

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

2010 NOV -9 P 12: 22

HEARING  
CLERK

In the Matter of:

OLIVER EXTERMINATING  
P.O. Box 363888  
San Juan, Puerto Rico 00936-3888

RESPONDENT

- \* U.S. EPA DOCKET NO.
- \* FIFRA-02-2010-5305
- \*
- \* Complaint and Notice of
- \* Opportunity for Hearing
- \*
- \* Proceeding Under Section
- \* 14(a) of the Federal
- \* Insecticide, Fungicide and
- \* Rodenticide Act
- \* (FIFRA), as amended,
- \* 7 U.S.C. § 136/(a).

\*\*\*\*\*

ANSWER TO THE COMPLAINT

COMES NOW, Oliver Exterminating Services Corp. (hereinafter "Oliver"), represented by the undersigned legal counsel, and respectfully states, alleges and prays:

I. Introduction:

The United States Environmental Protection Agency, Region II (hereinafter "EPA") issued a Complaint and Notice of Opportunity for Hearing dated September 30, 2010 (hereinafter "The Complaint") alleging that Oliver violated Section 12(a)(2)(g) of FIFRA during certain application of a registered pesticide.

This is an answer to the Complaint and a request for a hearing to contest material facts upon which the complaint is based and to contest the penalty proposed in the

complaint and to contend that, as a matter of law, the appearing party is entitled to judgement in its favor.

**II. Answer to the Complaint:**

1. The legal averments in paragraphs one (1) through three (3), Section I of the Order do not require a responsive allegation from respondent, except as to the violation alleged in paragraph two (2), which is denied.
2. The factual contentions under paragraphs four (4) through ten (10) of the Complaint are admitted.
3. The legal averments under paragraphs eleven (11), thirteen (13), fourteen (14), fifteen (15), sixteen (16), twenty one (21), twenty two (22), twenty three (23) of the Complaint do not require a responsive allegation from Oliver.
4. The factual contention in paragraph twelve (12) of the Complaint is admitted.
5. The factual contentions under paragraphs seventeen (17), eighteen (18), nineteen (19), twenty (20) and twenty Four (24) of the Complaint are admitted.
6. The factual allegations in paragraphs twenty five (25), twenty six (26), twenty seven (27), twenty eight (28), twenty nine (29), thirty (30), thirty one (31), thirty two (32), thirty three (33), thirty four (34), thirty five (35), thirty six (36),

thirty seven (37), thirty eight (38) and thirty nine (39) are denied for lack of knowledge and information.

All of the above allegations are related with matters and information under the control of the alleged EPA authorized official and other third persons. The name of the official, the sworn statements, the notices, the photographs and the records mentioned in these allegations were not included with the complaint and have not been available for review by respondent.

The factual allegations under the paragraphs mentioned above are not relevant to the violation alleged in the Complaint. If presented by EPA at the hearing requested, Oliver will dispute the allegations under paragraphs twenty five (25), twenty eight (28), thirty four (34), thirty eight (38) and thirty nine (39) of the Complaint. It will be at issue whether any poisoning occurred, the cause of the poisoning and if damages occurred.

7. The factual allegations under paragraphs forty (40), forty one (41), forty two (42) and forty three (43) of the Complaint are admitted.
8. Paragraphs one (1) through seven (7) of this Answer to the Complaint are reincorporated herein by reference.
9. Paragraph forty five (45) of the Complaint is admitted.

10. Paragraph forty six (46) of the Complaint is too broad, non specific, and therefore it is denied as presented.
11. The factual contention in paragraph forty seven (47) of the Complaint is denied. Oliver provided Mr. Celso González with the Fact Sheet for Vikane as provided in the General Information section of the product's label.
12. The factual contention in paragraph forty eight (48) of the Complaint is denied.
13. The factual contention in paragraph forty nine (49) of the Complaint is denied. Oliver contends that although the information provided to Mr. González did not include an option to keep food or drugs double bagged in Nylofume bags, the information included is totally consistent with the product's label.
14. The factual contention in paragraph fifty (50) of the Complaint is denied as alleged. From this allegation, respondent only admits that there is a possibility that the signs posted did not include the Spanish translation for "DANGER, DO NOT ENTER".
15. Oliver Exterminating denies the use of Vikane in a manner inconsistent with its labeling and therefore denies paragraph fifty one (51) of the Complaint.

**OTHER DEFENSES**

16. Oliver Exterminating is a local Puerto Rico business engaged in activities providing pest control services, using pesticides, since 1956.
17. In providing pest control services, it has always employed duly trained people, under the supervision of experienced certified applicators.
18. The services provided by Oliver to Mr. Celso González, consisted of pesticide (Vikane) application to a wooden house in Mayagüez, Puerto Rico, to eliminate an infestation of termites. These services were provided by Oliver following the recommendation in the Vikane label. Also, the wooden house that was fumigated was entirely enclosed in tarpauling.
19. The alleged respondent's deviations from the pesticide label requirements presented under paragraphs forty seven (47), forty eight (48), forty nine (49) and fifty (50) of the Complaint, will be at issue in the hearing requested herein.
20. For the above stated arguments, respondent herein opposes to the imposition of the proposed civil penalty.

Answer To The Complaint  
Docket No. FIFRA-02-2010-5305  
Oliver Exterminating, Respondent  
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### **REQUEST FOR A HEARING**

21. Oliver Exterminating respectfully requests that a hearing be scheduled to present and discuss the issues raised in the Complaint and the Answer to the Complaint.

**WHEREFORE**, Oliver respectfully prays that a hearing for the purposes stated above be granted.

RESPECTFULLY submitted this 5<sup>th</sup> day of November, 2010.

I hereby Certify: that a copy of the above document has been mailed to Mr. Héctor L. Vélez Cruz, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 2, Centro Europa Bldg., Suite 417, 1492 Ponce de León Ave., San Juan, Puerto Rico 00907-4127.



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