

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of: Costello Exterminating Inc., Island Wide Pest Management Group Inc., and Ramon L. Castillo Ortiz, Respondents Proceeding Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended and the Clean Air Act, as amended.	<u>CONSENT AGREEMENT</u> <u>FINAL ORDER</u> Docket No. FIFRA-02-2018-5302
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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.

On April 25, 2018, the Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("DECA" or "Complainant"), United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity To Request A Hearing ("the Complaint"), FIFRA-02-2018-5302, to the above-captioned Respondents. The Complaint alleged that the Respondents committed a total of 39 violations of Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(A), involving the use of a methyl bromide-containing pesticide in a manner inconsistent with its labeling. Additionally, the Complaint alleged that Respondents Costello Exterminating Inc. and Island Wide Pest Management Group Inc. committed violations, in connection with their use of a methyl bromide-containing pesticide, of the recordkeeping and reporting provisions of the CAA and its implementing regulations regarding ozone depleting substances.

Complainant and Respondents agree that settling this matter by entering into this Consent Agreement and Final Order (CA/FO) pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.18(b)(3) of the CROP, is an appropriate means of resolving this matter without litigation.

JURISDICTIONAL DETERMINATIONS

1. Section 14(a)(1) of FIFRA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any commercial applicator who has violated or is violating any requirement or prohibition of FIFRA.
2. Pursuant to EPA Delegation of Authority 5-14 and EPA Region 2 Delegation of Authority 5-14, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue FIFRA § 14 administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for FIFRA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.
3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the CAA, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters.
4. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA § 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.
5. Pursuant to EPA Delegations of Authority 7-6-C and 5-15-B, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA § 113(d) and FIFRA § 14 Final Orders.
6. Pursuant to CAA § 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on March 28, 2018, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA § 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

FIFRA STATUTORY AND REGULATORY BACKGROUND

7. 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.
8. 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."
9. 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.

10. 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.
11. 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.”
12. 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.”

CLEAN AIR ACT (CAA) STATUTORY AND REGULATORY BACKGROUND

13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. Pursuant to 40 C.F.R. § 82.3, “applicator” means the person who applies methyl bromide.

21. 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.
22. 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.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

23. Respondents are Costello Exterminating Inc. (hereinafter referred to as “Costello”), Island Wide Pest Management Group Inc. (hereinafter “Island Wide”) and Ramon L. Castillo Ortiz (hereinafter “Castillo”) (collectively, “Respondents”).
24. Respondent Castillo is the owner and/or operator of both Costello and Island Wide.
25. Each Respondent has been, and continues to be, a “person” as defined by FIFRA § 2(s), 7 U.S.C. § 136(s), Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
26. Respondent Castillo 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.
27. Each Respondent is a “commercial applicator” 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.
28. Respondents Costello and Island Wide are each an “applicator” within the meaning of 40 C.F.R. § 82.3 and as such each is subject to the CAA and the regulations of 40 C.F.R. Part 82.
29. At all times relevant to this Consent Agreement, Respondents’ business has included the provision of pest control services, specifically, the application of pesticides, including restricted use pesticides (“RUPs”), for compensation.
30. Respondent Costello is a pest control operator whose business headquarters is located at Las Piedras #10, Urbanizacion Bonneville Heights, Caguas, Puerto Rico 00727-4960 (hereinafter “the Costello Facility”).
31. Respondent Island Wide is a pest control operator whose business headquarters is located at Calle 38 #1278, Urbanizacion La Riviera, SE, San Juan, Puerto Rico 00921 (hereinafter “the Island Wide Facility”).
32. Respondent Island Wide also maintains a separate storage facility for pesticides located at the Caribbean Produce Exchange, PR-869, Cataño, Puerto Rico 00962 (hereinafter the “Island Wide Storage Facility”).

