



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

SEP 18 2008

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

Agro. Jose A. Ruiz Hernandez, Administrator  
Administracion de Servicios y Desarrollo Agropecuario  
Puerto Rico Department of Agriculture  
Finca Monterrey, HC-33 Buzon  
Dorado, Puerto Rico 00646

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. 2  
2008 SEP 19 PM 12:45  
REGIONAL HEARING  
CLERK

Re: **In the Matter of the Crop Protection Program**  
**Docket No. FIFRA-02-2008-5301**

Dear Administrator Ruiz:

Enclosed is the Complaint and Notice of Opportunity For Hearing, and supporting documents in the above-referenced proceeding. This Complaint alleges violations of Section 12(a)(2)(G) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 136j (a)(2)(G), and the Worker Protection Standard, 40 C.F.R. Part 170.

You have the right to a hearing to contest any of the allegations in the complaint. If you admit any of the allegations, or any are found to be true after you have had an opportunity for a hearing on any of them, you have the right 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, 16<sup>th</sup> Floor  
New York, New York 10007-1866

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

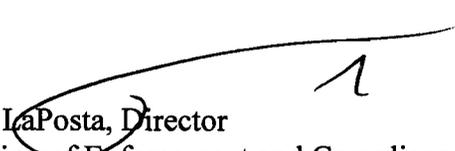
Whether or not you request a formal hearing, you may request an informal conference with EPA to discuss any issue relating to the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement and to have 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 "Consolidated Rules of Practice," which govern this proceeding. 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  
Secretary Gabriel Figuera Herrera, PRDA  
Carlos E. Irizarry Ruiz, CPP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 SEP 19 PM 12:45  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of :  
 :  
 :  
Crop Protection Program, Office of : COMPLAINT AND NOTICE OF  
the Agricultural Servicios and : OPPORTUNITY FOR HEARING  
Development Administracion :  
 :  
 :  
Respondent :  
 : Docket No. FIFRA-02-2008-5301  
Proceeding Under the Federal :  
Insecticide, Fungicide and :  
Rodenticide Act, as amended. :  
-----X

Complainant, as and for her Complaint against Respondent, hereby alleges:

1. This is a civil administrative proceeding instituted pursuant to Section 14 (a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA" or "the Act"), 7 U.S.C. § 1361(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22.
2. The Complainant, Dore LaPosta, Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), has been duly delegated the authority to institute this action.
3. Respondent is the Crop Protection Program ("CPP"), Office of the Agricultural Servicios and Development Administracion ("ASDA"), Puerto Rico Department of Agriculture (hereinafter "Respondent" or "CPP").
4. Respondent's central office is located at Finca Monterrey, HC-33 Buzon 5512, Dorado, Puerto Rico 00646.

5. Respondent is a "person" as defined by FIFRA Section 2(s), 7 U.S.C. § 136(s), and as such, is subject to FIFRA and the regulations promulgated thereunder.
6. Respondent has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. §136j(a)(2)(G), and the Worker Protection Standard ("The WPS") at 40 C.F.R Part 170.
7. Section 14(a) of FIFRA authorizes EPA to assess a civil penalty against any person determined by EPA to be in violation of any requirement of FIFRA or EPA's regulations thereunder.
8. Respondent is a "certified applicator" within the meaning of Section 2(e)(1) of FIFRA, 7 U.S.C. §136(e)(1).
9. Respondent is a "commercial applicator" within the meaning of Section 2(e)(3) of FIFRA, 7 U.S.C. §136(e)(3).
10. Respondent hires and compensates, and at all times pertinent to this Complaint has hired and compensated, persons to mix, load, transfer, and apply pesticides, handle open containers of pesticides and assist with the application of pesticides.
11. Therefore, Respondent employs, and at all times pertinent to this Complaint has employed, a "handler" and is thus a "handler employer" as those terms are defined by 40 C.F.R. §170.3.
12. Respondent performs pesticides application service at farms located throughout Puerto Rico. The owners of said farms are "agricultural employers" in accordance with 40 CFR § 170.3.
13. EPA conducted inspections of the Respondent's central and regional field offices on March 13, 2007 and March 14, 2007, to evaluate the compliance status of Respondent with respect to FIFRA and the WPS provisions, and evaluate application practices, particularly as related to application of restricted use pesticides.
14. On March 23, 2007, EPA issued a referral letter to PRDA pursuant to Section 27(a) of FIFRA. EPA's letter notified PRDA of EPA's determination that the Respondent is in violation of FIFRA, Section 12(a)(2)(G), 7 U.S.C. §136j(a)(2)(G) and of 40 C.F.R. § 170.224, and requested that PRDA take necessary enforcement actions within thirty (30) days of the referral.
15. EPA's March 23, 2007 referral letter to PRDA identified corrective actions that must be performed by Respondent to come into compliance with applicable FIFRA and WPS provisions.

