

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2016 OCT -14 AM 11:13
U.S. Environmental Protection Agency
Region 2

In the Matter of: Merced Exterminating Service, Corp. and Miguel A. Merced Rivera Respondents Proceeding Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended	<p style="text-align: center;"><u>CONSENT AGREEMENT AND FINAL ORDER</u></p> <p>Docket No. FIFRA-02-2016-5304</p>
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PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA” or the “Act”), as amended, 7 U.S.C. § 1361(a); Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d) (“CAA”); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits (“CROP”), 40 C.F.R. Part 22.

Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance (“DECA”), United States Environmental Protection Agency, Region 2 (“EPA”). Pursuant to Section 22.13(b) of the CROP, where the parties agree to settlement of one or more causes of action before filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3). Complainant and Respondents agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondents are Merced Exterminating Service, Corp., (hereinafter referred to as “MESCS”) and Miguel A. Merced Rivera (hereinafter “Merced”), alternatively referred to as “Respondents”).

2. Respondent Merced is the owner and/or operator of MESC.
3. At all times relevant to this Consent Agreement, Respondents' business has included the provision of pest control services, specifically, the use of restricted use pesticides for compensation.
4. From January 2014 to February 2015, Respondents used Meth-O-Gas Q, EPA Reg. No.5785-41 ("Meth Q"), a restricted use pesticide-containing methyl bromide, as part of their business activities.
5. Respondent Merced owns and/or operates a facility located at Senderos de Juncos, Fresa Street #186, Juncos, Puerto Rico 00777, from which MESC's pest control business is conducted.
6. On April 13, 2015, and May 13, 2015, duly-authorized inspectors from the Puerto Rico Department of Agriculture (PRDA) collected records and statements, including records and statements regarding Respondents' applications and purchases of Meth-O-Gas Q, EPA Reg. No.5785-41, for the period from January 2014 through the date of the May 2015 inspection.
7. On several dates in March, April, May and October 2015, duly-authorized PRDA and EPA inspectors conducted inspections at M&P Pest Control, a pesticide distributor from which Respondents purchased pesticides including Meth-O-Gas Q, EPA Reg. No.5785-41, located at 1332 Avenue, Jesus T. Piñero, San Juan, Puerto Rico, 00921 (hereinafter "the M&P Inspections").
8. At the M&P inspections, the inspectors collected records and statements, including records and statements regarding Respondents' purchases of Meth-O-Gas Q, EPA Reg. No.5785-41, for the period March 2014 through May 2015.

FIFRA STATUTORY AND REGULATORY BACKGROUND

9. Each Respondent has been, and continues to be, a "person" as defined by FIFRA Section 2(s), 7 U.S.C. § 136(s).
10. Respondent Merced is a "certified applicator" within the meaning of Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), and 40 C.F.R. § 171.2(a)(8), and as such is subject to FIFRA and the regulations promulgated thereunder.
11. Both Respondents are "commercial applicators" within the meaning of Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), and 40 C.F.R. § 171.2(a)(9)), and as such each is subject to FIFRA and the regulations promulgated thereunder.
12. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. §152.5, define, in part, a "pest" as any insect.

13. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”

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

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

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

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

18. Meth Q, is a restricted use pesticide (RUP) consisting of a pressurized liquid/gas formulation of 100% methyl bromide and is also known as a “fumigant.”

19. The label for Meth Q states (in all capital letters) that it is “FOR QUARANTINE AND REGULATORY USE ONLY,” “SUPERVISION BY REGULATORY AGENT REQUIRED.”

20. The label for Meth Q specifies application sites, crops, and pests. The label does not list dwellings (*e.g.*, residences) or structures not used for the commercial storage or handling of commodities as application sites.

21. The Meth Q label also states: “Store in a secure manner either outdoors under ambient conditions or indoors in a well-ventilated area.”

22. As a result of the MESC Inspections, EPA determined that Respondents applied Meth Q at least twenty-three times between January 13, 2014 and February 16, 2015. In addition, EPA determined that:

a. A regulatory agent was not present to supervise any of the applications of Meth Q;
and

b. None of the applications was made for a quarantine purpose.

23. Respondents' use of Meth Q, as described in paragraphs 22(a)-(c), above, constitute uses of a pesticide in a manner inconsistent with its label.

24. Each Respondent is independently and separately liable for each use of a pesticide in a

manner inconsistent with its label.

