

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

In the Matter of	:	
	:	
Edwin Andújar Bermúdez dba	:	
Truly Nolen Pest Control De Caguas	:	<u>Honorable Helen Ferrara</u>
	:	Presiding Officer
	:	
Respondent,	:	Docket No. FIFRA-02-2016-5306
	:	
Proceeding Under the Federal Insecticide,	:	
Fungicide, and Rodenticide Act, as	:	
amended, and the Clean Air Act, as amended	:	

**MEMORANDUM IN SUPPORT OF COMPLAINANT'S MOTION FOR DEFAULT
JUDGMENT ON LIABILITY**

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Exhibit 2: Certified Mail Return Receipt Green Card for the Complaint sent to the Bayamón address signed and dated March 5, 2016 by Jesenia Andújar.

Exhibit 3: Certified Mail Return Receipt Green Cards for the Complaint sent to P.O. Box address personally signed and dated March 7, 2016, by Edwin Andújar.

Exhibit 4: March 6, 2017 Email from Jeannie Yu to the Regional Hearing Clerk. Attached to the email are USPS green cards showing completion of service for the Complaint.

Exhibit 5: Email Correspondence between Peter Diaz and Jeannie Yu prior to the filing of the Complaint.

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Exhibit 14: EPA Secretary Yolanda Majette's May 17, 2016 email to Respondent's then-counsel Peter Diaz, attaching EPA's May 18, 2016 letters to Andújar.

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Exhibit 17: Pesticide Use Investigation Report.

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Exhibit 19: August 7, 2015 PRDA Notice of Violation.

Exhibit 20: Sample/Representative Invoices for Application of Methyl Bromide-containing pesticides.

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Exhibit 22: EPA's FIFRA Investigation Summary.

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Introduction

Complainant, by and through the United States Environmental Protection Agency (“EPA”), Region 2, Office of Regional Counsel, submits this Memorandum in support of its Motion, brought pursuant to 40 CFR §§ 22.16 and 22.17, for an order finding Edwin Andújar Bermúdez, doing business as Truly Nolen Pest Control De Caguas, (hereinafter “Andújar” or “Respondent”) in default for Respondent’s failure to file an Answer to EPA’s civil administrative Complaint, and further finding Respondent liable for the violations alleged in the Complaint. The Complaint alleged that the Respondent applied restricted use pesticides containing methyl bromide in a manner inconsistent with the products’ labeling in violation of Section 12(a)(2)(G) of the Federal Insecticide, Rodenticide & Fungicide Act (“FIFRA”), 7 U.S.C. § 136j(a)(2)(G). Additionally, the Complaint alleged that the Respondent violated the Clean Air Act (“CAA”) requirements for reporting and keeping records of the purchase and use of an ozone-depleting substance, methyl bromide, set out at 40 CFR §§ 82.13(z)(1) and (z)(2). The civil administrative Complaint is a result of EPA’s wide-spread investigation of the use and distribution of methyl bromide-containing pesticides in Puerto Rico and the U.S. Virgin Islands (“USVI”) following a very serious pesticide poisoning incident in the USVI. In March 2015, a family vacationing in St. John suffered serious and permanent harm after being exposed to methyl bromide that was used to fumigate a condominium unit located directly below their vacation rental.

I. LEGAL STANDARD FOR DEFAULT

Pursuant to 40 CFR § 22.17(a), if a respondent fails to file a timely Answer(s) [*i.e.* in accordance with the 30-day period set forth in 40 CFR § 22.15(a)] to the Complaint, the

respondent may be found in default upon motion. Further, “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 CFR § 22.17(a).

II. FACTUAL BACKGROUND: SERVICE OF PROCESS

On March 1, 2016, as required by 40 CFR § 22.5(a), an original and one copy of the Complaint was filed with the Regional Hearing Clerk for EPA Region 2 to initiate the present action. See Exhibit 1. On the same date, Complainant effected proper service of the Complaint upon the Respondent and sent a copy to his presumptive counsel. Counsel for Complainant followed up service with additional copies of the Complaint and numerous efforts to remind the Respondent and his attorney of the obligation to respond.

A. *Service of Complaint to Andújar*

(1) On March 1, 2016, EPA, Region 2 issued a civil administrative Complaint against Andújar pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136I(a) and Section 113(d) of the CAA, 42 U.S.C. § 7413(d) (“CAA”). See Exhibit 1, *supra*. The Complaint specifies the FIFRA statutory and regulatory background as well as the CAA statutory and regulatory background. The Complaint also specifies the factual and legal basis in support of the violations alleged in counts 1 – 57 of the Complaint.

(2) Pursuant to 40 CFR § 22.5(b)(1), a copy of the signed original of the Complaint, including Certificate of Service, along with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of

Permits (hereinafter "Consolidated Rules of Practice") was sent, by certified mail with return receipt requested ("green card"), to Andújar at the addresses set forth in the cover/transmittal letter for the complaint and in the certificate of service, page 22, of the Complaint (See Exhibit 1, *supra*). The certified letters were sent to Post Office Box 7155, Caguas, Puerto Rico 00726 ("P.O. Box address") and Urb. Miraflores, 16-15 Calle 29, Bayamón, Puerto Rico 00957-3707 ("Bayamón address").

(3) The Respondent was served with the Complaint on March 5, 2016 at the Bayamón address. The green card was signed and dated March 5, 2016 by Jesenia Andújar. (See Exhibit 2).

(4) The Respondent was served with the Complaint on March 7, 2016 at the P.O. Box address. The green card was signed and dated March 7, 2016, by Andújar himself. (See Exhibit 3).

(5) Pursuant to 40 CFR § 22.5(b)(1)(iii), green cards evidencing proof of service (*i.e.*, properly executed receipt) of the Complaint upon the Respondent were received by the EPA Region 2 Hearing Clerk. (See Exhibit 4).

(6) The Complaint advised the Respondent of his right to a Hearing and explained that, in order to avoid being found in default upon motion by Complainant, a written Answer, which could include a request for a Hearing, had to be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, 290 Broadway, (16th Floor), New York, NY

10007-1866, within thirty (30) calendar days of receipt of the Complaint. In addition, the Complaint (at page 17) stated the following:

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 with regard to which Respondent has any knowledge. 40 CFR § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 CFR § 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 the Respondent disputes (and thus intends to place at issue in the proceeding) and (3) whether the Respondent(s) requests a hearing. 40 CFR § 22.15(b).

(7) The Respondent did not file an Answer to the Complaint with the Regional Hearing Clerk within thirty calendar days of receipt of such Complaint or by April 6, 2016. See Yu Declaration, Paragraph 8.

(8) To date, the Respondent has not filed an Answer to the Complaint with the Regional Hearing Clerk nor has he contacted the Presiding Officer to request any extension of time to file an Answer or communicated with EPA's counsel about doing so. See Yu Declaration, Paragraph 13 and 14.

B. *Service of Complaint to then-Counsel for Andújar*

(1) Prior to issuance of the Complaint, Peter Diaz, Esq. ("Mr. Diaz") represented the Respondent in pre-filing negotiations regarding the FIFRA and CAA violations alleged in the Complaint (See Yu Declaration Paragraph 2). (See Exhibit 5). Therefore, a courtesy copy of the Complaint was also emailed to Mr. Diaz on March 1, 2016, to the email address Mr. Diaz had previously used in correspondence with EPA counsel: pdiazfederalcases@gmail.com. (See Exhibit 6).

(2) In a March 1, 2016 CBS news story, Mr. Diaz told reporters that he will contest the complaint. See Exhibit 7. To date, Mr. Diaz has not filed an Answer to the Complaint with the Regional Hearing Clerk on behalf of the Respondent nor has he even contacted the Presiding Officer to request any extension of time to file an Answer or communicated with EPA's counsel about doing so. See Yu Declaration, Paragraphs 13 and 14.

C. *Follow-up Notice and Copies of Complaint Package Sent to Then-Counsel for Andujar*

(1) On April 28, 2016, EPA sent, by certified mail with return receipt requested and via email (from ORC Secretary Yolanda Majette), a letter to Mr. Diaz ("Diaz Letter") informing him that the Respondent had accepted service of the Complaint on March 5, 2016 and March 7, 2016; that no Answer to the Complaint had been filed; that the Answer to the Complaint was due on or about April 6, 2016; that his client might be found in default upon motion; and about the legal effects of such default. (See Exhibits 8 & 9.)

(2) Additionally, EPA's April 28, 2016 letter requested confirmation in writing within five business days as to whether Mr. Diaz was currently retained as counsel for Respondent. The Diaz letter further specified that if EPA did not receive such written confirmation, the Agency would conclude that Mr. Diaz no longer represented the Respondent. Copies of the Complaint, Consolidated Rules of Practice, and the United States Postal Service return receipts (*e.g.*, green cards) showing delivery were enclosed with the letter and were attached to the email from Yolanda Majette. (See Exhibits 8 & 9).

(3) Mr. Diaz was served on May 2, 2016 with this letter, at the address on his letterhead, 420 Avenida Ponce de Leon, Suite 1001, San Juan, Puerto Rico 00918 (the green card signed by Yashira Mindez). See Exhibit 10 and Yu Declaration, Paragraph 8.

(4) Mr. Diaz has not contacted EPA or the EPA Regional Hearing Clerk since the filing of the Complaint, and notwithstanding EPA's written requests by letters and emails, he has not responded to EPA with any confirmation (written or oral) that he currently represents the Respondent. (See Yu Declaration, Paragraphs 13 and 14).

D. Follow-up Notice and Copies of Complaint Package Sent to Andújar

(1) On May 17, 2016, EPA sent, by certified mail with return receipt requested, letters to Respondent Andújar at both the P.O. Box address and the Bayamón address. (See Exhibit 11). The EPA letters stated the following: (i) that the deadline for filing an Answer to the Complaint had passed; (ii) that EPA believed that the Respondent was no longer represented by Mr. Diaz; (iii) that EPA issued a letter to Mr. Diaz on April 28, 2016, informing him that the Answer to the Complaint was due on or about April 6, 2016; (iv) that Mr. Diaz received the letter on May 2, 2016; and (v) that Mr. Diaz had not responded to the letter or filed an Answer on his behalf. Further, the letter to Andújar stated that EPA intended to seek a default order against the Respondent, set forth the legal effects of such default order, and requested that the Respondent contact EPA counsel Yu or EPA attorney Carolina-Jordán García if he intended to file an Answer to the Complaint. Copies of the Complaint, the Consolidated Rules of Practice, and the green cards for the Complaint, and for the April 28, 2016 Diaz letters, along with the green card receipts, were enclosed with the May 17, 2016 letter to Andújar. (See Exhibit 11, *supra*).

(2) On May 20, 2016, the Respondent was served with the EPA May 17, 2016 letter at the Bayamón address (green card was signed by Ana Figueroa) and at the P.O. Box address (green card was personally signed by Edwin Andújar). (See Exhibits 12 & 13).

(3) Copies of the May 17, 2016 letters sent to Andújar were also mailed and emailed by Yolanda Majette to Mr. Diaz on May 17, 2016. (See Exhibit 14).

III. **ARGUMENT: COMPLAINANT HAS SATISFIED THE GOVERNING LEGAL STANDARDS FOR A DEFAULT TO BE ENTERED**

A. *Complainant Used a Proper Method of Service.*

Forty CFR § 22.5(b)(1)(ii)(A) states: “Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.” Where a complainant chooses to serve the complaint by United States Postal Service or commercial delivery service, it is “obligated to follow the procedural rules for that type of service.” In the Matter of Lester Sykes, Docket No. TSCA-05-2008-0013, at 3-4 (ALJ July 30, 2013) (“[T]he standard for service of a complaint by reliable commercial service. . . is the same as that of certified mail—the signature of the intended recipient or its authorized representative for proper service.”) Complainant “must use the certified mail and return receipt requested services available from the United States Postal Service (USPS) for this method of service to be proper.” *Id.* at 5. In the present case, on March 1, 2016, EPA sent copies of the Complaint, along with the Consolidated Rules of Practice, via USPS by certified mail with return receipt requested to Andújar at his P.O. Box address and to his Bayamón address. (See Exhibit 1, *supra*). Thus, EPA satisfied a proper method of service by mailing the Complaint via certified mail with return receipt requested.

B. Complainant Used Proper Service Materials

Forty CFR § 22.5(b)(1)(i) requires that complainant serve “a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice.” In the present case, the Complainant sent a copy of the signed original of the Complaint, including a Certificate of Service, cover letter, and a copy of the Consolidated Rules to the Respondent; the documents were received by the Respondent, as evidenced by the U.S. Postal Service Product and Tracking Information and the signed green card return receipts. (See Exhibits 2 and 3, *supra*). Thus, Complainant used “proper service materials” in compliance with the requirements of 40 CFR § 22.5(b)(1)(i).

C. Complainant Used a Proper Address for the Respondent

Proof that mail is properly addressed, stamped and deposited in an appropriate receptacle has long been accepted as establishing a strong rebuttable presumption of delivery to the addressee. See In the Matter of Tifa Limited, 1999 EPA ALJ Lexis 55 (July 7, 1999) and 2000 EPA App Lexis 17 (June 5, 2000). In the present matter, on March 1, 2016, Counsel for Complainant’s secretary, Yolanda Majette, caused to be mailed a copy of the Complaint by certified mail, return receipt requested, to the P.O. Box and Bayamón addresses Respondent uses for his pest control business. (See Certificate of Service Exhibit 1, page 22, *supra*).

Several documents confirm that the above-mentioned post office mailing address is the correct address for Andújar’s business. Documents that list the P.O. Box address as the proper mailing address for Andújar include: Andújar’s commercial insecticide application license #2912 (Exhibit 15); certificate for the commercial application of Restricted use pesticides (Exhibit 16);

Pesticide Use Investigation Report (Exhibit 17); 4/5/15 and 5/14/15 Notices of Pesticide use/misuse Inspection (Exhibit 18); an 8/7/2015 PRDA Notice of Violation (Exhibit 19), “Truly Nolen Pest Control de Caguas” invoices to clients (Exhibit 20), and Truly Nolen’s webpage (Exhibit 21). Finally, that the Complaint was personally received by Andújar at the P.O. Box address, as evidenced by his signature on the signed Green Card, is further proof that the Complaint was properly addressed. See Exhibit 3, *supra*.

Documents that list the Bayamón address as the physical location of the business, and therefore a proper mailing address, include: EPA’s FIFRA Investigation Summary (Exhibit 22); EPA Receipt for Samples (Exhibit 23); Andujar affidavit signed 4/15/15 (Exhibit 24); 4/5/15 and 5/14/15 Notices of Pesticide use/misuse Inspection (Exhibit 18); a M&P sales receipt (Exhibit 25) and that the Complaint was signed for by Jesenia Andújar at the Bayamón address, is additional proof that the Complaint was properly addressed. (See Exhibit 2, *supra*).

D. Complainant Included a Proper Addressee for Service by Mail on Corporations and Individuals

Where respondent is an individual and complainant uses certified mail with return receipt requested, 40 CFR § 22.5(b)(1)(i) requires that the complainant address the service materials to the respondent or a representative authorized to receive service on respondent’s behalf. In the present case, EPA addressed the service materials to “Edwin Andújar Bermúdez doing business as Truly Nolen Pest Control De Caguas.” Thus, the Complainant included a “proper addressee” for service by mail to Andújar in compliance with 40 CFR § 22.5(b)(1)(i).

E. Properly Executed Receipt for Service of Process was Returned to the Region

Forty CFR § 22.5(b)(1)(iii) specifies that “[p]roof of Service of the Complaint must be made by affidavit of the person making personal service, or by properly executed receipt.¹ For the mailing of the March 1, 2016 Complaint to Andújar, proof of service was made by “properly executed receipt.” The green card return receipt for the mailing to the P.O. Box address was signed personally by Andújar. As such, the green card for the mailing to the P.O. Box address constitutes properly executed receipt. See Exhibit 3, *supra*.

As a matter of the fact and law, as detailed above, Respondent may be found to be in default as a result of the Respondent’s failure to file an Answer to EPA’s properly served Complaint.

IV. FACTS IN COMPLAINT DEEMED ADMITTED BY VIRTUE OF DEFAULT

Forty CFR § 22.17(a) states, in part, that “[d]efault 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.” Accordingly, the following facts, sufficient for a finding of liability for the violations alleged, are deemed admitted by virtue of Respondent’s default in this matter.

A. General Facts

The following general facts necessary to a finding of liability for all counts were set out in the Complaint. These facts established that the Respondent is subject to FIFRA and the CAA

¹ Due to an administrative error, the Regional Hearing Clerk received proof of service of the Complaint on 3/6/17. See Exhibit 4.

and that the pesticide purchased and used by Andújar is regulated under the statutes. Respondent is subject to FIFRA (and its implementing regulations) by virtue of being a person and a commercial pest control applicator as those terms are defined by the statutes, and who moreover used a registered pesticide containing the active ingredient methyl bromide. As such, he is subject to FIFRA and its implementing regulations. Additionally, these facts established that Andújar is subject to the CAA by virtue of having purchased and used methyl bromide, an ozone depleting substance whose production and use is limited by international treaty and the CAA to very limited circumstances, including use as a pesticide for quarantine and preshipment purposes. As such, Andújar is subject to the CAA and its implementing regulations.

- (1) Respondent has engaged in commercial activities providing pest control services using pesticides. See Paragraph 50 of Complaint.
- (2) Respondent has been a certified applicator within the meaning of Section 2(e)(1) of FIFRA and 40 CFR § 171.2(a)(8). See Paragraph 51 of Complaint.
- (3) Respondent has been a commercial applicator within the meaning of Section 2(e)(3) of FIFRA and 40 CFR § 171.2(a)(9). See Paragraph 52 of Complaint.
- (4) Respondent is a person as defined in FIFRA and as such is subject to FIFRA and the regulations promulgated thereunder. See Paragraph 49 of Complaint.
- (5) Meth-O-Gas Q, EPA Reg. No. 5785-41 (“MethQ”) is a pesticide registered pursuant to FIFRA § 3. See paragraph 25 of the Complaint.
- (6) MethQ’s active ingredient is 100% methyl bromide. See Paragraph 26 of the Complaint.
- (7) Methyl bromide is an ozone depleting chemical subject to the CAA and its implementing regulations at Part 82. See Paragraphs 13 to 16 of the Complaint.
- (8) M & P Pest Control, Inc. (hereinafter “M & P”) sold or otherwise distributed MethQ to Andújar between September 2013 and February 2015. See Paragraph 38 of Complaint.

- (9) Andújar admitted during the April 15th 2015 EPA Inspection that he purchased the MethQ he applied from M&P. See Paragraph 45 of Complaint.
- (10) Andújar is an applicator of methyl bromide within the meaning of 40 CFR § 82.3. See Paragraph 71 of the Complaint.
- (11) The methyl bromide used by Andújar was produced solely for quarantine or regulatory use (quarantine and preshipment (“QPS”) applications). See Paragraph 54a. of the Complaint.
- (12) Andújar is a person defined by Section 302(e) of the CAA, 42 USC § 7602(e). See Paragraph 70 of the Complaint
- (13) Andújar has been subject to the CAA and the regulations at 40 CFR Part 82 promulgated thereunder. See Paragraph 72 of the Complaint.

B. *Use of A Registered Pesticide in a Manner Inconsistent with its label (Application Violations)*

Section 12 (a)(2)(G) makes it unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling. The following facts sufficient for a finding of liability on the part of the Respondent for 55 violations of FIFRA § 12(a)(2)(G), 7 USC § 136j, were set out in the Complaint. These facts describe the use instructions on the methyl bromide label, which does not allow the pesticide to be used (*i.e.*, applied) in dwellings (*e.g.*, residences) and require that a supervisory regulatory agent be present for the application. These facts further lay out Respondent’s failures to comply with these requirements. The Respondent’s failures to comply with the pesticide label use requirements subject him to liability for misuse of a pesticide under this section of FIFRA.

- (1) The MethQ Label and MethQ booklet (collectively the “MethQ labeling”) set forth precautionary and specific directions regarding use, storage, handling, sale and disposal of MethQ. See Paragraph 27 of Complaint.
- (2) M & P provided the MethQ Labeling with the sale of every MethQ container. See Paragraphs 32 & 37 of Complaint.

- (3) The MethQ canisters which M & P sold to Respondent Andújar bore the MethQ labeling. See Paragraph 39 of Complaint.
- (4) The MethQ label had directions, including but not limited to the following statements:
 - a. For Quarantine/Regulatory Use Only. See Paragraph 54 a. and h. of the Complaint.
 - b. Supervision by Regulatory Agent Required. See Paragraphs 54 a. and h. of Complaint.
 - c. It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. See Paragraph 54 e. of Complaint.
- (5) The MethQ labeling specifies permitted application sites, crops, and pests. See Paragraph 56 of the Complaint.
- (6) The MethQ labeling does not allow dwellings (e.g., residences) or structures not used for the commercial storage or handling of commodities as application sites. See Paragraph 57 of Complaint.
- (7) Andújar applied/used the MethQ on the dates and at the locations identified in the Table in Paragraph 58 (page 9) of the Complaint.
- (8) Respondent used/applied MethQ at ten (10) application sites which were not specified in the MethQ labeling. See Paragraphs 58 through 62 of Complaint
- (9) During the April 15, 2015 inspection of Respondent' facility, Andújar acknowledged that he performed all MethQ applications without the supervision of a regulatory agent. See Paragraph 46 a. of the Complaint.
- (10) Respondent conducted 15 applications of MethQ which were not supervised by a regulatory agent as required by the MethQ labeling. See Paragraph 63 of Complaint.
- (11) Respondent conducted 15 applications without the PPE required by the MethQ Labeling. See Paragraph 64 of Complaint.
- (12) Respondent conducted 15 applications without a direct detection device required by the MethQ Labeling. See Paragraph 65 of Complaint.
- (13) In the course of the fifteen (15) applications identified in Paragraph 58 of the Complaint, Andújar committed 55 separate violations of FIFRA consisting of (a) 10 applications to a site not specified in the MethQ labeling; (b) 15 applications not supervised by a regulatory agent as required by the MethQ labeling; (c) 15 applications without the PPE required by the MethQ Labeling; and (d) 15 applications without a direct detection device required by the MethQ Labeling. See Paragraph 67 of Complaint.

Each of Respondent's failures to comply with a specific requirement of the MethQ label constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling, an unlawful act under FIFRA Section 12(a)(2)(G), 7 USC § 136j(a)(2)(G), for which a penalty may be assessed against the Respondent pursuant to FIFRA § 14(a)(1), 7 USC §136l.