16. EPA also sent a letter to ASDA on March 23, 2007, which alerted ASDA to specific FIFRA and Worker Protection Standard violations committed by Respondent.
17. By letter dated April 18, 2007, ASDA responded to EPA's March 23, 2007 letter, and stated that corrective measures have been implemented to address EPA's concerns.
18. By letter dated April 30, 2007, PRDA responded to EPA's March 23, 2007 referral letter, and stated that, based on the violations found, it would issue an Administrative Civil Complaint against Respondent.
19. EPA issued a letter on June 4, 2007, in response to PRDA's April 30, 2007 letter. EPA's letter stated that it needed to determine whether PRDA's civil Complaint constitutes appropriate enforcement action to address the serious pesticide misuse and WPS violations committed by Respondent. EPA's letter provided several examples of the misuse and WPS violations committed by Respondent.
20. EPA's June 4, 2007 letter further stated that it will determine the appropriateness of the PRDA enforcement action only after it reviews PRDA's Complaint and after compliance monitoring inspections indicate Respondent's full compliance with FIFRA and the WPS.
21. EPA conducted compliance monitoring inspections at Respondent's central and regional offices in August 2007 and again in April 2008. Both inspections revealed that Respondent continued to be in substantial noncompliance with the requirements of FIFRA and the WPS.
22. PRDA provided copies of information required by 40 CFR §170.224 to EPA for the time period January 1, 2008 through March 31, 2008.
23. An authorized EPA inspector inspected the Pinita farm, located at Yabucoa, Puerto Rico on April 15, 2008, to obtain records supplied to the farm by CPP.
24. An authorized EPA inspector inspected the Centro Agricola farm, located in Yabucoa, Puerto Rico on April 15, 2008, to obtain records supplied to the farm by CPP.
25. An authorized EPA inspector inspected the Finca Toa farm, located at Yabucoa, Puerto Rico on April 15, 2008, to obtain records supplied to the farm by CPP.
26. An authorized EPA inspector inspected the Hacienda Del Fina farm, located at Moricao, Puerto Rico on April 15, 2008, to obtain records supplied to the farm by CPP.
27. An authorized EPA inspector inspected the Bananera Fabre farm, located at Sabana Grande, Puerto Rico on April 15, 2008, to obtain records supplied to the farm by CPP.

28. An authorized EPA inspector inspected the PRDA-ASDA Ponce Regional Office, located at Ponce, Puerto Rico on April 15, 2008, to obtain Respondent's application records.
29. An authorized EPA inspector inspected the Miguel La Torres Crespo farm, located at San Sebastian, Puerto Rico on April 16, 2008, to obtain records supplied to the farm by CPP.
30. An authorized EPA inspector inspected the Manuel Borges Martinez farm, located at San Sebastian, Puerto Rico on April 16, 2008, to obtain records supplied to the farm by CPP.
31. An authorized EPA inspector inspected the Estelle La Bonda farm, located in Yabucoa, Puerto Rico on April 16, 2008, to obtain records supplied to the farm by CPP.
32. An authorized EPA inspector inspected the Jose Colon farm, located at Cebro Ariba, Puerto Rico on April 17, 2008, to obtain records supplied to the farm by CPP
33. An authorized EPA inspector inspected the Jose Hernandez farm, located at Las Piedras, Puerto Rico on April 17, 2008, to obtain records supplied to the farm by CPP
34. An authorized EPA inspector inspected the Horatio Ortega farm, located in Narajito, Puerto Rico April 17, 2008, to obtain records supplied to the farm by CPP
35. An authorized EPA inspector inspected the Anibel Nieves Gonzalez farm, located in Narajito, Puerto Rico on April 17, 2008, to obtain records supplied to the farm by CPP
36. By letter of September 5, 2008, EPA notified PRDA that its enforcement action against Respondent did not suffice as "appropriate enforcement action" because it did not address a number of FIFRA and WPS violations identified in EPA letters to PRDA, dated March 23, 2007 and June 4, 2007, and it did not bring about compliance on the part of Respondent.
37. EPA Registration Numbers are composed of an initial number, representing the manufacturer of the product, followed by a dash and a second number, representing the particular product.
38. Each of the pesticides described below is a registered pesticide and each has an EPA-approved label setting forth specific directions regarding its use. The label for each of the following pesticides that was in effect at all times relevant to this Complaint requires, among other things, compliance with the label directions for use:

