

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

M & P Pest Control Inc.,

Respondents.

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

**COMPLAINT and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING**

Docket No. FIFRA-02-2020-5303

ANSWER TO THE COMPLAINT AND REQUEST OF A FORMAL HEARING

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COME NOW M&P Pest Control Inc. and Mr. Michael Pantojas as President and on behalf of M&P Pest Control, (the “Respondents”), and through the undersigned counsel respectfully state, allege and pray as follows:

Allegations 1 to 32 does not require a formal response from Respondent, they are legal quotations and are presumed correct.

32. Accepted.

33. Accepted.

34. Accepted.

35. Accepted.

36. Accepted.

37. At the inspection the inspectors observed cylinders that were return by customers by direct orders from the inspector of Department of Agriculture Juan Carlos Muñoz Ruiz. On the statement provided by Mr. Juan Pantojas on March 26, 2015 it was stated that no inventory

was left at M&P. **(Exhibit 1)**. Respondent returned every empty cylinder at the beginning of April 2015 to Univar USA. Documents of such returns were provided to the Department of Agriculture's inspectors during the process of inspections.

38. Accepted in part and denied in part. It's true the fact that inspectors collected records and statements regarding MethQ during the period of 2013 through April 2015. Univar invoice Scott's Exterminating there is not invoice from Univar to M&P. The purchase order came from M&P, but all the invoices came under the name of Scott's Exterminating. **(Exhibit 2)**

39. Accepted. Also, the referred booklet provides for States to inform and educate applicators about accepted pesticides uses and other provisions of FIFRA.

40. Accepted.

41. Accepted.

42. Accepted.

43. Accepted.

44. The IRL made such request.

45. The IRL made such request.

46. Accepted. M&P did not provide such documents. Respondent requested to Univar USA the distributor of MethO because all invoices were directed to Scott's Exterminating and to MP Pest Control so the confusion of this process, been done by Univar. Univar assured M&P that they submitted the 40 CFR to the EPA directly to their offices in the mainland. M&P requested the documents to Univar when inspected by the Department of Agriculture inspector, but their legal department refuse to provide them. **(Exhibit 3)**

47. Allegation number 47 is misleading, the manner is written seems to imply a lack of diligence on Respondents side. When the truth is that the EPA and the Department of Agriculture

knew of should have known by at least June 12, 2015, that Univar USA Inc., provided the requested documentation directly to both entities. Additionally, evidence was provided and will be attached to the present Response as **Exhibit 3**, that Mr. Ted Worster as Marketing Manager for Univar, informed Respondent that their attorney recommended not to send the requested information. Univar assured Respondent of their compliance with the EPA.

48. Accepted.

49. Accepted.

50. Prior to October 19, 2015, no inspector from any agency requested said document. Univar assured Respondent that they complied with all the EPA's requirements and regulations.

Exhibit 3.

51. Univar assured Respondent that they complied with all the EPA's requirements and regulations, M&P acted under this assurance. Exhibit 3.

52. The Department of Agriculture conducted the referred inspections.

53. Inspectors received all the documentation requested from Respondent in good faith.

54. Does not requires a response.

55. Accepted.

56. Under the meaning of "distributor" under 40 C.F.R sec. 82.3 specifically, Respondent is not a "distributor".

57. Under the meaning of "distributor" under 40 C.F.R sec. 82.3 specifically, Respondent is not a "distributor".

58. Univar assured Respondent that they complied with all the EPA's requirements and regulations. Exhibit 3.

59. Univar assured Respondent that they complied with all the EPA's requirements and regulations. Univar was the distributor of MethQ.
60. Univar was the distributor of MethQ. Univar invoiced through Scott's Exterminating every sale they made.
61. Univar assured M&P that they complied with all of the EPA and Department of Agriculture rules and regulations.
62. Univar was the distributor of MethQ and the applicators purchased the product directly from them. M&P tried to receive the information from Univar, they refused to provide said information and instructed M&P that they complied with all regulations.
63. Is a citation of law, does not requires a response.

COUNT 2

64. Does not requires a response.
65. Referred to Exhibit 3 and previous allegations.
66. Referred to Exhibit 3 and previous allegations.
67. Referred to Exhibit 3 and previous allegations.
68. Referred to Exhibit 3 and previous allegations.
69. Referred to Exhibit 3 and previous allegations.

COUNT 3

70. Does not requires a response.
71. Accepted.
72. Accepted.
73. Accepted.
74. Accepted.

75. Accepted.

76. Accepted.

77. Univar was the distributor of MethQ. Univar assured M&P that they complied with all the EPA's requirements.

78. Univar filled and filed all the documents under the name of Scott's Exterminating.

79. This allegation does not require a response.

COUNT 4

80. This allegation does not require a response.

81. Accepted, is the law.

82. The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors. If any was raised, M&P move promptly to complied with the Department of Agriculture instructions.

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- 85.** The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors.
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- 91.** The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors.

92. The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors.

93. The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors. From the Inspection Report nothing indicates any violation.

94. The cylinders were stored as instructed by the Department of Agriculture, in none of the previous inspections a fault related to the storage or any issue of that matter was raised by the inspectors

II. Formal Hearing Request

95. In light of the above stated and to show Respondent will always represent himself in good faith we hereby request an informal hearing directly with the EPA representatives and a formal hearing to present our evidence.