C. *CAA Liability for Failure to Comply with Recordkeeping Requirements*

The regulation at 40 CFR §82.13(z)(1) sets out the duty of an applicator of methyl bromide produced for quarantine and preshipment (QPS) purposes to collect and maintain a document from the commodity owner, shipper or agent that requests that the methyl bromide pesticide be used for quarantine and preshipment (QPS) applications only and cites the regulatory requirements that justify its use for the requested application. The following facts sufficient for a finding of liability on the part of Respondent for violation of this regulation were set out in the Complaint. Respondent's failures to comply with the recordkeeping requirements of 40 CFR §82.13(z)(1) subject it to liability for a violation of the CAA.

- (1) Andújar applied/used the MethQ on the dates and at the locations identified in the Table in Paragraph 74 of the Complaint.
- (2) MethQ's active ingredient is 100% methyl bromide. See Paragraph 26 of the Complaint.
- (3) Andújar is an applicator of methyl bromide within the meaning of 40 CFR § 82.3 See Paragraph 71 of the Complaint.
- (4) The methyl bromide used by Andújar was produced solely for quarantine or preshipment (QPS) applications. See Paragraph 54(h) of the Complaint.
- (5) Respondent failed to collect and maintain, for the 15 applications identified in the Tables in Paragraphs 58 and 74 of the Complaint, a document from the commodity owner, shipper or his agent, requesting the use of methyl bromide for QPS applications and citing the regulatory requirements that justify the use of methyl bromide. See 74 Paragraph of the Complaint.

Respondent's failure to comply with the recordkeeping requirements of 40 CFR § 82.13(z)(1) for the period September 13, 2013 through February 26, 2015 constitutes a violation of the CAA, for which a penalty may be assessed under Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B). See Paragraph 75 of the Complaint.

D. *CAA Liability Against Andújar for Failure to Comply with Reporting Requirements*

The regulation at 40 CFR §82.13(z)(2) sets out the duty of an applicator of methyl bromide produced for QPS purposes to provide a certification to the seller/supplier, prior to shipment, that the methyl bromide purchased will only be used for QPS applications. The following facts sufficient for a finding of liability on the part of Andújar for violations of this section were set out in the Complaint. Respondent's failures to comply with the reporting requirements of 40 CFR §82.13(z)(2) subject him to liability for a violation of the CAA.

- (1) Andújar purchased containers of MethQ from M & P, a distributor, on the dates identified in the Table in Paragraph 78 of the Complaint. See also, Paragraph 38 of the Complaint.
- (2) Andújar did not provide certifications to M & P stating that that the methyl bromide purchased would be used only for QPS applications. See Paragraphs 40, 79 and 80 of the Complaint.
- (3) From May 27, 2013 to September 9, 2014, Andújar purchased methyl bromide from M & P without providing, prior to shipment, a certification that the MethQ purchased would be used only for QPS applications. See Paragraph 80 of the Complaint.

Respondent's failures to comply with the reporting requirements of 40 CFR § 82.13(z)(2) for the period May 27, 2013 through September 9, 2014 constitute a violation of the CAA, for which a civil penalty may be assessed under Section 113(d)(1)(B), 42 USC § 7413(d)(1)(B).

V. DEFAULT HAS OCCURRED IN THIS MATTER

(1) Complainant commenced this administrative proceeding according to 40 CFR §§ 22.3, 22.13(a) and 22.14, when it filed the Complaint with the Hearing Clerk on March 1, 2016. See Attachment 1, *supra*.

(2) On March 1, 2016, EPA mailed (by certified mail with return receipt requested) a copy of the signed original of the Complaint, along with a copy of the Consolidated Rules of Practice, to Andújar.

(3) As laid out more fully in Section IV, above, EPA's Complaint sets out all factual elements necessary to establish the liability of Respondent Andújar for 55 violations of FIFRA and for 2 violations of the CAA.

(4) EPA mailed the Complaint and letters to the proper address and addressee for the Respondent. The Complaint packages were properly addressed to Andújar at two different mailing addresses and such packages were sent to the proper mailing addresses (P.O. Box address and the Bayamon address) for the Respondent.

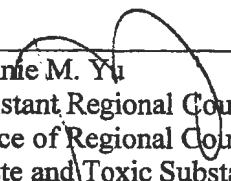
(5) Complainant effected proper service upon the Respondent on or about March 7, 2016 when Respondent Andújar personally signed the USPS Certified Mail Return Receipt for the Complaint package.

(6) The delivery of the Complaint satisfied the requirements for service of process as defined by 40 CFR § 22.4(b)(1).

(7) To date, no Answer to the Complaint has been filed with the Regional Hearing Clerk nor has any response to EPA's letters informing Respondent and his one-time counsel of an impending default motion been received. Thus, Respondent has shown a consistent pattern of ignoring EPA's requests to file an Answer.

Based on the foregoing, Complainant's counsel respectfully asserts that good cause exists for granting the motion for default with respect to liability against the Respondent for the violations set forth in the Complaint.

Respectfully submitted,



Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
Waste and Toxic Substances Branch
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866
212-637-3205
Yu.jeannie@epa.gov

Dated: March 21, 2017
New York, New York

Exhibit 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

MAR - 1 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00726

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29,
Bayamón, Puerto Rico 00957-3707

Re: Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas
Docket No. FIFRA-02-2016-5302

Dear Mr. Andújar:

Enclosed is a copy of the Complaint and Notice of Opportunity for Hearing and other documents, in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

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 (EPA) Regional Hearing Clerk at the following address:

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

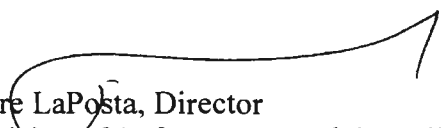
If you do not file an Answer within thirty (30) days of receipt of this Complaint and have not obtained a formal extension for filing an Answer from the Regional Judicial Officer, a default order may be entered against you, and a penalty may be assessed without further proceedings.

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 an Information Sheet for U.S. EPA Small Business Resources which may or may not apply to you.

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,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

Peter Diaz,
Attorney for Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas
420 Avenida Ponce de León Suite 1001
San Juan, Puerto Rico 00918-3491

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2016 MAR 01 PM 2:07 (FED)

-----X
In the Matter of :
 :
 :
 :
 Edwin Andújar Bermúdez dba : COMPLAINT AND NOTICE OF
 Truly Nolen Pest Control De Caguas : OPPORTUNITY FOR HEARING
 :
 : Docket No. FIFRA-02-2016-5302
 Respondent. :
 :
 :
 Proceeding Under the Federal :
 Insecticide, Fungicide, and :
 Rodenticide Act, as amended, and :
 the Clean Air Act, as amended. :
-----X

This Complaint and Notice of Opportunity for Hearing (hereinafter referred to as the “Complaint”) is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), as amended, 7 U.S.C. § 136I(a); Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d) (“CAA”); and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (“Consolidated Rules of Practice” or “CROP”).

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (“EPA”), has been duly delegated the authority to institute this action.

This Complaint serves notice of EPA’s preliminary determination that Edwin Andújar Bermúdez (hereinafter referred to as “Respondent”) doing business as Truly Nolen Pest Control De Caguas, from a location at Urb. Miraflores, Block 16-15, Calle 29, Bayamon, Puerto Rico (the “Facility”), has violated provisions of FIFRA and the CAA.

FIFRA Statutory and Regulatory Background

1. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
2. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), and 40 C.F.R. § 171.2(a) define a “certified applicator” as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. §136i, as authorized to use or supervise the use of any pesticide which is classified for restricted use.
3. Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), and 40 C.F.R. § 171.2(a)(9) define a “commercial applicator” as an applicator who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property.
4. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5, define a “pest,” in part, as any insect.
5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”
6. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as written, printed, or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.
7. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines the term “labeling” as all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide.
8. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), defines the term “to use any registered pesticide in a manner inconsistent with its labeling” as to use any registered pesticide in a manner not permitted by the labeling.
9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”

CAA Statutory and Regulatory Background

10. Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), directs the Administrator of EPA to publish a list of class I substances, and to add to that list any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer.

11. Section 603 of the CAA, 42 U.S.C. § 7671b, sets forth monitoring and reporting requirements for producers, importers or exporters of class I controlled substances, and authorizes the EPA Administrator to amend the monitoring and reporting regulations of class I and class II substances.
12. Pursuant to the authority in Section 603 of the CAA, 42 U.S.C. § 7671b, the Administrator of EPA promulgated regulations governing stratospheric ozone depleting substances, which are set forth at 40 C.F.R. Part 82.
13. Appendix A to 40 C.F.R. Part 82, Subpart A, lists class I controlled substances, and includes methyl bromide (CH₃Br) as a class I, Group VI controlled substance.
14. Appendix F to 40 C.F.R. Part 82, Subpart A, lists ozone-depleting chemicals, and includes methyl bromide (CH₃Br).
15. The use of methyl bromide, a class I ozone-depleting substance, for quarantine and preshipment purposes is regulated under Section 604(d)(5) of the CAA, 42 U.S.C. § 7671c (d)(5), and the implementing regulations at 40 C.F.R. Part 82.
16. Section 604 of the CAA, 42 U.S.C. § 7671c, provides for the phase-out of production and consumption of class I substances, with certain exceptions. One exception, set forth at Section 604(d)(5) of the CAA, 42 U.S.C. § 7671c(d)(5), provides that, to the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the EPA Administrator shall exempt from the phase-out the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State for purposes of compliance with Animal and Plant Health Inspection Service (U.S. Department of Agriculture) requirements or other international, Federal, State or local food protection standards.
17. Pursuant to 40 C.F.R. § 82.3, "quarantine applications" are, with respect to class I, Group VI controlled substances, treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.
18. Pursuant to 40 C.F.R. § 82.3, "preshipment applications" are, with respect to class I, Group VI controlled substances, those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

19. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.3 define “person” as any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.
20. 40 C.F.R. § 82.3 defines “applicator” as the person who applies methyl bromide.
21. Pursuant to 40 C.F.R. § 82.3, “distributor of methyl bromide” means the person directly selling a class I, Group VI controlled substance to an applicator.
22. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator’s authority to matters where the total penalty sought does not exceed \$37,500 (the amount as adjusted by 40 C.F.R. § 19.4), and the first alleged date of violation occurred no more than 12 months prior to the initiation of administrative action, except where the Administrator and the Attorney General of the United States jointly determine that the matter involving a larger penalty amount or longer period of violations is appropriate for the administrative penalty action.
23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this Complaint.

Background

24. Methyl Bromide is the active ingredient in certain restricted use pesticides regulated under FIFRA, 7 U.S.C. § 136 et seq.
25. Meth-O-Gas Q, EPA Reg. No. 5785-41 (“MethQ”), is a pesticide registered pursuant to FIFRA § 3.
26. MethQ’s active ingredient is 100% methyl bromide.
27. The MethQ label (MOGQ-8 REV.C) (the “Label”) and MethQ booklet (MOGQ-2 REV.GLK398F) (the “Booklet”) (collectively the “MethQ labeling”) set forth precautionary statements and specific directions regarding use, storage, handling, sale and disposal of MethQ.
28. M & P Pest Control, Inc. (hereinafter “M & P”), located at 1332 Ave. Jesus T. Pinero, San Juan, Puerto Rico, has been a distributor of pesticides at all times pertinent to this Complaint.
29. M & P Pest Control is a “distributor of methyl bromide” as that term is defined by 40 C.F.R. § 82.3.

30. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized Puerto Rico Department of Agriculture (“PRDA”) and EPA Inspectors conducted inspections of M & P on the following dates: March 25-26, 2015, March 31, 2015, April 8, 2015, April 16, 2015, April 17, 2015, April 22, 2015, May 13, 2015, May 20, 2015, and October 19, 2015 (collectively, the “M & P Inspections”).
31. At the M & P Inspections, the inspectors collected records and statements, including records and statements regarding Respondent’s purchases of MethQ during the period September 2013 through February 2015.
32. During the March 26, 2015 M & P Inspection, representatives of M & P provided the inspectors with a copy of the MethQ Labeling, described in Paragraph 27, above, which M & P provided with the sale of every MethQ canister.
33. On May 26, 2015, acting under the authority and pursuant to the provisions of Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), and of Section 114a of the CAA, 42 U.S.C. § 7414, EPA sent M & P an Information Request Letter (“IRL”) requesting information and records regarding the import, distribution, and application of Methyl Bromide.
34. The IRL specifically requested, along with other reporting and recordkeeping documents, that M & P provide copies of certifications that M & P received from applicators stating that the quantity of methyl bromide ordered would be used solely for quarantine or preshipment applications as required by 40 C.F.R. § 82.13(y)(2).
35. On July 17, 2015, M & P provided a response (the “M & P Response”) to EPA’s IRL.
36. In the M & P Response, M & P stated, as a response to the portion of the IRL discussed in Paragraph 34, that “We don’t have any these (sic) documents.”
37. In the M & P Response, M & P provided EPA with a copy of the MethQ Booklet, described in Paragraph 27, above, which M & P further asserted that it distributed with the sale of every MethQ canister.
38. M & P sold or otherwise distributed MethQ to Respondent between September 2013 and February 2015.
39. Upon information and belief, the MethQ canisters M & P sold Respondent bore the MethQ Labeling described in Paragraph 27, above.
40. During the October 19, 2015 Inspection, Mr. Michael Pantoja, the president of M & P stated that “no applicator gave any QPS documentation to M & P.”

41. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized EPA and PRDA Inspectors inspected Respondent's Facility, on April 15, 2015 and on May 14, 2015 ("April Inspection" and "May Inspection" respectively, or collectively, the "TN Inspections").

42. During the TN Inspections, the inspectors provided a Notice of Pesticides Use/Misuse Inspection form to Respondent which identified the reason for each of the Inspections and the violations suspected.

43. During the April Inspection, the inspectors collected ten (10) pesticide application records documenting Respondent's use of MethQ, for which they issued a Receipt for Samples document.

44. During the April Inspection, the inspectors requested that the Respondent provide all records in his possession related to the purchase and use of methyl bromide.

45. Respondent did not provide EPA with the records from each commodity owner requesting the quarantine and preshipment use of Methyl Bromide and citing legal justification for such use.

46. During the April Inspection, Respondent made the following statements regarding the MethQ applications to the inspectors:

- a. that he performed all MethQ applications without the supervision of a regulatory agent;
- b. that he did not have a direct reading device to measure the air concentration levels of methyl bromide (MethQ) during applications;
- c. that he did not have and/or did not own a self-contained breathing apparatus (SCBA) for use during the MethQ applications; and
- d. that he purchased the MethQ he applied from M & P.

47. During the May Inspection, the inspectors collected five (5) additional pesticide application records documenting Respondent's use of MethQ, for which they issued a Receipt for Samples document.

FIFRA Liability

Counts 1-55

Use of a Registered Pesticide in a Manner Inconsistent with its Label (Applications)

48. Complainant realleges each allegation contained in Paragraphs 1 through 47, inclusive, as if fully set forth herein.

49. Respondent has been, and continues to be, a “person” as defined by FIFRA § 2(s), 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

50. Respondent engages, and at all times pertinent to this Complaint has engaged, in commercial activities providing pest control services using pesticides.

51. Respondent is, and has been at all times pertinent to this Complaint, a “certified applicator” within the meaning of Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), and 40 C.F.R. § 171.2(a)(8).

52. Respondent is, and has been at all times pertinent to this Complaint, a “commercial applicator” within the meaning of Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), and 40 C.F.R. § 171.2(a)(9).

53. Respondent is, and has been at all times pertinent to this Complaint, subject to FIFRA and the regulations promulgated thereunder.

54. The following statements are clearly displayed on the MethQ Label received by Respondent and referenced in Paragraphs 27, 32, 37, and 39. above:

a. At the top of the label and in all bolded capital letters:

**“COMMODITY FUMIGANT
FOR QUARANTINE/REGULATORY USE ONLY
SUPERVISION BY REGULATORY AGENT REQUIRED.”**

b. “The acceptable air concentration level for persons exposed to methyl bromide is 5ppm (20 mg/m³). The air concentration level is measured by a direct reading detection device, such as a Matheson-Kitagawa, Draeger, or Sensidyne.”

c. “Do not allow entry into the treated area by any person before this time, unless protective clothing and a respiratory protection device (NIOSH/MSHA approved self-contained breathing apparatus (SCBA) or combination air-supplied/SCBA respirator) is worn.”

d. **PERSONAL PROTECTIVE EQUIPMENT (PPE) ... “Applicators and other handlers must wear:** ... Full-face or safety glasses with brow and temple shields (Do NOT wear goggles) ... When the acceptable air concentration level is above **5 ppm** and a respirator is required, protect the eyes by wearing a full-face respirator. No respirator is required if the air concentration level of methyl bromide in the working area is measured to be **5 ppm** or less. A respirator is required if the acceptable air concentration level of **5 ppm** is exceeded at any time. The respirator must be one of the following type: (a) a supplied-air respirator (MSHA/NIOSH approval number prefix TC-19C) OR (b) a self-contained breathing apparatus (SCBA) (MSHA/NIOSH approval number prefix TC-13F).”

- e. "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."
- f. "This fumigant is a highly hazardous material ... Before using, read and follow all label precautions and directions."
- g. "All persons working with this fumigant must be knowledgeable about the hazards, and trained in the use of required respiratory protection equipment and detector devices, emergency procedures, and proper use of the fumigant."
- h. "MethQ may be used for quarantine/regulatory commodity fumigation only. Supervision by regulatory agent is required."
- i. "You must carefully read and understand the accompanying use direction, GLK 398F [Booklet], in order to use MethQ."
- j. "Observe all safety and precautionary statements as set forth in the accompanying use directions, GLK398F [Booklet]."

55. The directions for use in the MethQ Booklet GLK398F include:

- a. On page 1, in large bold letters -
**"METHO-O-GAS ®Q
 COMMODITY FUMIGANT
 FOR QUARANTINE/REGULATORY USE ONLY
 SUPERVISION BY REGULATORY AGENT REQUIRED"**.
- b. "READ THIS BOOKLET AND ENTIRE LABEL CAREFULLY PRIOR TO USE.
 USE THIS PRODUCT ACCORDING TO LABEL INSTRUCTIONS."
- c. Same as 54(b) above
- d. Same as 54(c) above
- e. Same as 54(d) above.
- f. Same as 54(e) above.
- g. Same as 54(f) above.
- h. Same as 54(g) above.
- i. "This is a limited use label for quarantine/regulatory purposes and is to be used by or under the supervision of a State or Federal agency."

56. The MethQ Labeling specifies permitted application sites, crops, and pests.
57. The MethQ Labeling does not allow dwellings (*e.g.*, residences) or structures not used for the commercial storage or handling of commodities as application sites.
58. Respondent applied MethQ bearing the MethQ Labeling referenced in Paragraphs 27, 32, 37, and 39, above, and containing the statements set out in Paragraphs 54 and 55, above, at the following dates, times, and locations:

	Date	Location	Treatment Site/ Type of Structure	Invoice Number
1	02/26/2015	Agua Buena, PR	Residence/Closet	6832
2	02/20/2015	Bayamon, PR	Residence/Kitchen	6830
3	02/11/2015	Guaynabo, PR	Residence/Bedroom	6083
4	02/06/2015	San Juan, PR	Residence/Kitchen	6082
5	12/05/2014	Caguas, PR	Residence/Kitchen	Illegible
6	11/30/2014	Bayamon, PR	Residence/Bedroom	6690
7	09/26/2014	Bayamon, PR	Residence/Kitchen	6596
8	09/19/2014	Illegible	Residence/Kitchen	6585
9	09/10/2014	Caguas, PR	Door/Museum	6568
10	04/07/2014	Bayamon, PR	Residence/Furniture	6308
11	11/22/2013*	Bayamon, PR	Kitchen	053388
12	10/25/2013	Bayamon, PR	Wood Package	053375
13	10/11/2013*	Bayamon, PR	Wagon	053330
14	09/27/2013*	Bayamon, PR	Wood Panels	053322
15	09/13/2013*	Bayamon, PR	Kitchen	053271

59. During the May Inspection, Respondent indicated that the asterisked applications (invoices 11, 13, 14, and 15) memorialized in the previous Paragraph were performed inside of a freight car.
60. The “residences” identified in nine (9) of the applications listed in the table in Paragraph 58, above, are not application sites specified in the MethQ Labeling.
61. The museum identified in one of the applications listed in the table in Paragraph 58, above, is not an application site specified in the MethQ Labeling.
62. Respondent conducted applications of MethQ at ten (10) application sites, set out in the table in Paragraph 58 above, which were not specified in the MethQ Labeling.
63. None of the fifteen (15) MethQ applications set out in the table in Paragraph 58 above, was supervised by a regulatory agent.

64. For each of the fifteen (15) applications set out in the table in Paragraph 58, Respondent failed to use the following PPE:

- a. SCBA, and
- b. Full face or safety glasses with brow and temple shields.

65. For each of the fifteen (15) applications set out in the table in Paragraph 58, above, Respondent failed to use a direct reading device.

66. Each of Respondent's failures to comply with a specific requirement of the MethQ Label, as described in Paragraphs 50 to 55, above, constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G).

67. In the course of the fifteen (15) MethQ applications set out in the table in Paragraph 58, above, Respondent committed 55 separate violations of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G), specifically consisting of:

- a. 10 applications to a site not specified in the MethQ Labeling;
- b. 15 applications not supervised by a regulatory agent as required by the MethQ Labeling;
- c. 15 applications without the PPE required by the MethQ Labeling; and
- d. 15 applications without a direct detection device required by the MethQ Labeling.

68. Each of Respondent's fifty-five (55) failures to comply with specific requirements of the MethQ Label is a violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G), for which a penalty may be assessed pursuant to FIFRA.

CAA Liability

Count 56 Failure to Comply With CAA Recordkeeping Requirements

69. Complainant realleges each allegation contained in Paragraphs 1 through 68, inclusive, as if fully set forth herein.

70. Respondent is, and has been at all times pertinent to this Complaint, a "person," as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

71. Respondent is, and has been at all times pertinent to this Complaint, an "applicator" of methyl bromide within the meaning of 40 C.F.R. § 82.3.

72. Respondent is, and has been at all times pertinent to this Complaint, subject to the CAA and the regulations at 40 C.F.R. Part 82 promulgated thereunder.

73. Pursuant to 40 C.F.R. § 82.13(z)(1), applicators of methyl bromide produced or imported solely for quarantine and/or preshipment (“QPS”) applications must maintain, for three years, for every application, a document from the commodity owner, shipper or their agent, requesting the use of methyl bromide for QPS applications and citing the regulatory requirement that justifies its use.