33. Respondents Costello and Island Wide are corporations organized under the laws of the Commonwealth of Puerto Rico.
34. Respondent Island Wide is a subsidiary corporation of Costello.
35. Respondent Castillo is an owner of both Costello and Island Wide.
36. Respondent Castillo is the Technical director of both Costello and Island Wide and directs all aspects of pest control for both companies, including the purchase, application and use (including storage) of pesticides.
37. On several dates in March, April, May and October 2015, duly-authorized inspectors from the Puerto Rico Department of Agriculture ("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 (hereinafter "MethQ") located at 1332 Avenue, Jesus T. Piñero, San Juan, Puerto Rico 00921 (hereinafter the "M&P Inspections").
38. MethQ is a restricted use pesticide (RUP) consisting of a pressurized liquid/gas formulation of 100% methyl bromide and is also known as a "fumigant."
39. At the M&P Inspections, the inspectors collected records and statements, including records and statements regarding Respondents' purchases of MethQ for the period June 2013 through April 2015.
40. Respondent Costello purchased MethQ from M & P Pest Control on at least nine occasions between June 14, 2013 and April 8, 2015.
41. As a result of the M&P Inspections, EPA determined that Respondent Costello did not submit certifications to M & P Pest Control stating that the methyl bromide purchased would be used only for QPS applications
42. The label for MethQ states (in all capital letters) that it is "FOR QUARANTINE AND REGULATORY USE ONLY," "SUPERVISION BY REGULATORY AGENT REQUIRED."
43. The label for MethQ 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.
44. The MethQ label also states: "Store in a secure manner either outdoors under ambient conditions or indoors in a well-ventilated area."
45. On April 13-14, 2015, May 14, 2015 and October 22, 2015, duly-authorized inspectors from EPA and PRDA conducted inspections of the Costello facility (hereinafter, "the Costello Inspections").
46. On May 16, 2017, duly authorized inspectors form EPA and PRDA conducted an inspection of the Island Wide facility and the Island Wide Storage facility (hereinafter, "the Island wide Inspections").

47. At the Costello Inspections, the EPA and PRDA inspectors collected records and statements, including records and statements regarding Respondent Costello and Respondent Castillo's MethQ applications, for the period May 3, 2013 through February 24, 2015, and purchases of MethQ for the period from June 14, 2013 to April 8, 2015.
48. At the Island Wide Inspections, the EPA and PRDA inspectors collected records and statements, including records and statements regarding Respondent Island Wide and Respondent Castillo's MethQ applications, for the period May 2, 2013 through March 24, 2015.
49. As a result of the Costello and Island Wide Inspections, EPA determined that the Respondents applied a methyl bromide containing pesticide at least thirty-nine times between May 2, 2013 and March 24, 2015 and determined the following with respect to Costello, Island Wide and Castillo's applications:
 - a. A regulatory agent was not present to supervise any of the applications of MethQ;
 - b. None of the applications of either methyl bromide-containing pesticide was made for a quarantine purpose;
 - c. Respondents applied the methyl bromide-containing pesticides to dwellings (*e.g.*, residences) and/or structures not used for the commercial storage or handling of commodities, and;
 - d. Respondents Island Wide and Castillo stored three MethQ cylinders in an unsecured manner at the Island Wide Storage Facility.
50. Respondents' applications of MethQ, as described in paragraphs 49(a)-(d), above, constitute uses of a pesticide in a manner inconsistent with its label.
51. Each Respondent is independently and separately liable for each use of a pesticide in a manner inconsistent with its label.
52. Respondent Costello 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
53. Respondents Costello and/or Island Wide failed to obtain a document from a commodity owner, shipper or agent, requesting the use of methyl bromide for QPS purposes and citing the regulatory requirement that justifies its use for each of the applications described in Paragraph 49, above.
54. Each of the Respondents' failures to comply with a specific requirement of a pesticide label, as described in Paragraphs 49(a)-(d), above, constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G), for which a penalty may be assessed pursuant to § 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1).

55. Each of Respondent Costello and Island Wide's failures to comply with recordkeeping and reporting requirements under the CAA, as described in Paragraphs 52 and 53, above, 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.
56. On June 7, 2017 and June 19, 2018, Respondents submitted financial information and documentation regarding their respective financial conditions and demonstrating a limited ability to pay a penalty.

