



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

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 JUN -2 11:11:09  
REGIONAL HEARING  
CLERK

JUN 30 2009

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

Mr. Aurito Gómez López , Owner  
PO Box 1205  
Las Piedras, PR 00771

Re: In the Matter of Finca Aurito Gómez López  
Docket No. FIFRA-02-2009-5301

Dear Mr. Gómez:

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, 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 is a copy of the "Consolidated Rules of Practice, 40 C.F.R. Part 22" which governs this proceeding, as well as the "Worker Protection Standard, 40 C.F.R. Part 170", and "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), July 2, 1990, and the "Worker Protection Standards Penalty Policy," Interim Final, dated September 1997." Additionally, 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)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 JUL -2 AM 11:00  
REGIONAL HEARING  
CLERK

-----X  
In the Matter of: : Docket No:  
: : FIFRA-02-2009-5301  
Aurito Gomez Lopez :  
Finca Aurito Gomez Lopez :  
Carr. 917 KM 2.2 :  
Bo. Montones : COMPLAINT AND NOTICE OF  
Las Piedras, Puerto Rico, : OPPORTUNITY FOR HEARING  
:  
:  
Respondent. : Proceeding Under Section 14(a) of the  
: Federal Insecticide, Fungicide and  
: Rodenticide Act ("FIFRA"), as amended,  
: 7 U.S.C. § 136l(a).  
-----X

**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. § 1361(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Suspension of Permits ("Consolidated Rules of Practice" or "CROP"), 40 C.F.R. Part 22.
2. Respondent is hereby notified of EPA's determination that Respondent has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), and the Worker Protection Standard ("WPS") regulations at 40 C.F.R. Part 170. 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 and 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 Aurito Gómez López, 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 Finca Aurito Gómez López, located at Carr. 917, Km 2.2, Bo. Montones, Las Piedras, Puerto Rico (“Gómez Farm” or “Gómez facility”) for the commercial production of plantains.
7. Therefore, Respondent produces and at all times pertinent to this Complaint has produced “agricultural plants” at his Gómez 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 his Gómez facility.
9. Therefore, Respondent’s Gómez 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 Gómez 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. 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 Gómez Farm.
13. Therefore, at all times pertinent to this Complaint Respondent has employed “workers” as that term is defined in 40 C.F.R. § 170.3.
14. 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.

15. 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.
16. Therefore, Respondent has at all times pertinent to this Complaint employed “handlers” as that term is defined by 40 C.F.R. § 170.3.
17. 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.
18. On August 23, 2007, EPA-authorized Puerto Rico Department of Agriculture (“PRDA”) and EPA inspectors visited Respondent’s Gómez facility with the purpose of conducting an inspection to determine compliance with WPS requirements.
19. During the August 23, 2007 inspection of the Respondent’s Gómez facility, the inspectors found and documented in photographs containers of Restricted Use Pesticides (“RUP”), including: several empty one gallon containers of Vydate L (EPA Reg. No. 352-372) opened and upside down next to plantain plants; an empty container of Gramaxone (EPA Reg. No. 100-1217); and partially filled containers of Vydate L, all on the ground of the farm.
20. The inspectors presented their credentials to Mr. Gómez and explained the purposes of the inspection to him. In addition, they presented Mr. Gómez with an EPA Notice of Pesticide Use/Misuse Inspection (“NOI”) form, which he refused to sign. Upon his refusal to sign the NOI, the inspectors immediately left the Respondent’s Gómez facility.
21. On July 24, 2007, within thirty (30) days prior to EPA’s inspection of the Gomez Farm on August 23, 2007, a commercial applicator, the Office of the Agricultural Services and Development Administration (“ASDA”), applied the pesticide “Mocap” to plantain crops on the Farm.
22. The Agricultural Use Requirements portion of the Mocap label states: “Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 C.F.R Part 170. This Standard contains requirements for the protection of agricultural workers on the 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.
23. Authorized Puerto Rico Department of Agriculture (“PRDA”) inspectors visited Respondent’s Gómez facility with the consent of the Respondent on December 13, 2007, to inspect it for compliance with the FIFRA statute and implementing regulations.