Gramoxone Max, EPA Reg. No. 100-1074;  
Temik, EPA Reg. No. 264-330;  
Mocap 15%, EPA Reg. No. 264-457;  
Di-Syston 15%, EPA Reg. No. 264-723  
Vydate L, EPA Reg. No. 352-372

Thionex 3EC, EPA Reg. No. 66222-63  
Tilt, EPA Reg. No. 100-617  
Scala, EPA Reg. No. 264-788

39. The EPA-approved labels for each of the registered pesticides in paragraph 38 above, under "Directions for Use," state the following: "It is a violation of Federal law to use this product in a manner inconsistent with its labeling."
40. The EPA-approved labels for each of the registered pesticides in paragraph 38 above, under "Agricultural Use Requirements," state the following: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 C.F.R. Part 170."
41. FIFRA Section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with their labeling.
42. Failures to follow the WPS requirements described in the counts below constitute the uses of a registered pesticide in a manner inconsistent with its labeling and are separate violations of FIFRA Section 12(a)(2)(G).
43. Failures to follow other label requirements described in the counts below constitute the uses of a registered pesticide in a manner inconsistent with its labeling and are separate violations of FIFRA Section 12(a)(2)(G).

**COUNTS 1 - 7:  
PESTICIDE MISUSE - FAILURE TO INCORPORATE**

44. Paragraphs 1- 43 are incorporated herein by reference.
45. The EPA-approved label for Mocap (EPA Reg. No. 264-457), dated September 25, 2006, contains the following four (4) statements: i) Under the heading "Environmental Hazards": "Cover, incorporate or clean up granules that are spilled during loading or are visible on the soil surface in turn areas;" and Under the heading "Directions for Use": ii) "When treating agricultural crops, granules lying on the soil surface in turn areas at row ends must be incorporated to remove possible hazard to birds and other wildlife;" and iii) "Do not apply this product in a way that will contact workers or other persons, either directly or through drift;" and iv) Under the heading "Agricultural Crops Banana and Plantain": "Incorporate into the soil immediately following application by hand-raking to a depth of at least 1 inch."

46. The EPA-approved label for Di-Syston 15% Granular Systemic Insecticide (hereinafter "Di-Syston") (EPA Reg. No. 264-723), dated April 20, 2006, states: Under the heading "Directions for Use": "Product must be either soil incorporated or watered in. Do not allow people or pets to enter until after product is soil incorporated or watered in. . . . Product must be either soil incorporated, watered in or applied to areas with permanent ground cover; and "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."
47. For pesticides that require incorporation upon application, Respondent sometimes provides a letter, called a "Requisito Aplicacion" form, which is signed by a supervisor of the ASDA Brigade (Respondent) and the farm owner (i.e., the agricultural employer). The letter states that "the farm owner personally pledges to assign a person to incorporate the pesticide into the field during the application, in order to comply with the EPA requirements and the instructions on the label."
48. During inspections of the farms in which applications were performed by Respondent, as identified in counts 1 to 7, below, the EPA inspector examined and collected pesticide application records which were supplied by Respondent to the owners of each respective farm prior to the application of pesticides.
49. During EPA's inspection of the Jose Hernandez farm, records of pesticide applications by Respondent were provided by the agricultural employer. The agricultural employer did not provide to EPA any soil incorporation letter from Respondent, called a "Requisito Aplicacion" form, for the Mocap applications on January 8, 2008 and April 7, 2008.
50. During EPA's inspection of the Hacienda Del Fina farm, the agricultural employer provided a sworn statement that Respondent did not provide it with instructions for incorporation or any "Requisito Aplicacion" form for incorporation of the pesticide Di-Syston, which Respondent applied to coffee crops on the Hacienda Del Fina farm on January 8, 2008, March 31, 2008 and April 1, 2008.
51. The agricultural employer of the Hacienda Del Fina farm inspected the coffee plants where the Di-Syston applications were made about 4 or 5 days after the application and observed Di-Syston on the surface near the plants.
52. Photographs of the field on the Hacienda Del Fina farm show that the Di-Syston was not incorporated into the soil or watered-in.
53. During the inspection of the Miguel La Torres Crespo farm, the agricultural employer provided a sworn statement that Respondent did not provide it with instructions for incorporation or any "Requisito Aplicacion" form for incorporation of the pesticide Mocap, which Respondent applied to an area of the farm where Plantain crops were to be planted on January 16, 2008 and January 17, 2008.

