



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

COPY

SEP 30 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Emilio J Venegas, President  
Sanson Agricultural Corporation  
Edificio Marvesa  
472 Avenue Tito Castro – Suite 201  
Ponce, Puerto Rico 00716-4702

Re: In the Matter Sanson Agricultural Corp.  
Docket No. FIFRA-02-2010-5304

Dear Mr. Venegas:

Enclosed is the Complaint and Notice of Opportunity for Hearing and supporting documents, in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

You have the right to a formal hearing to contest any of the allegations in the Complaint and/or to contest the penalty proposed in the Complaint.

If you wish to contest the allegations or the penalty proposed in the Complaint, you must file an Answer, within **thirty (30)** days of your receipt of the enclosed Complaint, to the United States Environmental Protection Agency's (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you, and the entire proposed penalty may be assessed without further proceedings.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 OCT 12 A 9:11  
REGIONAL HEARING  
CLERK


Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issues relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of a settlement by participating in an informal conference with EPA. However, a request for an informal conference **does not** substitute for a written Answer, affect what you may choose to say in a written Answer, or extend the thirty (30) days by which you must file an Answer to request a hearing.

Enclosed are copies of the "Consolidated Rules of Practice," which govern this proceeding. For your general information and use, I also have enclosed both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

The EPA encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. I am enclosing a brochure on "EPA's Supplemental Environmental Projects (SEP) Policy." Please note that SEPs are only available as part of a negotiated settlement and will not be available if this case is resolved by formal adjudication.

If you have any questions or wish to schedule an informal settlement conference, please contact the attorney whose name is listed in the Complaint.

Sincerely yours,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2010 OCT 12 A of 12  
REGISTRAR HEARING  
CLERK

-----X  
In the Matter of: :  
: **COMPLAINT AND NOTICE OF**  
Sanson Agricultural Corporation, : **OPPORTUNITY FOR HEARING**  
: :  
: Docket No.  
: FIFRA-02-2010-5304  
: :  
Respondent. :  
: Proceeding Under Section 14(a) of the  
: Federal Insecticide, Fungicide and  
: Rodenticide Act ("FIFRA"), as amended,  
: 7 U.S.C. § 136l(a).  
-----X

**INTRODUCTION**

This Complaint and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint.

Respondent is hereby notified of EPA's determination that Respondent has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard ("WPS") at Title 40 of the Code of Federal Regulations ("C.F.R.") Part 170. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty against any person determined to be in violation of any requirement of FIFRA or EPA's regulations thereunder.

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), who has been duly delegated the authority to institute this action, upon information and belief, hereby alleges:

**COMPLAINT**

1. Respondent is Sanson Agricultural Corporation incorporated pursuant to the laws in the Commonwealth of Puerto Rico.
2. Respondent is a "person" within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to the requirements of FIFRA and the regulations promulgated

thereunder, including the Worker Protection Standard (“WPS”) codified at 40 C.F.R. Part 170.

3. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Sanson Agricultural farm, located at Road No. 153, Km 3.5, Bo. Paso Seco, Santa Isabel, Puerto Rico (“Sanson farm” or “Sanson facility”) for the commercial production of mangoes and citrus.
4. Therefore, Respondent produces, and at all times pertinent to this Complaint has produced, “agricultural plants” at its Sanson facility, as that term is defined by 40 C.F.R. § 170.3.
5. Respondent engages, and at all times pertinent to this Complaint has engaged, in the outdoor production of agricultural plants at its Sanson facility.
6. Therefore, Respondent’s Sanson facility is, and at all times pertinent to this Complaint has been, a “farm,” as that term is defined by 40 C.F.R. § 170.3.
7. Therefore, Respondent’s Sanson facility is, and at all times pertinent to this Complaint has been, an “agricultural establishment,” as that term is defined by 40 C.F.R. § 170.3.
8. Therefore, Respondent is, and at all times pertinent to this Complaint has been, an “owner” of an agricultural establishment covered by the regulations at 40 C.F.R. Part 170, as that term is defined by 40 C.F.R. § 170.3.
9. Respondent hires and compensates, and at all times pertinent to this Complaint has hired and compensated, persons to perform activities related to the production of agricultural plants at the Sanson facility.
10. Therefore, at all times pertinent to this Complaint, Respondent has employed “workers” as that term is defined in 40 C.F.R. § 170.3.
11. Therefore, at all times pertinent to this Complaint, Respondent has been an “agricultural employer,” as that term is defined by 40 C.F.R. § 170.3.
12. At all times relevant to this Complaint, Respondent has employed persons and compensated them to mix, load, transfer, and apply pesticides, handle opened containers of pesticides, and assist with the application of pesticides.
13. Therefore, Respondent, has at all times pertinent to this Complaint, employed “handlers” as that term is defined by 40 C.F.R. § 170.3.
14. Therefore, Respondent has, at all times pertinent to this Complaint, been a “handler employer” as that term is defined by 40 C.F.R. § 170.3.