74. Respondent failed to maintain the document described in the previous paragraph for any of the following fifteen (15) applications:

	Date	Location	Invoice Number
1	02/26/2015	Agua Buena, PR	6832
2	02/20/2015	Bayamon, PR	6830
3	02/11/2015	Guaynabo, PR	6083
4	02/06/2015	San Juan, PR	6082
5	12/05/2014	Caguas, PR	Illegible
6	11/30/2014	Bayamon, PR	6690
7	09/26/2014	Bayamon, PR	6596
8	09/19/2014	Illegible	6585
9	09/10/2014	Caguas, PR	6568
10	04/07/2014	Bayamon, PR	6308
11	11/22/2013	Bayamon, PR	053388
12	10/25/2013	Bayamon, PR	053375
13	10/11/2013	Bayamon, PR	053330
14	09/27/2013	Bayamon, PR	053322
15	09/13/2013	Bayamon, PR	053271

75. Respondent’s failure to comply with the recordkeeping requirements of 40 C.F.R. § 82.13(z)(1) for the period September 13, 2013 to February 26, 2015 constitutes a violation of the CAA, for which a civil penalty may be assessed under Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B).

Count 57
Failure to Comply With CAA Reporting Requirements

76. Complainant realleges each allegation contained in Paragraphs 1 through 75, inclusive, as if fully set forth herein.

77. Pursuant to 40 C.F.R. § 82.13(z)(2), every applicator that purchases methyl bromide that was produced or imported solely for QPS applications shall provide to the distributors from whom they purchase, prior to shipment, a certification that the methyl bromide will be used only for QPS applications.

78. Respondent purchased MethQ from M & P on the following 2 dates:

	Invoice Number	Date	Unit Purchased	Amount Purchased
1	203423	05/27/2013	1	50 lb.
2	208728	09/09/2014	1	50 lb.

79. As a result of the M & P Inspections, EPA determined that M & P did not receive certifications from Respondent stating that the methyl bromide purchased would be used only for QPS applications.

80. From May 27, 2013 to September 9, 2014, Respondent purchased methyl bromide from M & P without providing, prior to shipment, a certification that the MethQ purchased would be used only for QPS applications.

81. Respondent's failure to comply with the reporting requirements of 40 C.F.R. § 82.13(z)(2) from May 27, 2013 through September 9, 2014 constitutes a violation of the CAA, for which a civil penalty may be assessed under Section 113(d)(1)(B) 42 U.S.C. § 7413(d)(1)(B).

PROPOSED CIVIL PENALTY

Complainant proposes at this time that Respondent be assessed the statutory maximum penalties authorized by FIFRA and the CAA. After an exchange of information has occurred, pursuant to 40 C.F.R. § 22.19, Complainant will file a document with a specific proposed penalty and an explanation of how the proposed penalty was calculated in accordance with the criteria in FIFRA and the CAA. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), the text below provides the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the relevant statutory penalty authority of FIFRA and the CAA. Complainant intends to seek penalties for each violation alleged in each Count.

FIFRA VIOLATIONS

EPA's FIFRA Penalty Authority and Overview of FIFRA Enforcement Response Policy

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, Complainant proposes the assessment of a civil penalty of up to \$7,500 per day against Respondent for each of the applicable violations of FIFRA alleged in this Complaint.

For the FIFRA violations alleged above, the proposed civil penalty will be determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$7,500 for each violation of “any provision of” subchapter II of FIFRA, 7 U.S.C. §§ 136-136y. (Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”), and the Civil Monetary Penalty Inflation Adjustment Rules, 61 Fed. Reg. 69360 (December 31, 1996), 69 Fed. Reg. 7121 (February 13, 2004), and 73 Fed. Reg. 75345 (December 11, 2008) (collectively, “Inflation Rules”), as codified at 40 C.F.R. Part 19, the statutory maximum assessment per violation was raised to \$7,500 for violations occurring after January 12, 2009.)

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA “shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation” (Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4)).

In developing the proposed penalty for the violations alleged in this Complaint, Complainant will take into account the particular facts and circumstances of this case, to the extent known at the time, and use EPA’s “FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act,” dated December 2009 (hereinafter referred to as the “ERP”). This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases to develop a gravity-based penalty for each violation. A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://www.epa.gov/enforcement/fifra-enforcement-response-policy>.

Complainant may adjust each gravity-based penalty upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the ERP. In addition, Complainant may add a component to reflect any economic benefit gained by Respondent for failing to comply with the regulatory requirement. Complainant will also consider, if raised, Respondent’s ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with Respondent.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued.

Counts 1-55 – Use of a Registered Pesticide in a Manner Inconsistent with its Label, in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G).

For each type of violation associated with a particular product, the penalty amount is determined under the seven-step process in the ERP that considers the Section 14(a)(4) criteria. These steps using the tables and Appendixes in the ERP are as follows:

(1) *Number of independently assessable violations*: The Agency considers each failure of an applicator to follow a distinct label requirement to be an independently assessable violation of FIFRA § 12(a)(2)(G). The number of violations and days of violations are set out in Counts 1-55, above. Each of these independent violations of FIFRA is subject to civil penalties up to the statutory maximum.

(2) *Size of business category for the violator*: In order to provide equitable penalties, civil penalties assessed for violations of FIFRA generally increase as the size of the Respondent increases.

(3) *Gravity of the violation for each independently assessable violation*: The level assigned to each violation of FIFRA represents an assessment of the relative severity of each violation. The relative severity of each violation considers the actual or potential harm to human health and the environment which could result from the violation and the importance of the requirement to achieving the goals of the statute. MethQ is a highly toxic restricted use pesticide. In conducting each of the fifteen applications described herein, Respondent deviated substantially and in multiple ways from the requirements of the MethQ labeling, endangering himself, his customers, potentially others, and the environment.

(4) *“Base” penalty amount associated with the size of business and the gravity of violation for each independently assessable violation*: The size of business categories and gravity levels are broken out in the ERP Penalty Matrices. FIFRA imposes different statutory ceilings on the maximum civil penalty that may be assessed against persons listed in FIFRA § 14(a)(1) and persons listed in Section 14(a)(2), and the ERP sets out separate penalty matrices for each. As a certified applicator, Respondent is a FIFRA § 14(a)(1) business.

(5) *“Adjusted” penalty amount based on case-specific factors using the gravity adjustment criteria*: The Agency has assigned adjustments, for each violation relative to the specific characteristics of the pesticide involved, the harm to human health and/or harm to the environment, compliance history of the violator, and the culpability of the violator. The gravity adjustment values from each gravity category listed in Appendix B of the ERP are to be totaled. Once this base penalty amount is calculated, it is to be rounded to the nearest \$100.

(6) *Economic benefit of noncompliance*: An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in “significant” economic benefit to the violator. “Significant” is defined as an economic benefit that totals more than \$10,000 for all FIFRA violations alleged in the complaint.

(7) *Violator's ability to continue in business*: FIFRA § 14(a)(4) requires the Agency to consider the effect of the penalty on a respondent's ability to continue in business when determining the amount of the civil penalty.

In instances where the Agency obtains records which evidence multiple applications, sales or distributions for the same violations, the Region may apply a "graduated" penalty calculation.

CAA VIOLATIONS

EPA's CAA Penalty Authority and Overview of CAA General Policy

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the CAA. As previously noted, the DCIA requires EPA periodically to adjust its civil monetary penalties for inflation. Pursuant to the DCIA, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule which are codified at 40 C.F.R. Part 19 ("Part 19"). The maximum civil penalty per day for each violation that occurred from January 12, 2009 until now is \$37,500.

In determining the amount of penalty to be assessed, Section 113(e) of the CAA requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

In calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

Pursuant to Section 113(d) of CAA, 42 U.S.C. § 7413(d), as amended, Complainant proposes the assessment of a civil penalty of up to \$37,500 per day against the Respondent for each of the applicable violations alleged in this Complaint.

The violations alleged in Counts 56 and 57 would result in the Respondent being liable for the assessment of administrative penalties pursuant to Section 113(d) of the CAA. The proposed penalty will be prepared in accordance with the criteria in Section 113(e) of the CAA, and in accordance with the guidelines set forth in EPA's Clean Air Act Stationary Source Civil Penalty Policy, as amended (General Policy). EPA's General Policy reflects EPA's application of the factors set forth in Section 113(e) of the Act and provides guidance on how EPA is to calculate penalties for the CAA. The policy indicates that EPA should propose a penalty consisting of an economic benefit component and a gravity component. The economic benefit component is the economic benefit the violator gained as a result of the violation. The gravity component, in turn, consists of elements based on the actual or potential harm caused by the violation, the

significance of the regulation in question to the regulatory scheme, the sensitivity of the environment and the size of the violator.

Economic benefit: The General Policy provides the Region the discretion not to seek economic benefit where the benefit derived from the CAA violations is less than \$5,000.

Gravity: The General Policy also indicates that the Region should recover penalties that reflect the “seriousness” of the violation in a gravity component. In measuring the seriousness of these violations, the Region may consider the importance to the regulatory scheme, the duration of the violation, and the size of the violator.

Size of the violator: In order to provide equitable penalties, civil penalties assessed for violations of the CAA will generally increase as the size of the business increases.

Count 56 - Recordkeeping—Failure to maintain records from commodity owner requesting use of QPS Methyl Bromide and citing legal justification for such use for 3 years, in violation of 40 C.F.R. § 82.13(z)(1).

Gravity: Respondent’s failure to create and maintain records as required by 40 C.F.R. Part 82 contravened the essence of the regulatory scheme.

Importance to regulatory scheme: The Respondent, by failing to keep the required record, deviated substantially from the regulation. Recordkeeping allows regulatory agencies to confirm that QPS methyl bromide is being used properly.

Duration of violation: The violation period reflects the total number of days between the first date of a methyl bromide application for which no record was kept through the last date of such an application.

Count 57 - Reporting—Failure to provide certifications to distributor, prior to shipment of QPS methyl bromide, that methyl bromide will only be used for QPS applications, in violation of 40 C.F.R. § 82.13(z)(2).

Gravity: Respondent’s failure to provide the required certifications for MethQ contravened the regulatory scheme.

Importance to regulatory scheme: The Respondent, by failing to submit a required certification, deviated substantially from the regulation. Certification requirements help distributors report to EPA that QPS methyl bromide is being sold for QPS purpose.

Duration of violation: The violation period reflects the total number of days between the first date of a methyl bromide purchase for which no certification was provided to the distributor through the last date of such a purchase.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally 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 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 and/or the Compliance Order 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 the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). 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
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

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 their 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. § 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 ("APA"), 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. § 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 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 or through other appropriate means. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB") (see 40 C.F.R. § 1.25(e)), pursuant to 40 C.F.R. § 22.30, 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).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (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 pleading or 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 the 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, to reflect 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:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866
212-637-3205

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 will 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 waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). 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

If, instead of filing an Answer, Respondent wishes not to contest the Complaint and wants to pay the penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

COMPLAINANT:

DLaPosta

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2

Dated: 3/1/16,
New York, New York

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-02-2016-5302 and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00726

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29,
Bayamón, Puerto Rico 00957-3707

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: March 1, 2016
New York, New York

Yone M...

Exhibit 2

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edwin Andújar Bermúdez
 ba Truly Nolen Pest Control de Caguas
 Urb. Miraflores,
 16-15 Calle 29
 Bayamón, Puerto Rico 00957-3707



9590 9403 0968 5223 1640 29

2. Article Number (Transfer from service label)
 7015 0640 0001 0675 4558

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

X

B. Received by (Printed Name) C. Date of Delivery
 Jesenia Andujar 3/5

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

USPS TRACKING#



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First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10


United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Truly Yours
RTT PA 02 - 29/6

Exhibit 3

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature <input checked="" type="checkbox"/> <i>Edwin Andujar</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Edwin Andújar Bermúdez Ba Truly Nolen Pest Control de Caguas PO Box 7155 Caguas, Puerto Rico 00725	B. Received by (Printed Name) <i>Edwin Andujar</i>	C. Date of Delivery <i>3-7-16</i>
 9590 9403 0968 5223 1640 36	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label) 015 0640 0001 0675 4572	3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, July 2015 PSN 7530-02-000-9053		Domestic Return Receipt

USPS TRACKING#



9590 9403 0968 5223 1640 36



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

TALK APISD
FIFK A02-2019-3302

Exhibit 4

Yu, Jeannie

From: Yu, Jeannie
Sent: Monday, March 06, 2017 11:09 AM
To: Maples, Karen
Subject: FW: Have you received green cards in the following two matters?
Attachments: grencard1pobox.pdf; grencard2address.pdf

This is an email sent by naomi regarding Truly Nolan. Under the rules you must receive the green card. Can you check your files again for receipt of these green cards. The green cards were dated 3/5/16 and 3/7/16

From: Yu, Jeannie
Sent: Monday, March 06, 2017 11:01 AM
To: Yu, Jeannie <Yu.Jeannie@epa.gov>
Subject: Fw: Have you received green cards in the following two matters?

From: Aber, Bruce
Sent: Wednesday, April 6, 2016 5:34 PM
To: Majette, Yolanda; Shapiro, Naomi; Maples, Karen
Cc: Yu, Jeannie
Subject: Re: Have you received green cards in the following two matters?

Yes. Tower is due tomorrow. Fingers crossed.

From: Majette, Yolanda
Sent: Wednesday, April 6, 2016 4:43 PM
To: Shapiro, Naomi; Maples, Karen
Cc: Yu, Jeannie; Aber, Bruce
Subject: RE: Have you received green cards in the following two matters?

Jeannie has her green cards and Bruce has his green cards.

From: Shapiro, Naomi
Sent: Wednesday, April 06, 2016 4:34 PM
To: Maples, Karen
Cc: Yu, Jeannie; Aber, Bruce; Majette, Yolanda
Subject: Have you received green cards in the following two matters?

Hi, Karen.

Have you received green cards for the following two matters? The USPS website indicates that the first was delivered on March 4th and the second on March 6th.

Edwin Andujar Bermudez dba Truly Nolen Pest Control De Caguas
Docket No. FIFRA-02-2016-5302

Wilson J. Torres Rivera and Tower & Son Exterminating Corp.
Docket No. FIFRA-02-2016-5306

n.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edwin Andújar Bermúdez
ba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29
Bayamón, Puerto Rico 00957-3707



9590 9403 0968 5223 1640 29

2. Article Number (Transfer from service label)

7015 0640 0001 0675 4558

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x

Agent

Addressee

B. Received by (Printed Name)

Jesenia Andújar

C. Date of Delivery

3/5

D. Is delivery address different from item 1? Yes
if YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#



9590 9403 0968 5223 1640 29



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Truly Yours
FITPA-02-29/6

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edwin Andújar Bermúdez
Iba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00725



9590 9403 0968 5223 1640 36

2. Article Number (Transfer from service label)

015 0640 0001 0675 4572

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Edwin Andujar*

Agent

Addressee

B. Received by (Printed Name)

Edwin Andujar

C. Date of Delivery

3-7-16

D. Is delivery address different from Item 1? Yes

If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING#



9590 9403 0968 5223 1640 36



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

TRUCK ADVISED
FLTR A02-2010-
3302

Exhibit 5

Yu, Jeannie

From: Yu, Jeannie
Sent: Thursday, March 02, 2017 5:44 PM
To: Yu, Jeannie
Subject: FW: Mr. Edwin Andujar Bermudez dba as Truly Nolan de Caguas summary of requested documents

From: Yu, Jeannie
Sent: Thursday, December 10, 2015 10:19 AM
To: 'Peter Fed' <pdiazfederalcases@gmail.com>
Subject: RE: Mr. Edwin Andujar Bermudez dba as Truly Nolan de Caguas summary of requested documents

What is the status of Mr. Edwin Andujar Bermudez's Documents?

Thank you.

Jeannie

From: Peter Fed [<mailto:pdiazfederalcases@gmail.com>]
Sent: Friday, November 20, 2015 6:24 AM
To: Yu, Jeannie <Yu.Jeannie@epa.gov>
Subject: Re: Mr. Edwin Andujar Bermudez dba as Truly Nolan de Caguas summary of requested documents

I will comply by today as to Our first Client but as to Truly Nollen we need one more week for the first group of documents. Please let me know if you can allow us this period of time until Monday November 30, 2015.

Peter Díaz, Esq.
7879663323 Office
7874143214 Mobile

Sent from my iPhone

On Nov 18, 2015, at 5:40 PM, Yu, Jeannie <Yu.Jeannie@epa.gov> wrote:

Mr. Diaz,

As discussed last Thursday, we would like the same information (with the same deadlines) from Mr. Andujar that my colleague, Bruce Aber, requested for Tower. In addition, we would like to request the following:

-a copy of his franchise agreement with Truly Nolan;

-proof of training from the seminar conducted by the association of exterminators that he attended in 2012. Please contact association for information about the meeting and Mr. Andujar's records of attendance; and

-proof of training from the online great lakes internet training in 2012.

At the meeting Mr. Andujar had copies of his last 3 years of tax records, with attachments, and his franchise agreement. Can you send me copies of those documents as soon as possible so that we can release his tax information to EPA's expert financial contractor, Industrial Economics ("IE"), Incorporated (under GSA Contract # GS-10F-0061N, USEPA Task Order # EP-G15H-01186), located in Cambridge MA. The purpose of release of such financial records to IE is so that it can conduct a financial analysis of Mr. Andujar's ability to pay the penalty amount discussed during the settlement meeting. Please be advised that all released financial records will be maintained as business confidential.

Please confirm receipt of this email.

Regards,
Jeannie

From: Yu, Jeannie

Sent: Sunday, November 01, 2015 8:33 PM

To: 'pdiazfederalcases@gmail.com' <pdiazfederalcases@gmail.com>

Subject: RE: Mr. Edwin Andujar Bermudez dba as Truly Nolan de Caguas

In the Matter of Mr. Edwin Andujar Bermudez dba as Truly Nolan de Caguas

Dear Mr. Diaz;

This email confirms the date and time of our video settlement conference to be held on the above-referenced matter on Thursday, November 12 at 11 a.m (Puerto Rico time) at Environmental Protection Agency, City View Plaza II, Suite 7000, 48 Road 165, Km. 1.2, Guaynabo, PR 00968-8069. Ms. Aarti Reddy, EPA Environmental Engineer, and I will conducting the meeting in USEPA's Region 2 Office in Edison, New Jersey and Ms. Lizette Lugo will be in EPA's Puerto Rico office. Other EPA personnel may also attend the meeting. The local USEPA legal contact is Ms. Carolina Jordan-Garcia and her telephone number is (787) 977-5834.

In our experience, during settlement meetings, Respondents claim an inability to pay the penalty amounts. In order to expedite the process, we request that your client email to us 3 years of tax returns with all attachments prior to or bringing such information to the settlement meeting. Additionally, please provide me a copy of Mr. Andujar's franchise contract/agreement with Truly Nolan.

If you have any questions or need additional information please contact me.

Sincerely,

Jeannie Yu
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor

New York, New York 10007
(212) 637-3205

Exhibit 6

Yu, Jeannie

From: Yu, Jeannie
Sent: Tuesday, March 01, 2016 3:55 PM
To: 'pdiazfederalcases@gmail.com'
Subject: Truly Nolen Complaint
Attachments: Truly Nolen Complaint.pdf

Please see attached document.

Jeannie M. Yu
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007
(212) 637-3205



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR - 1 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00726

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29,
Bayamón, Puerto Rico 00957-3707

Re: Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas
Docket No. FIFRA-02-2016-5302

Dear Mr. Andújar:

Enclosed is a copy of the Complaint and Notice of Opportunity for Hearing and other documents, in the above-referenced proceeding. This Complaint alleges violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

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 (EPA) Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 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 a 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 an Information Sheet for U.S. EPA Small Business Resources which may or may not apply to you.

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,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

Peter Diaz,
Attorney for Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas
420 Avenida Ponce de León Suite 1001
San Juan, Puerto Rico 00918-3491

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of :
 :
 :
 :
 Edwin Andújar Bermúdez dba : COMPLAINT AND NOTICE OF
 Truly Nolen Pest Control De Caguas : OPPORTUNITY FOR HEARING
 :
 : Docket No. FIFRA-02-2016-5302
 :
 Respondent. :
 :
 :
 Proceeding Under the Federal :
 Insecticide, Fungicide, and :
 Rodenticide Act, as amended, and :
 the Clean Air Act, as amended. :
-----X

This Complaint and Notice of Opportunity for Hearing (hereinafter referred to as the "Complaint") is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 1361(a); Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d) ("CAA"); and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice" or "CROP").

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

This Complaint serves notice of EPA's preliminary determination that Edwin Andújar Bermúdez (hereinafter referred to as "Respondent") doing business as Truly Nolen Pest Control De Caguas, from a location at Urb. Miraflores, Block 16-15, Calle 29, Bayamon, Puerto Rico (the "Facility"), has violated provisions of FIFRA and the CAA.

FIFRA Statutory and Regulatory Background

1. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
2. Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), and 40 C.F.R. § 171.2(a) define a “certified applicator” as any individual who is certified under Section 11 of FIFRA, 7 U.S.C. § 136i, as authorized to use or supervise the use of any pesticide which is classified for restricted use.
3. Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), and 40 C.F.R. § 171.2(a)(9) define a “commercial applicator” as an applicator who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property.
4. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), and 40 C.F.R. § 152.5, define a “pest,” in part, as any insect.
5. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines the term “pesticide” as, among other things, “(1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.”
6. Section 2(p)(1) of FIFRA, 7 U.S.C. § 136(p)(1), defines the term “label” as written, printed, or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.
7. Section 2(p)(2) of FIFRA, 7 U.S.C. § 136(p)(2), defines the term “labeling” as all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide.
8. Section 2(ee) of FIFRA, 7 U.S.C. § 136(ee), defines the term “to use any registered pesticide in a manner inconsistent with its labeling” as to use any registered pesticide in a manner not permitted by the labeling.
9. Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), states that it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling.”

CAA Statutory and Regulatory Background

10. Section 602(a) of the CAA, 42 U.S.C. § 7671a(a), directs the Administrator of EPA to publish a list of class I substances, and to add to that list any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer.

11. Section 603 of the CAA, 42 U.S.C. § 7671b, sets forth monitoring and reporting requirements for producers, importers or exporters of class I controlled substances, and authorizes the EPA Administrator to amend the monitoring and reporting regulations of class I and class II substances.

12. Pursuant to the authority in Section 603 of the CAA, 42 U.S.C. § 7671b, the Administrator of EPA promulgated regulations governing stratospheric ozone depleting substances, which are set forth at 40 C.F.R. Part 82.

13. Appendix A to 40 C.F.R. Part 82, Subpart A, lists class I controlled substances, and includes methyl bromide (CH₃Br) as a class I, Group VI controlled substance.

14. Appendix F to 40 C.F.R. Part 82, Subpart A, lists ozone-depleting chemicals, and includes methyl bromide (CH₃Br).

15. The use of methyl bromide, a class I ozone-depleting substance, for quarantine and preshipment purposes is regulated under Section 604(d)(5) of the CAA, 42 U.S.C. § 7671c (d)(5), and the implementing regulations at 40 C.F.R. Part 82.