54. The agricultural employer at the Miguel La Torres Crespo farm stated the following: i) he dug holes at Respondent's request, before Respondent came to make the applications; and ii) about ten (10) days after application of Mocap on January 17, 2008, he planted plantains and covered the holes.
55. Between January 8, 2008 and April 7, 2008, at the farms listed in the table below, Respondent failed to incorporate pesticides following applications.
56. Each failure to follow label requirements for incorporation, as identified in counts 1 to 7 below, constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA § 12(a)(2)(G).

Count #	Farm	Date of Application	Pesticide/Reg #
1	Jose Hernandez	January 8, 2008	Mocap/264-457
2	Jose Hernandez	April 7, 2008	Mocap/264-457
3	Hacienda Del Fina	January 8, 2008	Di-Syston/264-723
4	Hacienda Del Fina	March 31, 2008	Di-Syston/264-723
5	Hacienda Del Fina	April 1, 2008	Di-Syston/264-723
6	Miguel La Torres Crespo	January 16, 2008	Mocap/264-457
7	Miguel La Torres Crespo	January 17, 2008	Mocap/264-457

**COUNTS 8 - 26:  
PESTICIDES MISUSE - APPLICATION METHOD**

57. Paragraphs 1- 56 are incorporated herein by reference.
58. The label for Mocap (EPA Reg. No. 264-457) states "For application only by tractor-drawn spreader, or by backpack granular spreader for only bananas and plantains...Do not apply by direct hand-held equipment, including measuring containers or spoons."
59. The label for Vydate L (EPA Reg. No. 352-372) states "Apply only with the specially designed VYDATE L spotgun applicator with a coarse spray nozzle".
60. The label for Temik (EPA Reg. No. 264-330) states "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."

61. The labels for Mocap, Vydate L, Temik and Di-Syston each contain a Direction for Use which states: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift."
62. On January 17, 2008, the agricultural employer of the Miguel La Torres Crespo farm observed Respondent applying the pesticide Mocap, by use of "spoons," to the area of the Crespo farm where Plantain crops were to be planted.
63. During EPA's April 15, 2008 inspection at the Pinita farm, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "spoon" to the Pinita farm on April 8, 2008 and April 9, 2008.
64. During EPA's April 17, 2008 inspection at the Horatio Ortega farm, inspectors found Respondent's WPS records indicating that the pesticide Vydate L, had been applied by "manual labor" to the Ortega farm on April 1, 2008.
65. During EPA's April 17, 2008 inspection at the Jose Hernandez farm, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "manual labor" to the Hernandez farm on January 8, 2008.
66. During EPA's April 17, 2008 inspection at the Jose Hernandez farm, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "hand pump" to the Hernandez farm on April 7, 2008.
67. During EPA's April 15, 2008 inspection at the Finca Toa farm, inspectors found Respondent's WPS records indicating that the pesticide Vydate L, had been applied by "manual labor" to the Finca Toa farm on August 12, 2008 and March 31, 2008.
68. During EPA's April 15, 2008 inspection at the Centro Agricola farm, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "spoon" to the Centro Agricola farm on April 14, 2008.
69. During EPA's April 15, 2008 inspection at the Centro Agricola farm, inspectors found Respondent's WPS records indicating that the pesticide Vydate L, had been applied by "manual labor" to the Centro Agricola farm on March 18, 2008.
70. During EPA's April 15, 2008 inspection at the Bananera Fabre farm, inspectors found Respondent's WPS records indicating that the pesticide Temik, had been applied by "spoon" to the Bananera Fabre farm on January 22, 2008.
71. During EPA's April 16, 2008 inspection at the Manuel Borges Martinez farm, inspectors found Respondent's WPS records indicating that the pesticide Di-Syston, had been applied by "spoon" to the Martinez farm on January 10, 2008.