15. On October 2, 2006, the Puerto Rico Department of Agriculture (“PRDA”) issued, and Respondent subsequently received, a Violation Notification for violating FIFRA at the Sanson farm by using a registered pesticide in a manner inconsistent with its labeling. The violations identified involved the application of a pesticide without complying with FIFRA and requirements of the WPS. The provisions violated included FIFRA Section 12(a)(2)(G) and 40 C.F.R. Sections 170.130, 170.230, and 170.240.
16. On May 13, 2010, an EPA-authorized PRDA inspector and an EPA inspector visited Respondent’s Sanson farm with the purpose of conducting an inspection to determine compliance with WPS requirements (“the May inspection”).
17. The inspectors presented their credentials to Mr. Juan Leon Rivas and presented Mr. Leon with an EPA Notice of Pesticide Use/Misuse Inspection (“NOI”) form. The purpose of the inspection was explained to Mr. Leon and Mr. Leon signed the NOI to provide voluntary consent necessary for the inspectors to enter, conduct an inspection and take samples from the Sanson farm.
18. At the time of the May inspection, it was determined that the bulletin board that was referred to as the central posting area had nothing posted on it.
19. At the time of the May inspection, it was determined that no safety poster, no emergency medical care information, and no information on pesticide applications were posted in a central location at the Sanson farm.
20. During the May inspection, the inspectors observed at least three employees present at the Sanson farm. The handler came on-site after the inspection began.
21. At the time of the May inspection, agricultural workers at the Sanson farm were interviewed.
22. During the agricultural worker interview, the inspectors observed the following Personal Protective Equipment (“PPE”) in the locker of one of the workers: respirators, cloth gloves, and boots. There were no coveralls or rubber gloves.
23. During the agricultural worker interview, it was determined that there was no designated decontamination area at the Sanson farm.
24. During the May inspection, the inspectors observed several water spigots around the Sanson farm that had no running water, including a shower facility.
25. During the May inspection, the inspectors observed the area known as Pump Number 3. The inspectors observed that the pump was capped off and not in use.

26. During the May inspection, the inspectors conducted an interview with Mr. Juan Leon Rivas, the supervisor of the Sanson farm.
27. At the time of the May inspection, Mr. Leon acknowledged in an interview that Respondent's establishment employs six agricultural field workers, one of which is a handler.
28. At the time of the May inspection, Mr. Leon acknowledged in an interview that Respondent does not have pesticide application information or records of pesticide applications at the Sanson facility, but that Respondent's agronomist keeps such records off-site.
29. At the time of the May inspection, Mr. Leon acknowledged in an interview that an application of Kocide 3000 (EPA Reg. Number 352-662) ("Kocide") was made to "Edward" mangoes in the North area of the Sanson farm approximately three weeks before the May inspection.
30. The Agricultural Use Requirements portion of the Kocide label states: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for protection of agricultural workers on farms . . . and handlers of agricultural pesticides. It contains requirements for training, decontamination . . . It also contains specific instructions . . . pertaining to the statements on the label about personal protective equipment."
31. FIFRA Section 12(a)(2)(G) prohibits the use of a registered pesticide in a manner inconsistent with its labeling.
32. Each failure to follow the WPS requirements and other label requirements, listed in the counts below, constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA Section 12(a)(2)(G).