24. At the time of the December 13, 2007 inspection, no safety poster, no emergency medical care information, and no information on pesticide applications were posted in a central location at the Gómez Farm.
25. At the time of the December 13, 2007 inspection, Respondent acknowledged in an interview that he “do[es] not have” pesticide application information or records of pesticide applications.
26. At the time of the December 13, 2007 inspection, Respondent acknowledged in an interview that he “do[es] not have” a safety poster.
27. At the time of the December 13, 2007 inspection, Respondent acknowledged in an interview that he “do[es] not have” emergency [medical care] information.
28. At the time of the December 13, 2007 inspection, Respondent acknowledged in an interview that his agricultural workers and handlers have not received pesticide safety training.
29. During the December 13, 2007 Inspection, Respondent stated that he has five farm employees, including his “hijo” (son).
30. On the Worker Protection Standard Inspection form collected during the December 13, 2007 inspection, the Respondent indicates that he employs 4 workers and 1 family member to perform tasks related to commercial production of agricultural plants.
31. On the Worker Protection Standard Inspection form collected during the December 13, 2007 inspection, the Respondent indicates that his son also is a pesticide handler.
32. During the December 13, 2007 Inspection, Respondent acknowledged in an interview that one of his employees applies pesticides.
33. On November 20, 2007, within thirty (30) days prior to EPA’s inspection of the Gomez Farm on December 13, 2007, a commercial applicator, ASDA, applied the pesticide “Tilt” (EPA Reg. No. 100-617) to plantain crops on the Farm.
34. The Agricultural Use Requirements portion of the Tilt label states: “Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 C.F.R Part 170. This Standard contains requirements for the protection of agricultural workers on the 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.
35. 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.

- Vydate L (EPA Reg. No. 352-372)
- Gramoxone (EPA Reg. No. 100-1217)
- Mocap (EPA Reg. No. 264-457)
- Tilt (EPA Reg. No. 100-617)

36. On January 28, 2008, PRDA issued a Violation Notification (also known as “Notice of Warning”) to Respondent for violating FIFRA at the Gómez Farm by using a registered pesticide, Vydate L, in a manner inconsistent with its labeling. The violations identified involved the application of a pesticide 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. §§ 170.110(a), 170.112(a), 170.120, 170.122, 170.124, 170.130, 170.135, 170.150, 170.160, 170.210, 170.222, 170.235, and 170.250.
37. FIFRA § 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with their labeling.
38. Each failure to follow the WPS requirements and other label requirements in 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).

#### **COUNTS 1 AND 2:**

#### **FAILURE TO PROVIDE WORKERS WITH SPECIFIC INFORMATION OF PESTICIDE APPLICATIONS**

39. Paragraphs 1 through 38 are incorporated herein by reference.
40. 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. Section 170.122.
41. 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. Section 170.122.

42. The WPS requires that pesticide application information required under 40 C.F.R. Section 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. Section 170.122(c).
43. On July 24, 2007, ASDA applied the pesticide, Mocap, EPA Reg. No. 264-457, to the plaintain crop on the Gomez farm.
44. During the August 13, 2007 inspection, at least one worker was present at the Gomez farm.
45. During the August 13, 2007 inspection, PRDA and EPA inspectors observed that there was no display of any specific pesticide application information, no central location where pesticide application information is displayed, no description of the treated area, no indication of application time and date that the pesticide, Mocap, was applied.
46. On November 20, 2007, ASDA applied the pesticide, Tilt, EPA Reg. No. 100-617, to the plaintain crop on the Gomez farm.
47. During the December 13, 2007 inspection, at least one worker was present at the Gomez farm.
48. During the December 13, 2007 inspection, PRDA and EPA inspectors observed that there was no display of any specific pesticide application information, no central location where pesticide application information is displayed, no description of the treated area, no indication of application time and date that the pesticide, Tilt, was applied.
49. During the December 13, 2007 inspection, Respondent acknowledged that he does not display specific information about the pesticides applied on the Gomez farm.
50. During the December 13, 2007 inspection, Respondent acknowledged that he does not have a folder where he files information about pesticides applied on the Gomez farm.
51. During the December 13, 2007 inspection, Respondent acknowledged that he puts the pesticide application records in his pocket and because he sweats so much they are ruined at the end of the day and he throws them in the garbage.
52. Therefore, Respondent was not displaying specific information to notify workers of pesticide applications, as required by 40 CFR Section 170.122 regarding the July 24, 2007 application of Mocap to the plaintains at the Gomez farm.