16. Section 604 of the CAA, 42 U.S.C. § 7671c, provides for the phase-out of production and consumption of class I substances, with certain exceptions. One exception, set forth at Section 604(d)(5) of the CAA, 42 U.S.C. § 7671c(d)(5), provides that, to the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the EPA Administrator shall exempt from the phase-out the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State for purposes of compliance with Animal and Plant Health Inspection Service (U.S. Department of Agriculture) requirements or other international, Federal, State or local food protection standards.

17. Pursuant to 40 C.F.R. § 82.3, "quarantine applications" are, with respect to class I, Group VI controlled substances, treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

18. Pursuant to 40 C.F.R. § 82.3, "preshipment applications" are, with respect to class I, Group VI controlled substances, those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

19. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and 40 C.F.R. § 82.3 define “person” as any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.
20. 40 C.F.R. § 82.3 defines “applicator” as the person who applies methyl bromide.
21. Pursuant to 40 C.F.R. § 82.3, “distributor of methyl bromide” means the person directly selling a class I, Group VI controlled substance to an applicator.
22. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), limits the Administrator’s authority to matters where the total penalty sought does not exceed \$37,500 (the amount as adjusted by 40 C.F.R. § 19.4), and the first alleged date of violation occurred no more than 12 months prior to the initiation of administrative action, except where the Administrator and the Attorney General of the United States jointly determine that the matter involving a larger penalty amount or longer period of violations is appropriate for the administrative penalty action.
23. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violation alleged in this Complaint.

Background

24. Methyl Bromide is the active ingredient in certain restricted use pesticides regulated under FIFRA, 7 U.S.C. § 136 et seq.
25. Meth-O-Gas Q, EPA Reg. No. 5785-41 (“MethQ”), is a pesticide registered pursuant to FIFRA § 3.
26. MethQ’s active ingredient is 100% methyl bromide.
27. The MethQ label (MOGQ-8 REV.C) (the “Label”) and MethQ booklet (MOGQ-2 REV.GLK398F) (the “Booklet”) (collectively the “MethQ labeling”) set forth precautionary statements and specific directions regarding use, storage, handling, sale and disposal of MethQ.
28. M & P Pest Control, Inc. (hereinafter “M & P”), located at 1332 Ave. Jesus T. Pinero, San Juan, Puerto Rico, has been a distributor of pesticides at all times pertinent to this Complaint.
29. M & P Pest Control is a “distributor of methyl bromide” as that term is defined by 40 C.F.R. § 82.3.

30. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized Puerto Rico Department of Agriculture ("PRDA") and EPA Inspectors conducted inspections of M & P on the following dates: March 25-26, 2015, March 31, 2015, April 8, 2015, April 16, 2015, April 17, 2015, April 22, 2015, May 13, 2015, May 20, 2015, and October 19, 2015 (collectively, the "M & P Inspections").
31. At the M & P Inspections, the inspectors collected records and statements, including records and statements regarding Respondent's purchases of MethQ during the period September 2013 through February 2015.
32. During the March 26, 2015 M & P Inspection, representatives of M & P provided the inspectors with a copy of the MethQ Labeling, described in Paragraph 27, above, which M & P provided with the sale of every MethQ canister.
33. On May 26, 2015, acting under the authority and pursuant to the provisions of Section 8(b) of FIFRA, 7 U.S.C. § 136f(b), and of Section 114a of the CAA, 42 U.S.C. § 7414, EPA sent M & P an Information Request Letter ("IRL") requesting information and records regarding the import, distribution, and application of Methyl Bromide.
34. The IRL specifically requested, along with other reporting and recordkeeping documents, that M & P provide copies of certifications that M & P received from applicators stating that the quantity of methyl bromide ordered would be used solely for quarantine or preshipment applications as required by 40 C.F.R. § 82.13(y)(2).
35. On July 17, 2015, M & P provided a response (the "M & P Response") to EPA's IRL.
36. In the M & P Response, M & P stated, as a response to the portion of the IRL discussed in Paragraph 34, that "We don't have any these (sic) documents."
37. In the M & P Response, M & P provided EPA with a copy of the MethQ Booklet, described in Paragraph 27, above, which M & P further asserted that it distributed with the sale of every MethQ canister.
38. M & P sold or otherwise distributed MethQ to Respondent between September 2013 and February 2015.
39. Upon information and belief, the MethQ canisters M & P sold Respondent bore the MethQ Labeling described in Paragraph 27, above.
40. During the October 19, 2015 Inspection, Mr. Michael Pantoja, the president of M & P stated that "no applicator gave any QPS documentation to M & P."

41. Acting under the authority and pursuant to the provisions of Section 9(a) of FIFRA, 7 U.S.C. § 136g(a), duly-authorized EPA and PRDA Inspectors inspected Respondent's Facility, on April 15, 2015 and on May 14, 2015 ("April Inspection" and "May Inspection" respectively, or collectively, the "TN Inspections").

42. During the TN Inspections, the inspectors provided a Notice of Pesticides Use/Misuse Inspection form to Respondent which identified the reason for each of the Inspections and the violations suspected.

43. During the April Inspection, the inspectors collected ten (10) pesticide application records documenting Respondent's use of MethQ, for which they issued a Receipt for Samples document.

44. During the April Inspection, the inspectors requested that the Respondent provide all records in his possession related to the purchase and use of methyl bromide.

45. Respondent did not provide EPA with the records from each commodity owner requesting the quarantine and preshipment use of Methyl Bromide and citing legal justification for such use.

46. During the April Inspection, Respondent made the following statements regarding the MethQ applications to the inspectors:

- a. that he performed all MethQ applications without the supervision of a regulatory agent;
- b. that he did not have a direct reading device to measure the air concentration levels of methyl bromide (MethQ) during applications;
- c. that he did not have and/or did not own a self-contained breathing apparatus (SCBA) for use during the MethQ applications; and
- d. that he purchased the MethQ he applied from M & P.

47. During the May Inspection, the inspectors collected five (5) additional pesticide application records documenting Respondent's use of MethQ, for which they issued a Receipt for Samples document.

FIFRA Liability

Counts 1-55

Use of a Registered Pesticide in a Manner Inconsistent with its Label (Applications)

48. Complainant realleges each allegation contained in Paragraphs 1 through 47, inclusive, as if fully set forth herein.

49. Respondent has been, and continues to be, a “person” as defined by FIFRA § 2(s), 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

50. Respondent engages, and at all times pertinent to this Complaint has engaged, in commercial activities providing pest control services using pesticides.

51. Respondent is, and has been at all times pertinent to this Complaint, a “certified applicator” within the meaning of Section 2(e)(1) of FIFRA, 7 U.S.C. § 136(e)(1), and 40 C.F.R. § 171.2(a)(8).

52. Respondent is, and has been at all times pertinent to this Complaint, a “commercial applicator” within the meaning of Section 2(e)(3) of FIFRA, 7 U.S.C. § 136(e)(3), and 40 C.F.R. § 171.2(a)(9).

53. Respondent is, and has been at all times pertinent to this Complaint, subject to FIFRA and the regulations promulgated thereunder.

54. The following statements are clearly displayed on the MethQ Label received by Respondent and referenced in Paragraphs 27, 32, 37, and 39, above:

a. At the top of the label and in all bolded capital letters:

**“COMMODITY FUMIGANT
FOR QUARANTINE/REGULATORY USE ONLY
SUPERVISION BY REGULATORY AGENT REQUIRED.”**

b. “The acceptable air concentration level for persons exposed to methyl bromide is 5ppm (20 mg/m³). The air concentration level is measured by a direct reading detection device, such as a Matheson-Kitagawa, Draeger, or Sensidyne.”

c. “Do not allow entry into the treated area by any person before this time, unless protective clothing and a respiratory protection device (NIOSH/MSHA approved self-contained breathing apparatus (SCBA) or combination air-supplied/SCBA respirator) is worn.”

d. **PERSONAL PROTECTIVE EQUIPMENT (PPE) ... “Applicators and other handlers must wear: ... Full-face or safety glasses with brow and temple shields (Do NOT wear goggles) ... When the acceptable air concentration level is above 5 ppm and a respirator is required, protect the eyes by wearing a full-face respirator. No respirator is required if the air concentration level of methyl bromide in the working area is measured to be 5 ppm or less. A respirator is required if the acceptable air concentration level of 5 ppm is exceeded at any time. The respirator must be one of the following type: (a) a supplied-air respirator (MSHA/NIOSH approval number prefix TC-19C) OR (b) a self-contained breathing apparatus (SCBA) (MSHA/NIOSH approval number prefix TC-13F).”**

- e. "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."
 - f. "This fumigant is a highly hazardous material ... Before using, read and follow all label precautions and directions."
 - g. "All persons working with this fumigant must be knowledgeable about the hazards, and trained in the use of required respiratory protection equipment and detector devices, emergency procedures, and proper use of the fumigant."
 - h. "MethQ may be used for quarantine/regulatory commodity fumigation only. Supervision by regulatory agent is required."
 - i. "You must carefully read and understand the accompanying use direction, GLK 398F [Booklet], in order to use MethQ."
 - j. "Observe all safety and precautionary statements as set forth in the accompanying use directions, GLK398F [Booklet]."
55. The directions for use in the MethQ Booklet GLK398F include:
- a. On page 1, in large bold letters –
**"METHO-O-GAS ®Q
COMMODITY FUMIGANT
FOR QUARANTINE/REGULATORY USE ONLY
SUPERVISION BY REGULATORY AGENT REQUIRED"**.
 - b. "READ THIS BOOKLET AND ENTIRE LABEL CAREFULLY PRIOR TO USE. USE THIS PRODUCT ACCORDING TO LABEL INSTRUCTIONS."
 - c. Same as 54(b) above
 - d. Same as 54(c) above
 - e. Same as 54(d) above.
 - f. Same as 54(e) above.
 - g. Same as 54(f) above.
 - h. Same as 54(g) above.
 - i. "This is a limited use label for quarantine/regulatory purposes and is to be used by or under the supervision of a State or Federal agency."

56. The MethQ Labeling specifies permitted application sites, crops, and pests.

57. The MethQ Labeling does not allow dwellings (e.g., residences) or structures not used for the commercial storage or handling of commodities as application sites.

58. Respondent applied MethQ bearing the MethQ Labeling referenced in Paragraphs 27, 32, 37, and 39, above, and containing the statements set out in Paragraphs 54 and 55, above, at the following dates, times, and locations:

	Date	Location	Treatment Site/ Type of Structure	Invoice Number
1	02/26/2015	Agua Buena, PR	Residence/Closet	6832
2	02/20/2015	Bayamon, PR	Residence/Kitchen	6830
3	02/11/2015	Guaynabo, PR	Residence/Bedroom	6083
4	02/06/2015	San Juan, PR	Residence/Kitchen	6082
5	12/05/2014	Caguas, PR	Residence/Kitchen	Illegible
6	11/30/2014	Bayamon, PR	Residence/Bedroom	6690
7	09/26/2014	Bayamon, PR	Residence/Kitchen	6596
8	09/19/2014	Illegible	Residence/Kitchen	6585
9	09/10/2014	Caguas, PR	Door/Museum	6568
10	04/07/2014	Bayamon, PR	Residence/Furniture	6308
11	11/22/2013*	Bayamon, PR	Kitchen	053388
12	10/25/2013	Bayamon, PR	Wood Package	053375
13	10/11/2013*	Bayamon, PR	Wagon	053330
14	09/27/2013*	Bayamon, PR	Wood Panels	053322
15	09/13/2013*	Bayamon, PR	Kitchen	053271

59. During the May Inspection, Respondent indicated that the asterisked applications (invoices 11, 13, 14, and 15) memorialized in the previous Paragraph were performed inside of a freight car.

60. The "residences" identified in nine (9) of the applications listed in the table in Paragraph 58, above, are not application sites specified in the MethQ Labeling.

61. The museum identified in one of the applications listed in the table in Paragraph 58, above, is not an application site specified in the MethQ Labeling.

62. Respondent conducted applications of MethQ at ten (10) application sites, set out in the table in Paragraph 58 above, which were not specified in the MethQ Labeling.

63. None of the fifteen (15) MethQ applications set out in the table in Paragraph 58 above, was supervised by a regulatory agent.

64. For each of the fifteen (15) applications set out in the table in Paragraph 58, Respondent failed to use the following PPE:

- a. SCBA, and
- b. Full face or safety glasses with brow and temple shields.

65. For each of the fifteen (15) applications set out in the table in Paragraph 58, above, Respondent failed to use a direct reading device.

66. Each of Respondent's failures to comply with a specific requirement of the MethQ Label, as described in Paragraphs 50 to 55, above, constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G).

67. In the course of the fifteen (15) MethQ applications set out in the table in Paragraph 58, above, Respondent committed 55 separate violations of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G), specifically consisting of:

- a. 10 applications to a site not specified in the MethQ Labeling;
- b. 15 applications not supervised by a regulatory agent as required by the MethQ Labeling;
- c. 15 applications without the PPE required by the MethQ Labeling; and
- d. 15 applications without a direct detection device required by the MethQ Labeling.

68. Each of Respondent's fifty-five (55) failures to comply with specific requirements of the MethQ Label is a violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G), for which a penalty may be assessed pursuant to FIFRA.

CAA Liability

Count 56

Failure to Comply With CAA Recordkeeping Requirements

69. Complainant realleges each allegation contained in Paragraphs 1 through 68, inclusive, as if fully set forth herein.

70. Respondent is, and has been at all times pertinent to this Complaint, a "person," as that term is defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

71. Respondent is, and has been at all times pertinent to this Complaint, an "applicator" of methyl bromide within the meaning of 40 C.F.R. § 82.3.

72. Respondent is, and has been at all times pertinent to this Complaint, subject to the CAA and the regulations at 40 C.F.R. Part 82 promulgated thereunder.

73. Pursuant to 40 C.F.R. § 82.13(z)(1), applicators of methyl bromide produced or imported solely for quarantine and/or preshipment ("QPS") applications must maintain, for three years, for every application, a document from the commodity owner, shipper or their agent, requesting the use of methyl bromide for QPS applications and citing the regulatory requirement that justifies its use.

74. Respondent failed to maintain the document described in the previous paragraph for any of the following fifteen (15) applications:

	Date	Location	Invoice Number
1	02/26/2015	Agua Buena, PR	6832
2	02/20/2015	Bayamon, PR	6830
3	02/11/2015	Guaynabo, PR	6083
4	02/06/2015	San Juan, PR	6082
5	12/05/2014	Caguas, PR	Illegible
6	11/30/2014	Bayamon, PR	6690
7	09/26/2014	Bayamon, PR	6596
8	09/19/2014	Illegible	6585
9	09/10/2014	Caguas, PR	6568
10	04/07/2014	Bayamon, PR	6308
11	11/22/2013	Bayamon, PR	053388
12	10/25/2013	Bayamon, PR	053375
13	10/11/2013	Bayamon, PR	053330
14	09/27/2013	Bayamon, PR	053322
15	09/13/2013	Bayamon, PR	053271

75. Respondent's failure to comply with the recordkeeping requirements of 40 C.F.R. § 82.13(z)(1) for the period September 13, 2013 to February 26, 2015 constitutes a violation of the CAA, for which a civil penalty may be assessed under Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B).

Count 57
Failure to Comply With CAA Reporting Requirements

76. Complainant realleges each allegation contained in Paragraphs 1 through 75, inclusive, as if fully set forth herein.

77. Pursuant to 40 C.F.R. § 82.13(z)(2), every applicator that purchases methyl bromide that was produced or imported solely for QPS applications shall provide to the distributors from whom they purchase, prior to shipment, a certification that the methyl bromide will be used only for QPS applications.

78. Respondent purchased MethQ from M & P on the following 2 dates:

	Invoice Number	Date	Unit Purchased	Amount Purchased
1	203423	05/27/2013	1	50 lb.
2	208728	09/09/2014	1	50 lb.

79. As a result of the M & P Inspections, EPA determined that M & P did not receive certifications from Respondent stating that the methyl bromide purchased would be used only for QPS applications.

80. From May 27, 2013 to September 9, 2014, Respondent purchased methyl bromide from M & P without providing, prior to shipment, a certification that the MethQ purchased would be used only for QPS applications.

81. Respondent's failure to comply with the reporting requirements of 40 C.F.R. § 82.13(z)(2) from May 27, 2013 through September 9, 2014 constitutes a violation of the CAA, for which a civil penalty may be assessed under Section 113(d)(1)(B) 42 U.S.C. § 7413(d)(1)(B).

PROPOSED CIVIL PENALTY

Complainant proposes at this time that Respondent be assessed the statutory maximum penalties authorized by FIFRA and the CAA. After an exchange of information has occurred, pursuant to 40 C.F.R. § 22.19, Complainant will file a document with a specific proposed penalty and an explanation of how the proposed penalty was calculated in accordance with the criteria in FIFRA and the CAA. Pursuant to 40 C.F.R. § 22.14(a)(4)(ii), the text below provides the number of violations for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the relevant statutory penalty authority of FIFRA and the CAA. Complainant intends to seek penalties for each violation alleged in each Count.

FIFRA VIOLATIONS

EPA's FIFRA Penalty Authority and Overview of FIFRA Enforcement Response Policy

Pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, Complainant proposes the assessment of a civil penalty of up to \$7,500 per day against Respondent for each of the applicable violations of FIFRA alleged in this Complaint.

For the FIFRA violations alleged above, the proposed civil penalty will be determined in accordance with Section 14(a) of FIFRA, 7 U.S.C. § 136l(a), as amended, which authorizes the assessment of a civil penalty of up to \$7,500 for each violation of “any provision of” subchapter II of FIFRA, 7 U.S.C. §§ 136-136y. (Pursuant to the Debt Collection Improvement Act of 1996 (“DCIA”), and the Civil Monetary Penalty Inflation Adjustment Rules, 61 Fed. Reg. 69360 (December 31, 1996), 69 Fed. Reg. 7121 (February 13, 2004), and 73 Fed. Reg. 75345 (December 11, 2008) (collectively, “Inflation Rules”), as codified at 40 C.F.R. Part 19, the statutory maximum assessment per violation was raised to \$7,500 for violations occurring after January 12, 2009.)

For purposes of determining the amount of any penalty to be assessed, Section 14 of FIFRA requires that EPA “shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person’s ability to continue in business, and the gravity of the violation” (Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4)).

In developing the proposed penalty for the violations alleged in this Complaint, Complainant will take into account the particular facts and circumstances of this case, to the extent known at the time, and use EPA’s “FIFRA Enforcement Response Policy [for] The Federal Insecticide, Fungicide and Rodenticide Act,” dated December 2009 (hereinafter referred to as the “ERP”). This guidance policy provides rational, consistent and equitable calculation methodologies for applying the statutory penalty criteria enumerated above to particular cases to develop a gravity-based penalty for each violation. A copy of the ERP is available upon request or may be obtained from the Internet at this address: <http://www.epa.gov/enforcement/fifra-enforcement-response-policy>.

Complainant may adjust each gravity-based penalty upward or downward based upon the violator-specific and environmental sensitivity adjustment factors described in the ERP. In addition, Complainant may add a component to reflect any economic benefit gained by Respondent for failing to comply with the regulatory requirement. Complainant will also consider, if raised, Respondent’s ability to pay a civil penalty. The burden of raising and demonstrating an inability to pay rests with Respondent.

As a basis for calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of this Complaint that become known after the Complaint is issued.

Counts 1-55 – Use of a Registered Pesticide in a Manner Inconsistent with its Label, in violation of FIFRA § 12(a)(2)(G), 7 U.S.C. § 136j (a)(2)(G).

For each type of violation associated with a particular product, the penalty amount is determined under the seven-step process in the ERP that considers the Section 14(a)(4) criteria. These steps using the tables and Appendixes in the ERP are as follows:

(1) *Number of independently assessable violations:* The Agency considers each failure of an applicator to follow a distinct label requirement to be an independently assessable violation of FIFRA § 12(a)(2)(G). The number of violations and days of violations are set out in Counts 1-55, above. Each of these independent violations of FIFRA is subject to civil penalties up to the statutory maximum.

(2) *Size of business category for the violator:* In order to provide equitable penalties, civil penalties assessed for violations of FIFRA generally increase as the size of the Respondent increases.

(3) *Gravity of the violation for each independently assessable violation:* The level assigned to each violation of FIFRA represents an assessment of the relative severity of each violation. The relative severity of each violation considers the actual or potential harm to human health and the environment which could result from the violation and the importance of the requirement to achieving the goals of the statute. MethQ is a highly toxic restricted use pesticide. In conducting each of the fifteen applications described herein, Respondent deviated substantially and in multiple ways from the requirements of the MethQ labeling, endangering himself, his customers, potentially others, and the environment.

(4) *“Base” penalty amount associated with the size of business and the gravity of violation for each independently assessable violation:* The size of business categories and gravity levels are broken out in the ERP Penalty Matrices. FIFRA imposes different statutory ceilings on the maximum civil penalty that may be assessed against persons listed in FIFRA § 14(a)(1) and persons listed in Section 14(a)(2), and the ERP sets out separate penalty matrices for each. As a certified applicator, Respondent is a FIFRA § 14(a)(1) business.

(5) *“Adjusted” penalty amount based on case-specific factors using the gravity adjustment criteria:* The Agency has assigned adjustments, for each violation relative to the specific characteristics of the pesticide involved, the harm to human health and/or harm to the environment, compliance history of the violator, and the culpability of the violator. The gravity adjustment values from each gravity category listed in Appendix B of the ERP are to be totaled. Once this base penalty amount is calculated, it is to be rounded to the nearest \$100.

(6) *Economic benefit of noncompliance:* An economic benefit component should be calculated and added to the gravity-based penalty component when a violation results in “significant” economic benefit to the violator. “Significant” is defined as an economic benefit that totals more than \$10,000 for all FIFRA violations alleged in the complaint.

(7) *Violator's ability to continue in business*: FIFRA § 14(a)(4) requires the Agency to consider the effect of the penalty on a respondent's ability to continue in business when determining the amount of the civil penalty.

In instances where the Agency obtains records which evidence multiple applications, sales or distributions for the same violations, the Region may apply a "graduated" penalty calculation.

CAA VIOLATIONS

EPA's CAA Penalty Authority and Overview of CAA General Policy

Section 113(d) of the CAA, 42 U.S.C. § 7413(d), provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the CAA. As previously noted, the DCIA requires EPA periodically to adjust its civil monetary penalties for inflation. Pursuant to the DCIA, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule which are codified at 40 C.F.R. Part 19 ("Part 19"). The maximum civil penalty per day for each violation that occurred from January 12, 2009 until now is \$37,500.

In determining the amount of penalty to be assessed, Section 113(e) of the CAA requires that the Administrator consider the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

In calculating a specific penalty pursuant to 40 C.F.R. § 22.19(a)(4), Complainant will consider, among other factors, facts and circumstances unknown to Complainant at the time of issuance of the Complaint that become known after the Complaint is issued.

