



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
OCT 30 2007 PM 2:41
REGIONAL HEARING
CLERK

OCT 30 2007

OVERNIGHT DELIVERY

Mr. Javier Quiles Torres
Owner
Javier Quiles Farm
Road No. 526 KM 2.4
PO Box 737
Adjuntas, PR 00601

Re: In the Matter of Javier Quiles Farm
Docket No. FIFRA-02-2008-5302

Dear Mr. Quiles:

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

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

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

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

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


Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue 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 settlement and to have 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 an Answer, or extend the thirty (30) days by which you must file an Answer requesting a hearing.

Enclosed are copies of the "Worker Protection Standard," 40 C.F.R. Part 170, the "Consolidated Rules of Practice," 40 C.F.R. Part 22, which govern this proceeding, and the "FIFRA Enforcement Response Policies." For your general information and use, I also enclose both an "Information Sheet for U.S. EPA Small Business Resources" and a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings," which may or may not apply to you.

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

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

Sincerely yours,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk (w/o enclosures)
C. Zayas, PRDA
C. Carmen Oliver Canabal, PRDA

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT 00 PM 2:41
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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In the Matter of: : U.S. EPA Docket No. FIFRA-02-2008-5302
: :
: :
Javier Quiles Torres : :
Javier Quiles Farm : : Complaint and Notice of Opportunity for
Rd. No. 526, Km. 2.4 : : Hearing
Adjuntas, Puerto Rico 00601 : :
: :
Respondent. : : Proceeding Under Section 14(a) of the
: : Federal Insecticide, Fungicide and
: : Rodenticide Act ("FIFRA"), as amended,
: : 7 U.S.C. § 136l(a).
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I. INTRODUCTION

1. This Complaint and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22, a copy of which is attached to this Complaint.
2. Respondent is hereby notified of EPA's determination that Respondent has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §136j(a)(2)(G), and the worker protection regulations at 40 C.F.R. Part 170, a copy of which is attached to this Complaint. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty against any person determined to be in violation of any requirement of FIFRA or EPA's regulations thereunder.
3. The Complainant in this proceeding, the Director of the Division of Enforcement & Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), who has been duly delegated the authority to institute this action, upon information and belief, alleges:

II. COMPLAINT

Findings of Fact and Conclusions of Law

4. Respondent is Javier Quiles Torres, an individual living in the Commonwealth of Puerto Rico.
5. Respondent is a “person” within the meaning of section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to the requirements of FIFRA and the regulations promulgated thereunder, including the Worker Protection Standard (“WPS”) codified at 40 C.F.R. Part 170.
6. At all times pertinent to this Complaint, Respondent has had a possessory interest in and operated a farm known as the Javier Quiles farm, located at Road No. 526, Km 2.4, Adjuntas, Puerto Rico (“Quiles Farm” or “Quiles facility”) for the commercial production of coffee, citrus fruits and plantains.
7. Therefore, Respondent produces and at all times pertinent to this Complaint has produced “agricultural plants” at its Quiles facility, as that term is defined by 40 C.F.R. § 170.3.
8. Respondent engages and at all times pertinent to this Complaint has engaged in the outdoor production of agricultural plants at its Quiles facility.
9. Therefore, Respondent’s Quiles facility is and at all times pertinent to this Complaint has been a “farm,” as that term is defined by 40 C.F.R. § 170.3.
10. Therefore, Respondent’s Quiles facility is and at all times pertinent to this Complaint has been an “agricultural establishment,” as that term is defined by 40 C.F.R. § 170.3.
11. Therefore, Respondent is and at all times pertinent to this Complaint has been an “owner” of an agricultural establishment covered by the regulations at 40 C.F.R. Part 170, as that term is defined by 40 C.F.R. § 170.3.
12. EPA sent a letter to Respondent on June 19, 2007, in order to inquire as to Respondent’s duties as “owner” of the Quiles Farm. In Respondent’s July 2, 2007 response to EPA’s letter, Respondent acknowledged that the duties performed by him as owner of the Quiles Farm are all duties required in agriculture to grow and collect crops.
13. Respondent hires and compensates and at all times pertinent to this Complaint has hired and compensated persons to perform activities related to the production of agricultural plants at the Quiles Farm.
14. Therefore, at all times pertinent to this Complaint Respondent has employed “workers” as that term is defined in 40 C.F.R. §170.3.

