



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 JUN 17 AM 11:52
REGIONAL HEARING
CLERK

JUN 17 2008

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Alberto L. Ramos, Esq.
Alberto Ramos Law Office
P.O. 750
Mercedita, PR 00715-0750

Re: In the Matter of Javier Quiles Torres, Javier Quiles Farm
FIFRA-02-2008-5302

Dear Mr. Ramos:

Please find enclosed a copy of the Consent Agreement and Final Order ("CA/FO") in the above-referenced matter, signed by the Regional Administrator of the United States Environmental Protection Agency ("EPA"), Region 2.

Please provide this copy to your client, Javier Quiles Torres, and assure that your client makes arrangement for payment of the civil penalty in accordance with the timeframe specified in the CA/FO, and performs the injunctive requirements specified in the CA/FO.

Thank you in advance for your cooperation in this matter. If you have any questions, please contact me at (212) 637-3224.

Sincerely yours,

Bruce H. Aber
Bruce H. Aber

Assistant Regional Counsel

Enclosure

cc: Honorable William B. Moran
Karen Maples, Region 2 Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2

2008 JUN 17 AM 11:52

REGIONAL HEARING
OLENK

-----X
In the Matter of :
Javier Quiles Torres, :
Respondent. :
CONSENT AGREEMENT AND
FINAL ORDER
FIFRA-02-2008-5302
Proceeding Under the Federal :
Insecticide, Fungicide and :
Rodenticide Act, as amended. :
-----X

PRELIMINARY STATEMENT


This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. Section 136l(a). On or about October 26, 2007, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing ("the Complaint"), FIFRA-02-2008-5302, to Respondent, Javier Quiles Torres (hereinafter "Respondent or "Javier Quiles"). The Complaint alleged that the Respondent committed violations of the Worker Protection Standards ("WPS") at 40 C.F.R. Part 170 and Section 12(a)(2)(G) of FIFRA, 7 U.S.C. Section 136j(a)(2)(G), involving the use of a registered pesticide in a manner inconsistent with its labeling.

L.Q.C.

On January 15, 2008, Respondent filed an Answer to the Complaint, specifically denying the allegations pertaining to the pesticide handler violations alleged in the Complaint.

During the winter of 2008, the Respondent and Complainant exchanged information and entered into negotiations under the Alternate Dispute Resolution process and on or about April 2, 2008, both parties reached an agreement to settle this matter. Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. subsections 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this case without further litigation.

COMPLAINANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 
1. Respondent is Javier Quiles Torres (hereinafter "Javier Quiles Torres" or "Javier Quiles" or "Respondent").
 2. Respondent is an "agricultural employer," as that term is defined in 40 C.F.R. Section 170.3.
 3. Respondent has employed "workers" and "handlers" as defined in 40 C.F.R. Section 170.3
 4. Respondent maintains and/or operates a "Farm" as defined in 40 C.F.R. Section 170.3, located at Road No. 526, KM 2.4, P.O. Box 737, Adjuntas, Puerto Rico 00601 (hereinafter "Quiles Farm").
 5. On or about April 24, 2006, August 24, 2006 and March 14, 2007, EPA and the Puerto Rico Department of Agriculture ("PRDA") conducted joint pesticide enforcement inspections of the Quiles Farm.
 6. During the March 14, 2007 inspection, EPA learned that on March 13, 2007 the pesticide "Honcho" (EPA Reg. No. 524-445) was applied to the Chironja plants on the Quiles Farm.
 7. On July 2, 2007, Respondent submitted a response to a June 19, 2007, EPA Request for Information Letter pursuant to Section 8 of FIFRA.

8. Throughout this administrative proceeding, Complainant has maintained, among other things, that the Respondent has failed to provide workers and handlers with specific information of pesticide applications, decontamination supplies, personal protective equipment (for handlers only), pesticide safety training, and pesticide safety and emergency medical care information. In addition, Complainant has alleged that Respondent has used pesticides in a manner inconsistent with their labeling.
9. Based on the above-mentioned inspections and the documentation obtained during and subsequent to those inspections, EPA issued a Complaint against Respondent for failing to provide WPS protections to his workers and handlers. The violations cited for these pesticides are 40 CFR Section 170.122, 40 CFR Section 170.130, 40 CFR Section 170.135, 40 CFR Section 170.222, 40 CFR Section 170.235, 40 CFR Section 170.240, 40 CFR Section 170.250, and Section 12(a)(2)(G) of FIFRA, 7 U.S.C. Section 136j(a)(2)(G).
10. In his Answer to the Complaint and throughout this proceeding, Respondent has maintained that he, as the owner of the Quiles Farm, applied the pesticide himself to the chironja plants on March 13, 2007, and therefore is not required to provide WPS protections (information, supplies and equipment) to himself, as a pesticide handler, under the exemption at 40 CFR Section 170.204.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. §22.18, it is hereby agreed that:

1. Respondent shall hereafter maintain compliance with the statutory and regulatory provisions of the Federal Insecticide Fungicide & Rodenticide Act (FIFRA), as amended, 7 U.S.C. Section 136 et seq., and its implementing regulations.
2. Respondent has signed an Affirmation and submitted said Affirmation to EPA concerning compliance with the applicable FIFRA and WPS requirements cited in the above-mentioned case. The compliance measures addressed in the Affirmation concern the following:

- i) Display of Specific Pesticide Application Information
- ii) Display of Pesticide Safety and Emergency Medical Care Information;
- iii) Pesticide Safety Training for Workers and Handlers
- iv) Decontamination Supplies for Workers and Handlers and location of said supplies in relation to workers and handlers
- v) Personal Protective Equipment
- vi) Container Disposal Instructions

3. Using a recent application on the Quiles Farm as an example, Respondent shall provide to EPA, within sixty (60) days from the date of the Regional Administrator's signature of this CA/FO, a readable photograph and/or photocopy of the displays cited in subparagraphs 2(i) and (ii), above. The photograph and/or photocopy of the displays must clearly show the following: i) the specific pesticide application information, including the location and description of the treated area, pesticide name, pesticide registration number, time and date the pesticide was applied); ii) pesticide safety information; and iii) emergency medical care information. Respondent shall indicate the location(s) where the display(s) are placed. In addition, Respondent shall provide to EPA a list of the decontamination supplies that were provided to workers and handlers, and personal protective equipment that was provided to handlers.
4. Respondent shall provide to EPA, within sixty (60) days from the date of the Regional Administrator's signature of this CA/FO, documentation that a pesticide safety training program for Respondent's workers and pesticide handlers has either occurred recently or is scheduled to occur no later than six (6) months after the Regional Administrator's signature of this CA/FO. In the case of training which is scheduled to occur, Respondent shall also provide to EPA documentation that the training has occurred, within thirty (30) days after its occurrence.
5. Respondent shall submit all reports with respect to the compliance provisions in paragraphs 3 and 4, above, to:

Dr. Adrian Enache
Division of Enforcement and Compliance Assistance
Pesticide and Toxic Substances Branch
2890 Woodbridge Avenue, Building 205, MS 500
Edison, New Jersey 08837-3679

6. Respondent has submitted financial information to EPA demonstrating financial difficulty and supporting the payment of the civil penalty by installments, as specified in paragraph 7, below, over a one (1) year period from the date of the Regional Administrator's signature of the Final Order in this CA/FO. EPA has relied on the accuracy of the financial information submitted by Respondent in negotiating this settlement.
7. Respondent shall pay, by cashier's or certified checks, a civil penalty in the total amount of **Five Thousand Dollars (\$5,000)**, which payment is in settlement of this case, payable to the "Treasurer, United States of America," in accordance with the following schedule:
- i) \$1,000 due on or before forty-five (45) days after the date of signature of the Final Order at the end of this document.
 - ii) \$1,000 due on or before three (3) months after the date of signature of the Final Order at the end of this document.
 - iii) \$1,000 due on or before six (6) months after the date of signature of the Final Order at the end of this document.
 - iv) \$1,000 due on or before nine (9) months after the date of signature of the Final Order at the end of this document.
 - v) \$1,000 due on or before twelve (12) months (one year anniversary) after the date of signature of the Final Order at the end of this document.

Each check shall be identified with the notation of the name and docket number of this case as follows: In the Matter of Javier Quiles Torres, Docket No. FIFRA-02-2008-5302.

Each check shall be mailed to:

United States Environmental Protection Agency
Fines & Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall also send copies of each payment to both:

Bruce Aber, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866; and

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

Each payment must be received at the above address on or before the due date specified above (the date by which each payment must be received shall hereafter be referred to as its "due date").

- 7-10-05
- 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 the Treasury for collection or other appropriate action.
 - b. Furthermore, if any 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. § 3717, 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 (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
 - c. A 6% per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.
 - d. If Respondent fails to pay any of the above payments within thirty (30) days of its due date, Respondent shall also be liable to the United States for an additional stipulated penalty of Two Thousand Dollars (\$2,000) for each such failure unless, on or before the due date, Respondent has submitted to EPA a writing that demonstrates to EPA's satisfaction good cause for such failure, as provided in paragraph 10 of this Consent Agreement.
 - e. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. Section 162(b).