Pursuant to Section 113(d) of CAA, 42 U.S.C. § 7413(d), as amended, Complainant proposes the assessment of a civil penalty of up to \$37,500 per day against the Respondent for each of the applicable violations alleged in this Complaint.

The violations alleged in Counts 56 and 57 would result in the Respondent being liable for the assessment of administrative penalties pursuant to Section 113(d) of the CAA. The proposed penalty will be prepared in accordance with the criteria in Section 113(e) of the CAA, and in accordance with the guidelines set forth in EPA's Clean Air Act Stationary Source Civil Penalty Policy, as amended (General Policy). EPA's General Policy reflects EPA's application of the factors set forth in Section 113(e) of the Act and provides guidance on how EPA is to calculate penalties for the CAA. The policy indicates that EPA should propose a penalty consisting of an economic benefit component and a gravity component. The economic benefit component is the economic benefit the violator gained as a result of the violation. The gravity component, in turn, consists of elements based on the actual or potential harm caused by the violation, the

significance of the regulation in question to the regulatory scheme, the sensitivity of the environment and the size of the violator.

Economic benefit: The General Policy provides the Region the discretion not to seek economic benefit where the benefit derived from the CAA violations is less than \$5,000.

Gravity: The General Policy also indicates that the Region should recover penalties that reflect the “seriousness” of the violation in a gravity component. In measuring the seriousness of these violations, the Region may consider the importance to the regulatory scheme, the duration of the violation, and the size of the violator.

Size of the violator: In order to provide equitable penalties, civil penalties assessed for violations of the CAA will generally increase as the size of the business increases.

Count 56 - Recordkeeping—Failure to maintain records from commodity owner requesting use of QPS Methyl Bromide and citing legal justification for such use for 3 years, in violation of 40 C.F.R. § 82.13(z)(1).

Gravity: Respondent’s failure to create and maintain records as required by 40 C.F.R. Part 82 contravened the essence of the regulatory scheme.

Importance to regulatory scheme: The Respondent, by failing to keep the required record, deviated substantially from the regulation. Recordkeeping allows regulatory agencies to confirm that QPS methyl bromide is being used properly.

Duration of violation: The violation period reflects the total number of days between the first date of a methyl bromide application for which no record was kept through the last date of such an application.

Count 57 - Reporting—Failure to provide certifications to distributor, prior to shipment of QPS methyl bromide, that methyl bromide will only be used for QPS applications, in violation of 40 C.F.R. § 82.13(z)(2).

Gravity: Respondent’s failure to provide the required certifications for MethQ contravened the regulatory scheme.

Importance to regulatory scheme: The Respondent, by failing to submit a required certification, deviated substantially from the regulation. Certification requirements help distributors report to EPA that QPS methyl bromide is being sold for QPS purpose.

Duration of violation: The violation period reflects the total number of days between the first date of a methyl bromide purchase for which no certification was provided to the distributor through the last date of such a purchase.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation were originally 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 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 and/or the Compliance Order 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 the Complaint. 40 C.F.R. §§ 22.15(a) and 22.7(c). 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
New York, New York 10007-1866**

(NOTE: Any documents that are filed after the Answer has been filed should be filed as specified in "D" below.)

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 their 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. § 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 ("APA"), 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. § 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 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 or through other appropriate means. Any default order requiring compliance action shall be effective and enforceable against Respondent without further proceedings on the date the default order becomes final under 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d).

D. Filing of Documents Filed After the Answer

Unless otherwise ordered by the Presiding Officer for this proceeding, all documents filed after Respondent has filed an Answer should be filed with the Headquarters Hearing Clerk acting on behalf of the Regional Hearing Clerk, addressed as follows:

If filing by the United States Postal Service:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1900R
Washington, D.C. 20460

If filing by UPS, FedEx, DHL or other courier or personal delivery, address to:

Sybil Anderson
Headquarters Hearing Clerk
Office of the Administrative Law Judges
Ronald Reagan Building, Room M1200
U.S. Environmental Protection Agency
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

E. Exhaustion of Administrative Remedies

Where Respondent fails to appeal an adverse initial decision to the Agency's Environmental Appeals Board ("EAB") (see 40 C.F.R. § 1.25(e)), pursuant to 40 C.F.R. § 22.30, 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).

To appeal an initial decision to the EAB, Respondent must do so "[w]ithin thirty (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 pleading or 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 the 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, to reflect 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:

Jeannie M. Yu, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, Room 1635
New York, New York 10007-1866
212-637-3205

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 will 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 waive its right to appeal the final order that is to accompany the consent agreement. 40 C.F.R. § 22.18(b)(2). 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

If, instead of filing an Answer, Respondent wishes not to contest the Complaint and wants to pay the penalty within thirty (30) days after receipt of the Complaint, Respondent should promptly contact the Assistant Regional Counsel identified on the previous page.

COMPLAINANT:

Dore LaPosta

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2

Dated: 3/1/16,
New York, New York

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-02-2016-5302 and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, by certified mail, return receipt requested, to:

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00726

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29,
Bayamón, Puerto Rico 00957-3707

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: March 1, 2016
New York, New York

Yone M

approve the State issued accordance with the re- §21.5. Regional Administrator will review State program per- the event of State pro- cesses the Regional Admin- notify the State of such

that period that any am is classified as defi- cients issued by a State sent to the Regional Ad- or review. The Regional shall notify the State, and the RBA of any de- subsequently made, in ac- §21.5, on any such state-

60 days after notice of oies has been provided, not taken corrective of- the deficiencies signifi- the conduct of the pro- regional Administrator, it notice has been pro- gional Director of SBA, w the approval of the t.

se whose program is with- se deficiencies have been y later reapply as pro- (a).

appropriated under section it may be utilized by a authorized to receive conducting this program.

of certification upon au- enforce applicable stand-

ation by EPA or a State purposes in no way con- mination by EPA or the se facilities certified (a) ruoted within the time n applicable standard or istructed and installed in lth the plans and speci- fited in the application, ed and maintained prop- be applied to process are the same as described tion. The certification in tates a waiver by EPA or authority to take appro- ment action against the ator of such facilities for n applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alter- native dispute resolution.
- 22.19 Prehearing information exchange; pre- hearing conference; other discovery.
- 22.20 Accelerated decision; decision to dis- miss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of per- suasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Environmental Protection Agency

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial deci- sion.

Subpart G—Final Order

- 22.31 Final order.
- 22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

- 22.33 [Reserved]
- 22.34 Supplemental rules governing the ad- ministrative assessment of civil pen- alties under the Clean Air Act.
- 22.35 Supplemental rules governing the ad- ministrative assessment of civil pen- alties under the Federal Insecticide, Fun- gicide, and Rodenticide Act.
- 22.36 [Reserved]
- 22.37 Supplemental rules governing admini- strative proceedings under the Solid Waste Disposal Act.
- 22.38 Supplemental rules governing the ad- ministrative assessment of civil pen- alties under the Clean Water Act.
- 22.39 Supplemental rules governing the ad- ministrative assessment of civil pen- alties under section 109 of the Com- prehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- 22.40 [Reserved]
- 22.41 Supplemental rules governing the ad- ministrative assessment of civil pen- alties under Title II of the Toxic Sub- stance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Re- sponse Act (AHERA).
- 22.42 Supplemental rules governing the ad- ministrative assessment of civil pen- alties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
- 22.43 Supplemental rules governing the ad- ministrative assessment of civil pen- alties against a federal agency under the Safe Drinking Water Act.
- 22.44 Supplemental rules of practice gov- erning the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.
- 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(5)(B)(ii) of the Clean Water Act and section 142(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

- 22.50 Scope of this subpart.
- 22.51 Presiding Officer.
- 22.52 Information exchange and discovery.

AUTHORITY: 7 U.S.C. 1361(i); 16 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 200g-9(g), 6912, 6925, 6928, 6931e and 6932d; 42 U.S.C. 7413(d), 7594(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

SOURCE: 64 FR 40179, July 22, 1999, unless otherwise noted.

Subpart A—General

§22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adju- dicatory proceedings for:

(1) The assessment of any admini- strative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a));

(2) The assessment of any admini- strative civil penalty under sections 112(d), 205(o), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7418(d), 7521(c), 7545(d) and 7547(d));

(3) The assessment of any admini- strative civil penalty or for the revoca- tion or suspension of any permit under section 105(a) and (f) of the Marine Pro- tection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective ac- tion order, the termination of a permit pursuant to section 3006(a)(3), the sus- pension or revocation of authority to operate pursuant to section 3006(e), or the assessment of any civil penalty under sections 3008, 3008, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6931e, and 6932d), except as provided in part 24 of this chapter;

(5) The assessment of any admini- strative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(5), or termination of any permit issued pursuant to section 402(a) of the

ended (33 U.S.C. 42(a));
 of any administrative section 109
 Environmental n, and Liability (42 U.S.C. 9609);
 of any administrative section 325
 Mining and Com- v Act of 1988 (045);
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§ 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:
Act means the particular statute authorizing the proceeding at issue.
Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.301(h).

Clerk of the Board means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in 40 CFR 1.25.

Final order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

Environmental Protection Agency

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

Hearing means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Initial decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

Party means any person that participates in a proceeding as complainant, respondent, or intervenor.

Permit action means the revocation, suspension or termination of all or part of a permit issued under section 103 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Proceeding means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

Regional Administrator means, for a case initiated in an EPA Regional Of-

§ 22.4

fice, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.4(b).

Respondent means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

[64 FR 40176, July 23, 1999, as amended at 65 FR 30904, May 15, 2000]

§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred

tor by the Environmental Board, the Administrator with any EPA employee in the matter, provided that the Administrator does not violate the provisions of the Act. The Administrator is considered excepted from the disqualification provisions of this section, or matters that the Environmental Board has referred to the Administrator.

The Administrator shall perform its duties and responsibilities under these Consolidated Rules, the Environmental Board, the Environmental Board shall do all acts and take all necessary steps to ensure the impartial adjudication in a proceeding, including procedural sanctions against any party who without adequate cause fails or refuses to comply with these Consolidated Rules in an order of the Environmental Board. Such sanctions may include drawing adverse inferences from a party, striking a party's submissions and denying any or all the party in the proceeding.

The Administrator shall perform its duties and responsibilities under these Consolidated Rules, the Environmental Board, the Environmental Board shall do all acts and take all necessary steps to ensure the impartial adjudication in a proceeding, including procedural sanctions against any party who without adequate cause fails or refuses to comply with these Consolidated Rules in an order of the Environmental Board. Such sanctions may include drawing adverse inferences from a party, striking a party's submissions and denying any or all the party in the proceeding.

knowingly preside over a case involving any party concerning whom the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of fact, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these

Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

§22.5 *Filing, service, and form of all filed documents; business confidentiality claims.*

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at §22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic filing, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.

(1) *Service of complaint.* (1) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of

nal of the complaint, copy of these Consolidated Rules of Practice. Service shall be by certified mail if requested, or by commercial delivery service with written verification

respondent is a domestic corporation, a partnership, or a partnership association to suit under a complainant shall serve an attorney or general agent or other person authorized by Federal or State law to receive process.

Complainant should file the complaint with the Regional Hearing Clerk. Complainant should file the complaint with the Regional Hearing Clerk. Complainant should file the complaint with the Regional Hearing Clerk.

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ices, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and §22.5.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules

of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words "Business Confidentiality Asserted". The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

40 CFR 40176, July 23, 1999, as amended at 69 FR 77639, Dec. 23, 2004

§22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional

Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Law Judges or the Regional Hearing Clerk, as appropriate.

§22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document; upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

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B—Parties and severances

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nership and an officer may appear on
behalf of a corporation. Persons who
appear as counsel or other representa-
tive must conform to the standards of
conduct and ethics required of practi-
tioners before the courts of the United
States.

§22.11 Intervention and non-party briefs.

(a) *Intervention.* Any person desiring
to become a party to a proceeding may
move for leave to intervene. A motion
for leave to intervene that is filed after
the exchange of information pursuant
to §22.18(a) shall not be granted unless
the movant shows good cause for its
failure to file before such exchange of
information. All requirements of these
Consolidated Rules of Practice shall
apply to a motion for leave to inter-
vene as if the movant were a party.
The Presiding Officer shall grant leave
to intervene in all or part of the pro-
ceeding if: the movant claims an inter-
est relating to the cause of action; a
final order may as a practical matter
impair the movant's ability to protect
that interest; and the movant's inter-
est is not adequately represented by
existing parties. The intervenor shall
be bound by any agreements, arrange-
ments and other matters previously
made in the proceeding unless other-
wise ordered by the Presiding Officer or
the Environmental Appeals Board for
good cause.

(b) *Non-party briefs.* Any person who
is not a party to a proceeding may
move for leave to file a non-party brief.
The motion shall identify the interest
of the applicant and shall explain the
relevance of the brief to the pro-
ceeding. All requirements of these Con-
solidated Rules of Practice shall apply
to the motion as if the movant were a
party. If the motion is granted, the
Presiding Officer or Environmental Ap-
peals Board shall issue an order setting
the time for filing such brief. Any
party to the proceeding may file a re-
sponse to a non-party brief within 14
days after service of the non-party
brief.

§22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer
or the Environmental Appeals

Board may consolidate any or all mat-
ters at issue in two or more pro-
ceedings subject to these Consolidated
Rules of Practice where: there exist
common parties or common questions
of fact or law; consolidation would ex-
pedite and simplify consideration of
the issues; and consolidation would not
adversely affect the rights of parties
engaged in otherwise separate pro-
ceedings. Proceedings subject to sub-
part I of this part may be consolidated
only upon the approval of all parties.
Where a proceeding subject to the pro-
visions of subpart I of this part is con-
solidated with a proceeding to which
subpart I of this part does not apply,
the procedures of subpart I of this part
shall not apply to the consolidated pro-
ceeding.

(b) *Severance.* The Presiding Officer
or the Environmental Appeals Board
may, for good cause, order any pro-
ceedings severed with respect to any or
all parties or issues.

Subpart C—Prehearing Procedures

§22.13 Commencement of a pro- ceeding.

(a) Any proceeding subject to these
Consolidated Rules of Practice is com-
menced by filing with the Regional
Hearing Clerk a complaint conforming
to §22.14.

(b) Notwithstanding paragraph (a) of
this section, where the parties agree to
settlement of one or more causes of ac-
tion before the filing of a complaint, a
proceeding may be simultaneously
commenced and concluded by the
issuance of a consent agreement and
final order pursuant to §22.18(b)(3) and
(3).

§22.14 Complaint.

(a) *Content of complaint.* Each com-
plaint shall include:

- (1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;
- (2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;
- (3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought,
including one or more of the following:

(i) The amount of the civil penalty
which is proposed to be assessed, and a
brief explanation of the proposed pen-
alty;

(ii) Where a specific penalty demand
is not made, the number of violations
(where applicable, days of violation)
for which a penalty is sought, a brief
explanation of the severity of each vio-
lation alleged and a recitation of the
statutory penalty authority applicable
for each violation alleged in the com-
plaint;

(iii) A request for a Permit Action
and a statement of its proposed terms
and conditions; or

(iv) A request for a compliance or
corrective action order and a state-
ment of the terms and conditions
thereof;

(5) Notice of respondent's right to re-
quest a hearing on any material fact
alleged in the complaint, or on the ap-
propriateness of any proposed penalty,
compliance or corrective action order,
or Permit Action;

(6) Notice if subpart I of this part ap-
plies to the proceeding;

(7) The address of the Regional Hear-
ing Clerk; and

(8) Instructions for paying penalties,
if applicable.

(b) *Rules of practice.* A copy of these
Consolidated Rules of Practice shall
accompany each complaint served.

(c) *Amendment of the complaint.* The
complainant may amend the complaint
once as a matter of right at any time
before the answer is filed. Otherwise
the complainant may amend the com-
plaint only upon motion granted by the
Presiding Officer. Respondent shall
have 20 additional days from the date
of service of the amended complaint to
file its answer.

(d) *Withdrawal of the complaint.* The
complainant may withdraw the com-
plaint, or any part thereof, without
prejudice one time before the answer
has been filed. After one withdrawal
before the filing of an answer, or after
the filing of an answer, the complain-
ant may withdraw the complaint, or
any part thereof, without prejudice
only upon motion granted by the Pre-
siding Officer.

the complaint. If the respondent: (1) Con-1 fact upon which the d; contends that the , compliance or cor- er, or Permit Action, e, is inappropriate; or is entitled to judg- of law, it shall file an copy of a written ap- plaint with the Re- terik and shall serve r on all other par- wer to the complaint n the Regional Hear- 30 days after service

is answer. The answer directly admit, deny if the factual allega- the complaint with respondent has any , respondent has no rticular factual alle- tes, the allegation is he answer shall also stances or arguments d to constitute the fense; the facts which es; the basis for op- relief; and whether ted.

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ions shall be served 5(b)(2). Upon the fil- ther parties may file notion and the mov- ply to the response. sponsive documents , only by order of the r Environmental Ap-

peals Board, as appropriate. All mo- tions, except those made orally on the record during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds therefor, with particularity;
- (3) Set forth the relief sought; and
- (4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

§ 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a

conference or hearing. 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. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* 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 under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The

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ment. Any and all ions of a settlement in a written consent i by all parties or tives. The consent ate that, for the purding, respondent: Additional allegations of imits the facts stipant agreement or ne-lesies specific factual ined in the complaint; assessment of any statu the issuance of any noc or corrective acy conditions specified reement, and to any tion; and waives any he allegations and its e proposed final orde e consent agreement. ant elects to com-eding pursuant to sent agreement shall elements described at i (8). The parties shall uted consent agree-ssed final order to the l Officer or Regional r, in a proceeding PA Headquarters, the eals Board.

proceeding. No settle- agreement shall dis- oseding under these ss of Practice without m the Regional Judi- gional Administrator, s commenced at EPA e Environmental Ap-tying the parties' con- sultation or settlement. the penalty proposed rsuant to paragraph 1 or settlement pursu- h (b) of this section ase affect the right of the United States to te injunctive or other or criminal sanctions s of law. Full payment oposed in a complaint

pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act ("ADRA"), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.*

(1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents

and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

- (1) Settlement of the case;
- (2) Simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

- (i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;
 - (ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and
 - (iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.
- (2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.
- (3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this

an additional finding
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 btained by alternative
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 substantial reason to
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ng Officer may require
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 nd necessity therefor.
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this paragraph (e) shall
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 of this section, shall
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 saged or response pro-
 sts, inaccurate or out-
 ditional or corrective
 ; not otherwise been
 other party pursuant

exchange information.
 .lis to provide informa-
 control as required pur-

suant to this section, the Presiding Of-
 ficer may, in his discretion:

(1) Infer that the information would
 be adverse to the party failing to pro-
 vide it;

(2) Exclude the information from evi-
 dence; or

(3) Issue a default order under
 § 22.17(c).

**§ 22.20 Accelerated decision; decision
 to dismiss.**

(a) *General.* The Presiding Officer
 may at any time render an accelerated
 decision in favor of a party as to any or
 all parts of the proceeding, without
 further hearing or upon such limited
 additional evidence, such as affidavits,
 as he may require, if no genuine issue
 of material fact exists and a party is
 entitled to judgment as a matter of
 law. The Presiding Officer, upon mo-
 tion of the respondent, may at any
 time dismiss a proceeding without fur-
 ther hearing or upon such limited addi-
 tional evidence as he requires, on the
 basis of failure to establish a prima
 facie case or other grounds which show
 no right to relief on the part of the
 complainant.

(b) *Effect.* (1) If an accelerated deci-
 sion or a decision to dismiss is issued
 as to all issues and claims in the pro-
 ceeding, the decision constitutes an
 initial decision of the Presiding Offi-
 cer, and shall be filed with the Re-
 gional Hearing Clerk.

(2) If an accelerated decision or a de-
 cision to dismiss is rendered on less
 than all issues or claims in the pro-
 ceeding, the Presiding Officer shall de-
 termine what material facts exist with-
 out substantial controversy and what
 material facts remain controverted.
 The partial accelerated decision or the
 order dismissing certain counts shall
 specify the facts which appear substanc-
 tially uncontroverted, and the issues
 and claims upon which the hearing will
 proceed.

Subpart D—Hearing Procedures

**§ 22.21 Assignment of Presiding Offi-
 cer; scheduling the hearing.**

(a) *Assignment of Presiding Officer.*
 When an answer is filed, the Regional
 Hearing Clerk shall forward a copy of
 the complaint, the answer, and any

other documents filed in the pro-
 ceeding to the Chief Administrative
 Law Judge who shall serve as Presiding
 Officer or assign another Administra-
 tive Law Judge as Presiding Officer.
 The Presiding Officer shall then obtain
 the case file from the Chief Adminis-
 trative Law Judge and notify the par-
 ties of his assignment.

(b) *Notice of hearing.* The Presiding
 Officer shall hold a hearing if the pro-
 ceeding presents genuine issues of ma-
 terial fact. The Presiding Officer shall
 serve upon the parties a notice of hear-
 ing setting forth a time and place for
 the hearing not later than 30 days prior
 to the date set for the hearing. The
 Presiding Officer may require the at-
 tendance of witnesses or the produc-
 tion of documentary evidence by sub-
 poena, if authorized under the Act,
 upon a showing of the grounds and ne-
 cessity therefor, and the materiality
 and relevancy of the evidence to be ad-
 duced.

(c) *Postponement of hearing.* No re-
 quest for postponement of a hearing
 shall be granted except upon motion
 and for good cause shown.

(d) *Location of the hearing.* The loca-
 tion of the hearing shall be determined
 in accordance with the method for de-
 termining the location of a prehearing
 conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer
 shall admit all evidence which is not
 irrelevant, immaterial, unduly repeti-
 tious, unreliable, or of little probative
 value, except that evidence relating to
 settlement which would be excluded in
 the federal courts under Rule 408 of the
 Federal Rules of Evidence (28 U.S.C.) is
 not admissible. If, however, a party
 fails to provide any document, exhibit,
 witness name or summary of expected
 testimony required to be exchanged
 under § 22.19 (a), (e) or (f) to all parties
 at least 15 days before the hearing
 date, the Presiding Officer shall not
 admit the document, exhibit or testi-
 mony into evidence, unless the non-ex-
 changing party had good cause for fail-
 ing to exchange the required informa-
 tion and provided the required informa-
 tion to all other parties as soon as it
 had control of the information, or had
 good cause for not doing so.

(2) In the presentation, admission,
 disposition, and use of oral and written
 evidence, EPA officers, employees and
 authorized representatives shall pre-
 serve the confidentiality of informa-
 tion claimed confidential, whether or
 not the claim is made by a party to the
 proceeding, unless disclosure is author-
 ized pursuant to 40 CFR part 2. A busi-
 ness confidentiality claim shall not
 prevent information from being intro-
 duced into evidence, but shall instead
 require that the information be treated
 in accordance with 40 CFR part 2, sub-
 part B. The Presiding Officer or the En-
 vironmental Appeals Board may con-
 sider such evidence in a proceeding
 closed to the public, and which may be
 before some, but not all, parties, as
 necessary. Such proceeding shall be
 closed only to the extent necessary to
 comply with 40 CFR part 2, subpart B,
 for information claimed confidential.
 Any affected person may move for an
 order protecting the information
 claimed confidential.