15. Therefore, at all times pertinent to this Complaint Respondent has been an “agricultural employer,” as that term is defined by 40 C.F.R. § 170.3.
16. At all times relevant to this Complaint, Respondent has employed persons and compensated them to mix, load, transfer, and apply pesticides, handle opened containers of pesticides, and assist with the application of pesticides.
17. Therefore, Respondent has at all times pertinent to this Complaint employed “handlers” as that term is defined by 40 C.F.R. § 170.3.
18. Therefore, Respondent has at all times pertinent to this Complaint been a “handler employer” as that term is defined by 40 C.F.R. § 170.3.
19. EPA-authorized Puerto Rico Department of Agriculture (“PRDA”) and EPA inspectors visited Respondent’s Quiles facility with the consent of Respondent on April 24, 2006, to inspect it for compliance with the FIFRA statute and implementing regulations.
20. EPA provided a Notice of Pesticides Use/Misuse Inspection, dated April 24, 2006, to Respondent, which identified the reason for the inspection and the violation suspected.
21. At the time of the April 24, 2006 inspection, handlers were present at the Quiles Farm and were applying the pesticide, “Roundup Ultra” (EPA Reg. No. 524-475).
22. At the time of the April 24, 2006 inspection, Respondent acknowledged in a sworn affidavit that he did not keep records of pesticide applications on the Quiles Farm.
23. At the time of the April 24, 2006 inspection, there was no central information area with pesticide safety and emergency medical information for workers and handlers at the Quiles Farm.
24. At the time of the April 24, 2006 inspection, Respondent acknowledged in a sworn affidavit that he did not provide soap or single use (disposable paper) towels in the decontamination area at the Quiles Farm.
25. At the time of the April 24, 2006 inspection, EPA inspector observed a drum of Roundup that appeared to be reused.
26. The pesticides identified below are registered pesticides and have an EPA-accepted label setting forth specific directions regarding their use. The labels for these pesticides in effect at all times relevant to this Complaint require, among other things, compliance with the WPS codified at 40 C.F.R. Part 170.

Honcho (also known as Roundup Original Herbicide), (EPA Reg. No. 524-445)
Amine 6 D (EPA Reg. No. 48273-5)
DMA 6 Weed Killer (EPA Reg. 62719-2A)
Roundup (EPA Reg. No. 524-475)
TEMIK 15 G (EPA Reg. No. 264-330)

27. On June 1, 2006, PRDA issued, and Respondent subsequently received, a Violation Notification (also known as "Notice of Warning") to Respondent for violating FIFRA at the Quiles Farm by using registered pesticides in a manner inconsistent with their labeling. The violations identified involved the application of pesticides without complying with FIFRA and several requirements of the Worker Protection Standard, authorized by 7 U.S.C. § 136w(a)(1) and found at 40 C.F.R. Part 170, which were required to be followed per the label directions. The violations identified included FIFRA § 12(a)(2)(G), 40 C.F.R. §§ 170.120, 170.122, 170.130, 170.135, 170.150, 170.160, 170.222, 170.230, 170.235, 170.250 and 170.260.
28. Authorized EPA inspectors visited Respondent's Quiles facility with the consent of Respondent on August 24, 2006, to inspect it for compliance with the FIFRA statute and implementing regulations.
29. At the time of the August 24, 2006 inspection, Respondent acknowledged in a sworn affidavit that he did not have a pesticide applicator license.
30. At the time of the August 24, 2006 inspection, there were no disposal towels or eyewash available in the decontamination area at the Quiles Farm.
31. At the time of the August 24, 2006 inspection, no safety poster, no emergency medical care information, and no information on pesticide applications were posted in a central location at the Quiles Farm.
32. On August 24, 2006, "workers," within the meaning of 40 C.F.R. §170.3 were present at the facility.
33. Authorized PRDA and EPA inspectors visited Respondent's Quiles Farm with the consent of Respondent on March 14, 2007 (hereinafter "the March 14, 2007 Inspection"), to inspect it for compliance with the FIFRA statute and implementing regulations.
34. EPA provided a Notice of Pesticides Use/Misuse Inspection, dated March 14, 2007, to Respondent, which identified the reason for the inspection and the violation suspected.