RESPECTFULLY SUBMITTED.

On this 17th day of August 2020, in San Juan, Puerto Rico.

I HEREBY CERTIFY that on this same date, I have caused the original and a copy of the foregoing Motion to be sent to the **Regional Hearing Clerk, ATTN: Karen Maples**, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 16th Floor, New York, NY 10007-1866; and, a true and exact copy of the foregoing to be sent via certified mail - return receipt requested to **Carolina Jordan-Garcia., Assistant Regional Counsel**, Office of the Regional Counsel, U.S. Environmental Protection Agency city View Plaza II, Suite 7000 48 Road 165, Km. 1.2, Guaynabo, PR 00968-8069 – with an advanced copy via email at jordan-garcia.carolina@pea.gov.

Dated: 17th August 2020

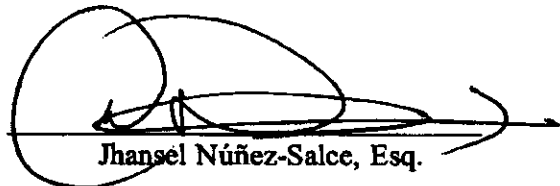

Jhansel Núñez-Salce, Esq.

Exhibit 1



United States
ENVIRONMENTAL PROTECTION AGENCY

Washington, DC 20460

Statement
Office of Enforcement and Compliance Assurance

I, Juan Pantoja, Vice-President of M.E.P. Pest Control, Inc. located at 1332 Jesus T. Piñero, San Juan PR, declare:

That we couldn't provide all the sale receipts of Meth-D-Gas (EPA REG NO. 5785-41) today but I would be able to provide them by Tuesday, March 31, 2015.

Also we need to make a correction to the purchase invoices to complete all requirements. We don't have actual inventory in the establishment of this pesticide.

I hereby swear/affirm that the foregoing statement is true to the best of my knowledge.

Signature	<i>Juan Pantoja</i>	Title	<i>3-26-15</i>
Name	<i>M.E.P. Pest Control Juan Pantoja</i>	Facility	<i>M.E.P. Pest Control</i>
Address	<i>1332 Jesus T. Piñero, San Juan</i>		
City	<i>San Juan</i>	State	<i>PR</i>
Zip Code	<i>00921</i>		
Subscribed and sworn to before me at (City)	<i>San Juan</i>	State	<i>PR</i>
this	<i>26 / MARCH / 2015</i>	In the year	<i>2015</i>
day of	<i>26</i>		
Signature of Inspector	<i>[Signature]</i>		
Address	<i>Dorado, PR</i>		

Univar USA Inc.
11305 Four Points Drive
Bldg 1 Suite 210
Austin, TX 78726
T 512 721 3080
F 512 348 0071



Date: March 26, 2015

Subject: Scott's Exterminating Methogas Sales

To Whom It May Concern:

Univar sold Scott's Exterminating 50 lb. Methogas cylinders for their use care of M&P Pest Control under the following invoices:

5e216197, 5e217087, 5e217270, 5e218107, 5e218212, 5e219347, 5e219993, 5e220610, 5e220838, 5e221735, 5e221859

If you have any questions, please don't hesitate to call.

Regards,

Ted Worster
International Marketing Manager
Univar Environmental Sciences
(512) 721-3959
ted.worster@univar.com

mpeest

From: Ted Worster [Ted.Worster@univarusa.com]
Sent: Friday, June 12, 2015 10:35 AM
To: Michael Pantoja
Subject: RE: EPA DOCUMENTS

Michael,

We have on file several documents as it related to restricted products; in particular methyl bromide.

- The first is a the certification letter from Chemtura approving us to sell to Scott's.
- The second is a copy of Scott's restricted use permit/license to buy and use methyl bromide
- Several shipping documents required for DG designation
- Required Clean Air Act Reporting requirement specific to Q gas that we send in quarterly to EPA

I suspect you need the latter. I have the first quarter of this year and am in the process of getting 2013 and 2014 together. We have filed it with EPA every quarter ever since it was required.

I will also need to get permission from my management to send it to you. Until then, all you can do is let EPA know that we have those records.

Thanks,

Ted Worster
Marketing Manager - Environmental Sciences
Univar
Austin, TX
T +1 512 721 3959
M +1 512 771 2893
F +1 512 348 6071
ted.worster@univarusa.com
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From: Michael Pantoja [mailto:mpeest@prtc.net]
Sent: Monday, June 08, 2015 4:39 PM
To: Ted Worster
Subject: EPA DOCUMENTS

Exhibit III

mpeest

From: Ted Worster [Ted.Worster@univarusa.com]
Sent: Friday, June 12, 2015 2:15 PM
To: Michael Pantoja (mpeest@prtc.net)
Subject: EPA Letter/Request

Michael,

I talked to our attorney to ask if I could forward the reports to you and unfortunately, he did not allow me to send it. He said it was confidential information. My apologies.

That being said, I can tell you that we did file it with EPA as required at:

Tracking System Program Manager
Stratospheric Protection Division
US EPA -(6205J)
1310 L Street NW 10th Floor
Washington, DC

EPA will already have this information available to them and on that list is the product we sold to Scott's during those years.

I hope that will help you.

Regards,

Ted Worster
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