(b) *Examination of witnesses.* Wit-
 nesses shall be examined orally, under
 oath or affirmation, except as other-
 wise provided in paragraphs (c) and (d)
 of this section or by the Presiding Offi-
 cer. Parties shall have the right to
 cross-examine a witness who appears at
 the hearing provided that such cross-
 examination is not unduly repetitious.

(c) *Written testimony.* The Presiding
 Officer may admit and insert into the
 record as evidence, in lieu of oral testi-
 mony, written testimony prepared by a
 witness. The admissibility of any part
 of the testimony shall be subject to the
 same rules as if the testimony were
 produced under oral examination. Be-
 fore any such testimony is read or ad-
 mitted into evidence, the party who
 has called the witness shall deliver a
 copy of the testimony to the Presiding
 Officer, the reporter, and opposing
 counsel. The witness presenting the
 testimony shall swear to or affirm the
 testimony and shall be subject to ap-
 propriate oral cross-examination.

(d) *Admission of affidavits where the
 witness is unavailable.* The Presiding Of-
 ficer may admit into evidence affida-
 vits of witnesses who are unavailable.
 The term "unavailable" shall have the
 meaning accorded to it by Rule 804(a)
 of the Federal Rules of Evidence.

its. Where practicable, an original copy of each exhibit and one copy of each exhibit with the Presiding Officer and a copy shall be furnished to each party. A true copy of each exhibit may be substituted for the original.

Official notice. Official notice may be given of any matter which can be noticed in the Federal courts or facts within the special-ized and experience of the presiding parties shall be given opportunity to show that the matter is erroneously noticed.

Objections and offers of proof. Any objection to the conduct of the hearing may be made orally or in writing during the hearing. The party raising the objection shall supply a short statement of the grounds therefor. The ruling by the Presiding Officer on any objection and the reasons therefor shall be part of the transcript. The exception to each objection shall be automatic and is not subject to further participation in the hearing.

Offer of proof. Whenever the Presiding Officer denies a motion for admission of evidence, the party offering the evidence may make an offer of proof which shall be included in the transcript. The offer of proof shall consist of a brief describing the nature of the evidence to be offered. The offer of proof shall be included in the transcript. The offer of proof shall be included in the transcript. The offer of proof shall be included in the transcript.

Burden of presentation; burden of persuasion; preponderance of the evidence.

The complainant has the burden of presentation and persuasion that the relief sought is warranted. Following complainant's presentation of a prima facie case, the respondent shall have the burden of persuasion to the allegations.

set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

§ 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion To Reopen a Hearing

§ 22.27 Initial Decision.

(a) **Filing and contents.** After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) **Amount of civil penalty.** If the Presiding Officer determines that a violation has occurred and the complainant seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) **Effect of initial decision.** The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) **Exhaustion of administrative remedies.** Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing.

(a) **Filing and content.** A motion to reopen a hearing to take further evidence must be filed no later than 30 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) **Disposition of motion to reopen a hearing.** Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

**F—Appeals and
Interlocutory Review**

from or review of interlocutory orders or rulings.

or interlocutory appeal. Interlocutory orders or rulings other than a final decision shall be at the discretion of the Environmental Appeals Board. A party may file a motion for review of such an order or ruling with the Environmental Appeals Board. A party may file a motion with the Environmental Appeals Board for review of the order or ruling that the Presiding Officer has issued in an order or ruling to the Appeals Board for review briefly the grounds

of interlocutory appeal. The Presiding Officer may recommend review of an order or ruling by the Appeals Board when: (1) the order or ruling involves an issue of law or policy on which there is substantial disagreement of opinion; and (2) immediate appeal from the order or ruling will materially advance the termination of the review after the final decision will be inadequate or in-adequate.

Interlocutory review. If the Presiding Officer recommends review of an order or ruling, the Environmental Appeals Board may, at its discretion, take no action with respect to the order or ruling. The Presiding Officer's recommendation is final unless the Board declines to review the order or ruling. The Board may only upon appeal from a final decision, except when the Board determines that the motion of a party and the circumstances, that would be contrary to the public interest. Such a motion shall be filed within 30 days of service of an order or ruling for review.

from or review of initial

decision. (1) Within 30 days of service of an order or ruling, any

party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 800, 1341 G Street, NW., Washington, DC 20005. One copy of any document filed with the Clerk of the Board shall also be served on the Regional Hearing Clerk. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within 20 days after the date on which the first notice of appeal was served.

(2) Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may file with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party, non-party participant, and the

Environmental Protection Agency

Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Board, and serve it upon the Regional Hearing Clerk, the Presiding Officer and the parties within 45 days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not

increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

[64 FR 40176, July 23, 1999, as amended at 68 FR 2304, Jan. 16, 2003; 68 FR 77636, Dec. 28, 2004]

Subpart G—Final Order**§ 22.31 Final order.**

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

Ref. Any final order of compliance or corrective action, shall become enforceable without furnishing on the effective date of order unless otherwise ordered.

Parties to Federal agencies on final order of the Environmental Board issued pursuant to department, agency, or by the United States effective 30 days after its the parties unless the affected department, agency requests a compliance order in writing a copy of the request on record within 30 days of final order. If a timely decision, a decision by the Administrator shall become the final

for reconsideration pursuant shall not toll the 30-day period in paragraph (e)(1) of unless specifically so ordered. Environmental Appeals

to reconsider a final

reconsider a final order pursuant to § 22.30 shall be filed after service of the final order must set forth the matters to be reconsidered. If the nature of the alleged violation shall be directed by the Environmental Appeals Board. Motions for reconsideration to the Administrator, the Environmental Appeals Board shall not be considered, except that the Environmental Appeals Board has referred to the Administrator to § 22.4(a) and in Administrator has issued the motion for reconsideration the effective date of order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 306(o), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36 [Reserved]

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3006(d) and (e), 3008, 3008 and 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926(d) and (e), 6928, 6928b and 691e) ("SWDA"). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 3008(a), or a corrective action order issued under section 3008(h) or section 3008(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32 and §§ 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(h)(6) of the Clean Water Act ("CWA") (33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Consultation with States.* For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been ob-

tained under section 504(b)(1) of the CWA, 33 U.S.C. 1364(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the "EPA, Hazardous Substances Superfund," in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

erved]

Supplemental rules governing administrative assessment of civil penalties under Title II of the Resource Conservation and Recovery Act, section 2 of the Asbestos Emergency Response Act

This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300f-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300f-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed; and
- (6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

§ 22.45 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300f-6(b). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed; and
- (6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

(d) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

- (1) The docket number of the order;
- (2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;
- (3) The location of the facility where violations were found;
- (4) A description of the violations;
- (5) The penalty that was assessed; and
- (6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

(e) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of

the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 370.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

(66 FR 3094, May 16, 2000)

§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(o)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice—(1) General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the pro-

posed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

aring on the merits, a present evidence, in testimony subject to by the parties.

ing Officer shall have establish the extent participation in any activity.

A commenter may not witness in any hearing be subject to or participation or prehearing

tion and settlement. Not at to the public notice provisions of paragraphs is section may be under §22.18, or comment 22.18(b), until 10 days of the comment period graph (c)(1) of this section

t aside a consent agreement final order. (i) Com provide to each concerned mail, return request not to the Clerk or Presiding Officer consent agreement files and the proposed

ays of receipt of the it and proposed final ar may petition the itor (or, for cases A Headquarters, the eals Board), to set agreement and prom the basis that maas not considered. tion shall be served t shall not be sent to ing Clerk or the Pre-

ys of receipt of a penant may, with noal Administrator or eals Board and to ithdraw the consent oposed final order to rs raised in the petitionant does not give al within 15 days of ition, the Regional Environmental Ap- assign a Petition Of- nner shall be an- nner, not otherwise

involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District

Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

§22.46-22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§22.50 Scope of this subpart.

(a) Scope. This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 306(g)(2)(A) and 511(b)(6)(B)(1) of the Clean Water Act (33 U.S.C. 1316(g)(2)(A) and 1821(b)(6)(B)(1)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(o) of the Safe Drinking Water Act (42 U.S.C. 300g-3(g)(3)(B) and 300b-2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) Relationship to other provisions. Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§22.11, 22.16(o), 22.21(a), and 22.22. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

§22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

§22.52 Information exchange and discovery.

Respondent's information exchange pursuant to §22.18(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under §22.18(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

PART 23—JUDICIAL REVIEW UNDER EPA-ADMINISTERED STATUTES

Sec.

23.1 Definitions.

23.2 Timing of Administrator's action under Clean Water Act.

23.3 Timing of Administrator's action under Clean Air Act.

23.4 Timing of Administrator's action under Resource Conservation and Recovery Act.

23.5 Timing of Administrator's action under Toxic Substances Control Act.

23.6 Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.

23.7 Timing of Administrator's action under Safe Drinking Water Act.

23.8 Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.

23.9 Timing of Administrator's action under the Atomic Energy Act.

23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.

23.11 Holidays.

23.12 Filing notice of judicial review.

AUTHORITY: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7501(a)(1), 7507(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6012(a), 6078; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j-7(a)(2), 300j-9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346, 23 U.S.C. 2112(a), 2343, 2344.

SOURCE: 50 FR 7270, Feb. 21, 1985, unless otherwise noted.



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Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Truly N61er
FITPA-02-2916

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 Edwin Andújar Bermúdez
 ba Truly Nolen Pest Control de Caguas
 Urb. Miraflores,
 16-15 Calle 29
 Bayamón, Puerto Rico 00957-3707



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A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
 Jesenia Andújar 3/5

D. Is delivery address different from item 1? Yes
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ba Truly Nolen Pest Control de Caguas
PO Box 7155
Caguas, Puerto Rico 00726



9590 9403 0968 5223 1640 36

2. Article Number (Transfer from service label)

015 0640 0001 0675 4572

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 Edwin Andujar Agent
 Addressee

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 If YES, enter delivery address below: No

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Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
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Exhibit 7



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AP/CBS / March 1, 2016, 8:03 PM

U.S. targets Puerto Rico companies in toxic pesticide case



Steve Esmond, an administrator at The Tatnall School in Wilmington; his wife, Dr. Theresa Devine are said to have been poisoned while on vacation. / CBS

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From 60 Minutes



Le Pen says France is Bardot, not burkinis



From the archives: Lost in the Bermuda Triangle



Is Marine Le Pen France's Trump?

SAN JUAN, Puerto Rico -- The U.S. government on Tuesday filed complaints against a pest control company in Puerto Rico and two businessmen for the illegal use of a toxic pesticide that nearly killed an American family in the neighboring U.S. Virgin Islands.

The Environmental Protection Agency said the businessmen used methyl bromide to fumigate homes and other unauthorized places in several cities across Puerto Rico from 2013 to early 2015. The men were identified as Edwin Andujar Bermudez with Truly Nolen Pest Control of Caguas and Wilson Torres Rivera of Tower & Son Exterminating Corp. in Bayamon. Tower & Son was named in a separate complaint, but not Truly Nolen.

They face up to \$7,500 in civil penalties for each violation as part of a continuing federal investigation in Puerto Rico into the illegal use of methyl bromide, an odorless chemical that can severely damage the brain and lungs. EPA spokesman John Martin said the agency expects to announce more actions in upcoming months.



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Pesticide blamed for sickening family on vacation

contest the complaints.



Play VIDEO

DOJ investigating possible pesticide poisoning of family on vacation

Federal officials began investigating the use of the chemical in Puerto Rico after a Delaware family vacationing in the U.S. Virgin Islands was poisoned in March 2015.

Officials opened a criminal investigation after announcing that Terminix had used methyl bromide at a vacation unit below the one the family had rented at Sirenusa Condominium Resort on the island of St. John. Two teenagers were hospitalized in critical condition while their parents had to undergo therapy.

AP/CBS

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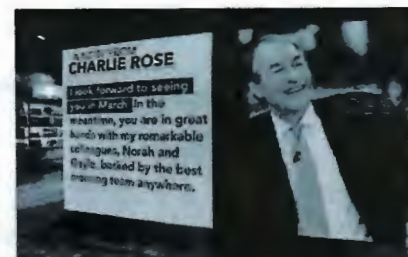
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Exhibit 8



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REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 28 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND VIA EMAIL

Peter Diaz, Esq.
420 Avenida Ponce de Leon
Suite 1001
San Juan, Puerto Rico 00918-3491
pdiazfederalcases@gmail.com

Re: In the Matter of Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas
Docket Number FIFRA-02-2016-5302

Dear Mr. Diaz:

As you know, on March 1, 2016, EPA issued a civil administrative Complaint and Notice of Opportunity for Hearing to Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas (hereinafter "Mr. Andújar" or "Respondent") for violations of Federal Insecticide, Fungicide & Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.*, and the Clean Air Act ("CAA"), as amended, 42 U.S.C. Section 7401 *et seq.* Two copies of the Complaint were served on the Respondent via certified mail, return receipt requested – one to the post office box for Truly Nolen and one to the street address of the business. Enclosed with each copy of the Complaint was a copy of the rules of procedure governing this proceeding, found at 40 C.F.R. Part 22 (the "Consolidated Rules of Practice").

As documented by the return receipts, the Respondent accepted service of the Complaint on March 5 and on March 7, 2016. Pursuant to 40 C.F.R. § 22.15(a), and as described on page 17 of the Complaint, any Answer(s) to the Complaint must be filed with the Regional Hearing Clerk within thirty (30) days of receipt. In the matter at hand, Respondent's Answer was due no later than April 6, 2016. To date, no Answer to the Complaint has been filed with the Regional Hearing Clerk and he may therefore be found to be in default upon motion.

The legal effects of such default are specified in 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.


A default order might include the requirement that respondent pay a penalty: "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 under § 22.27(c)." 40 C.F.R. § 22.17(d).

Prior to issuance of the Complaint you were representing Respondent in pre-filing negotiations with EPA regarding the violations alleged in the Complaint. Accordingly, a courtesy copy of the Complaint was mailed and emailed to you as well; another is enclosed herewith. In the days following the issuance of the Complaint numerous news outlets quoted you as identifying yourself as counsel for Respondent and stating that you intended to contest the Complaint on his behalf. As no Answer has been received and no other communications from you have been forthcoming -- indeed none have been received from you since shortly after a settlement conference in November 2015 despite my numerous emails and voicemail messages to you -- and given the seriousness of the consequences for the Respondent if a default order is entered against him, I ask that you confirm in writing within five (5) business days whether you are currently retained as counsel for Mr. Andújar. If I do not receive a written reply indicating that you are not currently retained in this matter, I will conclude that you do not represent Mr. Andújar and I will henceforth communicate directly with him.

If you wish to contact me regarding any aspect of the foregoing, my phone number is 212-637-3205 and my email is yu.jeannie@epa.gov. Any statement regarding your representation of Mr. Andújar should be made in writing.

Sincerely,




Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

Complaint
Consolidated Rules of Practice
USPS Return Receipts

Exhibit 9

Majette, Yolanda

From: Majette, Yolanda
Sent: Thursday, April 28, 2016 10:44 AM
To: pdiazfederalcases@gmail.com
Cc: Yu, Jeannie; Aber, Bruce
Subject: In the Matter of Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket Number FIFRA-02-2016-5302
Attachments: Truly Nolen letter 4.28.16.pdf; Truly Nolen Complaint.pdf; Part 22 (the "Consolidated Rules of Practice").pdf; greencard1.pdf; greencard2.pdf

Tracking:	Recipient	Read
	pdiazfederalcases@gmail.com	
	Yu, Jeannie	Read: 4/29/2016 8:57 AM
	Aber, Bruce	
	Mauel, Linda	Read: 4/29/2016 8:24 PM
	Shapiro, Naomi	Read: 4/28/2016 11:02 AM
	Reddy, Aarti	Read: 4/28/2016 11:13 AM

Dear Mr. Diaz,

Attached please find correspondence regarding the above-referenced matter from Assistant Regional Counsel Jeannie Yu.

Sincerely,
Yolanda J. Majette

Exhibit 10

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1. Article Addressed to: P
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20 Avenida Ponce de Leon S
uite 1001
San Juan, Puerto Rico 00918-3495



9590 9403 0968 5223 1626 67

2. Article Number (Transfer from...)
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Jashira Mendez *5/2/16*
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Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA - Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866

Truly Moken
Pocket Number FIF PA-02-2016
3308

Exhibit 11



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

MAY 17 2016

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Edwin Andújar Bermúdez
dba Truly Nolen Pest Control de Caguas
P.O. Box 7155
Caguas, PR 00726

Edwin Andujar Bermudez
dba Truly Nolen Pest Control de Caguas
Urb. Miraflores,
16-15 Calle 29,
Bayamon, Puerto Rico 00957-3707

Re: In the Matter of Edwin Andújar Bermúdez dba Truly Nolen Pest Control de Caguas
Docket Number FIFRA-02-2016-5302

Dear Mr. Andújar:

EPA is writing to you because the time to respond to the Complaint filed in the above-referenced matter has passed and we believe that you are no longer represented by Mr. Peter Diaz, Esq. As you are aware, on March 1, 2016, EPA issued a civil administrative Complaint and Notice of Opportunity for Hearing to Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas (hereinafter "Mr. Andújar" or "Respondent") for violations of Federal Insecticide, Fungicide & Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 et seq., and of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7401 et seq.

Prior to issuance of the Complaint, Mr. Diaz, represented you in pre-filing negotiations with EPA regarding the violations alleged in the Complaint. Accordingly, a courtesy copy of the Complaint was sent to him and another is enclosed herewith. In the days following the issuance of the Complaint numerous news outlets quoted Mr. Diaz as identifying himself as your counsel. However, to date no Answer has been received and we have had no other communications from Mr. Diaz.


On April 28, 2016, EPA issued a letter to Mr. Peter Diaz, via certified mail, return receipt requested (enclosed), setting forth the legal consequences of the failure to file an Answer to the Complaint. In addition, EPA requested confirmation in writing, within five business days, whether Mr. Diaz, is currently retained as your legal counsel and advising Mr. Diaz that if EPA did not receive such a response, EPA would conclude that Mr. Diaz is no longer retained by you and would contact you directly. As documented by the enclosed return receipt, Mr. Diaz received EPA's letter on May 2, 2016. To date, Mr. Diaz has not contacted us regarding his representation of you in this matter. Therefore, we believe that you are no longer retaining or are represented by Mr. Diaz.

Please be advised that your Answer was due on or about April 6, 2016. As documented by the enclosed return receipts, the Respondent accepted service of the Complaint on March 5 and on March 7, 2016. Pursuant to 40 C.F.R. § 22.15(a), and as described on page 17 of the Complaint, any Answer(s) to the Complaint must be filed with the Regional Hearing Clerk within thirty (30) days of receipt. EPA may therefore now move the Regional Judicial Officer for an order finding you in default. The legal effects of such default are specified in 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.

A default order might include the requirement that respondent pay a penalty: "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 under § 22.27(c)." 40 C.F.R. § 22.17(d). EPA currently intends to seek a default order against you. If you intend to file an Answer to the Complaint, please contact EPA attorney Carolina Jordán-García at (787) 977-5834 or by email at Jordan-Garcia.Carolina@epa.gov to arrange for discussion of this matter. Or you can contact me at (212) 637-3205 or by email at yu.jeannie@epa.gov.

Sincerely,


Jeannie M. Yu
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

Complaint
Consolidated Rules of Practice
USPS Return Receipts for Complaint (March 5 and March 7, 2016)
April 28, 2016 letter to Peter Diaz
USPS Return Receipt for Diaz letter (May 2, 2016)

cc: Peter Diaz, Esq.
420 Avenida Ponce de Leon
Suite 1001
San Juan, Puerto Rico 00918-3491
pdiazfederalcases@gmail.com

Exhibit 12

SEND TO COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Edwin Andújar Bermúdez
 dba Truly Nolen Pest Control de Caguas
 Urb. Miraflores,
 16-15 Calle 29
 Bayamón, Puerto Rico 00957-3707



9590 9403 0968 5223 1400 78

2. Article Number (Transfer from carrier label)
 015 0640 0001 0675 9102

PS Form 3811, July 2015 PSN 7530-02-000-9083

COMPLETE THIS SECTION ONLY

A. Signature
 x *Ana R. Figueroa* Agent
 Addressee

B. Received by (Printed Name) *Cenia Figueroa* C. Date of Delivery *05/20/16*

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Insured Mail	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	

Domestic Return Receipt

Exhibit 13

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Edwin Andújar Bermúdez
 dba Truly Nolen Pest Control de Caguas
 P.O. Box 7155
 Caguas, PR 00726



9590 9403 0968 5223 1626 74

2. Article Number (Transfer from sender label)
 7015 0640 0001 0675 9065

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *Edwin Andujar* Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

MAX 20
 CAGUAS, PR

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Insured Mail
 - Insured Mail Restricted Delivery (over \$500)
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Return Receipt for Merchandise
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery

Domestic Return Receipt

Exhibit 14

Majette, Yolanda

From: Majette, Yolanda
Sent: Tuesday, May 17, 2016 4:49 PM
To: pdiazfederalcases@gmail.com
Cc: Yu, Jeannie
Subject: In the Matter of Edwin Andújar Bermúdez dba Truly Nolen Pest Control De Caguas Docket Number FIFRA-02-2016-5302 - Part 1
Attachments: Truly Nolen May 17, 2016 letter.pdf; Truly Nolen Complaint.pdf; Part 22 (the "Consolidated Rules of Practice"..pdf; grencard2.pdf; grencard1.pdf; Truly Nolen letter 4.28.16.pdf; Green card for Tower letter mailed out on April 28, 2016 to Peter Diaz.pdf

Importance: High

Tracking:	Recipient	Read
	pdiazfederalcases@gmail.com	
	Yu, Jeannie	Read: 5/17/2016 6:10 PM
	Shapiro, Naomi	Read: 5/18/2016 10:05 AM
	Mauel, Linda	Read: 5/17/2016 7:32 PM
	Jordan-garcia, Carolina	Read: 5/19/2016 2:35 PM
	Aber, Bruce	Read: 5/17/2016 4:51 PM

Dear Mr. Diaz,
Attached please find correspondence regarding the above-referenced matter from Assistant Regional Counsel Jeannie Yu.

Sincerely,
Yolanda J. Majette

Exhibit 15

DEPARTAMENTO DE SALUD
SECRETARIA AUXILIAR PARA SALUD AMBIENTAL
OFICINA DE VENENOS COMERCIALES



2912

NÚM. LIC.