35. During the March 14, 2007 Inspection, Respondent stated that he has three (3) full time farm employees who are employed year-round. Respondent also stated that he hires additional employees during the harvest season in addition to his three full time farm employees.
36. During the March 14, 2007 Inspection, Respondent acknowledged in a sworn affidavit that his employees apply herbicides to treat areas as he directs them.
37. During the March 14, 2007 Inspection, “workers,” within the meaning of 40 C.F.R. § 170.3, were present at the Quiles facility.
38. During the March 14, 2007 Inspection, Respondent informed PRDA and EPA inspectors that two (2) workers were “in field” at the time of the inspection.
39. During the March 14, 2007 Inspection, PRDA’s inspector interviewed the two (2) workers who were “in field” at the time of the inspection.
40. During the interview with the two worker employees of Respondent at the March 14, 2007 Inspection, they indicated that they did not know about WPS requirements.
41. On March 13, 2007, the day prior to EPA’s inspection of the Quiles Farm on March 14, 2007, at least one handler, within the meaning of 40 C.F.R.. § 170.3, who was an employee of the Respondent, applied Honcho to the “chironja” plants at the Quiles Farm.
42. “Chironja,” also known as “orangelo,” is a citrus fruit that is a cross between an orange and a grapefruit.
43. The Agricultural Use Requirements on the Honcho label states: “Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms. . . and handlers of agricultural pesticides. It contains requirements for training, decontamination, . . . It also contains specific instructions. . . pertaining to the statements on the label about personal protective equipment (PPE). . . .”
44. FIFRA § 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with their labeling.
45. Failure to follow the WPS requirements and other label requirements in each of the counts below constitutes a separate use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA § 12(a)(2)(G).

**COUNT 1:
FAILURE TO PROVIDE WORKERS WITH SPECIFIC INFORMATION OF
PESTICIDE APPLICATIONS**

46. Paragraphs 1- 45 are incorporated herein by reference.
47. Subpart B of the WPS, which sets standards for workers, requires that when workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a restricted-entry interval (“REI”) has been in effect, the agricultural employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.122.
48. The WPS requires that when workers are on an agricultural establishment, specific information regarding each pesticide application made at the establishment shall be posted; such information shall continue to be displayed for at least 30 days after the end of the application or until the workers are no longer on the establishment. 40 C.F.R. § 170.122.
49. The WPS requires that pesticide application information required under 40 C.F.R. § 170.122 shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s); (c) the time and date the pesticide is to be applied; and (d) the REI for the pesticide. 40 C.F.R. § 170.122(c).
50. On March 13, 2007, Respondent’s handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at the Quiles Farm.
51. During the March 14, 2007 Inspection, two (2) workers were present at the Quiles Farm.
52. During the March 14, 2007 Inspection, PRDA and EPA inspectors observed that the location and description of the treated area, and application time and date that the pesticide, Honcho, was applied were not displayed in a central location where they could be readily seen and read by workers at the Quiles Farm.
53. During the March 14, 2007 Inspection, Respondent acknowledged in a sworn affidavit that he does not display specific information about the pesticides applied on the Quiles Farm.
54. Therefore, Respondent was not displaying specific information to notify workers of pesticide applications, as required by 40 C.F.R. §170.122, regarding the March 13, 2007 application of Honcho to the chironja plants at the Quiles Farm.
55. Respondent’s failure to display specific information concerning the March 13, 2007 application of the pesticide, Honcho, at the Quiles Farm constitutes a violation of 40 C.F.R. § 170.122.