72. During EPA's April 16, 2008 inspection at the Miguel La Torres Crespo farm, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "spoon" to the Crespo farm on January 16, 2008 and January 17, 2008.
73. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Temik, had been applied by "spoon" on January 28, 2008 at the Sucn. Jenaro Pagan Figueroa farm, located in Lajas, Puerto Rico.
74. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Mocap, had been applied by "spoon" on January 30, 2008 at the Edgardo Torres Pacheco farm, located in Bo Guacio, San Sebastian, Puerto Rico.
75. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Temik, had been applied by "spoon" on January 22, 2008 at the Nestali Nieves Ingles farm, located in Anasco, Puerto Rico.
76. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Temik, had been applied by "spoon" on January 31, 2008 at the Eddie Galanza Hernandez farm, located in Anasco, Puerto Rico.
77. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Vydate L, had been applied by a "stationary tank pump" (e.g., Bomba Estaciones) on March 25, 2008 at the Hector Vego Morrero farm, located in Aguirre, Puerto Rico.
78. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Di-Syston, had been applied by "spoon" on March 31, 2008 at the Hacienda Beba, Inc. farm, located in Jayuya, Puerto Rico.
79. The labels for the registered pesticide Mocap, Vydate L, Temik and Di-Syston, each prohibit the methods of application identified in paragraphs 62 through 78, above.
80. Applying the registered pesticides Mocap, Vydate L, Temik and Di-Syston by manual labor, spoon, hand or stationary pump will result in contact with workers or other persons, either directly or through drift.

81. Respondent's methods of application, identified in counts 8 to 26, below, constitute the use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA § 12(a)(2)(G).

<b>Count #</b>	<b>Date of Application</b>	<b>Farm Name</b>	<b>Pesticide/ Reg. #</b>	<b>Method of Application</b>
8	April 8, 2008	Pinita	Mocap/ 264-457	Spoon
9	April 9, 2008	Pinita	Mocap/ 264-457	Spoon
10	April 1, 2008	Horatio Ortega	Vydate L/ 352-372	Manual Labor
11	January 8, 2008	Jose Hernandez	Mocap/ 264-457	Manual Labor
12	April 7, 2008	Jose Hernandez	Mocap/ 264-457	Hand Pump
13	March 31, 2008	Toa	Vydate L/ 352-372	Manual Labor
14	August 12, 2008	Toa	Vydate L/ 352-372	Manual Labor
15	April 14, 2008	Centro Agricola	Mocap/ 264-457	Spoon
16	March 18, 2008	Centro Agricola	Vydate L/ 352-372	Manual Labor
17	January 22, 2008	Bananera Fabre	Temik/ 264-330	Spoon
18	January 10, 2008	Manuel Borges Martinez	Di-Syston/ 264-723	Spoon
19	January 16, 2008	Miguel La Torres Crespo	Mocap/ 264-457	Spoon
20	January 17, 2008	Miguel La Torres Crespo	Mocap/ 264-457	Spoon
21	January 28, 2008	Sucn. Jenaro Pagan Figueroa	Temik/ 264-330	Spoon
22	January 30, 2008	Edgardo Torres Pacheco	Mocap/ 264-457	Spoon

Count #	Date of Application	Farm Name	Pesticide/ Reg. #	Method of Application
23	January 22, 2008	Nestali Nieves Ingles	Temik/ 264-330	Spoon
24	January 31, 2008	Eddie Galanza Hernandez	Temik/ 264-330	Spoon
25	March 25, 2008	Hector Vego Morrero	Vydate L/ 352-372	Stationary Pump
26	March 31, 2008	Hacienda Beba, Inc.	Di-Syston/ 264-723	Spoon