53. Therefore, Respondent was not displaying specific information to notify workers of pesticide applications, as required by 40 CFR Section 170.122 regarding the November 20, 2007 application of Tilt to the plaintiffs at the Gomez farm.
54. Respondent's failures to display specific information concerning the July 24, 2007 and November 20, 2007 applications of the pesticides Mocap and Tilt, to workers at the Gomez farm, constitute violations of 40 C.F.R. Section 170.122.
55. Respondent's failures to display specific information concerning the July 24, 2007 and November 20, 2007 applications of the pesticides Mocap and Tilt, at the Gomez farm to workers constitute uses of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA Section 12(a)(2)(G).

#### **COUNTS 3 & 4:**

#### **FAILURE TO PROVIDE HANDLERS WITH SPECIFIC INFORMATION OF PESTICIDE APPLICATIONS**

56. Paragraphs 1 through 55 are incorporated herein by reference.
57. 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 a restricted-entry interval ("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. Section 170.222.
58. The WPS requires that when handlers 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 handlers are no longer on the establishment. 40 C.F.R. Section 170.222.
59. The WPS requires that pesticide application information required under 40 C.F.R. Section 170.222 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. Section 170.222(c).
60. On July 24, 2007, ASDA applied the pesticide, Mocap, EPA Reg. No. 264-457, to the plaintiff crop on the Gomez farm.
61. Upon information and belief, during the August 13, 2007 inspection, at least one handler was present at the Gomez farm.

62. During the August 13, 2007 inspection, PRDA and EPA inspectors observed that there was no display of any specific pesticide application information, no central location where pesticide application information is displayed, no description of the treated area, no indication of application time and date that the pesticide, Mocap, was applied.
63. On November 20, 2007, ASDA applied the pesticide, Tilt, EPA Reg. No. 100-617, to the plaintiff crop on the Gomez farm.
64. Upon information and belief, during the December 13, 2007 inspection, at least one handler was present at the Gomez farm.
65. During the December 13, 2007 inspection, PRDA and EPA inspectors observed that there was no display of any specific pesticide application information, no central location where pesticide application information is displayed, no description of the treated area, no indication of application time and date that the pesticide, Tilt, was applied.
66. During the December 13, 2007 inspection, Respondent acknowledged that he does not display specific information about the pesticides applied on the Gomez farm.
67. During the December 13, 2007 inspection, Respondent acknowledged that he does not have a folder where he files information about pesticides applied on the Gomez farm.
68. During the December 13, 2007 inspection, Respondent acknowledged that he puts the pesticide application records in his pocket and because he sweats so much they are ruined at the end of the day and he throws them in the garbage.
69. Therefore, Respondent was not displaying specific information to notify handlers of pesticide applications, as required by 40 CFR Section 170.222, regarding the July 24, 2007 applications of Mocap to the plaintiffs at the Gomez farm.
70. Therefore, Respondent was not displaying specific information to notify handlers of pesticide applications, as required by 40 CFR Section 170.222, regarding the November 20, 2007 application of Tilt to the plaintiffs at the Gomez farm.
71. Respondent's failures to display specific information concerning the July 24, 2007 and November 20, 2007 applications of the pesticides Mocap and Tilt, to handlers at the Gomez farm, constitute violations of 40 C.F.R Section 170.222.
72. Respondent's failures to display specific information concerning the July 24, 2007 and November 20, 2007 applications of the pesticides Mocap and Tilt, at the Gomez farm to handlers constitute uses of a registered pesticide in a manner inconsistent with its labeling, in violation of FIFRA Section 12(a)(2)(G).

**COUNT 5:**

**FAILURE TO ASSURE THAT WORKERS HAVE RECEIVED PESTICIDE SAFETY TRAINING**

73. Paragraphs 1 through 72 are incorporated herein by reference.
74. Title 40 C.F.R. Section 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 thirty (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.
75. On July 24, 2007, the pesticide, Mocap, EPA Reg. No. 264-457, was applied on the Gomez Farm.
76. On November 20, 2007, the pesticide, Tilt, EPA Reg. No. 100-617, was applied on the Gomez Farm.
77. During the August 23, 2007 inspection, at least one worker was present on the Gomez farm.
78. During the December 13, 2007 inspection, at least one worker was present on the Gomez farm.
79. During the December 13, 2007 inspection, Respondent acknowledged that none of his employees (ie., workers and handlers) had received any pesticide safety training.
80. Respondent’s failure to assure that each worker has been trained constitutes a violation of the WPS at 40 C.F.R. Section 170.130.
81. Respondent’s failure to assure that each worker has been trained constitutes the use of registered pesticides in a manner inconsistent with their labeling, and is a violation of FIFRA Section 12(a)(2)(G).

