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*Attorneys for The GEO Group, Inc.*

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
SAN FRANCISCO, CALIFORNIA**

In the Matter of: )  
)  
The GEO Group, Inc., )  
)  
)  
)  
)  
Respondent. )

Docket No. FIFRA-09-2024-0066  
**ANSWER TO COMPLAINT AND  
REQUEST FOR HEARING**

Respondent, GEO Group, Inc. (“Respondent”), hereby responds to the Amended Complaint and Notice of Opportunity for Hearing (“Complaint”) issued by the United States Environmental Protection Agency Region IX (“Complainant” or “EPA Region IX”) and makes its request for hearing.

The numbered Paragraphs of this Answer correspond to the numbered Paragraphs of the Complaint. Respondent denies any and all allegations of the Complaint served by EPA Region IX, whether express or implied, that are not specifically admitted, qualified, or denied by this Answer. The headings included in this Answer are quoted for consistency and ease of reference only and any allegations in the headings are specifically denied.

I. APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. Paragraph 1 purports to characterize Section 2(s) of FIFRA, which speaks for itself and is the best evidence of its contents.
2. Paragraph 2 purports to characterize Section 2(t) of FIFRA, which speaks for itself and is the best evidence of its contents.
3. Paragraph 3 purports to characterize Section 2(u) of FIFRA, which speaks for itself and is the best evidence of its contents.
4. Paragraph 4 purports to characterize Section 2(ee) of FIFRA, which speaks for itself and is the best evidence of its contents.
5. Paragraph 5 purports to characterize Section 2(p)(1) of FIFRA, which speaks for itself and is the best evidence of its contents.
6. Paragraph 6 purports to characterize Section 2(p)(2)(A) of FIFRA, which speaks for itself and is the best evidence of its contents.
7. Paragraph 7 purports to characterize Section 12(a)(2)(G) of FIFRA, which speaks for itself and is the best evidence of its contents.

II. ALLEGATIONS

8. Respondent incorporates by reference all the responses set forth in paragraphs 1 through 7 as though fully set forth herein.
9. Admitted.
10. Admitted.
11. Denied as to the characterization of the duration, time, or frequency of application using the product Halt. Overbroad and therefore denied as to the locations to which

HALT was applied. Admitted that Halt was applied by Respondent's employees at the Facility.

12. Admitted.

13. The HALT label speaks for itself and is the best evidence of its contents.

COUNTS 1-1137: Use of registered pesticide in a manner inconsistent with its labeling

14. Respondent incorporates by reference all the responses set forth in paragraphs 1 through 13 as though fully set forth herein.

15. Admitted that "Life Guard Nitrile Exam Gloves" were used at the Facility, but otherwise denied.

16. Without knowledge or information sufficient to form a belief, therefore denied.

17. The labeling of the box/package of "Life Guard Nitrile Exam Gloves" speaks for itself and is the best evidence of its contents.

18. The labeling of the box/package of "Life Guard Nitrile Exam Gloves" speaks for itself and is the best evidence of its contents.

19. Denied.

20. Denied.

21. Denied.

22. Paragraph 22 purports to characterize Section 2(a)(2)(G) of FIFRA, which speaks for itself and is the best evidence of its contents. Otherwise, denied.

23. The Notice of Warning speaks for itself and is the best evidence of its contents.

THE CIRCUMSTANCES OR ARGUMENTS THAT CONSTITUTE GROUNDS OF  
DEFENSE AND FOR OPPOSING THE PROPOSED PENALTY

To the extent a response is deemed necessary, Respondent denies that Complainant is entitled to any recovery in this action. Furthermore, Respondent asserts that the Complainant has calculated the penalty in a manner that violates the statute, EPA regulations, and policy. As provided in 40 CFR 22.15(a-b), Respondent contests material facts upon which the Complaint is based. The facts disputed by Respondent are all facts denied herein. Respondent contends that HALT was applied in a manner consistent with its label at all times and locations and contends that Life Guard Nitrile Exam gloves are chemically resistant. To the extent that the allegations in the Complaint require the interpretation of applicable statutory provisions, the Complainants' interpretations are to be afforded no deference based upon the law set out in the decision of the Supreme Court of the United States in *Loper Bright Enterprises et al. v. Raimondo*, Case No. 22-451.

OSHA recognizes that rubber gloves, which include nitrile rubber gloves such as those at issue in this matter, are considered chemically resistant. *See* OSHA Personal Protective Equipment (PPE), at 24 (“Chemical-resistant gloves are made with different kinds of rubber: natural, butyl, neoprene, nitrile and fluorocarbon...”; available at <https://www.osha.gov/sites/default/files/publications/osha3151.pdf>). USEPA environmental regulations also reference nitrile gloves as chemically resistant. *See* 40 CFR 156.212(f)(1) (describing chemical resistant gloves as including nitrile, butyl, neoprene, etc.). All gloves used at the Facility are nitrile gloves. In sum, nitrile gloves are entirely satisfactory protection for the hands.

