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7 Attorneys for Respondent  
GOWAN COMPANY  
8

9 **BEFORE THE**  
10 **CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:  
13  
14 Gowan Company  
P.O. Box 5569  
Yuma, Arizona 85366  
15 CA Registration Number 62719-301-AA-10163  
16 Respondent.

DPR Case No. R-19-007

**RESPONDENT GOWAN COMPANY'S**  
**1. NOTICE OF DEFENSE**  
**[GOVERNMENT CODE SECTION**  
**11506];**  
**and**  
**2. REQUEST FOR CONSIDERATION**  
**FOR STIPULATED SETTLEMENT**

17  
18 **TO THE CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION:**

19 PLEASE TAKE NOTICE THAT: Pursuant to California Government Code § 11506,  
20 Respondent Gowan Company (hereinafter "Gowan") specifically denies all parts of, and states its  
21 objections and affirmative defenses to, the Accusation filed by the Acting Director of the California  
22 Department of Pesticide Regulation (hereinafter "the Department" or "DPR") on or about  
23 August 14, 2019. Gowan respectfully requests to participate in a stipulated settlement of the  
24 Accusation and any negotiations or other discussions to reach such a settlement, without otherwise  
25 waiving any rights, including the right to a hearing to defend against the allegations in the  
26 Accusation. Gowan further suggests that it may be appropriate to coordinate any settlement  
27 discussions with those that may take place in the matter captioned as DPR Case No. 2002-02, *In*  
28 *the Matter of the Accusation Against Dow AgroSciences*, currently pending before the Department,

1 and in any other action in which the Department seeks the cancellation of registrations for pesticide  
2 products that contain chlorpyrifos.

3 PLEASE TAKE FURTHER NOTICE THAT: Gowan includes as Attachment A hereto a  
4 completed copy of the Department's form Notice of Defense included with the Accusation.

### 5 I. INTRODUCTION

6 Gowan understands that it is one of approximately 15 companies that have been presented  
7 with Accusations and form Notices of Defense regarding products that contain chlorpyrifos.  
8 Gowan also understands that DPR has suggested to each of these companies, as it has to Gowan,  
9 that "it may be possible to avoid the time, expense and uncertainties involved in an administrative  
10 hearing by disposing of the matter through a stipulated settlement" that would ultimately be  
11 incorporated into a final order.

12 Gowan further understands that the Department has commissioned a working group to  
13 consider alternatives to chlorpyrifos, which may avoid the necessity of immediate cancellation of  
14 registrations. The Department has not invited Gowan or other registrants of other pesticide  
15 products to participate in such discussions, however.

16 By this Notice, Gowan indicates that it is amenable to participating in discussions to reach  
17 a stipulated settlement and to participate in a stipulated settlement, without waiving any rights to  
18 defend the Accusation if settlement is not achieved.

### 19 II. REQUEST FOR CONSIDERATION FOR STIPULATED SETTLEMENT

20 Gowan requests that the Company be considered to participate in discussions to reach a  
21 stipulated settlement and to participate in a stipulated settlement if one can be achieved.

### 22 III. RESPONSE TO ALLEGATIONS IN THE ACCUSATION

#### 23 PARTIES

24 Paragraph 1: Gowan admits that the Accusation is brought by the Acting Director of the  
25 Department of Pesticide Registration, in his official capacity.

26 Paragraph 2: Gowan admits that it is a limited liability corporation with its principal place  
27 of business in Yuma, Arizona.

28



1 Paragraph 10: Gowan admits that the excerpt from Food & Agr. Code § 12827 is correctly  
2 quoted, but denies that this excerpt or other allegations in the Accusation constitute sufficient  
3 grounds for cancellation of Gowan's registrations for the products identified in the Accusation.

4 *Restricted Materials*

5 Paragraph 11: Gowan admits that the excerpt from Food & Agr. Code § 14004.5 is correctly  
6 quoted, but denies that this excerpt or other allegations in the Accusation constitute sufficient  
7 grounds for cancellation of Gowan's registrations for the products identified in the Accusation.

8 Paragraph 12: Gowan admits that chlorpyrifos, when labeled for the production of an  
9 agricultural commodity, is designated as a restricted material, but denies that this or other  
10 allegations in the Accusation constitute sufficient grounds for cancellation of Gowan's registrations  
11 for the products identified in the Accusation.

