

FAX

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To: Regional Hearing Clerk (E-13J) Fax Number: 312-886-9697
From: Elizabeth M. Roat
Re: EPA v. Behnke Lubricants, Inc.
Date: Friday, June 08, 2007
cc: Nidhi O'Meara

Documents Enclosed	No. Pages
Letter of today's date	1
Answer and Request for Hearing	30
Total Pages plus coversheet:	32

COMMENTS

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June 8, 2007

VIA FACSIMILE & U.S. MAIL

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: *Behnke Lubricants, Inc.*
Docket No. FIFRA-05-2007-0025

Dear Sir or Madam:

Enclosed for filing please find an original and one copy of Behnke Lubricants, Inc.'s Answer and Request for Hearing.

By copy of this letter, Attorney Nidhi O'Meara is being served.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elizabeth M. Roat', is written over a large, circular scribble or stamp. The signature is positioned above the printed name 'Elizabeth M. Roat'.

Elizabeth M. Roat

EMR/dlp

Enclosures

cc: Nidhi O'Meara, w/encl. (via facsimile, email and U.S. mail)
Eric Peter, w/encl. (via email and U.S. mail)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**BEHNKE LUBRICANTS INC.
MENOMONEE FALLS, WISCONSIN**

Docket No. FIFRA-05-2007-0025

Respondent.

ANSWER AND REQUEST FOR HEARING

Behnke Lubricants, Inc. ("Behnke"), by its undersigned counsel, answers to EPA's

Complaint in the above-captioned matter as follows:

1. Admits the allegations of paragraph 1.
2. Admits the allegations of paragraph 2.
3. Admits the allegations of paragraph 3.

STATUTORY AND REGULATORY BACKGROUND

4. Admits that the legal citations referenced in paragraph 4 generally prohibit the distribution or sale of a "pesticide" to any person that is not registered under FIFRA; further answering said paragraph alleges that circumstances exist such that Behnke disputes whether it, in fact, had any obligation to register any of its products further described in the Complaint as "pesticides" under FIFRA.

5. Admits the allegations of paragraph 5.
6. Admits that paragraph 6 accurately quotes a portion of 40 C.F.R. §152.15(a) (1); further answering said paragraph Behnke neither admits nor denies any legal conclusion implied by the citation in paragraph 6.
7. Admits the allegations of paragraph 7.

8. Admits the allegations of paragraph 8.
9. Admits the allegations of paragraph 9.
10. Admits that paragraph 10 contains a partial definition of the term "pests" as defined in the citations contained in paragraph 10; further answering said paragraph alleges that 40 C.F.R. §152.5 (d) excludes from the definition of "pests" "[a]ny fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages, drugs and cosmetics."
11. Alleges that the statutory and regulatory citations contained in paragraph 11 speak for themselves; further answering said paragraph lacks sufficient information and knowledge to form a belief as to what is "generally regarded" as a pesticide and therefore denies the same putting the EPA to its proof.
12. Admits the allegations of paragraph 12.

GENERAL ALLEGATIONS

13. Admits the allegations of paragraph 13.
14. Admits that on or about August 3, 2006, an employee of the Wisconsin Department of Agriculture and Consumer Protection (the "WDA Employee") called on Behnke and requested information and/or samples of the following Behnke products:

Halo-Guard FG-2
Halo-Guard FG-LT
JAX Conveyor-Glide
Poly-Guard FG-2
Poly-Guard FG-LT

Further answering said paragraph alleges that Behnke cooperated in providing the information requested. In answer to the remaining allegations, Behnke denies having knowledge and information sufficient to form a belief as to their truth and therefore denies the same putting the EPA to its proof.

15. Admits that on or about August 3, 2006, Behnke gave the WDA Employee one tube each of Behnke's Poly-Guard FG-2 and Halo-Guard FG-2 greases. In answer to the remaining allegations, Behnke denies having knowledge or information sufficient to form a belief as to their truth and therefore denies the same putting the EPA to its proof.