56. Respondent's failure to display specific information concerning the March 13, 2007 application of the pesticide, Honcho, at the Quiles Farm constitutes the use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G).

**COUNTS 2 AND 3:
FAILURE TO ASSURE THAT WORKERS HAVE RECEIVED PESTICIDE SAFETY
TRAINING**

57. Paragraphs 1 through 56 are incorporated herein by reference.
58. Title 40 C.F.R. § 170.130 requires agricultural employers to assure that workers on an agricultural establishment have received pesticide safety training, including general pesticide safety information, before a worker enters any area on an agricultural establishment and, within the last 30 days, a pesticide subject to the WPS has been applied on the establishment or the restricted entry interval ("REI") for such pesticide has been in effect.
59. During the April 24, 2006 Inspection, Respondent acknowledged that workers did not receive any pesticide safety training.
60. During the August 24, 2006 interviews with workers at the Quiles Farm, they stated that they did not receive pesticide safety training.
61. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at the Quiles Farm.
62. On March 14, 2007, two (2) workers were present at the Quiles Farm.
63. During the March 14, 2007 Inspection, Respondent acknowledged in a sworn affidavit that he does not provide pesticide safety training to his workers.
64. During the March 14, 2007 interviews with the two workers at the Quiles Farm, they stated that prior to, and during, employment at the Quiles Farm they had not received any pesticide safety training.
65. Respondent's failure to assure that each worker has been trained constitutes separate violations of the WPS at 40 C.F.R. §170.130.
66. Respondent's failure to assure that each worker has been trained constitutes the use of registered pesticides in a manner inconsistent with its labeling, and are two separate violations of FIFRA §12(a)(2)(G).

COUNT 4:
**FAILURE TO DISPLAY PESTICIDE SAFETY INFORMATION AND
EMERGENCY MEDICAL CARE INFORMATION FOR
WORKERS**

67. Paragraphs 1 through 66 are incorporated herein by reference.
68. When workers are on an agricultural establishment and, within the last 30 days, a pesticide has been applied on the establishment or a restricted entry interval has been in effect, the agricultural employer shall display pesticide safety information, including a pesticide safety poster and emergency medical care information. This information shall be displayed in a central location where it can be readily seen and read by workers. Workers shall be informed of the location of the information and shall be allowed access to it. The information shall remain legible during the time it is posted. 40 C.F.R. § 170.135(a)-(f).
69. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at the Quiles Farm.
70. On March 14, 2007, two (2) workers were present at the Quiles Farm.
71. On March 14, 2007, the PRDA and EPA inspectors observed that Respondent did not display pesticide safety information (concerning the March 13, 2007 application), including a safety poster and emergency medical care information, in a central location where it could be readily seen and read by workers at the Quiles Farm.
72. During the March 14, 2007 inspection, Respondent acknowledged in a sworn affidavit that he does not display pesticide safety information, including a safety poster and emergency medical care information, in a central location at the Quiles Farm.
73. Respondent's failure to display pesticide safety information for workers at the Quiles Farm on March 14, 2007, constitutes a violation of the WPS at 40 C.F.R. §170.135.
74. Respondent's failure to display pesticide safety information for workers at the Quiles Farm on March 14, 2007, constitutes the use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G).