25. Each one of Respondents' twenty-three applications of Meth Q described in paragraphs 22(a)-(b) constitutes a separate use of a registered pesticide in a manner inconsistent with its label and each is a violation of FIFRA §12(a)(2)(G).

Clean Air Act (CAA)
Statutory and Regulatory Background

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

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

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

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

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

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

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

33. Pursuant to 40 C.F.R. § 82.3, "applicator" means the person who applies methyl

bromide.

34. Respondent MESC is an “applicator” within the meaning of 40 C.F.R. § 82.3 and as such is subject to the CAA and the regulations of 40 C.F.R. Part 82.

35. Pursuant to 40 C.F.R. § 82.13(z)(1), applicators of methyl bromide for quarantine and/or preshipment (“QPS”) must maintain for three years, for every application, a document from the commodity owner, shipper or their agent, requesting the use of methyl bromide for QPS and citing the regulatory requirement that justifies its use.

36. For each of the Meth Q applications described in Paragraphs 22(a)-(b), above, Respondent MESC failed to obtain a document from a commodity owner, shipper or agent, requesting the use of methyl bromide for QPS and citing the regulatory requirement that justifies its use.

37. Pursuant to 40 C.F.R. § 82.13(z)(2), the purchasers of methyl bromide for QPS are required to provide to the distributor(s) who sold the methyl bromide to them, prior to shipment, a certification that the methyl bromide will be used only for QPS applications.

38. Respondent MESC purchased Meth Q from M&P Pest Control on at least five occasions between March 26, 2014 and March 6, 2015.

39. As a result of the M&P Inspections, EPA determined that M & P Pest Control did not receive certifications from Respondent MESC stating that the methyl bromide purchased would be used only for QPS applications.

40. Respondent MESC failed to provide to its distributor, prior to shipment, certifications that the methyl bromide purchased would be used only for QPS applications for any of the purchases referenced in Paragraph 40, above.

41. Each of Respondent MESC’s failures to comply with recordkeeping and reporting requirements under the CAA constitutes a separate violation of 40 C.F.R. § 82.13(z)(1) and 40 C.F.R. § 82.13(z)(2), for which a civil penalty may be assessed under Section 113(d)(1)(B) of the CAA.

CONSENT AGREEMENT

Based on the foregoing, and pursuant to 40 C.F.R. §§ 22.13(b) and 22.18 of the CROP, and pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), it is hereby agreed that:

1. Respondents shall hereinafter maintain compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations.
2. Respondents certify that they are each in compliance with the statutory provisions of FIFRA, as amended, 7 U.S.C. § 136 *et seq.*, and its implementing regulations with regard to the use of restricted use pesticides.

3. Respondent MESC shall hereinafter maintain compliance with the statutory provisions of the CAA and its implementing regulations at 40 C.F.R. § 82.13(z)(1) and 40 C.F.R. § 82.13(z)(2).
4. Respondent MESC certifies that it is in compliance with the statutory provisions of § 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B) and its implementing regulations with regard to reporting and recordkeeping requirements for use of pesticides containing methyl bromide.
5. Respondents shall not use any methyl bromide-containing pesticides unless the following conditions are met:
 - (i) Respondents provide to EPA and the Puerto Rico Department of Agriculture (PRDA) proof of eligibility to perform such applications thirty days prior to commencing any such application activities. Such proof shall include a contractual agreement with USDA/APHIS and/or certification by an American Lumber Standard Committee (ALSC)-accredited agency;
 - (ii) Respondents provide to EPA and PRDA proof that Respondents have taken pesticide product-specific training and any training offered by the pesticide's producer;
 - (iii) the application is for quarantine or pre-shipment (QPS) purposes within the meaning of the applicable USDA regulations and treatment manuals; and/or
 - (iv) the applications is for wood packaging fumigation as mandated and described by the IPCC Guidelines and the associated USDA regulations at 7 C.F.R. Part 319; and
 - (v) PRDA gives its approval for Respondents' use of methyl bromide-containing pesticides.
6. Respondents shall provide to EPA, within forty-five (45) days after the Effective Date of the Final Order, an Integrated Pest Management¹ Work Plan which shall include the following:
 - i. Pest identification
 - ii. Monitoring and assessing pest numbers and damage
 - iii. Guidelines for when management action is needed, preventing pest problems and using a combination of biological, cultural, physical/mechanical and chemical management tools.
 - iv. Measures for evaluating the success or failure of IPM, such as by reducing or eliminating pests in the least toxic manner. Heat Treatment and Cold Treatment

¹ Integrated Pest Management (IPM) means using the most environmentally sensitive means to prevent pest entry and control and eliminate pests when found, *i.e.* the least hazardous to human health and the environment.

remedies shall be considered in lieu of pesticides.