12 Paragraph 13: Gowan admits that a restricted material may be used only by or under the  
13 supervision of a certified applicator and under a permit issued by a County Agricultural  
14 Commissioner, but denies that this or other allegations in the Accusation constitute sufficient  
15 grounds for cancellation of Gowan's registrations for the products identified in the Accusation.

16 *Toxic Air Contaminant*

17 Paragraph 14: Gowan admits that the excerpt from Food & Agr. Code § 14021, subd. (b)  
18 is correctly quoted, but denies that this excerpt or other allegations in the Accusation constitute  
19 sufficient grounds for cancellation of Gowan's registrations for the products identified in the  
20 Accusation.

21 Paragraph 15: Gowan admits that the excerpt from Cal. Code Regs., tit. 3, § 6864 is  
22 correctly quoted, but denies that this or other allegations in the Accusation constitute sufficient  
23 grounds for cancellation of Gowan's registrations for the products identified in the Accusation.

24 Paragraph 16: Gowan admits the allegations in this paragraph, but denies that these or other  
25 allegations in the Accusation constitute sufficient grounds for cancellation of Gowan's registrations  
26 for the products identified in the Accusation.

27 Paragraph 17: Gowan admits that the excerpts from Food & Agr. Code § 14024, subd. (a),  
28 § 14024, subd. (b)(6), and § 14024, subd. (c)(1) are correctly quoted, but denies that these or other

1 allegations in the Accusation constitute sufficient grounds for cancellation of Gowan’s registrations  
2 for the products identified in the Accusation.

3 **CAUSE FOR CANCELLATION**

4 Paragraphs 18-32: Gowan admits that Paragraphs 18-32 are a recitation of Complainant’s  
5 assertion of grounds for cancellation of the registrations identified in the Accusation, but, based on  
6 the excerpted criteria in the statutes and regulations cited in the Accusation, Gowan denies that this  
7 recitation or other allegations in the Accusation are sufficient grounds for cancellation of the  
8 registrations identified in the Accusation.

9 **IV. AFFIRMATIVE DEFENSES**

10 In addition to its denial of the allegations above, Gowan asserts the affirmative defenses set  
11 forth below. Gowan has not completed its investigation of facts relevant to the Accusation, and  
12 reserves its right to assert additional defenses as more information becomes available.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **Failure to State a Claim - Government Code Section 11506(a)(2)**

15 The Accusation does not state acts or omissions upon which the agency may proceed.

16 **SECOND AFFIRMATIVE DEFENSE**

17 **Vagueness and Uncertainty - Government Code Section 11506(a)(3)**

18 The allegations in the Accusation are too indefinite and uncertain to allow a reasonable  
19 respondent to identify the transactions at issue or to prepare a defense.

20 **THIRD AFFIRMATIVE DEFENSE**

21 **Due Process**

22 The Accusation is so indefinite and uncertain that a reasonable respondent cannot identify  
23 the particular action, practice and/or transaction at issue and thereby prepare its defense, and  
24 deprives Gowan of its right to notice and due process under the United States and California  
25 Constitutions. *See* Cal. Gov’t Code § 11506(a)(3); *Lambert v. People of the State of California*,  
26 355 U.S. 225, 228 (1957) (requirement for notice “engrained in our concept of due process” in  
27 order that charges may be defended, before property interests can be disturbed or assessments made  
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or penalties are assessed”). *See also Drake v. Superior Court*, 175 Cal.App.4th 1462, 1467 (2009) (notice must be reasonably calculated so that a defendant can understand what is required).

**V. NO WAIVER OF RIGHTS**

Gowan, having stated its preference for a stipulated settlement and the consideration of alternatives to cancellation, without requesting a hearing at this time, does not waive any rights to defend against the allegations of the Accusation.

**VI. DISCOVERY**

No hearing having been initiated, discovery is premature. Gowan requests that discovery or any issue regarding discovery directed at or by Gowan be deferred.

**VII. PRAYER FOR RELIEF**


WHEREFORE, without waiving any rights, Gowan requests that the Department issue a decision finding insufficient cause for the cancellation of the registrations identified in the Accusation.

Gowan reserves the right to amend and/or supplement this Prayer.