**COUNT 5:
FAILURE TO PROVIDE HANDLERS WITH SPECIFIC INFORMATION OF
PESTICIDE APPLICATIONS**

75. Paragraphs 1- 74 are incorporated herein by reference.
76. Subpart C of the WPS, which sets standards for handlers, requires that when handlers are on an agricultural establishment and, within the last 30 days a pesticide covered by the WPS has been applied on the establishment or an REI has been in effect, the handler employer shall display specific information about the pesticide in accordance with the WPS regulations. 40 C.F.R. § 170.222.
77. The WPS requires that when handlers are on an agricultural establishment during application, specific information regarding each pesticide application shall be posted before the application takes place. Such information shall continue to be displayed for at least 30 days after the end of the application or until the handlers are no longer on the establishment. 40 C.F.R. § 170.222(b)(2) & (3).
78. The WPS requires that pesticide application information required under 40 C.F.R. § 170.222 (c) shall include: (a) the location and description of the treated area; (b) the product name, EPA registration number, and active ingredient(s) of the pesticide; (c) the time and date the pesticide is to be applied; and (d) the REI for the pesticide. 40 C.F.R. § 170.222 (c).
79. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. 524-445, to the chironja plants at the Quiles Farm.
80. During the March 14, 2007 Inspection, Respondent acknowledged in a sworn affidavit that he does not display specific information about the pesticides applied on the Quiles Farm.
81. During the March 14, 2007 Inspection, PRDA and EPA inspectors observed that the location and description of the treated area, and application time and date that the pesticide, Honcho, was applied were not displayed in a central location where they could be readily seen and read by handlers at the Quiles Farm.
82. Therefore, Respondent was not displaying specific information to notify handlers of pesticide applications, as required by 40 C.F.R. §170.222, regarding the March 13, 2007 application of Honcho to the chironja plants at the Quiles Farm.
83. Respondent's failure to display specific information for handlers regarding the application of the pesticide, Honcho, at the Quiles Farm on March 13, 2007, constitutes a violation of 40 C.F.R. §170.222.

84. Respondent's failure to display specific information for handlers regarding the application of Honcho at the Quiles Farm on March 13, 2007, constitutes the use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA § 12(a)(2)(G).

COUNT 6:

FAILURE TO DISPLAY PESTICIDE SAFETY INFORMATION AND EMERGENCY MEDICAL CARE INFORMATION FOR HANDLERS

85. Paragraphs 1 through 84 are incorporated herein by reference.
86. When handlers are on an agricultural establishment and, within the last 30 days, a pesticide has been applied on the establishment or a restricted entry interval has been in effect, the handler employer shall display pesticide safety information, including a pesticide safety poster and emergency medical care information. This information shall be displayed in a central location where it can be readily seen and read by handlers. Handlers shall be informed of the location of the information and shall be allowed access to it. The information shall remain legible during the time it is posted. 40 C.F.R. §170.235(a)-(f).
87. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at the Quiles Farm.
88. During the March 14, 2007 inspection, Respondent acknowledged in a sworn affidavit that he does not display pesticide safety information, including a safety poster and emergency medical care information, in a central location at the Quiles Farm.
89. During the March 14, 2007 Inspection, PRDA and EPA inspectors observed that Respondent did not display pesticide safety information, including a safety poster and emergency medical care information, in a central location where it could be readily seen and read by handlers at the Quiles Farm.
90. Respondent's failure to display pesticide safety information for handlers at the Quiles Farm on March 13, 2007 constitutes a violation of the WPS at 40 C.F.R. §170.235.
91. Respondent's failure to display pesticide safety information, including a safety poster and emergency medical care information in a central location at the Quiles Farm constitutes the use of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA §12(a)(2)(G).

