



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

SEP 30 2010

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

Mr. Michael E. Holston  
General Manager  
Oliver Exterminating  
P. O. Box 363888  
San Juan, Puerto Rico 00936-3888

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

Re: In the Matter of Oliver Exterminating  
Docket No. FIFRA-02-2010-5305

Dear Mr. Holston:

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.

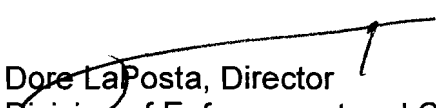
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issues relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of a settlement by participating 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.11  
2010 OCT 12 A 9:11  
ADMINISTRATIVE CLERK

IN THE MATTER OF:

**Oliver Exterminating**  
P. O. Box 363888  
San Juan, Puerto Rico 00936-3888

U.S. EPA DOCKET NO. FIFRA-02-2010-5305

Complaint and Notice of Opportunity for  
Hearing

**RESPONDENT**

Proceeding Under Section 14(a) of the Federal  
Insecticide, Fungicide and Rodenticide Act  
(FIFRA), as amended, 7 U.S.C. § 136/(a).

**I. INTRODUCTION**

1. 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" or the "Act"), as amended, 7 U.S.C. § 1361(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.
2. 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). 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.
3. The Complainant in this proceeding, the Director of the Division of Enforcement & 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, alleges:

## **II. COMPLAINT**

### **Findings of Fact and Conclusions of Law**

4. Respondent is Oliver Exterminating, a corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico.
5. 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 categorization of commercial applicators of pesticides codified at 40 C.F.R. § 171.3.
6. Respondent's corporate headquarters are located at Utuado Street, Number 16, Hato Rey, Puerto Rico. Respondent also has regional offices in different municipalities in the Commonwealth of Puerto Rico.
7. Respondent engages, and at all times pertinent to this Complaint, has engaged in commercial activities providing pest control services using pesticides.
8. Respondent applies pesticides that are classified as "restricted use pesticides" under section 3(d)(1) of FIFRA, 7 U.S.C. § 136a(d)(1), and 40 C.F.R. §§ 152.160 and 171.2(a)(23).
9. Respondent is a "certified applicator" and "commercial applicator" within the meaning of Sections 2(e)(1) and (3) of FIFRA, 7 U.S.C. §§ 136(e)(1) and (3), and 40 C.F.R. § 171.2(a)(8) and (9).
10. At all times relevant to this Complaint, Respondent has employed people as pesticide applicators to conduct pesticide applications throughout the Commonwealth of Puerto Rico.
11. Section 14(b)(4) of FIFRA, 7 U.S.C. § 136(b)(4), states that "the act, omission, or failure of any officer, agent or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed." Thus, FIFRA deems the acts, omissions, or failures of each individual acting on Respondent's behalf as the acts, omissions, or failures of Respondent.
12. On or about August 7, 2009, Respondent was hired by Mr. Celso González Anaya, owner of a wooden house covered with galvanized metal located on Road No. 108, Km. 9.1, Mayagüez, Puerto Rico (the "Property"), to conduct pesticide applications throughout the property to eliminate an infestation of termites.

13. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. section 152.5, define, in part, a “pest” as any insect.
14. A termite is an insect.
15. Therefore, a termite is a pest as defined by section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5.
16. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3, define the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”
17. Vikane Gas Fumigant (hereinafter “Vikane”), with U.S. EPA Registration Number 62719-4, is a pressurized liquid/gas formulation.
18. Vikane is a restricted use pesticide and its sale and use is limited to certified applicators and those under their direct supervision.
19. Vikane is used in tarpaulin, taped, or chamber fumigation applications and approved for use in dwellings, including mobile homes, buildings, construction materials, furnishings, and vehicles, including automobiles, buses, surface ships, rail cars, and recreational vehicles, excluding aircraft.
20. On Friday, August 14, 2009, Respondent applied the pesticide Vikane at Mr. Celso González’s property in order to eliminate the infestation of termites.
21. A “label” is defined by section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), as the “written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.” The term “labeling” is defined by section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), as “all labels and all other written, printed or graphic matter . . . (A) accompanying the pesticide or device at any time; or (B) to which reference is made on the label or in literature accompanying the pesticide.”
22. “To use any registered pesticide in a manner inconsistent with its labeling” is defined by section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), as “to use any registered pesticide in a manner not permitted by the labeling.”
23. Section 12(a)(2)(g) of FIFRA, 7 U.S.C. § 136j(a)(2)(g), states that it shall be unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”
24. Vikane’s label indicates the following, among other things:

First Aid:

- a. In all cases of overexposure, such as nausea, difficulty in breathing, abdominal pain, slowing of movements and speech, numbness of extremities, get medical attention immediately.

General Information:

- b. Prior to the parties entering into a fumigation agreement, the Fact Sheet for Vikane must be provided to an adult occupant of the structure to be fumigated.
- c. When used for fumigation of enclosed spaces 2 persons trained in the use of this product, at least one being an applicator that is licensed/certified by the state, must be present during introduction of fumigant, reentry prior to aeration, and during the initiation of the initial aeration procedure.
- d. Remove edible items from the structure before the fumigation if they cannot be adequately sealed to prevent exposure to the product.

Preparation for Fumigation:

- e. Food, feed, drugs and medicinals not in plastic, glass, or metal bottles, cans, or jars with the original manufacturer's air-tight seal intact, need to be removed from the fumigation site, or double bagged in Nylofume bags.

Warning Agent:

- f. Chloropicrin is a warning agent introduced into the structure during fumigation. It causes smarting of the eyes, tears, and discomfort, and has a very disagreeable pungent odor.

Introducing the Fumigant:

- g. Posting of Fumigated Areas: The applicator must post all entrances to the fumigated areas with signs bearing, in English and Spanish:
  - i. The signal word DANGER/PELIGRO and the SKULL and CROSSBONES symbol.
  - ii. The statement, "Area under fumigation, DO NOT ENTER/NO ENTRE".
  - iii. The date of fumigation.

iv. Name of fumigant used.

v. Name, address, and telephone number of the applicator.

25. On August 18, 2009, an EPA-authorized Puerto Rico Department of Agriculture (PRDA) official (hereinafter "EPA Authorized Official") received a phone call from Mrs. Glorimar Ortiz Santana, a resident at Road No. 108, Km. 9.1, Mayagüez, Puerto Rico, and immediate neighbor to Mr. Celso Gonzalez's Property. In such call Mrs. Ortiz informed that her youngest son had to be hospitalized in the evening of Friday, August 14, 2009, due to pesticide poisoning.
26. On August 20, 2009, an EPA Authorized Official visited Mrs. Glorimar Ortiz's home (hereinafter the "August 20, 2009 Inspection") to gather information regarding the alleged pesticide poisoning incident.
27. EPA provided a Notice of Pesticides Use/Misuse Inspection, dated August 20, 2009, to Mrs. Glorimar Ortiz which identified the reason for the inspection.
28. During the August 20, 2009 Inspection, Mrs. Ortiz acknowledged in a sworn affidavit that during the evening of August 14, 2009, when she returned home, she noticed that Mr. González's house was covered with a tarpaulin. Not long after her family started presenting the following symptoms: (1) Glorimar Ortiz Santana - smarting of the eyes, tears and discomfort, throat irritation, and nasal drip; (2) Christian Hernández Ortiz (oldest son) – strong headache, cheek redness; and (3) Oniel Hernández Ortiz (3 years old, youngest son) – sleepiness, slowing of movements and speech, numbness of extremities, among other symptoms.
29. During the August 20, 2009 Inspection Mrs. Ortiz reported that on August 14, 2009, she was informed by her husband and a neighbor that earlier that day Respondent's representatives had been fumigating Mr. Celso Gonzalez's Property.
30. On August 24, 2009, an EPA Authorized Official met with Mr. Celso González at his home (hereinafter the "August 24, 2009 Inspection") to discuss matters regarding the use of pesticides at the Property.
31. EPA provided a Notice of Pesticides Use/Misuse Inspection, dated August 24, 2009, to Mr. González which identified the reason for the inspection and the violation suspected.
32. During the August 24, 2009 Inspection Mr. González acknowledged in a sworn affidavit that on or about August 7, 2009, he hired Respondent to conduct

pesticide applications throughout the Property to eliminate an infestation of termites.