LICENCIA

PARA LA APLICACIÓN DE INSECTICIDA Y/O VENENOS COMERCIALES
POR LA PRESENTE CERTIFICO QUE:

*SR. EDWIN ANDUJAR BERMUDEZ DBA TRULY NOLEN PEST CONTROL DE
CAGUAS*

HA CUMPLIDO CON LAS DISPOSICIONES DE LA LEY NUM. 132 DEL 28 DE JUNIO DE 1966, POR LO CUAL SE LE OTORGA ESTA LICENCIA PARA DEDICARSE A LA APLICACION DE INSECTICIDAS Y/O VENENOS COMERCIALES.

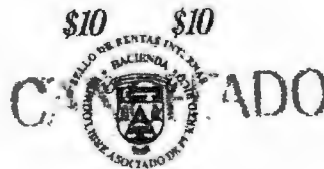
ESTA LICENCIA INCLUYE EL USO DE GAS PARA LLEVAR APLICACIONES, YA QUE LA POLIZA QUE CUBRE LOS RIESGOS DE LAS APLICACIONES CUBRE ESTA ACTIVIDAD.

EXPEDIDA EN RIO PIEDRAS, PUERTO RICO. HOY DIA 21 DE MAYO DE 2014.

ESTA LICENCIA VENCE EL DIA 3 DE MAYO DE 2015.

Y LA MISMA NO ES TRANSFERIBLE A NINGUNA OTRA PERSONA O ENTIDAD.

DIRECCION: PO BOX 7155
CAGUAS, PR 00726



D03781729

CARLOS M. CARAZO GILOT, DVM
SECRETARIO AUXILIAR INTERINO
SALUD AMBIENTAL

Exhibit 16

ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE AGRICULTURA
CERTIFICADO PARA APLICADOR COMERCIAL DE
PLAGUICIDAS DE USO RESTRINGIDO

1984-C-3161

EDWIN ANDUJAR BERMUDEZ



PO BOX 7155
CAGUAS, PR 00726-7155

SEXO M
EST 5'10
PESO 235

CATEGORIAS: 4, 8A
RESTRICCIONES:

SECRETARIO DE AGRICULTURA
O SU REPRESENTANTE

EXPIRA: 2-junio-2016

Exhibit 17

?

Estado Libre Asociado de Puerto Rico
DEPARTAMENTO DE AGRICULTURA
Laboratorio Agrológico

INFORME SOBRE INVESTIGACIÓN DE USO DE PLAGUICIDAS
(Pesticide Use Investigation Report)

1. PERSONA ENTREVISTADA (Person Interviewed)

a. NOMBRE (Name) <p style="text-align: center;">Sr. Edwin Andújar Bermúdez</p>	b. DIRECCION (Address) <p style="text-align: center;">PO Box 7155 Caguas, PR 00726</p>
c. TELEFONO (Telephone) <p style="text-align: center;">(787) 374-9668</p>	

2. APLICADOR (Applicator)

a. NOMBRE (Name) <p style="text-align: center;">N/A</p>	b. DIRECCION (Address) <p style="text-align: center;">N/A</p>
c. TELEFONO (Telephone) <p style="text-align: center;">N/A</p>	d. NUMERO DE CERTIFICACIÓN (Certification Number) <p style="text-align: center;">N/A</p>

3. SITIO DE APLICACIÓN (Site of Application)

a. NOMBRE (Name) <p style="text-align: center;">N/A</p>	b. DIRECCIÓN (Address) <p style="text-align: center;">N/A</p>
c. TELEFONO (Telephone) <p style="text-align: center;">N/A</p>	
d. TIPO DE NEGOCIO (Type of Business) <p style="text-align: center;">N/A</p>	e. COSECHA O AREA TRATADA (Crop or Area Treated) <p style="text-align: center;">N/A</p>
f. PLAGA A COMBATIR (Target Pest) <p style="text-align: center;">N/A</p>	g. FECHA Y HORA DE LA APLICACIÓN (Date and Time of Application) <p style="text-align: center;">N/A</p>
h. CONDICIONES DEL TIEMPO AL MOMENTO DE LA APLICACIÓN (Weather at time of Application) <p style="text-align: center;">N/A</p>	

4. PLAGUICIDA APLICADO (Pesticide Applied)

a. MARCA (Brand Name) <p style="text-align: center;">N/A</p>	b. NUMERO REG. EPA (EPA Reg. No.) <p style="text-align: center;">N/A</p>	c. NUMERO LOTE (Batch No.) <p style="text-align: center;">N/A</p>	d. CLASIFICACION (Classification) <p style="text-align: center;">N/A</p>
e. TIPO DE FORMULACION (Type of Formulation) N/A			
<input type="checkbox"/> POLVO (Dust) <input type="checkbox"/> ASPERJAR (Spray) <input type="checkbox"/> GRANULADO (Granular) <input type="checkbox"/> ROCIO (Mist) <input type="checkbox"/> NIEBLA (Fog) <input type="checkbox"/> OTRO (Other) (Especifique) (Specify)			

5. PROPORCION DE LA APLICACION (Rate of Application)

a. METODO DE APLICACION (Method of Application) N/A
<input type="checkbox"/> TERRESTRE (Ground) <input type="checkbox"/> AEREO (Aerial) <input type="checkbox"/> OTRO (Other) ESPECIFIQUE (Specify)
b. DILUCION (Dilution Rate) <p style="text-align: center;">N/A</p>

Exhibit 18



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PESTICIDE USE/MISUSE INSPECTION

ADDRESS (EPA Regional Office)
Agrological Laboratory
Hiroada, PR
Tel. (787) 726-1735

DATE 04-15-15 HOUR 10:41 A.M. P.M.

NAME OF INDIVIDUAL Mr. Edwin Andujar Borrudo TITLE Owner

NAME (Firm, Farmer, Homeowner, etc.) Truly Nolen Pest Control de Caguas ADDRESS (Number, Street, City, State, and ZIP Code) Urb. Miraflores PO Box 7155 Calle 29 B Bays 16-15 Caguas, PR 00726 Bayamon, PR

REASON FOR INSPECTION Tel. (787) 374 9668

FOR THE PURPOSE OF INSPECTING SITES WHERE PESTICIDES ARE BEING USED TO COLLECT DATA ON THE USE OF PESTICIDES AND TO DETERMINE WHETHER PESTICIDES ARE BEING USED IN COMPLIANCE WITH THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT...

VIOLATION SUSPECTED: Possible Meth-O-Gas Q Misuse
Accompanied by:
Agra Oyar Acovedo
PRDOA-EPA Pesticida Inspector
and Mr Mike Kramer
EPA Scientist
Bir. Jorge P. Mohammed Medina
PRDOA-EPA Pesticida Inspector

CONSENT

Voluntary Consent Necessary to Enter for Inspection and/or Sampling
The undersigned hereby voluntarily consents to an inspection of Truly Nolen Pest Control of which I am Owner, Agent or Person-In-Charge...

SIGNATURE Edwin Andujar TITLE Presidente DATE 4-15-15

1- (787) 796-1735, 842540



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PESTICIDE USE/MISUSE INSPECTION

ADDRESS (EPA Regional Office)
Agronomical Laboratory
Dorado, PR

DATE: 05-14-15
HOUR: 11:01 A.M.

NAME OF INDIVIDUAL: Mr. Edwin Andujar Bermudez
TITLE: Owner

NAME (Firm, Farmer, Homeowner, etc.): 'Truly Nolen Pest Control de Caguas'
ADDRESS (Number, Street, City, State, and ZIP Code): Urb. Miraflores, Calle 29, Bldg 16-15, Bayamon, PR 00957-3707
Tel: (787) 371-9668

REASON FOR INSPECTION: FOR THE PURPOSE OF INSPECTING SITES WHERE PESTICIDES ARE BEING USED TO COLLECT DATA ON THE USE OF PESTICIDES AND TO DETERMINE WHETHER PESTICIDES ARE BEING USED IN COMPLIANCE WITH THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT; AND FOR THE PURPOSE OF INSPECTING SITES WHERE PESTICIDES HAVE BEEN USED TO DETERMINE WHETHER THE PESTICIDES WERE USED IN COMPLIANCE WITH THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.

VIOLATION SUSPECTED: to perform a follow up to the inspection dated on 04-15-15

Accompanied by
Agro. Omar Acevedo (EPA-PRDA Pesticide Inspector)
Biol. Jorge S. Maldonado Medina (EPA-PRDA Pesticide Inspector)

CONSENT

[X] Voluntary Consent Necessary to Enter for Inspection and/or Sampling

The undersigned hereby voluntarily consents to an inspection of Truly Nolen Pest Control de Caguas, of which I am Owner, Agent or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of FIFRA. I understand that I have the right to refuse consent to this entry.

SIGNATURE: Edwin Andujar
TITLE: Owner
DATE: 5-14-15

- 1. Original - USE REPORT COPY
2. OWNER/AGENT COPY
3. REGION COPY
4. INSPECTOR'S COPY

Exhibit 19



7 de agosto de 2015

CERTIFICADA CON ACUSE DE RECIBO

Sr. Edwin Andújar Bermúdez
"TRULY NOLEN PEST CONTROL DE CAGUAS"
PO Box 7155
Caguas, PR 00726

Notificación de Violación

Estimado señor Andújar:

**Re: 04-15-15-10495-01-PR-NS
Orden de detención PFP 3534**

El 15 de abril de 2015, el Inspector del Programa de Fiscalización de Plaguicidas, Biol. Jorge L. Maldonado Medina, realizó una Inspección de Uso No Agrícola a "Truly Nolen Pest Control de Caguas", localizado en la Urb. Miraflores, Calle 29 Bloque 16-15, Bayamón, Puerto Rico.

Esta inspección se realizó conforme al Reglamento Núm. 7769 para Regir la Venta, Uso, Distribución y Aplicación de Plaguicidas y Dispositivos en el Estado Libre Asociado de Puerto Rico.

Durante la inspección se encontró violación por mal uso del plaguicida "Meth-O-Gas Q", (EPA Reg. No. 5785-41), al no seguir las instrucciones de la etiqueta. Las violaciones se describen a continuación:

- El producto fue aplicado en residencias (así lo indican nueve (9) récords de aplicación) y en un establecimiento comercial.
- No hubo una agencia reguladora presente en la aplicación como lo requiere la etiqueta del producto.

Por tal razón, se expidió la Orden de Detención PFP 3534, por (1) cilindro de 5.5 libras aproximadamente del mencionado producto.



Sr. Edwin Andújar Bermúdez

7 de agosto de 2015

Página 3

6. Cantidad utilizada.
7. Método de aplicación.
8. Lugar y fecha de aplicación.
9. Procedimiento para la disposición del sobrante del plaguicida.

Este Artículo establece la información que debe contener este récord y el periodo de tiempo que debe conservarlo (mínimo de dos (2) años) y deberán estar disponibles para inspección por el Secretario o su representante autorizado.

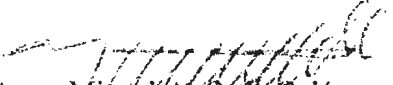
Conforme al procedimiento establecido en la **Parte VI. – DISPOSICIONES GENERALES** del Reglamento anteriormente mencionado, se le indica que según el:

- **Artículo 49; Procedimiento para suspender o cancelar licencias o certificación o imponer multas administrativas; se le puede denegar, suspender o revocar su certificación; según indica el Artículo 32 Inciso F; Que el aplicador, no lleve o mantenga los récords que se le requieren bajo el Artículo 31 del Reglamento.**

Para notificar las gestiones realizadas por las violaciones señaladas, debe enviar evidencia a la siguiente dirección: **Laboratorio Agrológico, Núm. 7, Carr. 693, Dorado, PR 00646-3445 o vía Fax al (787) 796-4426.**

Para información adicional, deberá comunicarse al **Laboratorio Agrológico, Oficina de Fiscalización de Plaguicidas, a los teléfonos: (787) 796-1735 o (1775), ext. 276.**

Atentamente,


Agro. Miguel A. Ortiz Colón
Director Interino
Laboratorio Agrológico

JLMM /mco

Exhibit 20



Expertos en Control de Plagas
 P.O. Box 7155
 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE
 812

①

DATE 2-26-15 TIME IN _____ OUT _____

NAME Carlos Diaz ACCOUNT TYPE
 REG RESIDENCIA INDOOR

ADDRESS Sonadora 1-TIME COMMERCIAL OUTDOOR

CITY, STATE, ZIP Aguila, Puerto Rico FREQUENCY
 ANNUALLY 6 MONTHS 3 MONTHS

PHONE _____ MONTHLY BI-MONTHLY WEEKLY

INSPECTION TREATMENT _____ _____

TARGET-PEST	SITE TREATED	APPLICATION METHOD	DATE
<input type="checkbox"/> Cucarachas			
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comején Subterráneo			
<input type="checkbox"/> Comején Arbóreo			
<input type="checkbox"/> Polilla			
<input checked="" type="checkbox"/> Cáculo Barranador			
<input type="checkbox"/> Insectos Areas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros _____			

CHEMICAL USED	ACTIVE INGREDIENT	CONCENTRATION		EPA NUMBER
		AMOUNT	END USED%	
<u>Ultrathyn Bifenox</u>		<u>3 LBS</u>	<u>100%</u>	

DESCRIPTION / REMARKS	AMOUNT
<u>Fumigación closet</u>	<u>250 -</u>
<u>para control cáculo</u>	
<u>Barrandis</u>	

SERVICED BY [Signature] ACCOUNT BALANCE

LIC. NO. 1984-C-3161 CASH AMOUNT PAID 250 -
 CHECK

CUSTOMER SIGNATURE _____ BALANCE DUE _____



Expertos en Control de Plagas
 P.O. Box 7155
 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE

383

DATE <u>2-20-15</u>	TIME IN _____ OUT _____
NAME <u>Erica Podin</u>	ACCOUNT TYPE <input type="checkbox"/> REG <input type="checkbox"/> RESIDENCIA; <input type="checkbox"/> INDOOR <input checked="" type="checkbox"/> 1-TIME <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
ADDRESS <u>Ps. Bonifacio, San Juan, P.R.</u>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS <input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY
CITY, STATE, ZIP <u>San Juan, P.R. 00901</u>	
PHONE _____	

INSPECTION TREATMENT _____ _____

<input type="checkbox"/> Cucarachas			
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comejón Subterráneo			
<input type="checkbox"/> Comejón Arbóreo			
<input checked="" type="checkbox"/> Polillas			
<input type="checkbox"/> Caculo Barrador			
<input type="checkbox"/> Insectos Areas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros _____			

	AMOUNT	END USED%
<u>Applied Bounce</u>		

<u>Eliminacion Muebles</u>	SUB-TOTAL	<u>400-</u>
<u>Asesoría</u>	TOTAL	
<u>1 Hora Limpieza</u>	ACCOUNT BALANCE	
SERVICED BY <u>Elg</u>	ACCOUNT BALANCE	
LIC. NO. 1984-C-3161	<input type="checkbox"/> CASH AMOUNT PAID	<u>400-</u>
<u>A. [Signature]</u>	<input type="checkbox"/> CHECK	
CUSTOMER SIGNATURE	BALANCE DUE	



Expertos en Control de Plagas
 P.O. Box 7155
 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE

180

DATE <u>2-11-15</u>	TIME IN _____ OUT _____
NAME <u>María Mercedes Nolasco</u>	ACCOUNT TYPE <input type="checkbox"/> REG <input checked="" type="checkbox"/> RESIDENCIA: <input checked="" type="checkbox"/> INDOOR
ADDRESS <u>Calle # 36 Velled</u>	<input checked="" type="checkbox"/> 1-TIME <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
CITY, STATE, ZIP <u>Caguas, P.R. 00726</u>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS
PHONE _____	<input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY

INSPECTION TREATMENT _____ _____

TARGET PEST	SITE TREATED	APPLIED METHOD	DATE
<input type="checkbox"/> Cucarachas			
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comején Subterráneo			
<input type="checkbox"/> Comején Arbóreo			
<input checked="" type="checkbox"/> Polilla			
<input type="checkbox"/> Casulo Barrador			
<input type="checkbox"/> Insectos Areas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros _____			

DESCRIPTION	AMOUNT	END USED%	QUANTITY
<u>1 botella Prothido</u>	<u>6.00</u>	<u>100%</u>	

DESCRIPTION	AMOUNT
<u>Tratamiento Completo</u>	<u>950.-</u>
<u>Tratamiento de Polilla</u>	

SERVICED BY <u>Chy</u>	ACCOUNT BALANCE
LIC. NO. 1984-C-31610	
<input type="checkbox"/> CASH	AMOUNT PAID
<input checked="" type="checkbox"/> CHECK # <u>218</u>	<u>950</u>
CUSTOMER SIGNATURE _____	BALANCE DUE



Expertos en Control de Plagas
 P.O. Box 7155
 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE

8

DATE <u>2-6-16</u>	TIME IN _____ OUT _____
NAME <u>María Ruiz</u>	ACCOUNT TYPE <input type="checkbox"/> REG <input checked="" type="checkbox"/> RESIDENCIA: <input checked="" type="checkbox"/> INDOOR
ADDRESS <u>1000 Highway M-10</u>	<input checked="" type="checkbox"/> 1-TIME <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
CITY, STATE, ZIP <u>San Juan, PR 00909</u>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS
PHONE <u>787-762-1016</u>	<input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY

INSPECTION TREATMENT _____ _____

TARGET PEST	SITE TREATED	DATE	AMOUNT	END USED%
<input type="checkbox"/> Cucarachas				
<input type="checkbox"/> Hormigas				
<input type="checkbox"/> Roedores				
<input type="checkbox"/> Comején Subterráneo				
<input type="checkbox"/> Comején Arbóreo				
<input checked="" type="checkbox"/> Bichos				
<input checked="" type="checkbox"/> Casulo Barranador				
<input type="checkbox"/> Insectos Areas Verdes				
<input type="checkbox"/> Pulgas y Garrapatas				
<input type="checkbox"/> Otros _____				

TARGET PEST	SITE TREATED	DATE	AMOUNT	END USED%
<u>1000 Highway M-10</u>			<u>810</u>	<u>100%</u>

<u>1000 Highway M-10</u>	SUB-TOTAL	<u>800</u>
<u>1000 Highway M-10</u>	TOTAL	
<u>1000 Highway M-10</u>	ACCOUNT BALANCE	
<u>1000 Highway M-10</u>	ACCOUNT BALANCE	

LIC. NO. 1984-C-3161	<input type="checkbox"/> CASH - AMOUNT PAID	
<u>[Signature]</u>	<input checked="" type="checkbox"/> CHECK <u>810</u>	<u>810</u>
CUSTOMER SIGNATURE	BALANCE DUE	



Expertos en Control de Plagas
 P.O. Box 7155
 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolan@live.com

SERVICE INVOICE

70

DATE 12-5-11 TIME IN _____ OUT _____

NAME Fernando Jimenez ACCOUNT TYPE
 REG RESIDENCIA: INDOOR
 1-TIME COMMERCIAL OUTDOOR

ADDRESS _____
 CITY STATE ZIP _____ FREQUENCY
 ANNUALLY 6 MONTHS 3 MONTHS
 PHONE _____ MONTHLY BI-MONTHLY WEEKLY

INSPECTION TREATMENT _____ _____

TARGET/PEST	SITE/TREATED	TREATMENT METHOD	DATE
<input type="checkbox"/> Cucarachas			
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comején Subterráneo			
<input type="checkbox"/> Comején Arbóreo			
<input type="checkbox"/> Polilla			
<input type="checkbox"/> Cuculo Barrenador			
<input type="checkbox"/> Insectos Arañas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros _____			

CHEMICAL USED	AMOUNT	CONCENTRATION	REF. NUMBER
<u>M. Top Domicilio</u>	<u>5 LRS</u>	<u>100%</u>	

DESCRIPTION / REMARKS	AMOUNT
<u>Fundación Cocina</u>	SUB-TOTAL <u>800</u> -
<u>Imp. control de cuculo</u>	TOTAL
<u>Imp. control de cuculo</u>	ACCOUNT BALANCE
<u>Imp. control de cuculo</u>	ACCOUNT BALANCE

LIC. NO. 1984-C-3161

CASH AMOUNT PAID 800 -

CHECK

CUSTOMER SIGNATURE _____ BALANCE DUE _____



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 trulynolen@live.com

SERVICE INVOICE

369

DATE <u>11-30-12</u>	TIME IN _____ OUT _____
NAME <u>EMILY RODRIGUEZ</u>	ACCOUNT TYPE <input type="checkbox"/> REG <input checked="" type="checkbox"/> RESIDENCIA: <input checked="" type="checkbox"/> INDOOR
ADDRESS <u>Call 24 4410</u>	<input checked="" type="checkbox"/> 1-TIME <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
CITY STATE ZIP <u>San Juan, P.R. 00901</u>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS
PHONE <u>787-8379</u>	<input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY

INSPECTION TREATMENT _____ _____

TARGET PEST	SITE COMMENTS
<input type="checkbox"/> Cucarachas	
<input type="checkbox"/> Hormigas	
<input type="checkbox"/> Roedores	
<input type="checkbox"/> Comején Subterráneo	
<input type="checkbox"/> Comején Arbóreo	
<input checked="" type="checkbox"/> Polilla	
<input type="checkbox"/> Caculo Barrenador	
<input type="checkbox"/> Insectos Areas Verdes	
<input type="checkbox"/> Pulgas y Garrapatas	
<input type="checkbox"/> Otros _____	

	AMOUNT	END USED%
<u>Moths</u>	<u>3 LBS</u>	<u>100%</u>

DESCRIPTION / REMARKS		
<u>Polilla</u>	SUB-TOTAL	<u>4.25</u>
<u>Call 24 4410</u>	TOTAL	
	ACCOUNT BALANCE	
<u>Call 24 4410</u>	ACCOUNT BALANCE	

LIC. NO. 1984-C-3161	<input type="checkbox"/> CASH	AMOUNT PAID
	<input checked="" type="checkbox"/> CHECK	<u># 843</u>
CUSTOMER SIGNATURE _____	BALANCE DUE _____	



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 Caguas, P.R. 00726-7155
 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE

3596

DATE <u>9-24-14</u>	TIME IN _____ OUT _____
NAME <u>RESIDENCIA 2014</u>	ACCOUNT TYPE <input type="checkbox"/> REG <input checked="" type="checkbox"/> RESIDENCIA: <input checked="" type="checkbox"/> INDOOR
ADDRESS <u>2151 PARRAS AVE 32</u>	<input checked="" type="checkbox"/> 1-TIME <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
CITY, STATE, ZIP <u>San Juan, P.R. 00901</u>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS
PHONE _____	<input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY

INSPECTION TREATMENT _____ _____

TARGET PEST	SITE TREATED	APPLICATION METHOD	DATE
<input type="checkbox"/> Cucaraches			
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comejen Subterráneo			
<input type="checkbox"/> Comejen Arbores			
<input checked="" type="checkbox"/> Pulgas			
<input type="checkbox"/> Cecido Barrador			
<input type="checkbox"/> Insecta Areas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros			