COUNT 7:
FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS

92. Paragraphs 1 through 91 are incorporated herein by reference.
93. The WPS requires handler employers to provide decontamination supplies for handlers to wash off pesticides and pesticide residues during any handling activity. 40 C.F.R. § 170.250(a).
94. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at the Quiles Farm.
95. Handler employers are required to provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. 40 C.F.R. § 170.250(b)(1).
96. The handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle. . .or shall be otherwise immediately available. 40 C.F.R. §170.250(d).
97. The label for the pesticide, Honcho, requires that handlers must wear protective eyewear.
98. During the March 14, 2007 Inspection, PRDA and EPA inspectors did not observe any protective eyewear or eyewash.
99. On March 13, 2007, Respondent failed to make eyeflush water immediately available to each handler who applied Honcho to the chironja plants on the Quiles Farm.
100. Respondent's failure to assure that eyeflush water was immediately available to each handler who applied Honcho to the chironja plants on the Quiles Farm on March 13, 2007 constitutes a violation of the WPS at 40 C.F.R § §170.250(d).
101. Respondent's handlers take two and a half gallons of water in the field for cleaning and drinking when they apply the pesticide Honcho on the chironja plants.
102. Two and a half gallons of water is not enough water for routine washing and emergency eyeflushing and for washing the entire body in case of emergency for handlers who apply pesticides to the chironja plants on the Quiles farm.
103. Handler employers are required to provide handlers with soap and single-use towels in quantities sufficient to meet handler's needs. 40 C.F.R. § 170.250(b)(3).

104. Respondent does not provide its handlers with soap or disposable towels when they go in the field to apply pesticides.
105. Handler employers are required to provide one clean change of clothing, such as coveralls, for use in an emergency. 40 C.F.R. §170.250(b)(4).
106. Respondent does not provide a clean change of clothing , such as coveralls, in case of emergency.
107. The WPS requires that decontamination supplies be located together and be reasonably accessible to and not more than 1/4 mile from each handler during the handler activity. 40 C.F.R. §170.250(c).
108. Respondent has one decontamination area on the Quiles Farm.
109. The decontamination area is a bathroom on the lower level of a house that is situated on the Quiles Farm.
110. On March 14, 2007, EPA's inspector observed that the decontamination area at the Quiles Farm contained a sink, shower, soap and single-use paper towels.
111. The topography of the Quiles farm includes rough, hilly terrain.
112. The chironja plants are located on a field that is approximately a half-hour walk from the decontamination area.
113. The decontamination supplies of water, soap, single-use towels, and clean change of clothing were not reasonably accessible to handlers who applied Honcho on the chironja plants on March 13, 2007 at the Quiles Farm, as required by 40 C.F.R. § 170.250(b) and (c).
114. Respondent's failure to make decontamination supplies of a sufficient amount of water, soap, single-use towels and clean change of clothing reasonably accessible to handlers who applied pesticides on the chironja plants on the Quiles Farm on March 13, 2007, constitutes a violation of the WPS at 40 C.F.R § §170.250(b)(1),(3) & (4) and 170.250(c).
115. At the end of any exposure period, the handler employer shall provide at the site where the handlers remove personal protective equipment ("PPE") soap, clean towels, and a sufficient amount of water so that handlers may wash thoroughly. 40 C.F.R. §170.250(e).
116. During the March 14, 2007 Inspection, two employees of Respondent indicated that they knew where the decontamination area was (in the house) and that there was no other place for changing clothes or cleaning PPE.

117. On March 14, 2007, EPA's inspector observed that the decontamination area at the Quiles Farm did not contain clean towels.
118. On March 13, 2007, Respondent failed to provide its handlers with clean towels at the decontamination site where handlers remove PPE after handling activities, as required by 40 C.F.R. §170.250(e).
119. Respondent's failure to provide its handlers conducting the March 13, 2007 application of Honcho to the chironja plants with clean towels at the decontamination site where handlers remove PPE after handling activities constitutes a violation of 40 C.F.R. §170.250(e).
120. Respondent's failure to provide its handlers conducting the March 13, 2007 application of Honcho to the chironja plants with adequate decontamination supplies in the field or at the site where handlers remove PPE after application constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA §12(a)(2)(G).