Respectfully submitted,

Dated: September 27, 2019

DENTONS US LLP

By:   
Stanley W. Landfair  
Robert S. Schuda  
Rebecca L. Woodson

Attorneys for Respondent GOWAN COMPANY

DENTONS US LLP  
ONE MARKET PLAZA, SPEAR TOWER, 24TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-1101  
(415) 267-4000

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# “Attachment A”

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**BEFORE THE  
CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:  
**GOWAN COMPANY**  
Respondent.

DPR Case No. R-19-007  
**NOTICE OF DEFENSE**  
[Gov. Code §§ 11505, 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

Date: September 10, 2019  
Respondent's Name: Gowan Company  
Respondent's Signature: Stanley W. Landfair,  
Counsel for Gowan Company  
Respondent's Mailing Address: Dentons US LLP  
One Market Plaza, Spear Tower, 24th Floor,  
San Francisco, California 941001  
Phone: (415) 267-4000  
FAX: (415) 267-4198  
E-mail: stan.landfair@dentons.com

Check appropriate boxes:

- I hereby request a hearing to permit me to present my defense to Accusation.
- I wish to be considered for a stipulated settlement.
- I wish to surrender my registration.
- I am represented by counsel, whose name, address and telephone number appear below:  
Counsel's Name Stanley W. Landfair  
Counsel's Mailing Address One Market Plaza, Spear Tower, 24th Floor  
San Francisco, California 94105-1101  
Phone: (415) 267-4000  
FAX: (415) 267-4198  
E-mail: stan.landfair@dentons.com
- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

DENTONS US LLP  
ONE MARKET PLAZA, SPEAR TOWER, 24TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-1101  
(415) 267-4000



DENTONS US LLP  
ONE MARKET PLAZA, SPEAR TOWER, 24TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-1101  
(415) 267-4000

1 **PROOF OF SERVICE**

2 ***In the Matter of the Accusation Against FMC CORPORATION, DPR Case No. R-19-006***

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am  
4 employed in the County of Los Angeles, State of California. My business address is 601 South  
Figueroa Street, 25th Floor, Los Angeles, California 90017.

5 On September 27, 2019, I served true copies of the document described as  
6 **“RESPONDENT GOWAN COMPANY’S 1. NOTICE OF DEFENSE [Government Code  
Section 11506]; and 2. REQUEST FOR CONSIDERATION FOR STIPULATED  
SETTLEMENT”** on the interested parties in this action:

7  **BY MAIL:** I enclosed the document in a sealed envelope/s or package/s addressed to the  
8 person/s at the address/es in the Service List and placed it/them for collection and mailing,  
9 following ordinary business practices. I am readily familiar with the practice of Dentons US LLP  
for collecting and processing correspondence for mailing: on that same day it is deposited in the  
ordinary course of business with the United States Postal Service with postage fully prepaid.

10  
11 Marc N. Melnick  
12 Deputy Attorney General  
13 Office of the Attorney General  
14 1515 Clay Street, 20th Floor  
15 P.O. Box 70550  
16 Oakland, CA 94612-0550

17  **BY ELECTRONIC MAIL** by transmitting via e-mail or electronic transmission the  
18 document(s) listed above to the person(s) at the e-mail address(es) set forth below.

19  
20 Tamara Zakim  
21 Deputy Attorney General  
22 California Department of Justice  
23 455 Golden Gate Ave., Ste. 11000  
24 San Francisco, CA 94102-7020  
25 E-mail: tamara.zakim@doj.ca.gov

26  **BY NEXT BUSINESS DAY DELIVERY:** I enclosed said document in an envelope/s or  
27 package/s provided by  Federal Express /  USPS and addressed to the person/s at the address/es  
28 in the Service List. I placed it/them for collection and next business day delivery at an office or a  
regularly utilized drop box of the carrier or delivered same to a courier or driver authorized by the  
carrier to receive documents.

**BY HAND DELIVERY:** I enclosed the document in a sealed envelope/s or package/s  
addressed to the person/s at the address/es in the Service List and engaged **Ace Attorney Service,  
Inc.** to deliver it/them by hand to the office/s of the addressee/s.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on September 27, 2019, at Los Angeles, California.

26 

27 Frederick Kalve