**COUNT 6:**

**FAILURE TO ASSURE THAT HANDLERS HAVE RECEIVED PESTICIDE SAFETY TRAINING**

82. Paragraphs 1 through 81 are incorporated herein by reference.

83. Title 40 C.F.R. Section 170.230 requires that before any handler performs any handling task, the handler employer shall assure that the handler(s) have received pesticide safety training, including general pesticide safety information.
84. On July 24, 2007 and August 23, 2007, at least one handler was present on the Gomez farm.
85. On November 20, 2007 and December 13, 2007, at least one handler employed by the Respondent was present on the Gomez farm.
86. As of the December 13, 2007 inspection, the Respondent has acknowledged employing a handler who has applied, and will continue to apply, pesticides on the Gomez farm.
87. During the December 13, 2007 inspection, Respondent acknowledged that none of his employees (i.e., workers and handlers) had received any pesticide safety training.
88. Respondent's failure to assure that his handler has been trained constitutes a violation of the WPS at 40 C.F.R. Section 170.230.
89. Respondent's failure to assure that his handler has been trained constitutes the use of registered pesticides in a manner inconsistent with its labeling, and is a violation of FIFRA Section 12(a)(2)(G).

#### **COUNTS 7 AND 8:**

#### **FAILURE TO DISPLAY PESTICIDE SAFETY INFORMATION AND EMERGENCY MEDICAL CARE INFORMATION FOR WORKERS**

90. Paragraphs 1 through 89 are incorporated herein by reference.
91. 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. Section 170.135(a)-(f).
92. On July 24, 2007, the pesticide, Mocap, EPA Reg. No. 264-457, was applied on the Gomez Farm.

93. On November 20, 2007, the pesticide, Tilt, EPA Reg. No. 100-617, was applied on the Gomez Farm.
94. During the August 23, 2007 inspection, at least one worker employed by the Respondent was present on the Gomez farm.
95. During the December 13, 2007 inspection, at least one worker employed by the Respondent was present on the Gomez farm.
96. During the December 13, 2007 inspection, Respondent acknowledged that he does 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 workers on the Gomez farm.
97. During the December 13, 2007 inspection, PRDA 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 workers on the Gomez farm.
98. Respondent's failures to display pesticide safety information for workers at the Gomez Farm on August 23, 2007 and December 13, 2007 constitute violations of the WPS at 40 CFR Section 170.135.
99. Respondent's failures to display pesticide safety information, including a safety poster and emergency medical care information in a central location at the Gomez Farm constitute the uses of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

#### **COUNTS 9 AND 10:**

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

100. Paragraphs 1 through 99 are incorporated herein by reference.
101. 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. Section 170.235(a)-(f).

102. On July 24, 2007, the pesticide, Mocap, EPA Reg. No. 264-457, was applied on the Gomez Farm.
103. On November 20, 2007, the pesticide, Tilt, EPA Reg. No. 100-617, was applied on the Gomez Farm.
104. Upon information and belief, during the August 23, 2007 inspection, at least one handler employed by Respondent was present at the Gomez farm.
105. Upon information and belief, during the December 13, 2007 inspection, at least one handler employed by Respondent was present at the Gomez farm.
106. During the December 13, 2007 inspection, Respondent acknowledged that he does 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 on the Gomez farm.
107. During the December 13, 2007 inspection, PRDA 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 on the Gomez farm.
108. Respondent's failures to display pesticide safety information for handlers at the Gomez Farm on August 23, 2007 and November 20, 2007 constitute violations of the WPS at 40 CFR Section 170.235
109. Respondent's failures to display pesticide safety information, including a safety poster and emergency medical care information in a central location at the Gomez Farm constitutes the uses of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

#### **COUNTS 11 and 12:**

#### **FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO WORKERS**

110. Paragraphs 1 through 109 are incorporated herein by reference.
111. The WPS requires agricultural employers to provide decontamination supplies for workers to wash off pesticides and pesticide residues during their performance of any activity within thirty (30) days of a pesticide application. 40 C.F.R. Section 170.150(a) & (b).