Nitrile gloves are not only satisfactory protection but are especially protective when used in accordance with GEO's instructions to its employees. The Facility's employees

use HALT in the following manner. HALT is significantly diluted, in accordance with instructions for use, to 2 ounces of HALT per gallon of water. While wearing nitrile gloves and other personal protective equipment including safety glasses, employees apply this highly diluted mixture through a coarse trigger spray device onto the surfaces to be cleaned. After waiting 10 minutes, the employee uses a cloth towel to wipe up any HALT that has not dried. In this manner, the employee's hands wearing the gloves do not make contact with HALT. Further, a Facility safety poster on sanitation products advises employees not to spray sanitation products on the skin. Assuming the employee's gloved hands ever come in contact with HALT, the contact is incidental and well short of the breakthrough time of HALT for Lifeguard Nitrile Exam Gloves.

USEPA's position in the Complaint appears to heavily rely on a statement contained on a box of nitrile gloves that the gloves are "Not intended for use as a general chemical barrier." Such a statement only recognizes that, for *some* chemicals not present in HALT, nitrile will not act as an effective "general" barrier. *See, e.g.*, OSHA PPE, at 26-29 (identifying nitrile as not recommended with acetone, aniline, butyl acetate, etc.). The gloves provide protection, however, from HALT and its constituent chemicals. According to the manufacturer's website, Lifeguard Nitrile Exam Gloves provide "Excellent Chemical and Puncture Resistance." OSHA's guidance on PPE also recognizes that rubber gloves, including nitrile rubber gloves, provide chemical resistant protection, as noted above. Also, EPA's Label Review Manual recognizes that water-based formulations do not even require chemical resistant gloves. *See* Label Review Manual at 10-8 ("Products in solvent category A (i.e., those with dry or water-based formulations) DO NOT require chemical-resistant gloves."). Moreover, use of the gloves in the manner indicated above is not using the

gloves as a chemical barrier.

Although Respondent denies any violation of FIFRA, it also contests the proposed penalty. The statutory factors in Section 14(a)(4), 7 U.S.C. s. 136l(a)(4), do not justify imposition of the statutory maximum penalty under these circumstances, and Respondent reserves its right to contest the application of the civil monetary inflation adjustment in 40 CFR 19.4. Respondent also opposes the proposed relief on other grounds, including that EPA lacks sufficient evidence of the frequency of use of Life Guard Nitrile Exam Gloves with HALT. Lifeguard Nitrile Exam Gloves compose only a fraction of gloves used at the Facility. The Facility uses nitrile gloves for many purposes, of which use as protective equipment with HALT is only one, relatively infrequent, use. The Facility procures many different types of nitrile gloves from many different sources for these various purposes. Determining which gloves were used for applying HALT is not reasonably possible.

#### ADDITIONAL DEFENSES

In addition to the above defenses to the alleged violation and opposition to the proposed penalty, Respondent raises the following additional defenses. First, EPA cannot compel respondent to defend Complainant's claims in a Hearing before a Presiding Officer, in this case an Administrative Law Judge (ALJ), and Environmental Appeals Board, as these terms are defined in 40 CFR 22.3, rather than before a jury in federal court. Defending such claims abridges Respondent's rights under the Seventh Amendment to the U.S. Constitution to a trial by jury. *See Securities and Exchange Commission v. Jarkesy*, 144 S.Ct. 2117, 603 U.S. \_\_\_\_ (2024); *Tull v. United States*, 481 U.S. 412, 421-22 (1987). Section 12(a)(2)(G) of FIFRA, allegedly violated here, and section 14 of FIFRA are akin to common law claims and do not fall within the public rights exception to the Seventh

Amendment. *See Jarkesy*, slip op. at 13-27; *Tull*, 481 U.S. at 422; *cf. Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, 430 U.S. 442 (1977).

Second, the procedure for defending Complainant's claims violates the nondelegation doctrine by authorizing the EPA, without adequate guidance, to choose whether to litigate this action in an Article III court or to adjudicate the matter itself. *See* s. 16, FIFRA, 7 U.S.C. s. 136n; *Jarkesy v. Securities and Exchange Commission*, 34 F.4th 446, 462-63 (5th Cir. 2022).

Third, this administrative procedure involving review by an EPA ALJ and the Environmental Appeals Board violates the constitutional requirement for a separation of powers. EPA's ALJs are authorized under 5 U.S.C. s. 3105 and can only be removed for cause under the procedures in 5 U.S.C. s. 7521(a). Likewise, members of the Environmental Appeals Board are members of the U.S. Government's Senior Executive Service and can only be removed for unsatisfactory performance. 5 CFR 359.502; U.S. Environmental Protection Agency, *Guide to the United States Environmental Protection Agency's Environmental Appeals Board*, at 3 (March 2023). The insulation of the EPA ALJs from executive supervision with two layers of for-cause removal protections violates the separation of powers. *See Jarkesy*, 34 F.4th at 465.

Respondent requests a jury trial on all issues so triable. In the alternative, Respondents request a hearing to contest all aspects of the Complaint, including the proposed penalty.

Dated on this 22<sup>nd</sup>, day of July 2024.



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Case Name: The GEO Group, Inc.  
Case No.: FIFRA-09-2024-0066

### CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Complaint and Request for Hearing was sent this 22<sup>nd</sup> day of July 2024, in the following manner to the below addressees:

Original and one copy by Federal Express and by Email to:

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Dated: July 22, 2024



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