

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In the Matter of:**

Crop Protection Program, Office of the  
Agricultural Services and Development  
Administration

Respondent

Proceeding Under the Federal Insecticide,  
Fungicide and Rodenticide Act, as  
amended

DOCKET NO. FIFRA-02-2008-330

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 JAN -5 AM 7:50  
REGIONAL HEARING  
CLERK

**ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY FOR  
HEARING AND REQUEST FOR HEARING**

COMES NOW, the Agricultural Services and Development Administration (“ASDA”), through the undersigned attorneys, and presents its Answer to the Complaint and Notice of Opportunity for Hearing (“Complaint”) issued by the Environmental Protection Agency (“EPA”) on September 18, 2008, and respectfully states, alleges and prays as follows:

1. The first sentence of Paragraph 1 of the “Complaint”, is a statement of law that requires no admission, denial or explanation and, in the alternative, is denied.
2. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 2 and, therefore, denies the same.
3. ASDA admits that the Complaint identifies the Crop Protection Program (“CPP”) as the Respondent.
4. ASDA admits that allegations of Paragraph 4.
5. Paragraph 5 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, is denied.

6. Paragraph 6 of the Complaint states conclusions of law that require no admission, denial or explanation and, in the alternative, is denied.

7. Paragraph 7 of the Complaint describes Complainant's characterization of Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") Section 14 (a), 7 U.S.C. §§136 et seq., 136l(a), but denies its applicability to this case.

8. Paragraph 8 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

9. Paragraph 9 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

10. Paragraph 10 of the Complaint is denied.

11. Paragraph 11 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

12. ADSA admits the First Sentence of Paragraph 12 of the Complaint. The Second Sentence of Paragraph 12 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

13. Upon information and belief, ASDA admits that EPA conducted inspections on the dates and locations indicated in Paragraph 13 of the Complaint, but lacks knowledge or information sufficient to form a belief as to whether or not the inspections were performed "to evaluate the compliance status of Respondent with respect to FIFRA and the WPS provisions and evaluate application practices particularly as related to application of restricted use pesticides" as stated therein person that performed the inspection was, as alleged, an "enforcement officer" and, likewise, as to whether or not the purpose of the inspector was "to

determine Respondent's compliance with the Act, its NPDES permit, and the applicable NPDES regulations" and, therefore, denies the same.

14. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14 of the Complaint and, therefore, denies the same.

15. Concerning Paragraph 15, ASDA admits that a letter dated March 23, 2007, signed by Dore la Posta, related to inspections of the CPP was notified to ASDA Administrator, agronomist José A. Ruiz Hernández, and furthermore answers that the letter speaks for itself.

16. Concerning Paragraph 16, ASDA admits that a letter dated March 23, 2007, signed by Dore la Posta was notified to ASDA Administrator, agronomist José A. Ruiz Hernández, and furthermore answers that the letter speaks for itself.

17. ASDA admits Paragraph 17 of the Complaint

18. ASDA admits Paragraph 18 of the Complaint.

19. In response to the allegations of Paragraph 19 of the Complaint, ASDA admits that a letter dated June 4, 2007, was notified by EPA to the Puerto Rico Department of Agriculture ("PRDA") and furthermore answers that the letter speaks for itself.

20. In response to the allegations of Paragraph 20 of the Complaint, ASDA admits that a letter dated June 4, 2007, was notified by EPA to the Puerto Rico Department of Agriculture ("PRDA") and furthermore answers that the letter speaks for itself.

21. In response to the allegations of the first sentence of Paragraph 21 of the Complaint, upon information and belief, ASDA admits that EPA conducted inspections as therein stated. In response to the allegations of the second sentence of Paragraph 21 of the Complaint, ASDA lacks knowledge of information sufficient to form a belief concerning what was purportedly revealed by the inspections and, therefore, denies the same.

22. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 22 of the Complaint and, therefore, denies the same.

23. In response to the allegations of Paragraph 23 of the Complaint ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

24. In response to the allegations of Paragraph 24 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

25. In response to the allegations of Paragraph 25 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

26. In response to the allegations of Paragraph 26 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, clarifying that the correct name is Maricao, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

27. In response to the allegations of Paragraph 27 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

28. In response to the allegations of Paragraph 28 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

29. In response to the allegations of Paragraph 29 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

30. In response to the allegations of Paragraph 30 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

31. In response to the allegations of Paragraph 31 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

32. In response to the allegations of Paragraph 32 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

33. In response to the allegations of Paragraph 33 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date

and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

34. In response to the allegations of Paragraph 34 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge of information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

35. In response to the allegations of Paragraph 35 of the Complaint, ASDA, upon information and belief, admits that an inspection by an EPA inspector was performed on the date and at the place indicated, but lacks knowledge or information sufficient to form a belief concerning the purpose of the inspection and, therefore, denies the same.