16. Admits that on or about August 3, 2006, Behnke gave the WDA Employee copies of Behnke's Product Data Sheet ("PDS") for each of the lubricants identified in paragraph 16 of the Complaint as well as Behnke's full-line product catalog. In answer to the remaining allegations, Behnke denies having knowledge or information sufficient to form a belief as to their truth and therefore denies the same putting the EPA to its proof.

17. Admits the allegations of paragraph 17.

JAX Poly-Guard FG2

18. Admits the allegations of paragraph 18.

19. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 19 and therefore denies the same putting the EPA to its proof.

20. Admits the allegations of paragraph 20.

21. Denies the allegations of paragraph 21; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

22. The allegations of paragraph 22 are simply legal conclusions that Behnke neither admits nor denies.

23. Denies the allegations of paragraph 23; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

24. The allegations of paragraph 24 are simply legal conclusions that Behnke neither admits nor denies.

25. Denies the allegations of paragraph 25; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the label refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

26. Denies the allegations of paragraph 26.

27. Admits that JAX Poly-Guard FG-2 is not registered as a pesticide; further answering the allegations of paragraph 27 denies that JAX Poly-Guard FG-2 is a pesticide required to be registered.

28. Admits the allegations of paragraph 28; further answering said paragraph alleges that the distribution of said product was for the purpose of lubricating the customer's food processing equipment.

29. Admits the allegations of paragraph 29; further answering said paragraph alleges that the distribution of said product was for the purpose of lubricating the customer's food processing equipment.

30. Admits the allegations of paragraph 30.

JAX Poly-Guard FG-LT

31. Admits the allegations of paragraph 31.

32. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 32 and therefore denies the same putting the EPA to its proof.

33. Denies the allegations of paragraph 33; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

34. The allegation of paragraph 34 is simply a legal conclusion that Behnke neither admits nor denies.

35. Denies the allegations of paragraph 35; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

36. The allegation of paragraph 36 is simply a legal conclusion that Behnke neither admits nor denies.

37. Denies the allegations of paragraph 37.

38. Admits that JAX Poly-Guard FG-LT is not registered as a pesticide; further answering the allegations of paragraph 27 denies that JAX Poly-Guard FG-LT is a pesticide required to be registered.

39. Admits the allegations of paragraph 39; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

40. Admits the allegations of paragraph 40; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

JAX Halo-Guard FG2

41. Admits the allegations of paragraph 41.

42. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 42 and therefore denies the same putting the EPA to its proof.

43. Admits the allegations of paragraph 43.

44. Denies the allegations of paragraph 44; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

45. The allegations of paragraph 45 are simply a legal conclusion that Behnke neither admits nor denies.

46. Denies the allegations of paragraph 46; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

47. The allegations of paragraph 47 are simply a legal conclusion that Behnke neither admits nor denies.

48. Denies the allegations of paragraph 48; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the label refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

49. Denies the allegations of paragraph 49.

50. Admits that JAX Halo-Guard FG-2 is not registered as a pesticide; further answering the allegations of paragraph 50 denies that JAX Halo-Guard FG-2 is a pesticide required to be registered.

51. Admits the allegations of paragraph 51; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

52. Admits the allegations of paragraph 52; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

53. Admits the allegations of paragraph 53; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

54. Admits the allegations of paragraph 54.

JAX Halo-Guard FG-LT

55. Admits the allegations of paragraph 55.

56. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 56 and therefore denies same putting the EPA to its proof.

57. Denies the allegations of paragraph 57; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

58. The allegation of paragraph 58 is simply a legal conclusion that Behnke neither admits nor denies.

59. Denies the allegations of paragraph 59; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on

or in processed food, beverages,,” within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of “pests.”

60. The allegation of paragraph 60 is simply a legal conclusion that Behnke neither admits nor denies.

61. Denies the allegations of paragraph 61.

62. Admits that JAX Halo-Guard FG-LT is not registered as a pesticide; further answering the allegations of paragraph 62denies that JAX Halo-Guard FG-LT is a pesticide required to be registered.

