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**BY FEDEX**

**Stephen J. Darmody**

February 11, 2010

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Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

Re: Docket No. FIFRA-04-2010-3002,  
Alleged Violations of the Federal Insecticide, Fungicide, and Rodenticide Act

Dear Sir or Madam:

I represent the Respondent, Agrimor Int'l Co., in this matter. Enclosed please find for filing in this matter my client's Answer and Defenses to the Amended Complaint.

Respectfully submitted,

  
Stephen J. Darmody

SJD/gmr

Enclosure

Copy: Robert Caplan, Esq., U.S. EPA, Region 4 (by FEDEX)  
Mr. Mark Bloeth, U.S. EPA, Region 4 (by FEDEX)

Geneva  
Houston  
Kansas City  
London  
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San Francisco  
Tampa  
Washington, D.C.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

In the Matter of: )

Agrimor Int'l Co., )

) Docket No. FIFRA-04-2010-3002

) ANSWER AND DEFENSES TO  
) FIRST AMENDED COMPLAINT

HEARING CLERK

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**AGRIMOR'S ANSWER AND DEFENSES  
TO THE EPA'S FIRST AMENDED CIVIL COMPLAINT**

Respondent, Agrimor Int'l Co. ("Agrimor") hereby serves its Answer and Defenses to the First Amended Civil Complaint filed by the Director of Air, Pesticides and Toxics Management, U.S. Environmental Protection Agency, Region 4 ("EPA").

**Answer**

**A. Jurisdiction**

1. Admit.
2. Admit.
3. Agrimor is without sufficient knowledge and therefore denies the allegation.
4. Admit.
5. Admit.
6. The Complaint speaks for itself. To the extent this allegation requires a response, Agrimor is without sufficient knowledge and therefore denies the allegation.

LAW OFFICES  
**SHOOK, HARDY & BACON LLP**  
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## **B. Statutory and Regulatory Authority**

7. Agrimor reasserts its responses to each allegation set forth in paragraphs 1 through 6, as if fully set forth above.

8. Agrimor admits that the term person is defined in section 2(s) of the Federal Insecticide Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136(s); the statute speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

9. Agrimor admits that the term pesticide is defined in section 2(u) of FIFRA, 7 U.S.C. § 136(u); the statute speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

10. Agrimor admits that the term pest is defined in section 2(t) of FIFRA, 7 U.S.C. § 136(t); the statute speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

11. Agrimor admits that section 17 of FIFRA, 7 U.S.C. § 136*o* and the regulations prescribed thereunder discuss the importation and exportation of pesticides into the United States; the statute and regulations speak for themselves. To the extent this allegation is intended to mean that the activities involved in this matter involve the importation of pesticides into the United States as defined by sections 17(c) and 17(e) of

FIFRA, that those statutory sections are the only sections governing the importation or exportation of pesticides into or out of the United States, or that they proscribe the activities involved in this matter, the allegation is denied.

12. Section 17(c) of FIFRA, 7 U.S.C. § 136o(c) speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

13. Section 17(e) of FIFRA, 7 U.S.C. § 136o(e) speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

14. Agrimor is without sufficient knowledge and therefore denies the allegation.

15. 19 C.F.R. § 12.112(a) speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

16. Deny.

17. Deny.

18. Section 12(a)(2)(N) of FIFRA, 7 U.S.C. 136j(a)(2)(N), speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

19. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

20. Agrimor admits that the term “To distribute or sell” is defined in section 2(gg) of FIFRA, 7 U.S.C. § 136(gg); the statute speaks for itself; the remainder of this allegation is a legal conclusion that does not require a response. To the extent that a response is required, the allegation is denied.

### **C. Factual Allegations**

21. Agrimor reasserts its responses to each allegation set forth in paragraphs 1 through 20, as if fully set forth above.