**COUNT 1:**

**Failure To Display Required Information Of Pesticide Applications For Workers**

33. Paragraphs 1 through 32 are incorporated herein by reference.
34. Subpart B of the WPS, which sets standards for workers, requires that when workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a restricted-entry interval ("REI") has been in effect, the agricultural employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.122.
35. The WPS requires that when workers are on an agricultural establishment, specific information regarding each pesticide application made at the establishment shall be

displayed and shall continue to be displayed for at least 30 days after the end of the REI or application if there is no REI or at least until the workers are no longer on the establishment. 40 C.F.R. § 170.122.

36. The WPS requires that pesticide application information shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number and active ingredient(s); (c) the time and date the pesticide is to be applied; and, (d) the REI for the pesticide. 40 C.F.R. § 170.122(c).
37. During the May inspection, PRDA and EPA inspectors observed that there were no central location where pesticide application information was displayed, no display of any specific pesticide application information, no description of the treated area, and no indication of application time and date of the pesticide application.
38. During the May inspection, Mr. Leon acknowledged that Respondent does not display records on the Sanson farm.
39. During the May inspection, Mr. Leon acknowledged that Respondent does have a folder where Respondent files information about pesticides applied on the Sanson farm, but it was not up to date.
40. Therefore, Respondent was not displaying specific information to notify workers of pesticide applications, as required by 40 CFR Section 170.122, regarding the application of Kocide that was made to “Edward” mangoes in the North area of the Sanson farm approximately three weeks prior to the May inspection.
41. Respondent’s failure to display specific information concerning the Kocide application to workers at the Sanson farm, constitutes a violation of 40 C.F.R Section 170.122.
42. Respondent’s failure to display specific information concerning the Kocide application to workers at the Sanson farm constitutes use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA Section 12(a)(2)(G).

#### **COUNT 2:**

#### **Failure To Display Pesticide Safety Information And Emergency Medical Care Information For Workers**

43. Paragraphs 1 through 42 are incorporated herein by reference.
44. When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a REI has been in effect, the agricultural employer shall display pesticide safety information, including a pesticide safety poster and emergency medical care information. This information shall be displayed in a central location where it can be readily seen and read by workers. Workers

shall be informed of the location of the information and shall be allowed access to it. The information shall remain legible during the time it is posted. 40 C.F.R. Section 170.135.

45. During the May inspection, Mr. Leon acknowledged that Respondent does not display pesticide safety information, including a safety poster and emergency medical care information, in a central location where it could be readily seen and read by workers on the Sanson farm.
46. Respondent's failure to display pesticide safety information, including a safety poster and emergency medical care information, after the application of Kocide for workers at the Sanson Farm constitutes a violation of the WPS at 40 CFR Section 170.135.
47. Respondent's failure to display pesticide safety information in a central location after the application of Kocide at the Sanson Farm constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

### **COUNT 3:**

#### **Failure To Provide Decontamination Supplies To Workers**

48. Paragraphs 1 through 47 are incorporated herein by reference.
49. The WPS requires agricultural employers to provide decontamination supplies for workers to wash off pesticides and pesticide residues during the performance of any activity within 30 days of application of a pesticide covered by the WPS. 40 C.F.R. Sections 170.150(a) & (b).
50. Agricultural employers are required to provide workers with enough water for routine washing and emergency eyeflushing. 40 C.F.R. Sections 170.150(b)(1) & (4).
51. Agricultural employers are required to provide workers with soap and single-use towels in quantities sufficient to meet the worker's needs. 40 C.F.R. Section 170.150(b)(3).
52. During the May inspection, Mr. Leon acknowledged that Respondent does not provide any decontamination supplies, such as water, soap and single use towels, to its workers when they work in the field and may come in contact with pesticides.
53. Respondent's failure to make decontamination supplies of a sufficient amount of water, soap, single-use towels and a clean change of clothing reasonably accessible to workers after the application of Kocide constitutes a violation of WPS at 40 CFR Section 170.150.
54. Respondent's failure to provide its workers with adequate decontamination supplies and a decontamination site in the field after application of Kocide at the Sanson farm constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).