7. Within ninety (90) days after EPA's approval of the IPM Work Plan, Respondent shall provide proof of implementation of IPM, including details of the type of IPM, location used, quantity of treatment used, measurements of success or failure, and any other pertinent information relevant to EPA's review and analyses of the IPM.
8. Respondents shall submit to EPA for review and approval, within sixty (60) days of the effective date of the Final Order, a Standard Operating Plan ("SOP") for all restricted use pesticides they use, including instruction for personal protective equipment ("PPE"), storage, use directions, transportation, Health & Safety and Quality Assurance requirements. Under the SOP, Respondents shall provide to EPA, at six months and again at the one year anniversary of the effective date of this CA/FO, a summary of how it responded to, addressed and complied with the following label requirements for each pesticide product which it used/applied during the preceding six month period:
 - i. Danger
 - ii. Air Concentration Level
 - iii. Personal Protective Equipment
 - iv. Worker Safety Requirements
 - v. User Safety Recommendations
 - vi. Precautions for Commodity Use
 - vii. Environmental Hazard
 - viii. Chemical Hazard
 - ix. Directions for Use
 - x. Storage and Disposal
 - xi. Transportation
 - xii. Reference to Label Booklet for complete Directions for Use
9. Within sixty (60) days of the effective date of the Final Order, Respondents shall prepare and submit to EPA for review and approval, a checklist for applicators to bring to each application to ensure compliance with the SOP.
10. For each application of a restricted use pesticide, Respondents shall provide a copy of the pesticide label in Spanish to the customer prior to commencing the application.
11. Respondents shall not use fumigants/conduct fumigation of any kind, unless and until it has (i) attended training by a third party provider pre-approved by PRDA (and send notice of pre-approval to EPA); (ii) has provided proof of such training to EPA and PRDA; and (iii) receives written approval from EPA, at least 30 days prior, to commence fumigation.
12. Within ninety (90) days of the effective date of the Final Order, Respondents shall attend training administered by a 3rd party provider for pesticide applicators. Respondents' selection of a 3rd party trainer shall be subject to PRDA's approval (and

send notice of pre-approval to EPA). 3rd party experts may include, but not be limited to a five-day training offered by the University of Florida structural fumigation school. This training shall include both structural category and fumigation elements, as well as a review of labels and labeling for pesticides used, followed by testing of label and operating knowledge, including: identification and determination of dosage rates, PPE required for each product, air concentration measuring devices, product metering devices for use with a full spectrum of fumigation pesticides, area preparation and clearance determinations, target pests, storage, usage, etc. Respondents shall provide training modules and course content/syllabus for approval by PRDA (and send copy of training modules and course/content syllabus to EPA). Upon successful completion and testing, Respondents shall receive certification by trainer. Respondent shall provide proof of this training to EPA and PRDA. This training shall be renewed as required by the third party provider.

13. Within thirty (30) days of the effective date of the Final Order, Respondents shall provide proof to EPA and PRDA that it has obtained the Personal Protective Equipment, as required and described on the pesticide product labels used for Respondents' commercial applications. Respondent shall maintain all required and appropriate equipment (e.g., scales and metering devices, aeration monitoring instruments (e.g., Draeger tubes), full face shield, full-face respirator, safety goggles, disposable overalls, and rubber boots. Respondents shall provide, within thirty (30) days of the effective date of the Final Order, proof to EPA and PRDA of the obtainment and/or use of this equipment.
14. Respondents shall maintain a list of PRDA regulatory personnel/contacts. Within thirty (30) days of the effective date of the Final Order, Respondents shall provide the list of the PRDA contacts to EPA.
15. At six months and one year after the effective date of the Final Order, and continuing for a period of 2 years, Respondents shall provide to PRDA comprehensive application records, as set forth in (i) through (xiv) immediately below:
 - i. Name of Pesticide
 - ii. Name of Applicator
 - iii. Certification Number of Applicator
 - iv. EPA Registration Number
 - v. EPA Producer Establishment Number
 - vi. Active Ingredient
 - vii. Type of Pesticide (RUP)
 - viii. What is the use of the pesticide—against what pest?
 - ix. Dosage of the Application
 - x. Quantity of Pesticide Used
 - xi. Method of Application
 - xii. Place/Location of Application
 - xiii. Date of Application
 - xiv. Inventory of Pesticides Used

Within 5 days of each submittal to PRDA, Respondents shall send proof to EPA that the submittal was made.