112. On July 24, 2007, the pesticide, Mocap, EPA Reg. No. 264-457, was applied on the Gomez Farm.
113. On November 20, 2007, the pesticide, Tilt, EPA Reg. No. 100-617, was applied on the Gomez Farm.
114. During the August 23, 2007 inspection, at least one worker was present at the Gomez farm.
115. During the December 13, 2007 inspection, at least one worker was present at the Gomez farm.
116. Agricultural employers are required to provide workers with enough water for routine washing and emergency eyeflushing. 40 C.F.R. Section 170.150(b)(1)&(4).
117. Agricultural employers are required to provide workers with soap and single-use towels in quantities sufficient to meet workers needs. 40 C.F.R Section 170.150(b)(3)
118. During the December 13, 2007 inspection, Respondent acknowledged that he does not have a decontamination site on the farm for workers.
119. During the December 13, 2007 inspection, Respondent stated that there was a river nearby and if anything happens the workers could wash themselves in it.
120. 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 workers constitutes a violation of WPS at 40 CFR Sections 170.150(b)(1),(3), & (4) and 170.150(c).
121. Respondent's failure to provide its workers with adequate decontamination supplies in the field constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

#### **COUNTS 13 and 14:**

#### **FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO HANDLERS**

122. Paragraphs 1 through 121 are incorporated herein by reference.
123. 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. Section 170.250(a) & (b).
124. On July 24, 2007, the pesticide, Mocap, EPA Reg. No. 264-457, was applied by handler(s) on the Gomez Farm.

125. On November 20, 2007, the pesticide, Tilt, EPA Reg. No. 100-617, was applied by handler(s) on the Gomez Farm.
126. 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. Section 170.250(b)(1).
127. 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. Section 170.250(d).
128. The label for the pesticide Mocap, requires that the handlers must wear protective eyewear.
129. The label for the pesticide Tilt requires that the handlers must wear protective eyewear.
130. During the August 23, 2007 and December 13, 2007 inspections, PRDA and EPA inspectors did not observe any protective eyewear or eyewash.
131. Respondent's failures to assure that eyeflush water was immediately available to each handler on the Gomez farm on the dates of application constitutes violations of WPS at 40 C.F.R. Section 170.250(d).
132. Handler employers are required to provide handlers with soap and single-use towels in quantities sufficient to meet handlers' needs. 40 C.F.R. Section 170.250(b)(3).
133. During the December 13, 2007 inspection, Respondent acknowledged that he does not provide any decontamination supplies, such as water, soap and single use towels, to his handlers when they go in the field to apply pesticides.
134. During the December 13, 2007 inspection, Respondent acknowledged that he does not have a decontamination site on the farm for handlers.
135. Handler employers are required to provide one clean change of clothing, such as coveralls, for use in an emergency. 40 C.F.R. Section 170.250(b)(4).
136. Respondent does not provide a clean change of clothing, such as coveralls, in case of emergency.
137. Respondent's failures to make decontamination supplies of a sufficient amount of water, soap, single-use towels and clean change of clothing reasonably accessible to handlers constitute violations of WPS at 40 CFR Sections 170.250(b)(1),(3), & (4) and 170.250(c).



138. Respondent's failures to provide its handlers with adequate decontamination supplies in the field constitutes the use of a registered pesticide in a manner inconsistent with its labeling in violation of FIFRA Section 12(a)(2)(G).

**COUNT 15:  
FAILURE TO FOLLOW PESTICIDE LABEL**

139. Paragraphs 1 through 138 are incorporated herein by reference.

140. The Vydate L label requires all empty plastic containers to be triple rinsed, then offered for recycling or reconditioning, or punctured and disposed of in a sanitary landfill.

141. During the August 23, 2007 inspection, EPA's inspector found empty or partially filled plastic containers of Vydate L that had been discarded but had not been rinsed, and had not been offered for recycling, or punctured and disposed of in a sanitary landfill.

142. Respondent's failure to properly dispose of the empty or partially filled Vydate L containers violates the specific requirements of the Vydate L 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.

**COUNT 16:  
FAILURE TO FOLLOW PESTICIDE LABEL**

143. Paragraphs 1 through 142 are incorporated herein by reference.

144. The Gramoxone label requires all empty plastic containers to be triple rinsed, then offered for recycling or reconditioning, or punctured and disposed of in a sanitary landfill.

