

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 (NEW ENGLAND)

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In the Matter of:)

BioSensory, Inc.)
107 Providence Street)
Putnam, CT 06260)

) Docket No. FIFRA-01-2012-0043

) **CONSENT AGREEMENT and**
) **FINAL ORDER**
)

Respondent.)
_____)

INTRODUCTION

1. The United States Environmental Protection Agency, Region 1 ("EPA") as Complainant, and BioSensory, Inc. ("BioSensory" or "Respondent"), as Respondent, enter into this Consent Agreement and Final Order ("CAFO") by mutual consent.
2. Complainant and Respondent (collectively, the "Parties") agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.
3. Therefore, before any hearing or the taking of any testimony, without adjudication of any issue of fact or law herein, the Parties agree to comply with the terms of this CAFO.

PRELIMINARY STATEMENT

4. On June 28, 2012, EPA filed a Complaint and initiated this proceeding for the assessment of a civil penalty pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. § 136l(a).
5. The Complaint alleges that BioSensory violated Sections 12(a)(2)(L) (failure to submit annual reports), 12(a)(2)(N) (failure to file report of pesticide/device imports),

12(a)(1)(F) (sale and distribution of misbranded pesticide/device), and 12(a)(1)(B) (sale or distribution of a registered pesticide/device for an unregistered use) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(L), 136j(a)(2)(N), 136j(a)(1)(F), and 136j(a)(1)(B), and the regulations promulgated pursuant to FIFRA at 40 C.F.R. Part 152 et seq. and 19 C.F.R. §§ 12.110 – 12.117.

6. On October 17, 2012, BioSensory filed an Answer to the Complaint in which it denied the violations alleged by EPA and requested a hearing pursuant to FIFRA and the Consolidated Rules of Practice at 40 C.F.R. Part 22.

7. For purposes of this proceeding, without trial or litigation of the issues or any adjudication of the facts, Respondent: (1) admits that EPA has jurisdiction over the subject matter alleged in the Complaint, (2) neither admits nor denies the factual allegations contained in the Complaint, and (3) consents to the terms of this CAFO as a settlement of the allegations raised by EPA in the Complaint.

8. Respondent hereby waives any defenses it might have as to jurisdiction and venue, its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and its right to appeal the Final Order accompanying the Consent Agreement.

9. By signing this CAFO, Respondent certifies that it is presently operating in compliance with FIFRA and the regulations promulgated thereunder and that it has fully addressed the violations alleged by EPA in the Complaint.

TERMS OF SETTLEMENT

10. In light of the above, and taking into account the factors enumerated in Section 14(a) of FIFRA, the December 2009 “FIFRA Enforcement Response Policy” issued by the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, the Monetary Penalty Inflation Adjustment Rules at 40 C.F.R. Part

19, promulgated in accordance with the Debt Collection Improvement Act of 1996 ("DCIA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996), and other factors as justice may require, EPA has determined that it is fair and appropriate that Respondent pay a civil penalty in the amount of \$50,000 in settlement of the violations alleged in the Complaint.

11. Respondent shall pay a civil penalty in the amount of fifty thousand dollars (\$50,000), plus interest at three (3) percent per annum, in two payments as follows: 1) the first payment of \$25,000 (interest free) shall be made within thirty (30) days of the effective date of this CAFO; and 2) the second payment of \$25,750 (of which \$25,000 is principal and \$750 is interest) shall be made within three hundred and ninety five (395) days of the effective date of this CAFO.

12. Respondent shall make payments by submitting a bank or certified check, to the order of the "Treasurer, United States of America" in the amounts outlined in Paragraph 11 above to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent may alternatively make payments by debit/credit card or business check by completing and submitting the U.S. Environmental Protection Agency Miscellaneous Payment Form (SFO Form Number 1.1), available at <https://www.pay.gov/paygov/>. At the time of payment, Respondent shall provide copies of the check, the U.S. Environmental Protection Agency Miscellaneous Payment Form (SFO Form Number 1.1), and/or the electronic payment receipt to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1 (Mail Code: ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

and

Peter DeCambre, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 (Mail Code: OES04-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Respondent shall include the case name and docket number (i.e., In the Matter of BioSensory, Inc., Docket No. Docket No. FIFRA-01-2012-0043) on the face of the check or on the Miscellaneous Payment Form (i.e., SFO Form Number 1.1).

13. If Respondent fails to pay the civil penalty, it will be subject to an action to compel payment, plus interest, enforcement expenses and a nonpayment penalty. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, as well as a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty (or any portion thereof) on the date it is due under this CAFO if such penalty (or portion thereof) is not paid in full by such due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent (6%) per year and an amount to cover the costs of collection will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due. Should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due, under 31 C.F.R. § 901.9(d).

14. The civil penalty due and any interest, non-payment penalties, or charges that

arise pursuant to this CAFO shall represent penalties assessed by EPA and shall not be deductible for the purposes of Federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Internal Revenue Service regulations, including 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under Federal, State or local law.

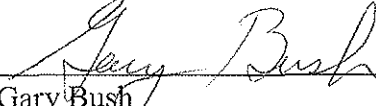
15. This CAFO constitutes a settlement by EPA of all claims for civil penalties, pursuant to Section 14(a) of FIFRA, for the specific violations alleged in the Complaint.

16. This CAFO in no way relieves Respondent of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to take any action to address imminent hazards. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations.

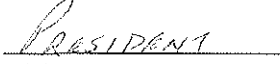
17. The Parties each shall bear its own costs and attorneys' fees in the action resolved by this CAFO, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

18. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

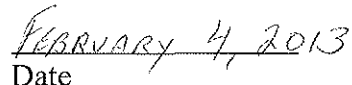
For Respondent:



Gary Bush
BioSensory, Inc.
107 Providence Street
Putnam, CT 06260



Title



Date

For EPA Region 1:



Joanna B. Jerison, Legal Enforcement Manager
Office of Environmental Stewardship
EPA-Region 1

2/28/13
(Date)

and:



Peter DeCambre, Senior Enforcement Counsel
Regulatory Legal Office
Office of Environmental Stewardship
EPA-Region 1

2/21/13
(Date)

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent, BioSensory, Inc., is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

March 1, 2013
(Date)



Leann Jensen, Acting Regional Judicial Officer
EPA-Region 1

In The Matter of **BioSenory, Inc. Respondent**
Docket No. FIFRA-01-2012-0043

CERTIFICATE OF SERVICE

I certify that the foregoing **Consent Agreement and Final Order**, dated March 7, 2013, was sent this day in following manner to the addresses listed below:



Sybil Anderson
Headquarters Hearing Clerk

Dated: **March 7, 2013**

Copy By Regular Mail and Email To:

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

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