**COUNTS 27 - 36:**

**PESTICIDES MISUSE – PESTICIDE NOT APPROVED FOR USE ON CROP**

82. Paragraphs 1 to 81 are incorporated herein by reference.
83. The label for Gramoxone Max (EPA Reg. No. 100-1074) states that “[s]ince Gramoxone Max is a contact-type herbicide, it is essential to obtain complete coverage of target weeds to get good [weed] control. . . See details below for specific application instructions.” Under “Application Instructions” there is a table listing each crop for which the pesticide Gramoxone Max, has been approved for use.
84. In the Gramoxone Max label, the crop, “plantain,” is not listed as a crop for which the pesticide Gramoxone Max, has been approved for use.
85. The label for Scala (EPA Reg. No. 264-788) indicates that Scala should not be used on any crop not listed on the label and states: “See HOW TO USE directions for a complete list of all crops approved for use.”
86. In the Scala label, the crops, “guineos” (e.g., “banana”) and “platanos” (e.g. “plantain”) are not listed as crops for which the pesticide Scala, has been approved for use.
87. In the label for Temik (EPA Reg. No. 264-330), the crop “aguacatos” (e.g. avocado) is not listed as a crop for which the pesticide Temik, has been approved for use.
88. During EPA’s April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent’s WPS records indicating that the pesticide Gramoxone Max, had been applied to the crop, “platanos” (e.g., plantains), on January 18, 2008, January 25, 2008 and January 31, 2008, at the Wilfred

Ruiz Valyes [sic, Vargas] farm, located at Maricao, Puerto Rico.

89. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Scala, had been applied to the crop, "platanos" (e.g., plantains) on January 11, 2008, at the Evana, Inc. farm, located at Mayaguez, Puerto Rico.
90. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Temik, had been applied to the crop, "aguacatos" (e.g., avocado) on January 28, 2008, at the Sucn. Jenaro Pagan Figueroa farm.
91. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Scala, had been applied to the crop, "guineos" (e.g., banana), on January 25, 2008, at the Jose A. Lopez Perez farm, located in Bo Portillo, Puerto Rico.
92. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Scala, had been applied to the crop, "guineos" (e.g., banana), on January 18, 2008, at the Jesus M. Gonzalez Ramos farm, located in Bo. Yahuecas, Puerto Rico.
93. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Scala, had been applied to the crop, "guineos" (e.g., banana), on January 16, 2008, at the Leon Morales Rivera farm, located in Bo. Portillo, Puerto Rico.
94. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Gramoxone Max, had been applied to the crop, "platanos" (e.g., plantains) on January 31, 2008 at the Angel Gonzales Valazquez farm, located in Moca, Puerto Rico.
95. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating that the pesticide Gramoxone Max, had been applied to the crop, "platanos" (e.g., plantains) on January 15, 2008 at the Evana, Inc. farm, located at Mayaguez, Puerto Rico.
96. Respondent's applications of Gramoxone Max to plantains, Respondent's applications of Scala to platanos and guineos, and Respondent's application of Temik to aguacados, as identified in counts 27 to 36 below, constitute the use of registered pesticides in a manner inconsistent with their labeling and each is a violation of FIFRA § 12(a)(2)(G).

<b>Count#</b>	<b>Farm</b>	<b>Date of Application</b>	<b>Pesticide/Reg#</b>	<b>Target Crop</b>
27	Wilfred Ruiz Vargas	January 18, 2008	Gramoxone Max/100-1074	Platanos (plantain)
28	Sucn. Jenaro Pagan Figueroa	January 28, 2008	Temik/264-330	Aguacados (avocado)
30	Wilfred Ruiz Vargas	January 31, 2008	Gramoxone Max/100-1074	Platanos (plantain)
31	Evana, Inc.	January 11, 2008	Scala/264-788	Platanos (plantain)
32	Jose A. Lopez Perez	January 25, 2008	Scala/264/788	Guineos (banana)
33	Jesus M. Gonzalez	January 18, 2008	Scala/264-788	Guineos (banana)
34	Leon Morales Rivera	January 16, 2008	Scala/264-788	Guineos (banana)
35	Angel Gonzales Valazquez	January 31, 2008	Gramoxone Max/100-1074	Platanos (plantain)
36	Evana, Inc.	January 15, 2008	Gramoxone Max/100-1074	Platanos (plantain)

**COUNT 37 - 46:**

**FAILURE TO PROVIDE NOTICE OF SPECIFIC PESTICIDE INFORMATION FOR AGRICULTURAL EMPLOYERS**

97. Paragraphs 1-96 are incorporated herein by reference.
98. In accordance with one section of the WPS, 40 C.F.R. § 170.224 before, the application of any pesticide on or in an agricultural establishment, the handler employer shall provide specific pesticide information to the agricultural employer for the establishment.
99. The pesticide application information required under 40 C.F.R. § 170.224 must include: (a) the specific location and description of the treated area; (b) the time and date of application; (c) the product name, EPA registration number, and active ingredient(s) of the pesticide; (d) Restricted-Entry Interval; (e) whether posting and oral notification are required; and (f) any other product-specific requirements on the product labeling concerning protection of the workers or other persons during or after the application.
100. The Gramoxone Max label has an "Agricultural Use Requirements" section that states: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 C.F.R. Part 170."