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. Respondents Costello and Island Wide 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 (2).
4. Respondents Costello and Island Wide certify that they are in compliance with the statutory provisions of Section 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. Respondent Ramon Castillo Ortiz certifies that in February 2016 he attended a five-day training program administered by a third-party provider (University of Florida structural fumigation school) for pesticide applicators and has provided proof of completion to EPA.
6. Respondents shall not use any methyl bromide-containing pesticides unless the following conditions are met:
 - (i) Respondents provide to EPA and the 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 additional relevant training offered by the pesticide's producer thirty days prior to commencing any such application activities;
 - (iii) The proposed application is for quarantine or pre-shipment purposes within the meaning of the applicable USDA regulations and treatment manuals; and/or the application 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

- (iv) PRDA gives its approval for Respondents' use of methyl bromide-containing pesticides.
7. Respondents shall provide to EPA for its review and approval, within 60 days after the Effective Date of the Final Order, an Integrated Pest Management¹ Work Plan for all restricted use pesticides they use 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; and
 - (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 remedies shall be considered in lieu of pesticides.
8. Within 90 days after EPA's approval of the IPM Work Plan, Respondents 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.
9. 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, on the one-year anniversary of the effective date of this CA/FO, a summary of how they responded to, addressed and complied with the following label requirements for each restricted use 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
10. 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 of restricted use pesticides to bring to each application to ensure compliance with the SOP.

¹ Integrated Pest Management (IPM) means using the most reasonably implementable 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.

11. Respondents shall provide written notice to EPA and PRDA at least ten (10) days prior to conducting a fumigation application (including restricted use pesticide(s)) (except in an emergency, where documentation of emergency shall be provided to EPA and PRDA within 5 days after the application) and inform EPA and PRDA to the location and time of the application, in order to allow an oversight inspection to be performed by EPA and/or PRDA if, in fact, EPA and/or PRDA decide to conduct said oversight inspection.
12. Within thirty (30) days of the effective date of the Final Order, Respondents shall provide proof to EPA and PRDA that they have obtained the PPE, as required and described on the pesticide product labels used for Respondents' commercial applications. Respondents 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.)
13. Within six (6) months of the effective date of the Final Order and again at the 1 year anniversary of the Final Order, the Respondents shall provide to PRDA comprehensive restricted use pesticides application records, containing the information 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 five (5) days of each submittal to PRDA, Respondents shall send proof to EPA that the submittal was made.

14. 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.
15. Respondents each certify that the information and documentation they submitted to EPA on June 7, 2018 and June 19, 2018 regarding Respondents' current and recent financial status is accurate, complete, 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 a civil penalty or regarding any of the other matters herein at issue, are false or, in any material respect, inaccurate.

16. 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

Bruce H. Aber
Office of Regional Counsel
Environmental Protection Agency
290 Broadway
16th Floor
New York, New York 10007

and

PDRA: Dr. Alejandro E. Pérez Ramírez, Director Interino
Puerto Rico Department of Agriculture
Laboratorio Agroológico
#7 Carr 693
Dorado, Puerto Rico 00646-3445

Unless the EPA contacts named above are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondents at the following address:

Ramon L. Castillo Ortiz
Calle Las Piedras #10
Urbanizacion Bonneville Heights
Caguas, Puerto Rico 00727-4960

and

Rafael A. Ojeda Diez
P.O. Box 9023392
San Juan, Puerto Rico 00902-3392

17. Respondents shall pay, by cashier's or certified check, or by electronic fund transfer via Fedwire, a civil penalty in the total penalty amount of **EIGHT THOUSAND DOLLARS (\$8,000)** due on or before Thirty (30) days after the date of signature of the Final Order at the end of this document (the "due date").

18. Payment by check must be received at the address listed in Paragraph 19 below, or the electronic fund transfer via Fedwire must be received by the Federal Reserve Bank of New York as per the instructions in paragraph 20 below, on or before 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.
19. 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 Costello Exterminating Inc., Island Wide Pest Management Group Inc., and Ramon Castillo Ortiz, Docket No. FIFRA-02-2018-5302.** 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
20. If Respondents choose to make payment by electronic fund transfer (EFT, Respondents shall provide the following information to their remitter bank when payment is made:
- (i) Amount of payment: **\$8,000**
 - (ii) SWIFT address: **FRNUS33, 33 Liberty Street, New York, New York 10045**
 - (iii) Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
 - (iv) Federal Reserve Bank of New York ABA routing number: **021030004**
 - (v) Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
 - (vi) Name of Respondents: **Costello Exterminating Inc., Island Wide Pest Management Group Inc. and Ramon L. Castillo Ortiz**
 - (vii) Case Docket Number: **FIFRA-02-2018-5302**
21. 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.

