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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of:

BioSensory, Inc.,
Respondent

Proceeding under Section 14(a)
of the Federal Insecticide,
Fungicide, and Rodenticide Act,
7 U.S.C. § 136l(a)

Docket No. FIFRA-01-2012-0043

ANSWER

[40 C.F.R. § 22.15]

Respondent BioSensory, Inc. (“BioSensory”), by and through its counsel, respectfully submits the following Answer to the Complaint filed by the United States Environmental Protection Agency, Region I (“EPA” or “the Agency”) in this case. The responses in the numbered paragraphs below correspond to the allegations contained in the numbered paragraphs in EPA’s Complaint. All matters not specifically admitted are hereby denied.

EPA’S INTRODUCTORY STATEMENT

The allegations in the opening paragraph set forth EPA’s characterization of the nature and basis of its case and the relief it seeks, to which no response is required. BioSensory denies that EPA is entitled to the penalties that it seeks.

EPA’S STATUTORY AND REGULATORY BACKGROUND SECTION

1. BioSensory admits the allegations in this paragraph.

2. The allegations in this paragraph constitute conclusions of law to which no response is required.

3. The allegations in this paragraph purport to characterize the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

4. BioSensory admits the allegations in this paragraph.

5. The first sentence of this paragraph purports to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute. The second sentence of this paragraph constitutes a conclusion of law to which no response is needed.

6. The allegations in the first sentence of this paragraph constitute conclusions of law to which no response is required. BioSensory admits the allegations in the second sentence of this paragraph.

7. BioSensory admits the allegations in this paragraph.

8. The allegations in the first sentence of this paragraph constitute conclusions of law to which no response is required. BioSensory admits the allegations in the second sentence of this paragraph.

9. The allegations in this paragraph purport to characterize FIFRA and its implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and regulations.

10. The allegations in this paragraph purport to characterize FIFRA's implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the regulations.

11. BioSensory admits the allegations in this paragraph.

12. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

13. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

14. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

15. The allegations in this paragraph purport to characterize FIFRA's implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the regulations.

EPA'S GENERAL ALIGATIONS [sic] SECTION

16. The allegations in this paragraph constitute conclusions of law to which no response is required.

17. BioSensory admits the allegations in this paragraph.

18. BioSensory admits the allegations in this paragraph.

19. BioSensory admits the allegations in this paragraph.

20. BioSensory admits the allegations in this paragraph.

21. The allegations in this paragraph constitute conclusions of law to which no response is required.

22. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

23. The allegations in this paragraph purport to characterize FIFRA and its implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and regulations.

24. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

25. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

26. The allegations in this paragraph purport to characterize FIFRA and its implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and regulations.

27. The allegations in this paragraph purport to characterize FIFRA's implementing regulations, which speak for themselves and are the best evidence of their

content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the regulations.

28. The allegations in the first and third sentences of this paragraph purport to characterize FIFRA's implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the regulations. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of allegations in the second sentence of this paragraph and, on that basis, denies the allegations.

29. The allegations in this paragraph constitute conclusions of law to which no response is required.

30. As to the allegations in this paragraph, BioSensory avers that an EPA inspector conducted a FIFRA inspection at the BioSensory Facility on or about September 28, 2010. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies the allegations.

31. The allegations in this paragraph constitute conclusions of law to which no response is required.

32. BioSensory admits the allegations in this paragraph.

33. The allegations in this paragraph purport to characterize FIFRA, which speaks for itself and is the best evidence of its content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute.

34. The allegations in this paragraph purport to characterize FIFRA and its implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and regulations.

35. BioSensory admits the allegations in this paragraph.

36. BioSensory admits the allegations in this paragraph.

37. BioSensory admits the allegations in this paragraph.

EPA'S VIOLATIONS SECTION

EPA'S COUNT 1

38. BioSensory incorporates its responses to paragraphs 1 through 37 as if set forth fully herein.

39. The allegations in this paragraph purport to characterize FIFRA and its implementing regulations, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and regulations.