COUNT 8:

FAILURE TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT TO HANDLERS

121. Paragraphs 1 through 120 are incorporated herein by reference.
122. The WPS requires that any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment ("PPE") specified on the labeling for use of the product. 40 C.F.R. § 170.240(a).
123. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler. 40 C.F.R. Section 170.240(c).
124. On March 13, 2007, Respondent's handlers applied the pesticide, Honcho, EPA Reg. No. 524-445, to the chironja plants at its facility:
125. The Honcho label states:
"Personal Protective Equipment (PPE)
Applicators and other handlers must wear: long-sleeved shirt and long pants, shoes plus socks, and protective eyewear. . ."

126. During the March 14, 2007 Inspection, Respondent signed a sworn affidavit stating that he does not provide protective eyewear, such as goggles, to his handlers.
127. During the March 14, 2007 Inspection, PRDA and EPA inspectors observed that there were no safety glasses available to handlers at the Quiles Farm.
128. On March 13, 2007, Respondent did not provide its handlers with the appropriate PPE, as required by 40 C.F.R. § 170.240, for the application of Honcho on the Quiles Farm.
129. Respondent's failure to provide its handlers with appropriate PPE, constitutes a violation of WPS at 40 C.F.R. § 170.240, for the March 13, 2007 application of Honcho.
130. Respondent's failure to provide its handlers with appropriate PPE constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA § 12(a)(2)(G).

**COUNT 9:
FAILURE TO FOLLOW PESTICIDE LABEL**

131. Paragraphs 1 through 130 are incorporated herein by reference.
132. The Honcho label states [For Plastic One-Way Containers]: "Do not reuse container. Triple rinse container, then puncture and . . .dispose of in a sanitary landfill . . ."
133. During the August 24, 2006 inspection, EPA's inspector found a two and a half gallon Honcho container that had been reused.
134. During the August 24, 2006 inspection, EPA's inspector found that the container mentioned in paragraph 133, above, had not been rinsed, punctured and disposed of in a landfill.
135. Respondent's reuse of the Honcho container mentioned in paragraph 133, above, and failure to rinse, puncture and dispose of said container violates the specific requirements of the Honcho label and is thus a violation of FIFRA §12(a)(2)(G), which requires use of any registered pesticide in a manner consistent with its labeling.

III. CIVIL PENALTIES

The proposed civil penalty has been determined in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136j (a)(2), which authorizes the assessment of a civil penalty of up to \$1,000 for each violation of FIFRA. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28

U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and regulations promulgated pursuant thereto at 40 C.F.R. Parts 19 and 27, *see* 61 Fed. Reg. 69360 (December 31, 1996); 69 Fed. Reg. 7121 (February 13, 2004), this amount was increased to \$1,200. This amount was revised to \$1,100. *See* Memorandum from Stephanie P. Brown, Acting Director of Toxics and Pesticides Enforcement Division, "Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule," dated June 5, 2006. Complainant derived the proposed penalty by applying the factors enumerated in section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), to the violations alleged in this Complaint. The reasoning for the assessment is explained in detail in the "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), July 2, 1990" and the "Worker Protection Standard Penalty Policy," Interim Final, dated September 1997, copies of which are attached to this Complaint. These policies provide a rational, consistent and equitable calculation methodologies for applying the statutory penalty factors to particular cases.

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

- Count 1:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide workers with specific information of pesticide applications).....\$1,032
- Counts 2 & 3:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide pesticide safety training to workers)....\$1,100 x 2 = \$2,200
- Count 4:** Use of registered pesticides in a manner inconsistent with labeling (Failure to post pesticide safety information and emergency medical care information to workers).....\$1,032
- Count 5:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide handlers with specific information of pesticide applications)\$1,032
- Count 6:** Use of registered pesticides in a manner inconsistent with labeling (Failure to post pesticide safety information and emergency medical care information to handlers).....\$1,032
- Count 7:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide decontamination supplies to handlers).....\$1,032

Count 8: Use of registered pesticides in a manner inconsistent with labeling (Failure to provide PPE to handlers).....\$1,100

Count 9: Use of registered pesticides in a manner inconsistent with labeling (Failure to follow pesticide label-specific disposal requirement).....\$1,032

Total Proposed Civil Penalty.....\$9,500*

*This aggregate penalty amount has been rounded up to the nearest \$100 unit after calculating and summing the gravity-based penalties for each count in this case. See Memorandum from Stephanie P. Brown (dated June 5, 2006), supra.