22. 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:

<u>Period of Non-compliance</u>	<u>Penalty for Non-compliance per Calendar Day</u>
1st through 14th day	\$100
15th through 30th day	\$300
31 st through 90th day	\$500
More than 90 days	\$1000

23. Unless Respondents provide EPA with a written explanation in accordance with paragraph 24 below, all stipulated penalties are due and payable within thirty (30) calendar days of the Respondents' receipt from EPA of a written demand for payment of penalties. Respondents agree that such demand may be mailed to Ramon L. Castillo Ortiz, Calle Las Piedras #10, Urbanizacion Bonneville Heights, Caguas, Puerto Rico 00727-4960, with a copy to Respondents' counsel, Rafael A. Ojeda Diez, P.O. Box 9023392, San Juan, Puerto Rico 00902-3392. All stipulated penalty payments shall be made by cashier's or certified check or EFT in accordance with the payment instructions in paragraphs 19 and 20 of the Consent Agreement. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondents of the violation or made a demand for payment, but need only be paid upon demand. Any payment of stipulated penalties shall be in addition to any other payments required under any other paragraph of this Consent Agreement. Nothing in this Consent Agreement shall 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. Failure to pay any stipulated penalty in full will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection and/or other appropriate action.
24. After receipt of a demand from EPA for stipulated penalties, Respondents shall have fifteen (15) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondents deem relevant). Pursuant to paragraph 25 below, EPA shall evaluate the written explanation provided by the Respondents.
25. The Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this Consent Agreement if Respondents have, in writing, demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondents' submission pursuant to the preceding paragraph, Complainant determines that Respondents have failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondents, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondents. Respondents shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of its receipt of such written notice from EPA. Failure of Respondents to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in further action by EPA.

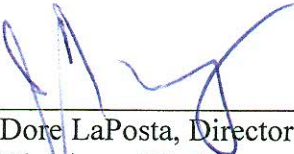
26. At any time prior to Respondents' payment of stipulated penalties, the Director, may, for good cause as independently determined by her, reduce or eliminate the stipulated penalty(ies). If the Director makes such determination, EPA shall notify the Respondents in writing of any such action.
27. Failure of Respondents to pay any stipulated penalty(ies) demanded by EPA and not contested and/or eliminated pursuant to paragraphs 24 -26 above 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 shall perform all the requirements of this CA/FO within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondents which would not be overcome by due diligence and which delays or prevents performance by a date required by this CAFO. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, or normal precipitation events. The Respondents shall notify in writing EPA staff identified in paragraph 16 above within five (5) calendar days after becoming aware of any event which is known, or should be known, to have constituted a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondents must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provisions of this paragraph shall constitute a waiver of Respondents' right to assert a force majeure and shall be grounds for EPA to deny Respondents an extension of time for performance.
29. After receiving notice that Respondents are invoking the force majeure provisions of this CAFO, EPA shall respond in writing indicating either EPA's agreement that the event constitutes a force majeure or its disagreement and the reasons therefor. A single Respondent may provide notice on behalf of one or more Respondents. If EPA and the Respondents agree that a force majeure has occurred, the time for performance may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances or such longer time as EPA deems appropriate. This shall be accomplished through a letter written by EPA's staff identified in paragraph 16 above. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this CAFO.
30. EPA may grant an extension of the date(s) of performance or such other dates as are established in paragraphs 7 through 14 in this Consent Agreement if Respondents have first demonstrated in writing good cause for such extension, including but not limited to, failures arising from causes beyond the reasonable contemplation of the parties and beyond the reasonable control and without fault or negligence of the Respondents. If Respondents submit a request for extension, such request shall be accompanied by supporting documentation or information and submitted to EPA no later than thirty (30) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement, or where the need for an extension does not become apparent until a date within thirty (30) calendar days of the due date or other deadline, Respondents shall submit a request for extension prior to the due date, or other deadline established pursuant to the Consent Agreement. Such extension, if any, shall be approved in writing within a reasonable amount of time after EPA's receipt of Respondents' written request.