145. During the August 23, 2007 inspection, EPA's inspector found an empty plastic container of Gramoxone that had been discarded but had not been rinsed, and had not been offered for recycling, or punctured and disposed of in a sanitary landfill.

146. Respondent's failure to properly dispose of the empty Gramoxone container violates the specific requirements of the Gramoxone 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.

**COUNT 17:**

**FAILURE TO FOLLOW PESTICIDE LABEL**

147. Paragraphs 1 through 146 are incorporated herein by reference.
148. The Vydate L label specifies an application rate of 5 to 10 ml undiluted per plant, only with the specially designed Vydate L spotgun applicator with a coarse spray nozzle.
149. During the August 23, 2007 inspection, EPA's inspector found one gallon plastic containers (uncapped) of Vydate L upside down at the bases of several plants and/or trees.
150. Respondent's failure to apply Vydate L according to the specific directions on the product label violates the specific requirements of the Vydate L 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.

**II. PROPOSED CIVIL PENALTY**

The proposed civil penalty has been determined in accordance with Section 14(a)(2) of FIFRA, 7 U.S.C. § 136l(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. 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:

**Counts 1 and 2:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide workers with specific information of pesticide applications).....\$1,100 x 2 applications equals \$2,200

**Counts 3 and 4:** Use of registered pesticides in a manner inconsistent with labeling (Failure to provide handlers with specific information of pesticide applications).....\$1,100 x 2 applications equals \$2,200

**Count 5:** Use of registered pesticides in a manner inconsistent with labeling (Failure to assure that workers have received pesticide safety training) .....\$1,100

**Count 6:** Use of registered pesticides in a manner inconsistent with labeling (Failure to assure that handlers have received pesticide safety training) .....\$1,100

**Counts 7 and 8:** Use of registered pesticide in a manner inconsistent with labeling (Failure to display pesticide safety information and emergency medical care information for workers).....\$1,100 x 2 applications equals \$2,200

**Counts 9 and 10:** Use of registered pesticide in a manner inconsistent with labeling (Failure to display pesticide safety information and emergency medical care information for handlers).....\$1,100 x 2 applications equals \$2,200

**Counts 11 and 12:** Use of registered pesticide in a manner inconsistent with labeling (Failure to provide decontamination supplies to workers).....\$1,100 x 2 applications equals \$2,200

**Counts 13 and 14:** Use of registered pesticide in a manner inconsistent with labeling (Failure to provide decontamination supplies to handlers). .....\$1,100 x 2 applications equals \$2,200

**Counts 15 through 17:** Use of registered pesticides in a manner inconsistent with labeling (Failure to follow pesticide label-specific requirement).....\$1,100 x 3 = \$3,300

**Total Proposed Civil Penalty.....\$18,700**

## 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. 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, 16<sup>th</sup> Floor  
New York, N.Y. 10007-1866  
(212) 637-3224 (telephone)  
(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 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:

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 Aurito Gómez López , Docket No. FIFRA-02-2009-5301

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: JUNE 30, 2009  
New York, New York

COMPLAINANT:

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

TO: Aurito Gómez López , Owner  
Finca Aurito Gómez López  
P.O. Box 1205  
Las Piedras, PR 00771



In the Matter of Aurito Gómez López , Docket No. FIFRA-02-2009-5301

CERTIFICATE OF SERVICE

This is to certify that I have this day caused to be sent the foregoing Complaint, bearing docket number FIFRA-02-2009-5301, and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22 (2008), in the following manner to the respective addressees below:

Original and One Copy

By Hand:

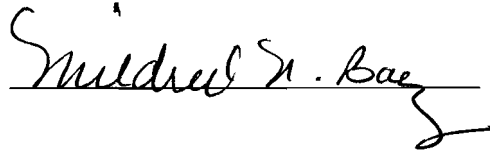
The Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency-Region 2  
290 Broadway, Rm. 1631  
New York, N.Y. 10007-1866

Copy by Certified Mail

Return Receipt Requested:

Aurito Gómez López , Owner  
Finca Gómez López  
P.O. Box 1205  
Las Piedras, PR 00771

Dated JUL - 2, 2009  
New York, New York

  
Mercedes N. Bae