40. BioSensory denies the allegations in this paragraph.

41. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S COUNT 2

42. BioSensory incorporates its responses to paragraphs 1 through 41 as if set forth fully herein.

43. BioSensory admits the allegations in this paragraph.

44. BioSensory admits the allegations in this paragraph.

45. BioSensory admits the allegations in this paragraph.

46. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S COUNT 3

47. BioSensory incorporates its responses to paragraphs 1 through 46 as if set forth fully herein.

48. BioSensory admits the allegations in this paragraph.

49. BioSensory admits the allegations in this paragraph.

50. BioSensory admits the allegations in this paragraph.

51. BioSensory admits the allegations in this paragraph.

52. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S COUNT 4

53. BioSensory incorporates its responses to paragraphs 1 through 52 as if set forth fully herein.

54. BioSensory admits the allegations in this paragraph.

55. BioSensory denies the allegations in this paragraph.

56. BioSensory admits the allegations in this paragraph.

57. BioSensory admits the allegations in this paragraph.

58. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S PROPOSED CIVIL PENALTY SECTION

59. The allegations in this paragraph purport to characterize FIFRA, its implementing regulations, the Debt Collection Improvement Act of 1996, and EPA's Civil Monetary Penalty Inflation Adjustment Rule, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statutes and regulations.

60. The allegations in the first sentence of this paragraph consist of EPA's request for penalties, to which no answer is required. BioSensory denies the allegations in the second sentence of this paragraph.

61. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph and, on that basis, denies the allegations.

62. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph and, on that basis, denies the allegations.

63. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph and, on that basis, denies the allegations.

64. BioSensory lacks the knowledge or information sufficient to form a belief as to the truth of allegations in this paragraph and, on that basis, denies the allegations.

65. The allegations in this paragraph purport to characterize FIFRA and various FIFRA enforcement policy documents, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statute and enforcement policy documents.

66. The allegations in this paragraph purport to characterize the Consolidated Rules, which speak for themselves and are the best evidence of their content. BioSensory

denies any allegations contrary to the plain language, meaning, and context of the Consolidated Rules.

67. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S NOTICE OF OPPORTUNITY TO REQUEST A HEARING SECTION

68. The allegations in the first sentence of this paragraph purport to characterize FIFRA, its implementing regulations, and the Administrative Procedure Act, which speak for themselves and are the best evidence of their content. BioSensory denies any allegations contrary to the plain language, meaning, and context of the statutes and regulations. The allegations in the second, third, fourth, fifth, and sixth sentences of this paragraph constitute conclusions of law to which no response is required.

69. The allegations in this paragraph constitute filing instructions to which no response is required.

70. The allegations in this paragraph constitute conclusions of law to which no response is required.

71. The allegations in this paragraph constitute conclusions of law to which no response is required.

EPA'S INFORMAL SETTLEMENT CONFERENCE SECTION

72. The allegations in this paragraph pertain to settlement discussions to which no response is required.

73. The allegations in this paragraph pertain to settlement discussions to which no response is required.

74. The allegations in this paragraph pertain to settlement discussions to which no response is required.

GENERAL DENIAL

BioSensory denies each and every allegation of the Complaint not otherwise expressly admitted, qualified, or denied herein.

AFFIRMATIVE DEFENSES

1. BioSensory lacks the ability to pay the penalties sought by EPA in this matter.
2. If the total amount of the penalties sought by EPA is awarded, BioSensory lacks the ability to continue in business.
3. The amount of the penalties sought by EPA in this matter is inconsistent with, and unsubstantiated in light of, FIFRA § 14(a)(4), the December 2009 FIFRA Enforcement Policy, and the May 2010 Enforcement Response Policy for FIFRA Section 7(c).

REQUEST FOR A HEARING

BioSensory hereby requests a hearing on the issues of the proper amount of the penalties in this matter and of BioSensory's ability to pay such penalties.

Dated: October 17, 2012

Respectfully submitted,

MCKENNA LONG & ALDRIDGE LLP

By: 

Michael Boucher
Counsel to BioSensory, Inc.

CERTIFICATE OF SERVICE

I certify that on October 17, 2012, the foregoing **Answer** was delivered to the persons listed below in the manner indicated:

Original and one copy by UPS
Next Day Air to the following:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100 (DRA 18-1)
Boston, MA 02109-3912

One copy by UPS Next Day
Air to the following:

Peter DeCambre, Senior Enforcement Counsel
U.S. EPA, Region I
5 Post Office Square, Suite 100 (OES04-1)
Boston, MA 02109-3912

Dated: October 17, 2012



Signature



Print Name