8. If Respondent fails to comply with the requirements of paragraphs 3 and/or 4, above, it shall pay a stipulated penalty for each day that it fails to meet the requirements, as follows:

<u>Period of Failure to Comply</u>	<u>Penalty Per Day Per Violation</u>
1 st to 10 th day	\$250
11 th to 30 th day	\$500
31 to 60 days	\$1000
Each day in Excess of 60 days	\$1,500

9. All stipulated penalties are due and payable within forty-five (45) calendar days of Respondent's receipt from EPA of a written demand for payment. All stipulated penalty payments shall be made by cashier's or certified check in accordance with the payment instructions in paragraph 7. Penalties shall accrue as provided below regardless of whether EPA has notified the Respondent 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 CA/FO. Nothing in this CA/FO, including payment of penalties identified in this CA/FO, shall preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. Section 1001 et seq. or any other applicable 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.

10. Complainant may, in her sole discretion, reduce or eliminate any stipulated penalty due under this CA/FO if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA. If, after review of Respondent's submission, Complainant determines that Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate any stipulated penalty demanded by EPA, Complainant will notify Respondent in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by the Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within thirty (30) calendar days of receipt.
11. Respondent explicitly and knowingly consent to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

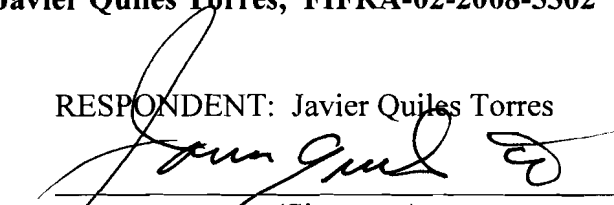
12. This CA/FO is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of the settlement are set forth herein.
13. For purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies any factual allegations contained in the Complaint or in the Complainant's Findings of Fact and Conclusions of Law herein.
14. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or the Complainant's Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
15. Respondent waives its right to appeal the CA/FO.
16. The Respondent agrees not to contest the validity or any term of this CA/FO in any 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.
17. The provisions of this CA/FO shall be binding upon Respondent, its successors or assigns.
18. This CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of FIFRA and the regulations promulgated thereunder.
19. Each undersigned signatory to this CA/FO certifies that he or she is duly and fully authorized to enter into and ratify this CA/FO and all the terms and conditions set forth in this CA/FO.

20. Respondent waives any right pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
21. Complainant and Respondent agree to bear their own costs and fees in this matter.
22. Respondent consents to service upon it of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
23. Any failure by Respondent to perform fully any requirement herein will be considered a violation of this CA/FO, and may subject Respondent to a civil judicial action by the United States to enforce the provisions of this CA/FO.

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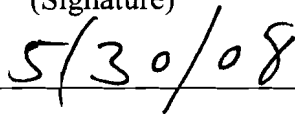
In the Matter of Javier Quiles Torres, FIFRA-02-2008-5302

RESPONDENT: Javier Quiles Torres

A handwritten signature in black ink, appearing to read 'Javier Quiles Torres', written over a horizontal line.

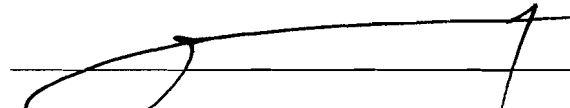
(Signature)

DATE:

A handwritten date '5/30/08' written in black ink over a horizontal line.

In the Matter of Javier Quiles Torres, FIFRA-02-2008-5302

COMPLAINANT:



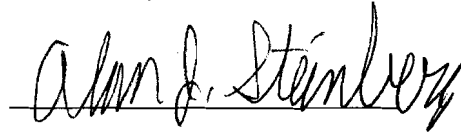
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection
Agency - Region 2

DATE: JUNE 6, 2008

In the Matter of Javier Quiles Torres, FIFRA-02-2008-5302

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, 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. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 26th Floor
New York, New York 10007

DATE: 6-11-08

In the Matter of Javier Quiles Torres. FIFRA-02-2008-5302

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed Consent Agreement and Final Order ("CA/FO"), bearing the above-referenced docket number, 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, N.Y. 10007-1866

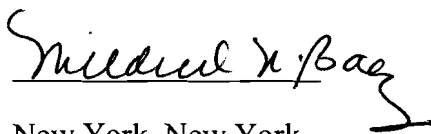
Copy by Pouch Mail :

Honorable William B. Moran
Administrative Law Judge
U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Mail Code 1900 L
Washington, D.C. 20005

Copy by Certified Mail/
Return Receipt Requested:

Alberto L. Ramos Law Offices
P.O. Box 750
Mercedita, Puerto Rico 00715-0750

Dated: JUN 17, 2008


New York, New York