63. Admits the allegations of paragraph 63; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer’s food or beverage processing equipment.

64. Admits the allegations of paragraph 64; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer’s food or beverage processing equipment.

JAX Magna Plate 74

65. Admits the allegations of paragraph 65.

66. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 66 and therefore denies the same putting the EPA to its proof.

67. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 67 and therefore denies the same putting the EPA to its proof.

68. Denies the allegations of paragraph 68; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and,

therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,,” within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of “pests.”

69. The allegation of paragraph 69 is simply a legal conclusion that Behnke neither admits nor denies.

70. Denies the allegations of paragraph 70; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,,” within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of “pests.”

71. The allegation of paragraph 71 is simply a legal conclusion that Behnke neither admits nor denies.

72. Denies the allegations of paragraph 72; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet site refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,,” within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of “pests.”

73. The allegations of paragraph 73 are simply a legal conclusion that Behnke neither admits nor denies.

74. Denies the allegations of paragraph 74.

75. Admits JAX Magna-Plate 74 is not registered as a pesticide; further answering the allegations of paragraph 75 denies that JAX Magna-Plate 74 is a pesticide required to be registered.

76. There is no paragraph 76 in the Complaint.

77. Admits the allegations of paragraph 77; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

78. Admits the allegations of paragraph 78; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

79. Lacks sufficient information to admit or deny the allegations of paragraph 79 of the complaint and therefore denies the same putting the EPA to its proof.

80. Lacks sufficient information to admit or deny the allegations of paragraph 80 of the complaint and therefore denies the same putting the EPA to its proof.

81. Lacks sufficient information to admit or deny the allegations of paragraph 81 of the complaint and therefore denies the same putting the EPA to its proof.

82. Lacks sufficient information to admit or deny the allegations of paragraph 82 of the complaint and therefore denies the same putting the EPA to its proof.

83. Lacks sufficient information to admit or deny the allegations of paragraph 83 of the complaint and therefore denies the same putting the EPA to its proof.

84. Lacks sufficient information for admit or deny the allegations of paragraph 84 of the complaint and therefore denies the same putting the EPA to its proof.

85. Lacks sufficient information to admit or deny the allegations of paragraph 85 of the complaint and therefore denies the same putting the EPA to its proof.

86. Lacks sufficient information to admit or deny the allegations of paragraph 86 of the complaint and therefore denies the same putting the EPA to its proof.

87. Denies the allegations of paragraph 87; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

88. Denies the allegations of paragraph 88; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

89. Denies the allegations of paragraph 89; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

90. Denies the allegations of paragraph 90; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

91. Denies the allegations of paragraph 91; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

92. Denies the allegations of paragraph 92; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

93. Denies the allegations of paragraph 93; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or

in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

94. Denies the allegations of paragraph 94; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

95. The allegations of paragraph 95 are simply a legal conclusion that Behnke neither admits nor denies.

96. The allegations of paragraph 96 are simply a legal conclusion that Behnke neither admits nor denies.

97. The allegations of paragraph 97 are simply a legal conclusion that Behnke neither admits nor denies.

98. The allegations of paragraph 98 are simply a legal conclusion that Behnke neither admits nor denies.

99. Denies the allegations of paragraph 99.

100. Admits that JAX Magna-Plate 78 is not registered as a pesticide; further answering the allegations of paragraph 100 denies that JAX Magna-Plate 78 is a pesticide required to be registered.

101. Admits the allegations of paragraph 101; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

102. Admits the allegations of paragraph 102; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

103. Admits the allegations of paragraph 103; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

104. Admits the allegations of paragraph 104; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

105. Admits the allegations of paragraph 105; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

106. Lacks sufficient information to admit or deny the allegations of paragraph 106 of the complaint and therefore denies the same putting the EPA to its proof.

107. Lacks sufficient information to admit or deny the allegations of paragraph 107 of the complaint and therefore denies the same putting the EPA to its proof.