CHEMICAL USED	ACTIVE INGREDIENT	CONCENTRATION		EPA NUMBER
		AMOUNT	END USED%	
<u>Ortho Home Guard</u>		<u>5#</u>	<u>100%</u>	

DESCRIPTION / REMARKS	AMOUNT
<u>Parquet Control</u>	<u>800 -</u>
<u>Ortho Home Guard</u>	
<u>Ortho Home Guard</u>	

SERVICED BY <u>[Signature]</u>	ACCOUNT BALANCE
LIC. NO. 1984-C-3181	<input type="checkbox"/> CASH AMOUNT PAID
	<input checked="" type="checkbox"/> CHECK <u>21.4</u>

CUSTOMER SIGNATURE _____ BALANCE DUE _____



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 (787) 374-9668 / Fax. (787) 797-0571
 trulynolen@live.com

SERVICE INVOICE

DATE 4-14-14 TIME IN _____ OUT _____

NAME Carmen Karibil Garcia ACCOUNT TYPE
 REG RESIDENCIA; INDOOR

ADDRESS Carretera # 14 Urb. Mirasol 1-TIME COMMERCIAL OUTDOOR

CITY, STATE, ZIP Miraflores, G.D.R. FREQUENCY
 ANNUALLY 6 MONTHS 3 MONTHS

PHONE _____ MONTHLY BI-MONTHLY WEEKLY

INSPECTION TREATMENT _____ _____

TARGET PEST	SITE TREATED	APPLICATION METHOD	DATE
<input type="checkbox"/> Cucarachas		<u>Kemula Koulpote yabaxen</u>	
<input type="checkbox"/> Hormigas			
<input type="checkbox"/> Roedores			
<input type="checkbox"/> Comején Subterráneo			
<input type="checkbox"/> Comején Arbóreo			
<input checked="" type="checkbox"/> Pollos			
<input type="checkbox"/> Caculo Barrenador			
<input type="checkbox"/> Insectos Areas Verdes			
<input type="checkbox"/> Pulgas y Garrapatas			
<input type="checkbox"/> Otros _____			

CHEMICAL USED	ACTIVE INGREDIENT	CONCENTRATION		EPA NUMBER
		AMOUNT	END USED %	
<u>Methul Premula</u>		<u>5oz</u>	<u>100%</u>	

DESCRIPTION / REMARKS	AMOUNT
<u>Fuente de Control</u>	SUB-TOTAL <u>450.-</u>
<u>Procedimiento de Control</u>	TOTAL
	ACCOUNT BALANCE
SERVICED BY <u>FLY</u>	ACCOUNT BALANCE

LIC. NO. 1984-C-316

CASH AMOUNT PAID 450.-

CHECK

CUSTOMER SIGNATURE _____ BALANCE DUE _____



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 trulynolen@live.com

SERVICE INVOICE

3568

DATE <i>7-10-14</i>	TIME IN _____ OUT _____
NAME <i>AP Industrial Corp</i>	ACCOUNT TYPE <input type="checkbox"/> REG <input type="checkbox"/> RESIDENCIA: <input checked="" type="checkbox"/> INDOOR <input checked="" type="checkbox"/> 1-TIME <input checked="" type="checkbox"/> COMMERCIAL <input type="checkbox"/> OUTDOOR
ADDRESS <i>Car 183 Km 44</i>	FREQUENCY <input type="checkbox"/> ANNUALLY <input type="checkbox"/> 6 MONTHS <input type="checkbox"/> 3 MONTHS <input type="checkbox"/> MONTHLY <input type="checkbox"/> BI-MONTHLY <input type="checkbox"/> WEEKLY
CITY, STATE, ZIP <i>Caguas</i>	
PHONE <i>746-2291</i>	

INSPECTION TREATMENT _____ _____

TARGET PEST	CITE	DATE	AMOUNT	END USED%
<input type="checkbox"/> Cucarachas				
<input type="checkbox"/> Hormigas				
<input type="checkbox"/> Roedores				
<input type="checkbox"/> Comején Subterráneo				
<input type="checkbox"/> Comején Arbóreo				
<input checked="" type="checkbox"/> Polilla				
<input type="checkbox"/> Caculo Barrador				
<input type="checkbox"/> Insectos Areas Verdes				
<input type="checkbox"/> Pulgas y Garrapatas				
<input type="checkbox"/> Otros _____				

PRODUCT	AMOUNT	END USED%
<i>Adaptal Grande</i>		
	<i>6.185</i>	<i>100%</i>

DESCRIPTION/REMARKS	AMOUNT
<i>Carretil Polilla</i>	<i>500 -</i>
<i>Material de Limpieza</i>	
<i>Trabajo de Limpieza</i>	
SERVICED BY <i>Jip</i>	ACCOUNT BALANCE

LIC. NO. 1984-C-3161	<input type="checkbox"/> CASH . AMOUNT PAID	<i>500 -</i>
	<input type="checkbox"/> CHECK	
CUSTOMER SIGNATURE	BALANCE DUE	

Exhibit 21

CAREERS | FRANCHISING | CUSTOMER LOGIN
|CONTACT | SEARCH

787-374-9668

PEST CONTROL | TERMITE CONTROL | OTHER SERVICES

HOW TO BUY | PEST GUIDE | LOCATIONS | ABOUT

Truly Nolen of CAGUAS, PR

CONTACT
INFO

COUPONS

EVENTS
& NEWS

REVIEWS

AREAS
SERVED

EMPLOYMENT

(787) 374-9668

P.O. Box Fax: (787) 797-
7155 0571

Caguas,
PR 00726

Email:

trulynolencaguas@trulynolen.n

Pest Control

Pest Alert!

SERVICE
GUIDE

PEST
CONTROL

BED BUG
CONTROL

TERMITE
CONTROL

RODENT
CONTROL

BEE &
WASP

PEST CONTROL

Truly Nolen of Caguas, PR provides an innovative solution to ongoing household pest problems. Our Four Season's Protection Plan combines advanced, proactive treatments with pests' seasonal behavior to keep your Caguas home protected year round. More on Caguas Pest Control.

Free Estimate

Schedule Free
Inspection

BED BUG CONTROL

Bed Bugs can be a real problem in Caguas, PR. Let Truly Nolen of Caguas, PR provide a free inspection to determine the scope of the problem. We utilize an integrated treatment approach addressing sanitation, material application and exclusion for your Caguas home. More on Caguas Bed Bug Control.

Schedule Free
Inspection

TERMITE CONTROL

Truly Nolen of Caguas, PR combines a variety of termite control techniques into one comprehensive treatment program. Our Total Termite Protection Plan "TTP" protects your Caguas home from all termites under one contract backed by a \$1M Guarantee. More on Caguas Termite Control.

Schedule Free
Inspection

RODENT CONTROL

Truly Nolen of Caguas, PR rodent control "CRC" program focuses on trapping and removing existing rodents and preventing new rodents and mice from re-entering through exclusion. Ensure your Caguas home is protected from rodents. More on Caguas Rodent Control.

Schedule Free
Inspection

BEE & WASP CONTROL

Bees and Wasps in Caguas, PR can become a serious pest. Let Truly Nolen of Caguas determine if you have an infestation through a free inspection ensuring bees and wasps are removed safely from your Caguas home. More on Caguas Bee & Wasp Control.

Schedule Free
Inspection

Schedule Free Inspection

Free Estimate

Note: Not all services are available at all locations.

ABOUT

SERVICES

RESOURCES

CONNECT

SOCIAL

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[Privacy Policy](#) | [Sitemap](#)

TRULY NOLEN PEST CONTROL PROUDLY SERVES THESE COMMUNITIES

Abilene, TX	El Paso, TX	Key Largo, FL	New York/Northern New Jersey
Albuquerque, NM	Fort Lauderdale, FL	Lakeland, FL	Orlando, FL
Amarillo, TX	Fort Myers, FL	Lancaster, PA	Phoenix, AZ
Anaheim, CA	Fort Pierce, FL	Las Vegas, NV	Port Charlotte, FL
Atlanta, GA	Galveston, TX	Lexington, KY	Port Elgin, ON
Burlington, PA	Gloucester, ON	McAllen, TX	Riverside, CA
Caguas, PR	Goderich, ON	Melbourne, FL	Salt Lake City, UT
Charleston, SC	Halifax, NS	Merrickville, ON	San Antonio, TX
Charlotte, NC	Hamilton, ON	Miami, FL	San Diego, CA
Columbus, OH	Houston, TX	Mississauga, ON	San Juan, PR
Dallas, TX	Jacksonville, FL	Naples, FL	Santa Fe, NM
Sarasota, FL			
Sierra Vista, AZ			
St. Catharines, ON			
Tallahassee, FL			
Tampa, FL			
Tucson, AZ			
West Palm Beach, FL			
Wichita Falls, TX			
Yuma, AZ			

Exhibit 22

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT
INVESTIGATION SUMMARY

City Name (Producer/Dealer/User)

TRULY NOLEN PEST CONTROL DE CAGUAS

1. INVESTIGATION IDENTIFICATION

2. Region/State

10. Street

Date: 05-14-15

Inspector Number: 10492

Daily Sequence: 03

Region/State: PR

Urb. Miraflores

Inspecting Org. E S F

4. Facility Function: CA

5. Investigation Type: URN

29 Street Block 16-15

Reason for Investigation: FDF

7. Referral Agency: DOA

8. Warrant Required: Yes No

11. City: Bayamón

SAMPLE INFORMATION

Sequence Number: N/A

18. State Sample No.: N/A

12. State: PR

13. ZIP Code: 00958

14. Establishment Number: _____

Product Code: N/A

20. EPA Registration Number: N/A

15. DUNS Number: _____

16. SIC Codes: _____

1. Project Code: N/A

22. Sample Medium: N/A

23. Date Collected: N/A

24. Sample Type: _____

25. Date Shipped: N/A

6. Lot or Other Code Numbers: N/A

7. Sample Identification: N/A

8. Amount Before Sampling: N/A

9. Description of Sample: N/A

0. Sample Preparation: N/A

1. Related Samples: N/A

2. Reason for Collection: N/A

OTHER FACILITIES

3. Producer: N/A

34. Establishment Number: N/A

35. DUNS Number: _____

Street: _____

37. City: _____

38. State: _____

39. ZIP Code: _____

0. Shipper: N/A

41. City: _____

42. State: _____

43. ZIP Code: _____

4. Dealer: Truly Nolen Pest Control de Caguas

45. City: Bayamón

46. State: PR

47. ZIP Code: 00958

RECORDS

8. Original Records: PRDA Dorado Agrological Laboratory

49. Region Copy: N/A

50. Sample Copy: Dorado, PR

11. Sample Delivered To: N/A

52. Date: N/A

53. Bill of Lading Number: _____

14. Credentials Presented:

55. Notice of Inspection:

56. Receipt for Samples: N/A

57. Sample Cost: \$ N/A

C V B

58. Collection Station: Ponce, PR

19. Remarks:

- 1- Notice of Pesticide Use/Misuse inspection dated on: 05-14-15.
- 2- Copy of Receipt for Samples dated on: 05-14-15.
- 3- Copy of Pesticide Use Investigation Report.

10. Inspector's Name: Biol. Jorge L. Maldonado Medina

61. Inspector's Signature: *Biol. Jorge L. Maldonado Medina*

US ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT
INVESTIGATION SUMMARY

Facility Name (Producer/Dealer/User)

TRULY NOLEN PEST CONTROL DE CAGUAS

1. INVESTIGATION IDENTIFICATION

2. Region/State

10. Street

Date
05-14-15

Inspector Number
10495

Daily Sequence
D1

PR

"Urb. Miraflores"
29 Street Block 18-15

3. Inspecting Org.
E S

4. Facility Function
CA

5. Investigation Type
URN

6. Reason for Investigation
FCF

7. Referral Agency
DOA

8. Warrant Required
Yes No

11. City
Bayamón

SAMPLE INFORMATION

12. State 13. ZIP Code 14. Establishment Number

7. Sequence Number
N/A

18. State Sample No.
N/A

PR 00958

9. Product Code
N/A

20. EPA Registration Number
N/A

15. DUNS Number

16. SIC Codes

21. Project Code
N/A

22. Sample Medium
N/A

23. Date Collected
N/A

24. Sample Type

25. Date Shipped
N/A

26. Lot or Other Code Numbers
N/A

27. Sample Identification
N/A

28. Amount Before Sampling
N/A

29. Description of Sample
N/A

30. Sample Preparation
N/A

31. Related Samples
N/A

32. Reason for Collection
N/A

OTHER FACILITIES

33. Producer
N/A

34. Establishment Number
N/A

35. DUNS Number

36. Street

37. City

38. State

39. ZIP Code

40. Shipper

41. City

42. State

43. ZIP Code

44. Dealer

Truly Nolen Pest Control de Caguas

45. City

Bayamón

46. State

PR

47. ZIP Code

00958

RECORDS

48. Original Records
PRDA Dorado Agrolological Laboratory

49. Region Copy
N/A

50. Sample Copy
Dorado, PR

51. Sample Delivered To
N/A

52. Date
N/A

53. Bill of Lading Number

54. Credentials Presented

55. Notice of Inspection

56. Receipt for Samples
N/A

57. Sample Cost
\$ N/A C V B

58. Collection Station
Ponce, PR

59. Remarks:

- 1- Notice of Pesticide Use/Misuse Inspection dated on: 05-14-15.
- 2- Copy of Receipt for Samples dated on: 05-14-15.
- 3- Copy of Pesticide Use Investigation Report.

60. Inspector's Name

Biol. Jorge L. Maldonado Medina

61. Inspector's Signature

Biol. Jorge L. Maldonado Medina

Exhibit 23

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



RECEIPT FOR SAMPLES

ADDRESS (EPA Regional Office)

Do not PIZ

DATE

04 15 15

NAME OF INDIVIDUAL

Edwin Andujar

TITLE

Owner

FIRM NAME

Truly Home Pest Control

FIRM ADDRESS (Number, Street, City, State, and ZIP Code)

196. Alvarado Blvd. Calverton, NY 11710

SAMPLE NUMBERS

SAMPLES COLLECTED (Describe fully, List Registration, Lot, Batch, Model, Serial Numbers, and other positive identification)

The following samples were collected by the U.S. Environmental Protection Agency and receipt is hereby acknowledged pursuant to Section 9(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 g). This section is quoted on the reverse of this form.

- ① Application Records of Meth-O-Gas @ 20 pages
- ② Copy of Department of Health # 2912
- ③ Copy of Commercial Applicator Certification # 1984-C-3161

ACKNOWLEDGEMENT OF PRODUCER/REGISTRANT

The undersigned acknowledges that the samples shown above were obtained from pesticides or devices that were packaged, labeled, and released for shipment.

SIGNATURE (Owner, Operator, or Agent)

Edwin Andujar

TITLE (Owner, Operator, or Agent)

Dueño

DUPLICATE SAMPLES REQUESTED AND PROVIDED

DUPLICATE SAMPLES NOT REQUESTED

SAMPLES WERE

PURCHASED

BORROWED

AMOUNT PAID FOR SAMPLES

\$ 0

CASH

VOUCHER

TO BE BILLED

NO CHARGE

NAME OF COLLECTOR (print or type)

Ed. Jerry L. Maldonado Medina

TITLE OF COLLECTOR

FEPA-EPA Inspector

SIGNATURE OF COLLECTOR

Ed. Jerry L. Maldonado Medina

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



RECEIPT FOR SAMPLES

ADDRESS (EPA Regional Office)

London, IL

DATE

5-14-15

NAME OF INDIVIDUAL

Fleming, Andrew

TITLE

Owner

FIRM NAME

Fleming, Andrew

FIRM ADDRESS (Number, Street, City, State, and ZIP Code)

1000 N. ... IL 618

SAMPLE NUMBERS

SAMPLES COLLECTED (Describe fully. List Registration, Lot, Batch, Model, Serial Numbers, and other positive identification)

The following samples were collected by the U.S. Environmental Protection Agency and receipt is hereby acknowledged pursuant to Section 9(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 g). This section is quoted on the reverse of this form.

1. ...
2. ...
3. ...

ACKNOWLEDGEMENT OF PRODUCER/REGISTRANT

The undersigned acknowledges that the samples shown above were obtained from pesticides or devices that were packaged, labeled, and released for shipment.

SIGNATURE (Owner, Operator, or Agent)

Andrew Fleming

TITLE (Owner, Operator, or Agent)

Owner

DUPLICATE SAMPLES REQUESTED AND PROVIDED

DUPLICATE SAMPLES NOT REQUESTED

SAMPLES WERE

PURCHASED

BORROWED

AMOUNT PAID FOR SAMPLES

\$ 7

CASH

VOUCHER

TO BE BILLED

NO CHARGE

NAME OF COLLECTOR (print or type)

Andrew Fleming

TITLE OF COLLECTOR

Owner

SIGNATURE OF COLLECTOR

Andrew Fleming

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT
INVESTIGATION SUMMARY

City Name (Producer/Dealer/Jar)

TRULY NOLEN PEST CONTROL DE CAGUAS

1. INVESTIGATION IDENTIFICATION

2. Region/State

10. Street

Date
04-15-15

Inspector Number
10495

Daily Sequence
01

PR

"Urb. Miraflores"
29 Street Block 18-15

Inspecting Org.
E S

4. Facility Function
CA

5. Investigation Type
URN

Reason for Investigation
NSR

7. Referral Agency
DOA

8. Warrant Required
Yes No

11. City
Bayamón

SAMPLE INFORMATION

7. Sequence Number
N/A

18. State Sample No.
N/A

12. State
PR

13. ZIP Code
00958

14. Establishment Number

9. Product Code
N/A

20. EPA Registration Number
N/A

15. DUNS Number

16. SIC Codes

1. Project Code
N/A

22. Sample Medium
N/A

23. Date Collected
N/A

24. Sample Type

25. Date Shipped
N/A

6. Lot or Other Code Numbers
N/A

7. Sample Identification
N/A

8. Amount Before Sampling
N/A

9. Description of Sample
N/A

0. Sample Preparation
N/A

1. Related Samples
N/A

2. Reason for Collection
N/A

OTHER FACILITIES

13. Producer
N/A

34. Establishment Number
N/A

35. DUNS Number

16. Street

37. City

38. State

39. ZIP Code

10. Shipper
N/A

41. City

42. State

43. ZIP Code

14. Dealer
Truly Nolen Pest Control de Caguas

45. City
Bayamón

46. State
PR

47. ZIP Code
00958

RECORDS

18. Original Records
PRDA Dorado Agrological Laboratory

49. Region Copy
N/A

50. Sample Copy
Dorado, PR

51. Sample Delivered To
N/A

52. Date
N/A

53. Bill of Lading Number

54. Credentials Presented

55. Notice of Inspection

56. Receipt for Samples
N/A

57. Sample Cost
\$ N/A C V B

58. Collection Station
Ponce, PR

59. Remarks:
1- Notice of Pesticide Use/Misuse Inspection dated on: 04-15-15.
2- Copy of Detention Order PFP No. 3534 dated 04-15-15 was issued to 5.5 pounds appr. of Meth-O-Gas.
3- Copy of Receipt for Samples dated on: 04-15-15.
4- Copy of Pesticide Use Investigation Report.

60. Inspector's Name
Biol. Jorge L. Maldonado Medina

61. Inspector's Signature
Biol. Jorge L. Maldonado Medina

Exhibit 24



United States

ENVIRONMENTAL PROTECTION AGENCY

Washington, DC 20460

Statement

Office of Enforcement and Compliance Assurance

Yo, Edwin Andujar Bermudez, mayor de edad, vecino de Bayamon, PR y dueño de "Truly Nolen Pest Control" localizada en la Urb. Ninfalores Calle 29 Bbque 16-15 Bayamon, PR declaro voluntariamente ante el Biol. Jorge L. Maldonado Medina (PRDA-EPA Particular Inspector) que el producto comprado a Mand P Pest Control, Inc. fue "Meth-O-Gas Q" (EPA Reg. No. 5785-41) de la compañía Great Lakes. Que la etiqueta suplementaria en español que se me entregó es del producto "Methyl Bromide 100" (EPA Reg. No. 8536-15-8853) de la compañía Hendrix and Davi, Inc.

Name	Edwin Andujar	Title	Dueño Neg
Date	4-15-15	Signature	Edwin Andujar

August 6, 2015

Non Ag Use Inspection
TRULY NOLEN PEST CONTROL DE CAGUAS
Bayamón, Puerto Rico

Re: 04-15-15-10495-01-PR-NS

TRANSLATION OF AFFIDAVIT

Mr. Edwin Andújar Bermúdez says:

I, Edwin Andújar Bermúdez, an adult person, neighbor of Bayamón, PR and owner of Truly Nolen Pest Control, located at "Urb. Miraflores" 29 Street Block 16-15, Bayamón, P.R., voluntary declare in front of Biol. Jorge L. Maldonado Medina (PRDA-EPA Pesticides Inspector) that I bought the product Meht-O-Gas Q (EPA Reg. No. 5785-41) from Great Lakes to M and P Pest Control, Inc. That the Spanish supplemental label they gave me belong to the product Methyl Bromide 100 (EPA Reg. No. 8536-15-8853) from Hendrix and Dail Co., Inc.

I, Biol. Jorge L. Maldonado Medina, certify that this is a complete Translation of the Affidavit done, to the best of my knowledge.

Biol. Jorge L. Maldonado Medina
Name

Biol. Jorge L. Maldonado Medina
Signature

08-07-15

Date

JLMM
08-06-15

Exhibit 25

Copy

M & P Pest Control, Inc.

Ave Jesús T. Piñero 1332 Caparra Terrace

San Juan Puerto Rico 00921

Lic 005

Tel (787) 793-1506 or (787) 783-2608

Fax (787)-783-1749

Bill To: Truly Nolen Caguas

Lic 2029 1994C3161 Exp 02/06/2016 Edwin Andujar

Bloque 16-15 Calle 29 Urb. Miraflores

Bayamon, PR 00957

Item Name	Item Description	Attribute	Size	Qty	Price	Ext Price	Ta
Q-Label Methyl Bromide	Epa Reg No.5785-41	Restrict	50lb	1	\$599.99	\$599.99	T
ECO	ECO PCO ARX Aerosol	ARX	17oz	2	\$11.99	\$23.98	T

Subtotal: \$623.97

TAXES 7 % Tax + \$43.68

RECEIPT TOTAL: \$667.65

Amount Tendered: \$680.00

Change Given: \$12.35

Cash: \$680.00

He recibido de M & P Pest Control, Inc. la etiqueta en español del plaguicida de uso restringido.

Toda Factura sobre 30 dias estara sujeta a 1.5% de intereses



203423