101. During EPA's April 17, 2008 inspection at the Horatio Ortega farm, located in Narajito, Puerto Rico, inspectors found that Respondent did not provide any notice of specific pesticide information to the agricultural employer, Horatio Ortega, concerning its application of Gramoxone Max on February 12, 2008 and February 15, 2008, to the Horatio Ortega farm.
102. For applications in the counts numbered 37 and 38, below, on February 12, 2008 and February 15, 2008, Respondent did not provide any notice of specific pesticide information concerning the application of Gramoxone Max to the agricultural employer, Horatio Ortega, as required by 40 C.F.R. Section 170.224.
103. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating an incorrect EPA registration number was provided to the agricultural employer, Wilfred Ruiz Vargas, concerning the application of Gramoxone Max on January 9, 2008, January 15, 2008, January 18, 2008 and January 25, 2008, to the Wilfred Ruiz Vargas farm, located in Maricao, Puerto Rico
104. For each of the applications of Gramoxone Max, as identified in counts numbered 39 to 42 below, Respondent's WPS Records provided to the agricultural employer lists the EPA Registration Number for Gramoxone Max as "101-074."
105. There is no EPA Registration Number "101-074".
106. The actual EPA Registration Number for Gramoxone Max is 100-1074.
107. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating an incorrect EPA registration number was provided to the agricultural employer, Angel Gonzales Valazquez, concerning the application of Gramoxone Max on January 30, 2008, and January 31, 2008, to the Angel Gonzales Valaquez farm, located in Moca, Puerto Rico.
108. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating an incorrect EPA registration number was provided to the agricultural employer, Alvina Medina Torres, concerning the application of Gramoxone Max on January 17, 2008, to the Alvina Medina Torres farm, located in Lares, Puerto Rico.
109. During EPA's April 15, 2008 inspection at the Puerto Rico Department of Agriculture, ASDA Ponce Regional Office, inspectors found Respondent's WPS records indicating an incorrect EPA registration number was provided to the agricultural employer, Angel A.

Pagan Izquierdo, concerning the application of Gramoxone Max on January 15, 2008, to the Angel A. Pagan Izquierdo farm, located in Angeles, Puerto Rico.

110. For each of the applications of Gramoxone Max, as identified in counts 43 to 46 below, Respondent's WPS Records provided to the agricultural employer list the EPA Registration Number for Gramoxone as "100-617"
111. The EPA Registration Number for the "Tilt" pesticide is 100-617.
112. On each of the dates of applications of Gramoxone Max, as identified in counts numbered 37 to 46 below, Respondent did not provide accurate, specific pesticide information to the agricultural employers, as required by 40 C.F.R. Section 170.224.
113. Respondent's failures to provide notice of specific pesticide information to agricultural employers, as identified in the counts 37 to 46 below, constitute use of a registered pesticide in a manner inconsistent with its labeling.
114. Each failure to provide information specified in 40 CFR 170.224 constitutes the use of registered pesticides in a manner inconsistent with their labeling and each is a violation of FIFRA § 12(a)(2)(G).

<b>Count #</b>	<b>Farm</b>	<b>Date of Application</b>	<b>Pesticide/Reg. #</b>	<b>Violation</b>
37	Horatio Ortega	Feb. 12, 2008	Gramoxone Max/ 100-1074	No WPS Form
38	Horatio Ortega	Feb. 15, 2008	Gramoxone Max/ 100-1074	No WPS Form
39	Wilfred Ruiz Vargas	January 9, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.101-074
40	Wilfred Ruiz Vargas	January 15, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.101-074
41	Wilfred Ruiz Vargas	January 18, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.101-074
42	Wilfred Ruiz Vargas	January 25, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.101-074
43	Angel Gonzales Valazquez	January 30, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.100-617 (Tilt)
44	Angel Gonzales Valazquez	January 31, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.100-617 (Tilt)
45	Alvina Medina Torres	January 17, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg. No.100-617 (Tilt)