36. EPA lacks knowledge or information sufficient to form a belief as to the truth of Paragraph 36 of the Complaint and, therefore, denies the same.

37. ASDA concurs that Paragraph 37 of the Complaint partially describes the elements that form part of an EPA Registration Number for pesticides but denies its applicability to this case.

38. ASDA concurs that Paragraph 38 of the Complaint partially describes registration aspects of the pesticides therein described but denies its applicability to this case.

39. ASDA concurs that Paragraph 39 of the Complaint partially describes registration label text for pesticides listed in Paragraph 38 of the Complaint but denies its applicability to this case.

40. ASDA concurs that Paragraph 40 of the Complaint partially describes registration label text for pesticides listed in Paragraph 38 of the Complaint but denies its applicability to this case.

41. ASDA concurs that Paragraph 41 of the Complaint partially describes a statutory enactment appearing in FIFRA Section 12 (a)(2) but denies its applicability to this case.

42. Paragraph 42 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

43. Paragraph 43 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

**COUNTS 1-7  
PESTICIDE MISUSE – FAILURE TO INCORPORATE**

44. With respect to the allegations in Paragraph 44 of the Complaint, ASDA reasserts and reincorporates by reference its responses to Paragraphs 1-43 as set forth above.

45. ASDA concurs that Paragraph 45 of the Complaint partially describes, in general terms, the EPA approved label for Mobcap (EPA Reg. No. 264-457), dated September 25, 2006, but denies its applicability to this case.

46. ASDA concurs that Paragraph 46 of the Complaint partially describes, in general terms, the EPA approved label for Di-Syston 15% Granular Systemic Insecticide (Di-Syston) (EPA Reg. No. 264-723), dated April 20, 2006, but denies its applicability to this case.

47. ASDA admits that a form titled “Requisito de Aplicación”, described in Paragraph 47 of the Complaint, is provided to farmers that request services from CPP and that the form contains spaces for signing by the CPP Brigades Supervisor and the Farmer denying, for lack of knowledge or information sufficient to form a belief as to their truth, the remaining averments.

48. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 48 of the Complaint and therefore denies the same.

49. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 49 of the Complaint and, therefore, denies the same, and states that two “Requisito de Aplicación” forms dated January 8, 2008 and April 7, 2008, were signed, respectively, by an agent for Mr. José M. Hernández and by José M. Hernández.

50. ASDA lacks knowledge or information sufficient to form a belief as to the truth of whether or not a sworn statement, as described in Paragraph 50 of the Complaint, and the statement ascribed to the agricultural employer of the Hacienda del Fina farm was provided and, therefore, denies the same, and states that a “Requisito de Aplicación” form, dated March 31, 2008, was signed by an agent of Mr. Guillermo Oliver.

51. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 51 of the Complaint and, therefore, denies the same.

52. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 52 of the Complaint and therefore denies the same.

53. ASDA lacks knowledge or information sufficient to form a belief as to the truth of whether or not a sworn statement, as described in Paragraph 53 of the Complaint, and the statement ascribed to the agricultural employer of the Miguel La Torres Crespo farm was provided and, therefore, denies the same, and states that an “Informe de Visita” (“Visit Report”) form, dated January 15, 2008; a “Registro de Aplicaciones de Pesticidas - WPS” (Pesticides Applications Registry - WPS) form, with application dates of January 15, 16 and 17, 2008; and an “Autorización para la Aplicación de Plaguicidas” (Authorization for Application of Pesticides), dated December, 2007, were signed, all by Miguel La Torres Crespo, and CPP or ASDA agents.



54. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 54 of the Complaint and, therefore, denies the same.

55. Paragraph 55 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

56. Paragraph 56 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

**COUNTS 8 – 26**  
**PESTICIDES MISUSE – APPLICATION METHOD**

57. With respect to the allegations in Paragraph 57 of the Complaint, ASDA reasserts and reincorporates by reference its responses to Paragraphs 1-56 as set forth above.