PROCEDURES GOVERNING THIS ADMINISTRATIVE LITIGATION

The rules of procedure governing this civil administrative litigation have been set forth in 64 Fed. Reg. 40138 (July 23, 1999), entitled, “Consolidated Rules of Practice Governing the Administrative Assessments of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” and are codified at 40 C.F.R. Part 22 (2005). A copy of these rules accompanies this “Complaint and Notice of Opportunity for Hearing” (hereinafter referred to as the “Complaint”).

A. Answering The Complaint

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

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

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

Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. (40 C.F.R. § 22.15(b)) Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. (40

C.F.R. § 22.15(b)) The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), and (3) whether Respondent requests a hearing. (40 C.F.R. § 22.15(b))

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

B. Opportunity To Request A Hearing

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

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

C. Failure To Answer

If Respondent fails in 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); extended to 90 days for this Complaint) 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.

D. Exhaustion Of Administrative Remedies

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

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

INFORMAL SETTLEMENT CONFERENCE

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

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

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

Bruce Aber, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866
(212) 637-3224 (telephone) or (212) 637-3199 (facsimile)

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. (40 C.F.R. § 22.18(b)(1)) Respondent's requesting a formal hearing does not prevent it from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

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

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

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

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

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

certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

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

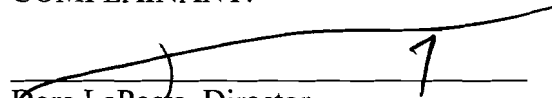
The check shall be identified with a notation of the name and docket number of this case as follows:

In the Matter of Javier Quiles Torres, Docket No. FIFRA 02-2008-5302

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

Dated: OCTOBER 24, 2007
New York, New York

COMPLAINANT:


Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S.E.P.A. – Region 2

TO: Javier Quiles Torres, Owner
The Quiles Farm
Rd. No. 526, Km 2.4
Adjuntas, Puerto Rico 00601

In the Matter of Javier Quiles Torres, Docket No. FIFRA-02-2008-5302

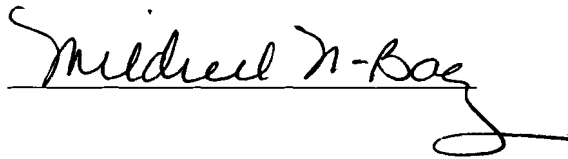
CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be mailed a copy of the foregoing Complaint, bearing docket number FIFRA-02-2008-5302, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2006), by overnight delivery, to:

Mr. Javier Quiles Torres, Owner
The Quiles Farm
Rd. No. 526, Km 2.4
Adjuntas, Puerto Rico 00601

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

Dated: OCT 30, 2007
New York, New York


Mildred N. Boe

ENCLOSURES

Attachment A: Worker Protection Standard, 40 C.F.R. Part 170

Attachment B: Consolidated Rules of Practice, 40 C.F.R. Part 22

Attachment C: FIFRA Enforcement Response Policies

COPY OF THE WORKER PROTECTION STANDARD (40 C.F.R. PART 170)

ATTACHMENT A

ATTACHMENT B

COPY OF THE CONSOLIDATED RULES OF PRACTICE (40 C.F.R. PART 22)

ATTACHMENT C

**COPY OF "ENFORCEMENT RESPONSE POLICY FOR THE FEDERAL
INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA), JULY 2, 1990"
AND "WORKER PROTECTION STANDARDS PENALTY POLICY", INTERIM
FINAL, DATED SEPTEMBER 1997**