108. Lacks sufficient information to admit or deny the allegations of paragraph 108 of the complaint and therefore denies the same putting the EPA to its proof.

109. Lacks sufficient information to admit or deny the allegations of paragraph 109 of the complaint and therefore denies the same putting the EPA to its proof.

110. Lacks sufficient information to admit or deny the allegations of paragraph 110 of the complaint and therefore denies the same putting the EPA to its proof.

111. Lacks sufficient information to admit or deny the allegations of paragraph 111 of the complaint and therefore denies the same putting the EPA to its proof.

112. Lacks sufficient information to admit or deny the allegations of paragraph 112 of the complaint and therefore denies the same putting the EPA to its proof.

113. Lacks sufficient information to admit or deny the allegations of paragraph 113 of the complaint and therefore denies the same putting the EPA to its proof.

114. Lacks sufficient information to admit or deny the allegations of paragraph 114 of the complaint and therefore denies the same putting the EPA to its proof.

115. Lacks sufficient information to admit or deny the allegations of paragraph 115 of the complaint and therefore denies the same putting the EPA to its proof.

116. Lacks sufficient information to admit or deny the allegations of paragraph 116 of the complaint and therefore denies the same putting the EPA to its proof.

117. Lacks sufficient information to admit or deny the allegations of paragraph 117 of the complaint and therefore denies the same putting the EPA to its proof.

118. Denies the allegations of paragraph 118; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,", within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

119. The allegation of paragraph 119 is simply a legal conclusion that Behnke neither admits nor denies.

120. Lacks sufficient information to admit or deny the allegations of paragraph 120 of the complaint and therefore denies the same putting the EPA to its proof.

121. Lacks sufficient information to admit or deny the allegations of paragraph 121 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

122. Lacks sufficient information to admit or deny the allegations of paragraph 122 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

123. Admits the allegations of paragraph 123; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

124. Admits the allegations of paragraph 124; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

125. Lacks sufficient information to admit or deny the allegations of paragraph 125 of the complaint and therefore denies the same putting the EPA to its proof.

126. Lacks sufficient information to admit or deny the allegations of paragraph 126 of the complaint and therefore denies the same putting the EPA to its proof.

127. Lacks sufficient information to admit or deny the allegations of paragraph 127 of the complaint and therefore denies the same putting the EPA to its proof.

128. Lacks sufficient information to admit or deny the allegations of paragraph 128 of the complaint and therefore denies the same putting the EPA to its proof.

129. Lacks sufficient information to admit or deny the allegations of paragraph 129 of the complaint and therefore denies the same putting the EPA to its proof.

130. Admits the allegations of paragraph 130; in further answer to this paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

131. Lacks sufficient information to admit or deny the allegations of paragraph 131 of the complaint and therefore denies the same putting the EPA to its proof.

132. Lacks sufficient information to admit or deny the allegations of paragraph 132 of the complaint and therefore denies the same putting the EPA to its proof.

133. Lacks sufficient information to admit or deny the allegations of paragraph 133 of the complaint and therefore denies the same putting the EPA to its proof.

134. Lacks sufficient information to admit or deny the allegations of paragraph 134 of the complaint and therefore denies the same putting the EPA to its proof.

135. Lacks sufficient information to admit or deny the allegations of paragraph 135 of the complaint and therefore denies the same putting the EPA to its proof.

136. Admits the allegations of paragraph 136; further answering said paragraph alleges that the distribution of the product was for the purpose of lubricating the customer's food or beverage processing equipment.

137. Lacks sufficient information to admit or deny the allegations of paragraph 137 of the complaint and therefore denies the same putting the EPA to its proof.

138. Lacks sufficient information to admit or deny the allegations of paragraph 138 of the complaint and therefore denies the same putting the EPA to its proof.

139. Lacks sufficient information to admit or deny the allegations of paragraph 139 of the complaint and therefore denies the same putting the EPA to its proof.