46	Angel A. Pagan Izquierdo	January 15, 2008	Gramoxone Max/ 100-1074	Incorrect EPA Reg.No.100-617 (Tilt)
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**PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 14(a)(1) of FIFRA, 7 U.S.C. § 1361 (a), which authorizes the assessment of a civil penalty of up to \$5,000 for each violation of FIFRA and the regulations promulgated pursuant thereto.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 3701, Pub. Law No. 104-34, 110 Stat. 1321 (1996), required EPA to adjust its penalties for inflation on a periodic basis. EPA issued a Civil Monetary Penalty Inflation Adjustment Rule on December 31, 1996, see 61 Fed. Reg. 69360 (1996), and on February 13, 2004, see 69 Fed. Reg. 7121 (2004) codified at 40 C.F.R. Part 19. 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 15, 2006. Complainant derived the proposed penalty by applying the factors enumerated in section 14(a)(4) of FIFRA, 7 U.S.C. Section 1361(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. These policies provide rational, consistent and equitable calculation methodologies for applying the statutory penalty factors to particular cases.

Based on the facts presented above, the gravity of the violations alleged herein, the size of Respondent's business, and Respondent's ability to continue in business in light of the proposed penalty, Complainant proposes, subject to receipt and evaluation of further relevant information, that the Respondent be assessed a civil penalty in the amount of Two Hundred and Sixty Three Thousand Nine Hundred and Eighty Dollars (**\$263,980.00**) for the violations alleged in this Complaint.

Counts 1-7: Use of registered pesticides in a manner inconsistent with labeling (Failure to incorporate).....\$45,500

Counts 8-26: Use of registered pesticides in a manner inconsistent with labeling (Application Method).....\$123,500

Counts 27-36: Use of registered pesticides in a manner inconsistent with labeling (Crop Not Approved For Use).....\$43,400

Counts 37-46 Use of registered pesticides in a manner inconsistent with labeling (WPS Forms).....\$51,580

**TOTAL ASSESSMENT..... \$263,980**

**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 which are codified at 40 C.F.R. Part 22. A copy of these rules accompanies this "Complaint and Notice of Opportunity for Hearing" (hereinafter referred to as the "Complaint").

**A. Answering The Complaint**

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint. (40 C.F.R. § 22.15(a)) While that provision requires that an Answer must be filed within thirty (30) days after service of a Complaint, EPA, Region 2, has administratively extended the deadline for such filing in this proceeding, and Respondent's Answer accordingly must be filed within ninety (90) days of service of the Complaint. 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 thirty (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 ninety (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. (40 C.F.R. § 22.17(a)) Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

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

#### D. Exhaustion of Administrative Remedies

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

In order to appeal an initial decision to the Agency's Environmental Appeals Board [EAB; see 40 C.F.R. § 1.25(e)], Respondent must do so "within 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 document." Note that the forty-five (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 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, 16<sup>th</sup> 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 terminates this administrative litigation and 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 thirty (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 Regional Counsel identified on the previous page. Payment of the penalty assessed should be made by sending a cashier's or certified check made payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint and shall be mailed to

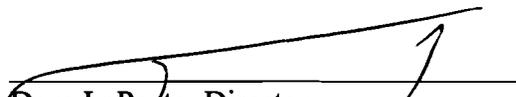
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check shall be identified with a notation of the name and docket number of this case as follows: **IN THE MATTER OF CROP PROTECTION PROGRAM, OFFICE OF AGRICULTURAL SERVICES AND DEVELOPMENT ADMINISTRATION**, Docket Number FIFRA-02-2008-5301.

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

Dated: September 13, 2008  
New York, New York

COMPLAINANT:

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

TO: Agro. Jose A. Ruiz Hernandez, Administrator  
Administracion de Servicios y Desarrollo Agropecuario  
Puerto Rico Department of Agriculture  
Finca Monterrey, HC-33 Buzon  
Dorado, Puerto Rico 00646

In the Matter of Crop Protection Program, Office of Agricultural Servicios and Development  
Administracion, Docket Number FIFRA-02-2008-5301

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Complaint, bearing docket number FIFRA-02-2008-5301, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2005), in the following manner to the respective addressees below:

Original and One Copy

By Hand:

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

Copy by Certified Mail

Return Receipt Requested:

Agro. Jose A. Ruiz Hernandez, Administrator  
Administracion de Servicios y Desarrollo  
Agropecuario  
Puerto Rico Department of Agriculture  
Finca Monterrey, HC-33 Buzon  
Dorado, Puerto Rico 00646

Dated: SEP 19, 2008  
New York, New York