**COUNT 4:**

**Failure To Provide Handler With Specific Information Of Pesticide Application**

55. Paragraphs 1 through 54 are incorporated herein by reference.
56. Subpart C of the WPS, which sets standards for handlers, requires that when handlers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a REI has been in effect, the handler employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.222.
57. The WPS requires that when handlers are on an agricultural establishment, specific information regarding each pesticide application made at the establishment shall be displayed and shall continue to be displayed for at least 30 days after the end of the REI or application if there is no REI or at least until the handlers are no longer on the establishment. 40 C.F.R. § 170.222.
58. The WPS requires that pesticide application information shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number and active ingredient(s); (c) the time and date the pesticide is to be applied; and (d) the REI for the pesticide. 40 C.F.R. § 170.222(c).
59. During the May inspection, PRDA and EPA inspectors observed that there was no display of any specific pesticide application information, no central location where pesticide application information is displayed, no description of the treated area, no indication of application time and date that the pesticide Kocide was applied.
60. During the May inspection, Mr. Leon acknowledged that Respondent does not display records on the Sanson farm.
61. Therefore, Respondent did not display specific information to notify the handler of Kocide applications, as required by 40 CFR Section 170.222.
62. Respondent's failure to display specific information concerning the application of the pesticide Kocide for the handler at the Sanson farm, constitutes a violation of 40 C.F.R. Section 170.222.
63. Respondent's failure to display specific information concerning the application of the pesticide Kocide at the Sanson farm for the handler constitutes use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA Section 12(a)(2)(G).

**COUNT 5:**  
**Failure To Display Pesticide Safety Information And Emergency Medical Care  
Information For Handler**

64. Paragraphs 1 through 63 are incorporated herein by reference.
65. When handlers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a REI has been in effect, the handler employer shall display pesticide safety information, including a pesticide safety poster and emergency medical care information. This information shall be displayed in a central location where it can be readily seen and read by handlers. Handlers shall be informed of the location of the information and shall be allowed access to it. The information shall remain legible during the time it is posted. 40 C.F.R. § 170.235.
66. During the May inspection, Mr. Leon acknowledged that Respondent does not display pesticide safety information, including a safety poster and emergency medical care information, in a central location where it could be readily seen and read by the handler on the Sanson farm.
67. Respondent's failure to display pesticide safety information after the application of Kocide, including a safety poster and emergency medical care information, for the handler at the Sanson Farm constitutes a violation of the WPS at 40 CFR Section 170.235.
68. Respondent's failure to display pesticide safety information concerning the application of Kocide in a central location at the Sanson Farm constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**COUNT 6:**  
**Failure To Comply With Handler PPE Requirements**

69. Paragraphs 1 through 68 are incorporated herein by reference.
70. When PPE is specified by the product labeling of any pesticide for any handling activity, the handler employer shall provide handlers with appropriate PPE. 40 C.F.R. § 170.240(c).
71. The Kocide label requires that for: **“PERSONAL PROTECTIVE EQUIPMENT . . . applicators and other handlers must wear:**
- long-sleeved shirt and long pants
  - chemical resistant gloves”
72. The handler employer shall not allow any handler to wear home or take home personal protective equipment. 40 C.F.R. § 170.240(f)(10).

73. During the May inspection, the inspectors observed the following PPE on the Sanson farm: respirators, cloth gloves and boots.
74. During the May inspection, the inspectors did not observe chemical resistant gloves at the Sanson farm.
75. Both Mr. Leon and the handler indicated that the handler took his PPE home with him.
76. On June 11, 2010, subsequent to the inspection, Respondent acknowledged correction of the handler PPE requirement and provided the handler with coveralls and safety glasses.
77. Respondent did not provide its handler with all appropriate PPE, as required by 40 C.F.R. Section 170.240 and the Kocide label, for the application of Kocide that was made to "Edward" mangoes in the North area of the Sanson farm approximately three weeks prior to the May inspection.
78. Respondent's failure to provide its handler with appropriate PPE constitutes a violation of WPS at 40 C.F.R. Section 170.240.
79. Respondent allowed the handler to take home personal protective equipment after the application of Kocide at the farm in violation of WPS at 40 C.F.R. Section 170.240(f)(10).
80. Respondent's failure to comply with handler PPE requirements constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**COUNT 7:**