140. Lacks sufficient information to admit or deny the allegations of paragraph 140 of the complaint and therefore denies the same putting the EPA to its proof.

141. Lacks sufficient information to admit or deny the allegations of paragraph 141 of the complaint and therefore denies the same putting the EPA to its proof.

142. Lacks sufficient information to admit or deny the allegations of paragraph 142 of the complaint and therefore denies the same putting the EPA to its proof.

143. Lacks sufficient information to admit or deny the allegations of paragraph 143 of the complaint and therefore denies the same putting the EPA to its proof.

144. Lacks sufficient information to admit or deny the allegations of paragraph 144 of the complaint and therefore denies the same putting the EPA to its proof.

145. Lacks sufficient information to admit or deny the allegations of paragraph 145 of the complaint and therefore denies the same putting the EPA to its proof.

146. Lacks sufficient information to admit or deny the allegations of paragraph 146 of the complaint and therefore denies the same putting the EPA to its proof.

147. Lacks sufficient information to admit or deny the allegations of paragraph 147 of the complaint and therefore denies the same putting the EPA to its proof.

148. Lacks sufficient information to admit or deny the allegations of paragraph 148 of the complaint and therefore denies the same putting the EPA to its proof.

149. Lacks sufficient information to admit or deny the allegations of paragraph 149 of the complaint and therefore denies the same putting the EPA to its proof.

150. Lacks sufficient information to admit or deny the allegations of paragraph 150 of the complaint and therefore denies the same putting the EPA to its proof.

151. Lacks sufficient information to admit or deny the allegations of paragraph 151 of the complaint and therefore denies the same putting the EPA to its proof.

152. Lacks sufficient information to admit or deny the allegations of paragraph 152 of the complaint and therefore denies the same putting the EPA to its proof.

153. Lacks sufficient information to admit or deny the allegations of paragraph 153 of the complaint and therefore denies the same putting the EPA to its proof.

154. Denies the allegations of paragraph 154; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

155. The allegations of paragraph 155 are simply a legal conclusion that Behnke neither admits nor denies.

156. Denies the allegations of paragraph 156; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or

in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

157. The allegations of paragraph 157 are simply a legal conclusion that Behnke neither admits nor denies.

158. Denies the allegations of paragraph 158; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

159. The allegations of paragraph 159 are simply a legal conclusion that Behnke neither admits nor denies.

160. Denies the allegations of paragraph 160; further answering said paragraph alleges that this food-grade lubricant is sold and used only in food or beverage processing plants and is FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the literature refers to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

161. The allegations of paragraph 161 are simply a legal conclusion that Behnke neither admits or denies.

162. Lacks sufficient information to admit or deny the allegations of paragraph 162 of the complaint and therefore denies the same putting the EPA to its proof.

163. Lacks sufficient information to admit or deny the allegations of paragraph 163 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

164. Lacks sufficient information to admit or deny the allegations of paragraph 164 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

165. Lacks sufficient information to admit or deny the allegations of paragraph 165 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

166. Lacks sufficient information to admit or deny the allegations of paragraph 166 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

167. Lacks sufficient information to admit or deny the allegations of paragraph 167 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

168. Lacks sufficient information to admit or deny the allegations of paragraph 168 of the complaint and therefore denies the same putting the EPA to its proof; further answering said

paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

169. Lacks sufficient information to admit or deny the allegations of paragraph 169 of the complaint and therefore denies the same putting the EPA to its proof; further answering said paragraph alleges that the distribution of the product, if any, was for the purpose of lubricating the customer's food or beverage processing equipment.

170. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 170 and therefore denies the same putting the EPA to its proof.

171. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 171 and therefore denies the same putting the EPA to its proof.

172. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 172 and therefore denies the same putting the EPA to its proof.

173. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 173 and therefore denies the same putting the EPA to its proof.

174. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 174 and therefore denies the same putting the EPA to its proof.

175. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 175 and therefore denies the same putting the EPA to its proof.

176. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 176 and therefore denies the same putting the EPA to its proof.

177. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 177 and therefore denies the same putting the EPA to its proof.

178. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 178 and therefore denies the same putting the EPA to its proof.

179. Denies the allegations of paragraph 179; further answering said paragraph alleges that the food-grade lubricants are sold and used only in food or beverage processing plants and are FDA approved for potential ingestion from incidental contact with processed foods or beverages; and, therefore, the internet sites refer to "...fungus, bacterium, virus or other microorganisms ... on or in processed food, beverages,," within the meaning of 40 C.F.R. §152.5 (d), which are expressly excluded from the definition of "pests."

180. The allegations of paragraph 180 are simply a legal conclusion that Behnke neither admits nor denies.

181. Admits the allegations of paragraph 181.

182. Admits the allegations of paragraph 182.

183. Admits the allegations of paragraph 183.

184. Admits the allegations of paragraph 184.

185. Admits the allegations of paragraph 185.

186. Admits the allegations of paragraph 186.

187. Admits the allegations of paragraph 187.

188. Admits the allegations of paragraph 188.

189. Admits the allegations of paragraph 189.

190. Denies the allegations of paragraph 190; further answering said paragraph alleges that Respondent was not invited to present any information that would demonstrate Respondent's inability to pay the proposed civil penalty of \$50,050.

191. Denies the allegations of paragraph 191; further answering said paragraph alleges that Respondent did not present information regarding its inability to pay claims but Respondent did not specifically decline a request for such information.

192. Lacks sufficient information and knowledge to admit or deny the allegations of paragraph 192 and therefore denies the same putting the EPA to its proof.

193. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 192 of this Answer.

194. Denies the allegations of paragraph 194.

195. The allegations of paragraph 195 are simply a legal conclusion that Behnke neither admits nor denies.

196. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 196 of this Answer.

197. Denies the allegations of paragraph 197.

198. The allegations of paragraph 198 are simply a legal conclusion that Behnke neither admits nor denies.

199. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 199 of this Answer.

200. Denies the allegations of paragraph 200.

201. The allegations of paragraph 201 are simply a legal conclusion that Behnke neither admits nor denies.

202. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 201 of this Answer.

203. Denies the allegations of paragraph 203.

204. The allegations of paragraph 204 are simply a legal conclusion that Behnke neither admits nor denies.

205. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 204 of this Answer.

206. Denies the allegations of paragraph 206.

207. The allegations of paragraph 207 are simply a legal conclusion that Behnke neither admits nor denies.

208. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 207 of this Answer.

209. Denies the allegations of paragraph 209.

210. The allegations of paragraph 210 are simply a legal conclusion that Behnke neither admits nor denies.

211. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 213 *[sic]* of this Answer.

212. Denies the allegations of paragraph 212.

213. The allegations of paragraph 213 are simply a legal conclusion that Behnke neither admits nor denies.

214. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 216 *[sic]* of this Answer.

215. Denies the allegations of paragraph 215.

216. The allegations of paragraph 216 are simply a legal conclusion that Behnke neither admits nor denies.

217. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 216 of this Answer.

218. Denies the allegations of paragraph 218.

219. The allegations of paragraph 219 are simply a legal conclusion that Behnke neither admits nor denies.

220. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 219 of this Answer.

221. Denies the allegations of paragraph 221.

222. The allegations of paragraph 222 are simply a legal conclusion that Behnke neither admits nor denies.

223. Respondent realleges and incorporates by reference the responses contained in paragraphs 1 through 222 of this Answer.

224. Denies the allegations of paragraph 224.

225. The allegations of paragraph 225 are simply a legal conclusion that Behnke neither admits nor denies.

AFFIRMATIVE DEFENSES

1. Behnke's products are not "pesticides" within the meaning of 7 U.S.C. §136(u).
2. Behnke's products do not contain a "pesticide" as defined by 7 U.S.C. §136(u).
3. Behnke's products are not "antimicrobial pesticides" within the meaning of 7 U.S.C. §136(mm).
4. Behnke's products are not "pesticide chemicals" within the meaning of 21 U.S.C. §321(q)(1)(A).