16. Within thirty (30) days after the effective date of the Final Order, and to the extent not already done, Respondents shall perform and provide to EPA a self-audit listing all restricted use pesticides applications, including but not limited to pesticides containing methyl bromide, they conducted over the past 2 years.
17. Within thirty (30) days after the effective date of the Final Order, and to the extent not already done, Respondents shall provide to EPA a list of the current inventory of RUPs in their possession and the quantity of RUPs on order.
18. By their signatures below, Respondents each certify that the information and documentation submitted to EPA regarding Respondents' ability to pay and regarding any other matter at issue in this proceeding, is accurate and not misleading. Respondents have submitted financial information and documentation demonstrating financial difficulty and inability to pay the proposed penalty. EPA has relied on the accuracy of the financial information and documentation submitted by Respondents in negotiating the settlement. Respondents are aware that the submission of false or misleading information or documentation to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information or documentation provided and/or representations made to Complainant regarding Respondents' claim of inability to pay or regarding any of the other matters herein at issue, are false or, in any material respect, inaccurate.
19. Except as the parties in this paragraph may otherwise in writing agree, all documentation and information required to be submitted in accordance with the respective terms and conditions of this Consent Agreement shall be sent to:

USEPA:

John Gorman, Chief
Pesticides & Toxic Substances Branch
US Environmental Protection Agency
2890 Woodbridge Avenue
Edison, New Jersey 08837

and

PDRA:

Juan Carlos Muñoz Ruiz
Puerto Rico Department of Agriculture
Laboratorio Agrológico
#7 Carr. 693
Dorado, Puerto Rico 00646-3445

20. Respondents shall pay, by cashier's or certified check, or by electronic fund transfer, a civil penalty in the amount of TWO THOUSAND AND FIVE HUNDRED DOLLARS (\$2,500) due on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.
21. Payment must be received at the address listed in Paragraph 22 below, or the EFT must be received by the Federal Reserve Bank of New York as per the instructions in paragraph 23 below, (the date by which the 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 Treasury for collection or other appropriate action.
 - b. Furthermore, if the 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. § 1317, 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 day (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
 - c. A 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.
22. If payment is made by cashier's or certified check, such payment shall be payable to the "Treasurer, United States of America." The check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Merced Exterminating Service, Corp. and Miguel A. Merced Rivera, Docket No. FIFRA-02-2016-5304. A check shall be mailed to:
- U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000
23. If Respondents choose to make payment by electronic fund transfer (EFT), Respondents shall provide the following information to its remitter bank when payment is made:
- a. Amount of payment
 - b. SWIFT address: FRNUS33, 33 Liberty Street, New York, New York 10045

- c. Account Code for Federal Reserve Bank of New York receiving payment:
68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency
- f. Name of Respondents: Merced Exterminating Service, Corp. and Miguel A. Merced Rivera
- g. Case Docket Number: FIFRA-02-2016-5304

23. Whether Respondents make payment by cashier's check, certified check or by the EFT method, Respondents shall promptly after such payment has been made, furnish reasonable proof that it has been made, and such proof shall be furnished to both:

Carolina Jordán García
Office of Regional Counsel-CT
Environmental Protection Agency
City View Plaza II, Suite 7000
48 Road 165, Km. 1.2
Guaynabo, PR 00968-8069

and

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

- 24. The civil penalties and any stipulated penalties provided for herein are "penalt[ies]" within the meaning of 26 U.S.C. § 162(f), and are not deductible expenditures for purposes of federal or state law.
- 25. In addition to any other remedies or sanctions available to EPA, if Respondents fail or refuse to comply with any of their obligations in the Consent Agreement, Respondents shall be liable for stipulated penalties in the following amounts for each day during which each failure or refusal to comply continues:

Period of Failure to Comply	Penalty for Non-compliance per Calendar Day
1st through 14th day	\$100
15 th through 30th day	\$300
31st through 190th day	\$500
More than 90 days	\$1000

26. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated

penalty due if Respondents have in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondents' submission pursuant to the preceding paragraph, EPA determines that Respondents have failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondents, in writing, of its decision regarding the stipulated penalty(ies). Respondents shall then, within thirty (30) days of receipt thereof, pay the stipulated penalty amount(s) indicated in EPA's notice. EPA may also in its discretion, sua sponte, decide not to demand stipulated penalties.

