serve the public interest. Complainant finds that Respondent's efforts to settle this matter without further litigation merit a penalty reduction of fifteen percent (15%), or \$1,725.
19. The FIFRA ERP permits a further reduction of penalty where a respondent agrees to perform certain environmentally beneficial acts in exchange for a reduction in penalty, referred to by the FIFRA ERP as a "Settlement with Conditions." Respondent has agreed to comply with the terms of settlement above, which require Respondent to take steps to assure compliance not only with those provisions of FIFRA alleged in the Complaint, but to ensure across-the-board compliance with FIFRA and the WPS in the future. As part of these conditions, Respondent agrees to provide Complainant with an audit of a future pesticide application and to pay stipulated penalties should there be any FIFRA violations associated therewith. These steps will not only benefit the environment by assuring pesticides are properly used, but will reduce risks to human health by assuring Respondent has documented procedures for assuring compliance with the WPS. In exchange for agreeing to these conditions, Complainant has agreed to reduce the proposed penalty an additional ten percent (10%), or \$1,150.
20. Consistent with the relevant penalty policies and based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent's business, Respondent's ability to continue in business in light of the proposed penalty, Respondent's willingness to abide by the conditions of settlement set forth herein, and such other matters as justice may require, Complainant proposes that Respondent be assessed a total penalty of \$8,625 for the violations alleged in this Complaint.

VI. TERMS OF SETTLEMENT

21. Respondent consents to the execution of this Agreement, and agrees to pay EIGHT THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS (\$8,625.00) in satisfaction of the penalty.
22. For payment of the civil penalties, Respondent shall make three (3) payments of TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) each within four (4) months, eight (8) months, and twelve (12) months of the issuance of a Final Order. Each of the three payments shall be made by sending a cashier's check or a certified check in the amount of TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) made payable to the "Treasurer of the United States of America," to the following address:

United States Environment Protection Agency
Hearing Clerk
Docket No. FIFRA-02-2008-5304
P.O. Box 360277M
Pittsburgh, PA 15251

Alternatively, Respondents shall make each of these payments of TWO THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$2,875.00) via wire transfer by using the following instructions:

Name of Beneficiary:	EPA
Number of Account for deposit:	68010099
The Bank Holding Acct:	Treas_NYC
The ABA routing Number:	021030004

Each of the three checks or wire transfers should indicate that it is for In the Matter of Anibal Torres Sepulveda, Docket No. FIFRA-02-2008-5304.

23. Respondent shall forward copies of each of these checks or wire transfers to EPA, within five (5) days of payment, to the attention of:

Danielle C. Fidler
U.S. Environmental Protection Agency
Special Litigation and Projects Division
1200 Pennsylvania Ave, NW
Ariel Rios Building, Room 4150F
Washington, DC 20460

and

Clerk, Environmental Appeals Board
U.S. Environmental Protection Agency
MC 1103B
1200 Pennsylvania Avenue, NW
Washington, DC 20460

24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the Final Order, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of twelve percent (12%) per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
25. Respondent's obligations under this Agreement shall end when it has paid the civil penalty, as required by Section VI of this Agreement and the Final Order, and has complied with its obligations under Section IV of this Agreement.
26. If the Respondent fails to meet all of its obligations under this Agreement within one year of the execution of the Final Order, the Complainant may send a demand letter for the full gravity-based penalty of eleven thousand five hundred (\$11,500) dollars. Payment of this full penalty shall be due within ten (10) days of the receipt of the demand letter.
27. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Respondent to deduct any such payments shall constitute a violation of the Agreement.
28. All of the terms and conditions of this Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Agreement (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory Parties in identical form, or is not approved in such identical form by the EAB or its designated representative then the entire Agreement shall be null and void.
29. The parties agree that the Respondent preserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Respondent's obligations, agreements and waivers under this Agreement will cease, and be null and void with no effect, should this Agreement be rejected by the Environmental Appeals Board ("EAB").

VII. Reservation of Rights and Settlement

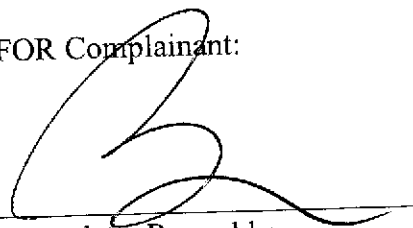
30. This Agreement and the Final Order, when issued by the EAB, and upon payment by Respondent of the civil penalty in accordance with Section VI and completion of the Conditions of Settlement in Section IV, shall resolve only the federal civil and administrative claims specified in this Agreement. Nothing in this Agreement and the Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, issuance of the Final Order does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Respondent for any other violation of any federal or state statute, regulation, or permit.

VIII. Other Matters

31. Each party shall bear its own costs and attorney fees in this matter.
32. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant, and the Respondent. When executed by the EAB, the Final Order shall have the same force and effect as defined in 40 C.F.R. § 22.3. The Respondent shall remain responsible for the completion of all work required under this Agreement and the satisfaction of all of its terms.
33. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of FIFRA or other applicable federal, state or local environmental laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable environmental laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.
34. The undersigned representatives of each party to this Agreement certify that each is duly authorized by the party whom he represents to enter into these terms and bind that party to it.

A.T.S.

FOR Complainant:

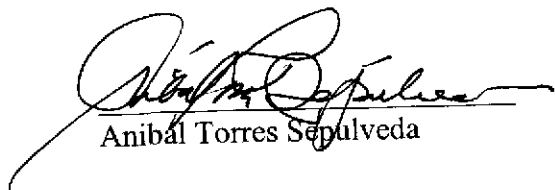


Bernadette Rappold
Director, Special Litigation and
Projects Division
U.S. Environmental Protection Agency

6/9/08
Date

In the Matter of Anibal Torres Sepulveda, Docket No. FIFRA-02-2008-5304

FOR Respondent:


Anibal Torres Sepulveda

5/27/08
Date