**Failure To Provide Decontamination Supplies To Handler**

81. Paragraphs 1 through 80 are incorporated herein by reference.
82. The WPS requires handler employers to provide decontamination supplies for handlers to wash off pesticides and pesticide residues during any handling activity. 40 C.F.R. § 170.250(a) & (b).
83. Handler employers are required to provide the handlers with enough water for routine washing and emergency eyeflushing. 40 C.F.R. § 170.250(b)(1).
84. Handler employers are required to provide the handler with soap and single-use towels in quantities sufficient to meet handlers' needs. 40 C.F.R. § 170.250(b)(3)

85. During the May inspection, Mr. Leon acknowledged that Respondent does not provide any decontamination supplies, such as water, soap and single use towels, to its handler when he goes into the field to apply pesticides.
86. During the May inspection, Mr. Leon acknowledged that Respondent does not have a decontamination site on the Sanson farm for the handler.
87. Respondent's failure to make decontamination supplies of a sufficient amount of water, soap, and single-use towels reasonably accessible to the handler during the application of Kocide constitutes a violation of WPS at 40 CFR Sections 170.250.
88. Respondent's failure to provide its handler with adequate decontamination supplies during the application of Kocide at the farm, in the field or at the site where the handler removes PPE after application, constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**COUNT 8:  
Failure To Follow Pesticide Label-Specific Requirement**

89. Paragraphs 1 through 88 are incorporated herein by reference.
90. Inside the fenced area of Pump Number 3 at the Sanson farm, the inspectors observed a pesticide container on the ground. The one gallon container of Glyphos X-tra Herbicide (EPA Registration Number 4787-23) ("Glyphos") was empty.
91. The Agricultural Use Requirements on the Glyphos label states: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms . . . and handlers of agricultural pesticides."
92. The Glyphos label requires that empty containers to be triple rinsed promptly after emptying, then offered for recycling, or punctured and disposed of in a sanitary landfill.
93. During the May inspection, EPA's inspector found an empty plastic container of Glyphos that had not been rinsed, offered for recycling, punctured, or disposed of in a landfill.
94. Respondent's failure to properly dispose of the empty Glyphos container violates the specific requirements of the Glyphos label and is thus a violation of FIFRA Section 12(a)(2)(G), which requires use of any registered pesticide in a manner consistent with its labeling.

## PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(a)(2), which authorizes the assessment of a civil penalty of up to \$1,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Part 19, this amount was increased to \$1,100. Complainant derived the proposed penalty by applying the factors enumerated in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), to the violations alleged in this Complaint. The reasoning for the assessment is explained in detail in the “Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), December 2009” and the “Worker Protection Standard Penalty Policy,” Interim Final, dated September 1997, available on the Internet. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors to particular cases.

Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent’s business, and Respondent’s ability to continue in business in light of the proposed penalty, Complainant proposes, subject to receipt and evaluation of further relevant information, that Respondent be assessed the following civil penalty for the violations alleged in this Complaint:

**Count 1:** Use of registered pesticide in a manner inconsistent with labeling (Failure to display required information of pesticides application for workers).....\$1,100

**Count 2:** Use of registered pesticide in a manner inconsistent with labeling (Failure to display pesticide safety information and emergency medical care information for workers).....\$1,100

**Counts 3:** Use of registered pesticide in a manner inconsistent with labeling (Failure to provide decontamination supplies to workers).....\$1,100

**Count 4:** Use of registered pesticide in a manner inconsistent with labeling (Failure to provide handler with specific information of pesticide application).....\$1,100

**Count 5:** Use of registered pesticide in a manner inconsistent with labeling (Failure to display pesticide safety information and emergency medical information for handler).....\$1,100