58. ASDA concurs that Paragraph 58 of the Complaint quotes text appearing in the label for Mocap (EPA Reg. No. 264-457) but denies its applicability to this case.

59. ASDA, upon information and belief, denies that the Vydate L label (EPA reg. No. 352-372) limits application methods as described in Paragraph 59 of the Complaint.

60. ASDA concurs that Paragraph 60 of the Complaint quotes text appearing in the label for Temik (EPA Reg. No. 264-330) but denies its applicability to this case.

61. ASDA concurs that Paragraph 61 of the Complaint quotes text appearing in the labels for Mocap, Vydate L, Temik and Di-Syston but denies its applicability to this case.

62. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 62 of the Complaint and, therefore, denies the same.

63. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 63 of the Complaint and, therefore, denies the same.

64. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 64 of the Complaint and, therefore, denies the same.

65. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 65 of the Complaint and, therefore, denies the same.

66. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 66 of the Complaint and, therefore, denies the same.

67. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 67 of the Complaint and, therefore, denies the same.

68. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 68 of the Complaint and, therefore, denies the same.

69. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 69 of the Complaint and, therefore, denies the same.

70. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 70 of the Complaint and, therefore, denies the same.

71. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 71 of the Complaint and, therefore, denies the same.

72. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 72 of the Complaint and, therefore, denies the same.

73. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 73 of the Complaint and, therefore, denies the same.

74. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 74 of the Complaint and, therefore, denies the same.

75. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 75 of the Complaint and, therefore, denies the same.

76. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 76 of the Complaint and, therefore, denies the same.

77. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 77 of the Complaint and, therefore, denies the same.

78. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 78 of the Complaint and, therefore, denies the same.

79. ASDA admits that labels for registered pesticides contain restrictions concerning application equipment, some of which, but not all are similar to those described in Paragraphs 62 through 78 of the Complaint but denies that all pesticides described in Paragraphs 62-78 of the Complaint were applied using prohibited application methods.

80. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averment of Paragraph 80 and, therefore, denies the same.

81. Paragraph 81 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

**COUNTS 27-36**  
**PESTICIDES MISUSE – PESTICIDE NOT APPROVED FOR USE CROP**

82. With respect to the allegations in Paragraph 82 of the Complaint, ASDA reasserts and reincorporates by reference its responses to Paragraphs 1-81 as set forth above.

83. ASDA concurs that Paragraph 83 of the Complaint quotes text appearing in the label for Gramaxone Max (EPA Reg. No. 100-1074) but denies its applicability to this case.

84. ASDA admits Paragraph 84 of the Complaint.

85. ASDA denies, as stated in Paragraph 85 of the Complaint, that the label for Scala (EPA Reg. No. 264-788 “indicates that Scala should not be used on any crop not listed on the label” and admits that the label states: “See HOW TO USE directions for a complete list of all crops approved for use.”

86. ASDA admits Paragraph 86 of the Complaint.

87. ASDA admits Paragraph 87 of the Complaint.

88. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 88 of the Complaint and, therefore, denies the same.

89. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 89 of the Complaint and, therefore, denies the same.

90. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 90 of the Complaint and, therefore, denies the same.

91. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 91 of the Complaint and, therefore, denies the same.

92. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 92 of the Complaint and, therefore, denies the same.

93. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 93 of the Complaint and, therefore, denies the same.

94. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 94 of the Complaint and, therefore, denies the same.

95. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 95 of the Complaint and, therefore, denies the same.

96. Paragraph 96 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

**COUNTS 37-46  
FAILURE TO PROVIDE NOTICE OF SPECIFIC PESTICIDE INFORMATION  
FOR AGRICULTURAL EMPLOYERS**

97. With respect to the allegations in Paragraph 97 of the Complaint, ASDA reasserts and reincorporates by reference its responses to Paragraphs 1-96 as set forth above.

98. ASDA concurs that Paragraph 98 of the Complaint partially describes the content of 40 C.F.R. § 170.224, but denies its applicability to this case.

99. ASDA concurs that Paragraph 99 of the Complaint describes the content of 40 C.F.R. § 170.224 (a), (b), (c), (d), (e) and (f) but denies its applicability to this case.

100. ASDA admits Paragraph 100 of the Complaint.

101. ASDA lacks knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 101 of the Complaint concerning the findings by inspectors and, therefore, denies the same, and states that a “Registro de Aplicaciones de Plaguicidas” (Pesticides Applications Registry – WPS) form, with application dates February 12 and February 15, 2008, were signed by agents for Horacio Ortega and CPP or ASDA agents.