5. Behnke's products are "food additives" pursuant to 21 U.S.C. §321(s). Behnke's products are approved as lubricants with incidental food contact pursuant to 21 CFR 178.3570, a regulation promulgated pursuant to 21 U.S.C. §348(a). It is anticipated that such products will be subject to incidental food contact and ingestion. As such, Behnke's products are strictly regulated by the Food & Drug Administration pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act ("FFDCA").

6. The intended use of Behnke's products is to protect components of equipment in food and beverage manufacturing plants from wear, corrosion, oxidation, and heat. Behnke's products are formulated to resist internal degradation from contaminants found in food processing environments. As such, the products protect themselves, and only themselves, from such environmental contaminants.

7. Behnke's products are not intended for a pesticidal purpose as set forth in 40 CFR §152.15, i.e., they are not intended to be used for the purpose of preventing, destroying, repelling or mitigating any pest. A "pest" as defined in 40 CFR §152.5, does not include microorganisms on or in processed food, which are the environmental contaminants to which Behnke's products are exposed.

REQUEST FOR A HEARING

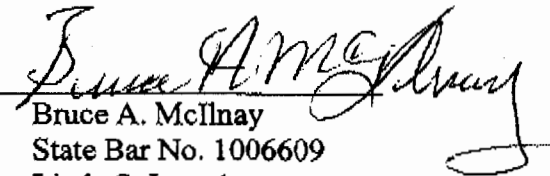
As provided in Section 14 of FIFRA, 7 U.S.C. §1361(a)(3), and in accordance with the Administrative Procedure Act, 5 U.S.C. §§551 *et seq.*, Respondent hereby requests a hearing on the Complaint, to contest any material facts contained in the Complaint not otherwise admitted in this Answer, and to contest the appropriateness of the amount of any proposed penalty. The hearing will be held and conducted in accordance with the provisions of the Administrative

Procedure Act, 5 U.S.C. §§551 *et seq.*, and the "Consolidated Rules of Practice," 64 Fed. Reg. 40138 (July 23, 1999).

WHEREFORE, Respondent Behnke Lubricants, Inc., demands judgment dismissing the Complaint and causes of action of the U.S. Environmental Protection Agency, upon the merits, together with the costs and disbursements of this action and for such other relief as deemed just and equitable.

Dated: June 8, 2007

McIlnay & Button, Ltd.
Counsel for Respondent

By: 

Bruce A. McIlnay
State Bar No. 1006609
Linda S. Isnard
State Bar No. 1000538
Elizabeth M. Roat
State Bar No. 1037779

Bruce A. McIlnay, attorney for the respondent, BEHNKE LUBRICANTS, INC., is authorized to receive service relating to this proceeding at the following address:

Bruce A. McIlnay
McIlnay & Button, Ltd.
1150 Washington Street
Grafton, WI 53024
(262) 376-1287
(262) 376-1289 (fax)

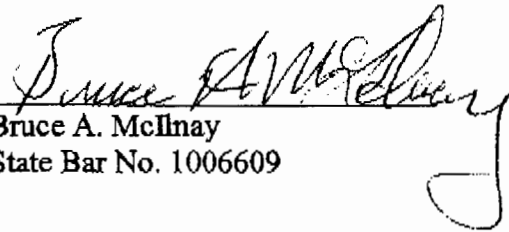
CERTIFICATE OF SERVICE

Bruce A. McIlroy, attorney for the respondent, BEHNKE LUBRICANTS, INC., hereby certifies that he has caused a true and correct copy of foregoing ANSWER AND REQUEST FOR HEARING to be served upon:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Nidhi O'Meara (C-14J), Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

via facsimile and U.S. Mail, delivered this 8th day of June, 2007.


Bruce A. McIlroy
State Bar No. 1006609