31. The reporting and recordkeeping obligations in paragraphs 7 through 14 of the Consent Agreement shall remain in effect until all of those obligations are completed satisfactorily to EPA and Respondents are so notified in writing by EPA. Respondents may request that EPA provide Respondents with written notice that those obligations are completed satisfactorily and EPA shall respond within a reasonable time of receipt of Respondents' written request. Respondents shall supply EPA with any information and documentation that EPA may specify in order for EPA to be able to issue the requested written notice.
32. Respondents have read the Consent Agreement understand its terms, find it to be reasonable and consent 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.
33. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, Respondents (a) admit the jurisdictional allegations of the Complaint; and (b) neither admit nor deny the specific factual allegations set out therein.
34. 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' certifications in this proceeding, the civil and administrative claims alleged in the Complaint. 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.
35. 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 and any stipulated penalties in accordance with the terms of this Consent Agreement.
36. 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.
37. Respondents waive any right they may have to appeal this Consent Agreement and the accompanying Final Order.
38. Respondents agree not to contest the validity or any term of this Consent Agreement in action brought: a) by the United States, including EPA, to enforce this CA/FO, or b) to enforce a judgment relating to this CA/FO. Any failure by Respondents to perform fully any requirement herein will be considered a violation of this CA/FO may subject Respondents to a civil judicial action by the United States to enforce the provisions of this CA/FO.
39. 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.

40. This Consent Agreement 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 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.
41. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA, including for any violation of FIFRA or the CAA.
42. Each undersigned signatory to this Consent Agreement certifies that he or she is duly authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement. The provisions of this Consent Agreement shall be binding upon both EPA and Respondents, their officers/officials, agents, authorized representatives and successors or assigns.
43. Each party hereto agrees to bear its own costs and fees in this matter.
44. Respondents consent to service upon themselves of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
45. Nothing in this Consent Agreement affects any rights, claims, interests, defenses or causes of action of Respondents against any third parties.

**In the Matter of Costello Exterminating Inc., Island Wide Pest Management Group Inc., and
Ramon L. Castillo Ortiz, Docket No. FIFRA-02-2018-5302**

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: 9/26/18

In the Matter of Costello Exterminating Inc., Island Wide Pest Management Group Inc., and Ramon L. Castillo Ortiz, Docket No. FIFRA-02-2018-5302

RESPONDENTS:

Costello Exterminating Inc.


By: 
(Signature)

NAME: Ramon L. Castillo

TITLE: Director tecnico

DATE: SEPT/26/2018

Island Wide Pest Management Group Inc.

By: 
(Signature)

NAME: Ramon L. Castillo

TITLE: Director tecnico

DATE: SEP/26/2018

Ramon L. Castillo Ortiz

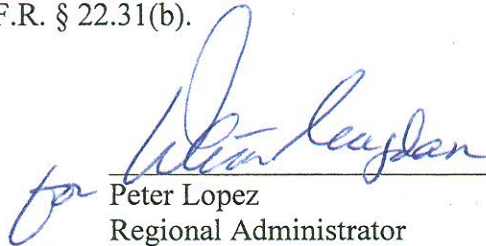

(Signature)

DATE: Director

**In the Matter of Costello Exterminating Inc., Island Wide Pest Management Group Inc., and
Ramon L. Castillo Ortiz, Docket No. FIFRA-02-2018-5302**

FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency for Region 2 ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to 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).



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

DATE: Sept. 27, 2018

In the Matter of Costello Exterminating Inc., Island Wide Pest Management Group Inc., and Ramon L. Castillo Ortiz, Docket No. FIFRA-02-2018-5302

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-02-2018-5302, 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:

Ramon L. Castillo Ortiz, Individually and as
Director, Island Wide Pest Management Group, Inc.
Calle 38 SE #1278
Urbanizacion La Riviera SE
San Juan, Puerto Rico 00921

Ramon L. Castillo Ortiz, Individually and as
Director, Costello Exterminating, Inc.
Calle Las Piedras #10
Urbanizacion Bonneville Heights
Caguas, Puerto Rico 00727-4960

Lcdo. Rafael A. Ojeda Diez
P.O. Box 9023392
San Juan, Puerto Rico 00902-3392
Tel. 787-728-4120
Fax 787-727-3177
rafaelojeda@ojedalawpr.com

Dated: Oct. 1, 2018
New York, New York