33. During the August 24, 2009 Inspection Mr. González reported that Respondent had told him to remove any plants and pets he had in the house before the date set to conduct the pesticide application and that bed sheets and covers needed to be removed and washed after re-entry.
34. During the August 24, 2009 Inspection Mr. González reported that he was never instructed by Respondent that he had to remove any food or medicines from the refrigerator and/or the house unless they had the original manufacturer's air-tight seal intact or were double bagged in Nylofume bags.
35. During the August 24, 2009 Inspection the EPA Authorized Official took pictures of a pamphlet, the service agreement contract and some company advertisement material that Respondent had provided to Mr. González.
36. On September 9, 2009, Mrs. Glorimar Ortiz Santana met with an EPA Authorized Official (hereinafter the "September 9, 2009 Inspection") and provided him with documents related to the alleged pesticide poisoning incident.
37. EPA provided a Notice of Pesticides Use/Misuse Inspection, dated September 9, 2009, to Mrs. Glorimar Ortiz Santana, which stated that it was a follow-up to the August 20, 2009 meeting that they held.
38. During the September 9, 2009 Inspection Mrs. Ortiz acknowledged in a sworn affidavit that she was providing the EPA Authorized Official with copies of her son's (Oniel Hernández) medical records from the Yagüez Hospital related to the August 14, 2009 alleged pesticide poisoning incident.
39. During the September 9, 2009 Inspection Mrs. Ortiz also submitted a series of pictures of her neighbor's (Mr. González) house covered by tarpaulin and taken by her husband during the days in which Respondent was providing pesticide application services at Mr. González's Property.
40. On December 8, 2009, an EPA Authorized Official conducted an inspection to Respondent's main offices (hereinafter the "December 8, 2009 Inspection") located in San Juan, Puerto Rico, in order to determine Respondent's compliance with the Act and its implementing regulations, and to obtain more information regarding the services it had provided at Mr. González's Property and regarding Oniel Hernández's August 14, 2009 alleged pesticide poisoning incident with Vikane. The EPA Authorized Official met with the company's General Manager, Mr. Michael E. Holston, and other Respondent officials.



41. During the December 8, 2009 Inspection Mr. Holston acknowledged in a sworn affidavit details as to Respondent's activities related to the pesticide application services provided at Mr. González's Property.
42. During the December 8, 2009 Inspection Mr. Holston agreed to submit to EPA the receipts for the purchase of Vikane, the Vikane Stewardship Plan, the receipt for the services provided at Mr. González's Property on August 14, 2009, and the signed Fact Sheet; among others.
43. On or about December 18, 2009, Respondent submitted to an EPA Authorized Official the information requested during the December 8, 2009 Inspection.