102. ASDA denies Paragraph 102 of the Complaint.

103. Upon information and belief, ASDA admits Paragraph 103 of the Complaint.

104. ASDA admits Paragraph 104 of the Complaint.

105. ASDA admits Paragraph 105 of the Complaint.

106. ASDA admits Paragraph 106 of the Complaint.

107. Upon information and belief, ASDA admits Paragraph 107 of the Complaint.

108. Upon information and belief, ASDA admits Paragraph 108 of the Complaint.

109. Upon information and belief, ASDA admits Paragraph 109 of the Complaint.

110. ASDA admits Paragraph 110 of the Complaint.

111. ASDA admits Paragraph 111 of the Complaint.

112. Paragraph 112 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative, is denied.

113. Paragraph 113 of the Complaint states a conclusion of law or of the application of facts to law that requires no admission, denial or explanation and, in the alternative, is denied.

114. Paragraph 114 of the Complaint states a conclusion of law that requires no admission, denial or explanation and, in the alternative is denied.

#### **PROPOSED CIVIL PENALTY**

In response to this section, Respondent alleges that the proposed final order assessing administrative penalties in the amount of \$263,980.00 has no basis in law or in fact.

In addition, the proposed penalty assessment is excessive, unwarranted, burdensome, and fails to take into account the factors identified in Section 14(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. §§ 136 *et seq.*, §136l (a)(4).

Except as specifically admitted, all factual allegations contained in this part of the Complaint are denied.

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

No response to the allegations of this Part of the Compliant is requested and, thus, none is proffered.

**INFORMAL SETTLEMENT CONFERENCE**

No response to the allegations of this Part of the Complaint is requested and, thus, none is proffered.

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

No response to the allegations of this Part of the Complaint is requested and, thus, none is proffered.

**AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted against ASDA.
2. ASDA is a legal entity created as a programmatic and operational component of the Commonwealth of Puerto Rico's Department of Agriculture, an arm of the Commonwealth of Puerto Rico and, as such, is not a person pursuant to FIFRA Section 2 (s), 7 U.S.C. § 136(s).
3. The Commonwealth of Puerto Rico ("Commonwealth") has been granted primary enforcement authority under FIFRA Section 26, 7 U.S.C. §136w-1, over pesticide use violations, which authority is exercised through Department of Agriculture.
4. The Crop Protection Program is not a legal entity but rather a programmatic division within ASDA and, as such, is not a person pursuant to FIFRA Section 2 (s), 7 U.S.C. §136(s).
5. Congress did not confer EPA with jurisdiction over ASDA for the alleged violations to FIFRA Section 14 (a)(1), 7 U.S.C. §136l, described in the Complaint.
6. Upon information and belief, the Complaint does not pursue a legitimate regulatory purpose and has been notified solely in retaliation for the legitimate exercise by the Commonwealth of its primary enforcement authority under FIFRA Section 26, 7 U.S.C. §136w-

1, and as a form to improperly circumvent procedures established pursuant to FIFRA Section 27, 7 U.S.C. 136w-2, for alleged failure to assure enforcement of state pesticide use regulations.

7. To the extent that ASDA's acts or omissions as described in the Complaint may, without either so admitting or denying, be in non compliance with pertinent FIFRA provisions establishing pesticide incorporation, application, use and information requirements and, thus, afoul of Section 136l (a)(1) of FIFRA, 7 U.S.C. § 14(a)(1), those failures are de minimis in nature, occurred despite the exercise of due care or did not cause significant harm to health or the environment.

8. ASDA has, at all times, and acted in good faith.

9. ASDA reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case should disclose.

**WHEREFORE**, it is respectfully requested that the "Complaint" in the instant case be dismissed.

**CERTIFICATE OF SERVICE:** This Answer to Administrative Complaint and a copy have been notified by certified mail, return receipt requested, to: Regional Hearing Clerk, U.S. EPA, Region II, 290 Broadway, 16<sup>th</sup> Floor (Room 1631), New York, New York 10007-1866; and copy was notified to Dore La Posta, Division of Enforcement and Compliance, U.S. EPA, Region II, 290 Broadway New York, New York 10007-1866.

In San Juan, Puerto Rico this 21 day of December, 2008.  
Respectfully submitted.

**MARTINEZ-LORENZO LAW OFFICES**

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