27. Failure of Respondents to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.
28. Respondents have read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondents consent to the issuance of the accompanying Final Order. Respondents agree that all terms of settlement are set forth herein.
29. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondents (a) admit the EPA jurisdiction pursuant to Section 14 of FIFRA, 7 USC § 1361(a) and § 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B) to commence a civil administrative proceeding for the allegations in the EPA Findings of Fact and Conclusions of Law section above; and (b) neither admits nor denies the facts set out therein.
30. This Consent Agreement is being voluntarily and knowingly entered into by the Complainant and Respondents to resolve (conditional upon full payment of the civil penalty and any applicable stipulated penalty herein, compliance with the injunctive requirements herein, and the accuracy of the Respondents' certification in this proceeding) the civil and administrative claims alleged in this Consent Agreement. Nothing herein shall be read to preclude EPA or the United States, on behalf of EPA, however, from pursuing injunctive or other equitable relief or criminal sanctions for any violation of law.
31. Respondents explicitly and knowingly consent to the assessment of the civil penalties as set forth in this Consent Agreement and agree to pay the civil penalties in accordance with the terms of this Consent Agreement.
32. Respondents explicitly and knowingly waive their right to request or to seek any Hearing on this Consent Agreement or on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
33. Respondents waive their right to appeal this Consent Agreement and the

accompanying Final Order.

34. Respondents agree not to contest the validity or any term of this Consent Agreement and Final Order in action brought: a) by the United States, including EPA, to enforce this Consent Agreement and Final Order, or b) to enforce a judgment relating to this Consent Agreement and Final Order. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this CA/FO.
35. This Consent Agreement and any provisions 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 or seek compromise with this Consent Agreement and its accompanying Final Order.
36. This Consent Agreement and Final Order does not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of FIFRA and the CAA and the regulations promulgated thereunder.
37. Nothing in this Consent Agreement and Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA.
38. Each undersigned signatory to this Consent Agreement certifies that he or she is duly authorized to enter into and ratify this Consent Agreement and Final Order and all the terms and conditions set forth in this Consent Agreement and Final Order.
39. The provisions of this Consent Agreement and Final Order shall be binding upon both EPA and Respondents, its officers/officials, agents, authorized representatives and successors or assigns.
40. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondents to a civil judicial action by the United States to enforce the provisions of this CA/FO.
41. Each party hereto agrees to bear its own costs and fees in this matter.
42. Respondents consent to service upon themselves of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Merced Exterminating Service, Corp. and Miguel A. Merced Rivera
FIFRA-02-2016-5304

COMPLAINANT: **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**



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

DATE: 9/30/, 2016

RESPONDENTS:

Miguel A. Merced Rivera

By: 
(Signature)

DATE: 30 - Septiembre 2016

Merced Exterminating Service, Corp.

By: 
(Signature)

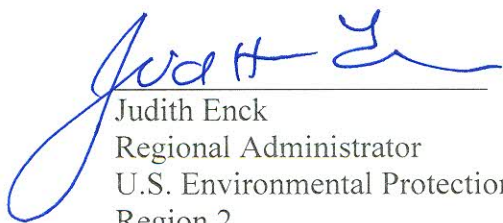
NAME Miguel A Merced
Miguel A. Merced Rivera

TITLE: President

DATE: 30-septiembre 2016

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement bearing docket number **FIFRA-02-2016-5304**, The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 40 C.F.R. § 22.18. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 40 C.F.R. § 22.31(b).



Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007

DATE: 9/30/16

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order (“CA/FO”), bearing docket number **FIFRA-02-2016-5304**, in the following manner to the respective addressees listed below:

Original and Copy
by Hand Delivery:

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

Copy by Certified Mail/
Return Receipt Requested:

Miguel L. Torres Torres, Esq.
Counsel for Miguel A. Merced Rivera and
Merced Exterminating Service, Corp.
P.O Box 191064
San Juan, Puerto Rico 00919-1064

Dated: October 4, 2016
New York, New York