22. Agrimor is without sufficient knowledge and therefore denies the allegation.

23. Agrimor is without sufficient knowledge and therefore denies the allegation.

24. Agrimor is without sufficient knowledge and therefore denies the allegation.

25. Agrimor is without sufficient knowledge and therefore denies the allegation.

26. Agrimor is without sufficient knowledge and therefore denies the allegation.

27. Agrimor is without sufficient knowledge and therefore denies the allegation.

28. Agrimor is without sufficient knowledge and therefore denies the allegation.

29. Agrimor is without sufficient knowledge and therefore denies the allegation.

30. Agrimor is without sufficient knowledge and therefore denies the allegation.

31. Agrimor is without sufficient knowledge and therefore denies the allegation.

32. Agrimor is without sufficient knowledge and therefore denies the allegation.

33. Agrimor is without sufficient knowledge and therefore denies the allegation.

34. Agrimor is without sufficient knowledge and therefore denies the allegation.

35. Agrimor is without sufficient knowledge and therefore denies the allegation.

**D. Allegations of Violations: Counts 1 – 11.**

36. Agrimor reasserts its responses to each allegation set forth in paragraphs 1 through 35, as if fully set forth above.

37. Deny.

38. Deny.

39. Deny.

40. Deny.

**E. Allegations of Violations: Counts 12-22.**

41. Agrimor reasserts its responses to each allegation set forth in paragraphs 1 through 40, as if fully set forth above.

42. Deny.

43. Deny.

F. **Proposed Penalty** -- Agrimor denies that FIFRA provides the EPA with the authority to assess any civil penalty based upon the facts alleged in this matter.

G. **Appropriateness of Penalty** – Agrimor denies that it is a Category 1 business under the Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act; Agrimor also denies that it has the ability to pay any penalty assessed by the EPA.

## II. NOTICE OF OPPORTUNITY FOR HEARING

A. **Answer and Request for Hearing** – Agrimor requests a formal hearing in this matter to contest: the facts alleged by the EPA; the EPA’s interpretation of the governing law; the lawfulness of assessing a penalty based upon the facts alleged; and the appropriateness of the EPA’s proposed penalty.

### Agrimor’s Defenses

#### First Defense

The first amended complaint fails to state a claim upon which relief can be granted.

#### Second Defense

Neither FIFRA nor FIFRA in combination with its implementing regulations is sufficiently clear to provide the public with fair warning that the conduct alleged in the amended complaint is unlawful; therefore, the assessment of a penalty based upon the EPA’s allegations would deprive Agrimor of the due process of law.

#### Third Defense

None of the chemicals allegedly identified in the complaint were imported into the United States by Agrimor, as the term “import” is defined in FIFRA.



#### Fourth Defense

Because none of the chemicals identified in the EPA's allegations were imported into the United States for use as a pesticide in the United States, no notice of arrival was required under the governing regulations.

#### Fifth Defense

Because the chemicals identified in the allegations of the complaint were not manufactured in the United States and were intended solely for export to Honduras, they may not be deemed in violation of FIFRA unless, when exported, they do not comply with the requirements of FIFRA section 2o(a). The complaint includes no such allegation.

#### Sixth Defense

The EPA unlawfully seeks multiple penalties for each alleged act.

#### Seventh Defense

The EPA unlawfully seeks to impose an excessive penalty because Agrimor is not a Category 1 business under the EPA's enforcement policy.

#### Eighth Defense

The EPA unlawfully seeks to impose an excessive penalty because Agrimor does not have the ability to pay the proposed penalty.

WHEREFORE, Agrimor respectfully requests that the complaint be dismissed with prejudice, that no penalty be assessed against Agrimor, that Agrimor be awarded the costs it incurred in connection with this action, and that the Court award such other and further relief as may be appropriate.

Respectfully submitted,

**SHOOK, HARDY & BACON L.L.P**

*Counsel for Agrimor Int'l Co.*

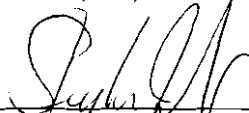
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By: 


Stephen J. Darmody

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing motion for enlargement of time was served by FEDEX this 11<sup>th</sup> day of February 2010, to: Regional Hearing Clerk, U.S. EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303; Robert Caplan, Esq., Senior Attorney, U.S. EPA, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303; Mr. Mark Bloeth, Enforcement Officer, U.S. EPA, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303.

  
Counsel