**COUNT 1:  
FAILURE TO FOLLOW PESTICIDE LABEL**

44. Paragraphs 1- 43 are incorporated herein by reference.
45. The Vikane label requires, among other things, that: prior to the parties entering into a fumigation agreement, the Fact Sheet for Vikane must be provided to an adult occupant of the structure to be fumigated; if edible items cannot be adequately sealed to prevent exposure to the product they need to be removed from the structure before the fumigation; food, feed, drugs and medicinals not in plastic, glass, or metal bottles, cans, or jars with the original manufacturer's air-tight seal intact, need to be removed from the fumigation site, or double bagged in Nylofume bags; the applicator must post all entrances to the fumigated areas with signs bearing, in English and Spanish the signal word DANGER/PELIGRO, the statement "Area under fumigation, DO NOT ENTER/NO ENTRE", the date of fumigation, the name of fumigant used and the name, address, and telephone number of the applicator.
46. In the course of its August 14, 2009 application of Vikane at the home of Celso Gonzalez, Respondent failed to comply with the requirements of the Vikane label.
47. In the course of its August 14, 2009 application of Vikane at the home of Celso Gonzalez, Respondent failed to provide Mr. Celso González with the Fact Sheet for Vikane prior to the parties entering into a fumigation agreement.
48. In the course of its August 14, 2009 application of Vikane at the home of Celso Gonzalez, Respondent failed to notify Mr. Celso González that he had to remove edible items from the structure before the fumigation if they could not be adequately sealed to prevent exposure to the product.

49. In the course of its August 14, 2009 application of Vikane at the home of Celso Gonzalez, Respondent failed to notify Mr. Celso González that food, feed, drugs and medicinals not in plastic, glass, or metal bottles, cans, or jars with the original manufacturer's air-tight seal intact, needed to be removed from the fumigation site, or double bagged in Nylofume bags.
50. In the course of its August 14, 2009 application of Vikane to the home of Celso Gonzalez, Respondent failed to post all entrances to the fumigated areas with signs bearing, in English and Spanish the signal word DANGER/PELIGRO, "Area under fumigation, DO NOT ENTER/NO ENTRE," date of fumigation, name of fumigant used, and name, address, and telephone number of the applicator.
51. Respondent's failure to comply with the specific requirements of the Vikane label is a violation of FIFRA §12(a)(2)(G), which makes unlawful the use of any registered pesticide in a manner inconsistent with its labeling.

### **III. CIVIL PENALTIES**

The proposed civil penalty has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 136(a)(1), which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated thereto.

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, required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 11, 2008, see 73 Fed. Reg. 75340, codified at 40 C.F.R. Part 19, and applicable here. Complainant derived the proposed penalty by applying the factors enumerated in section 14(a)(4) of FIFRA, 7 U.S.C. § 136(a)(4), to the violations alleged in this Complaint. To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case, to the extent known at the time of its filing, with specific reference to EPA's "FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act," dated December 2009 (hereinafter referred to as the "ERP"). A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://cfpub.epa.gov/compliance/resources/policies/civil/fifra/>. This policy provides 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 pesticides in a manner inconsistent with labeling.....\$6,804**

**Total Proposed Civil Penalty.....\$6,804**

**PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this 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, 16<sup>th</sup> 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); (3) the basis for opposing the proposed relief; and (4) 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 the 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. § 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. § 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 the 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. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). 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. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 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. § 22.30, and that initial decision thereby becomes a final order pursuant to the terms of 40 C.F.R. § 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. § 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. § 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. § 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/or (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. § 22.18.

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

Héctor L. Vélez Cruz, Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Bldg., Suite 417  
1492 Ponce de León Ave.  
San Juan, Puerto Rico 00907-4127  
(787) 977-5850 (telephone)  
(787) 729-7748 (facsimile)  
velez.hector@epa.gov.

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. § 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. § 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 any 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 terminates 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 Respondents file with the Regional Hearing Clerk, Region 2 (at the 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  
PO 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 Oliver Exterminating, Docket No. FIFRA 02-2010-5305

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.E.P.A. – Region 2

TO: Michael E. Holston  
General Manager  
Oliver Exterminating  
P. O. Box 363888  
San Juan, Puerto Rico 00936-3888

In the Matter of Oliver Exterminating, Docket No. FIFRA 02-2010-5305

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number FIFRA-02-2010-5305, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Michael E. Holston  
General Manager  
Oliver Exterminating  
P. O. Box 363888  
San Juan, Puerto Rico 00936-3888.

I hand-carried the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Dated: OCT - 5, 2010  
New York, New York

Mildred N. Bae  