**Count 6:** Use of registered pesticide in a manner inconsistent with labeling (Failure to comply with handler PPE requirements).....\$1,100

**Count 7:** Use of registered pesticide in a manner inconsistent with labeling (Failure to provide decontamination supplies to handler).....\$1,100

**Count 8:** Use of registered pesticides in a manner inconsistent with labeling (Failure to follow pesticide label-specific requirement).....\$1,100

**Total Proposed Civil Penalty.....\$8,800**

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

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, "Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," and are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

#### **A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within 30 days after service of a Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor (Rm 1631)  
New York, New York 10007-1866

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus

intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

#### B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. Section 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. Section 22.35(b). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

#### C. Failure To Answer

If Respondent fails in its Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely (i.e., in accordance with the 30-day period set forth in 40 C.F.R. Section 22.15(a)) Answer to the Complaint, Respondent may be found in default upon motion. Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. Section 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings 30 days after the default order becomes final pursuant to 40 C.F.R. Section 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such final order of default against Respondent, and to collect the assessed penalty amount, in federal court.

#### D. Exhaustion Of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Environmental Appeals Board pursuant to 40 C.F.R. Section 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. Section 22.27(c), Respondent waives its right to judicial review. 40 C.F.R. § 22.27(d).

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within 30 days after the initial decision is served." 40 C.F.R. § 22.30(a). Pursuant to 40 C.F.R. Section 22.7(c), where service is effected by mail, ". . . five days shall be added to the time allowed by these [rules] for the filing of a responsive document." Note that the 45-day period provided for in 40 C.F.R. Section 22.27(c) (discussing when an initial decision becomes a final order) does not pertain to or extend the time period prescribed in 40 C.F.R. Section 22.30(a) for a party to file an appeal to the EAB of an adverse initial decision.

### **INFORMAL SETTLEMENT CONFERENCE**

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondent or any relevant information previously not known to Complainant, or to dismiss any or all of the charges if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondent is referred to 40 C.F.R. Section 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this complaint should be directed to:

Karen L. Taylor, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, N.Y. 10007-1866  
(212) 637-3637 (telephone)  
(212) 637-3199 (facsimile)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A



request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. Section 22.15(c).

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. Section 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written consent agreement. 40 C.F.R. § 22.18(b)(2). In accepting the consent agreement, Respondent waives its right to contest the allegations in the Complaint and waives its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a final order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

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

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the New York address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO. 63197-9000

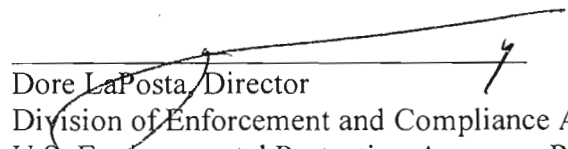
The check shall be identified with a notation of the name and docket number of this case as follows:

In the Matter of Sanson Agricultural Corp., Docket No. FIFRA-02-2010-5304

Pursuant to 40 C.F.R. Section 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within 30 days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a final order. Issuance of this final order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. Section 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said final order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable regulations and requirements, and to maintain such compliance.

Dated: SEPTEMBER 30, 2010  
New York, New York

COMPLAINANT:

  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency – Region 2

TO: Emilio J Venegas, President  
Sanson Agricultural Corp.  
Edificio Marvesa  
472 Avenue Tito Castro  
Suite 201  
Ponce, Puerto Rico 00716-4702

**In the Matter of Sanson Agricultural Corp.**  
**Docket No. FIFRA-02-2010-5304**

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be sent the foregoing Complaint, bearing docket number FIFRA-02-2010-5304, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, in the following manner to the respective addressees below:

Original and One Copy  
By Hand:

Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, Rm. 1631  
New York, N.Y. 10007-1866  
Attn: Karen Maples

Overnight Delivery:

Emilio J. Venegas, President  
Sanson Agricultural Corp.  
Edificio Marvesa  
472 Avenue Tito Castro  
Suite 201  
Ponce, Puerto Rico 00716-4702

Dated: OCT - 6, 2010  
New York, New York

Mildred N. Baez