

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
) FIFRA-07-2008-0036
Advanced Products Technology, Inc.,)
Keith G. Kastendieck and) ANSWER TO
Karlán C. Kastendieck,) FIRST AMENDED COMPLAINT
)
Respondents.)

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**CORPORATE RESPONDENT ADVANCED PRODUCTS TECHNOLOGY, INC.'S
ANSWER TO FIRST AMENDED COMPLAINT**

COMES NOW Corporate Respondent Advanced Products Technology, Inc. ("APT" or "Corporate Respondent"), by and through its undersigned counsel, and for its Answer to the First Amended Complaint filed by United States Environmental Protection Agency ("EPA"), states the following:

Section I

Jurisdiction

1. APT admits the allegations contained in Paragraph 1.
2. APT is without sufficient knowledge, information or belief to admit or deny the allegations contained in Paragraph 2 and, therefore, denies same.

Section II

Parties

3. APT admits the allegations contained in Paragraph 3.

4. APT admits it is a pesticide producer and distributor located at 50-60 Hi-Line Drive, Union, Missouri. APT admits it was a “person” as defined by Section 2(s) of FIFRA. APT denies the balance of the allegations in Paragraph 4.

Section III

Statutory & Regulatory Background

5-13. Title 7, U.S.C. § 136 and 40 C.F.R. § 152 quoted in Paragraphs 5 through 13 speak for themselves.

Section IV

Factual Allegations

14. APT admits the allegations contained in Paragraph 14.

15. APT admits the allegations contained in Paragraph 15.

16. APT denies any knowledge whatsoever that the registration of Steri-Dine was cancelled or that supplemental distribution agreements were cancelled by the EPA on July 19, 1995.

APT denies any knowledge whatsoever that sales of existing stock of Steri-Dine were prohibited after January 15, 1996.

APT did become aware of these cancellations and prohibitions when a Stop Sale Order was served on Corporate Respondent on or about October 8, 2008.

17. APT admits the allegations contained in Paragraph 17.

18. APT admits it was a “person” as defined by Section 2(s) of FIFRA. APT denies the balance of the allegations in Paragraph 18.

19. APT admits the allegations contained in Paragraph 19.

20-24. These allegations are not directed toward the Corporate Respondent and are, therefore, not answered. Otherwise, APT is without sufficient knowledge, information or belief to respond to the allegations in Paragraphs 20 - 24.

25. APT admits that a representative of the Missouri Department of Agriculture (MDA) conducted a "Routine PEI" of FRM Chem's (co-respondent in the consolidated cases) facilities on December 21 and 28, 2005. Further, at the time of the inspections, the MDA inspector documented that "no violations were suspected".

APT was never told the Steri-Dine registrations or supplemental registrations had been cancelled by the MDA representative and the company was not served with a No Sale Order at that time.

26. APT is without sufficient knowledge, information or belief as to the allegations in Paragraph 26 and, therefore, denies same. APT specifically denies that the MDA representative ever told Corporate Respondent that the Steri-Dine registration was cancelled. Moreover, no Stop Sale Order was ever delivered to APT regarding Steri-Dine in 2005, 2006 or 2007.

27. APT is without sufficient knowledge, information or belief as to the allegations contained in Paragraph 27 and, therefore, denies same.

28-46. APT denies the allegations contained in Paragraphs 28 - 46.

Violations

47. APT denies the FIFRA allegations contained in Paragraph 47.

Count 1

48. As and for its Answer to Paragraph 48 of Count 1 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 47 above as if more fully stated herein.

49. APT admits the allegations contained in Paragraph 49.

50. APT denies the allegations contained in Paragraph 50.

51. APT denies the allegations contained in Paragraph 51.

52. APT denies the allegations contained in Paragraph 52.

Count 2

53. As and for its Answer to Paragraph 53 of Count 2 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 52 above as if more fully stated herein.

54. APT admits the allegations contained in Paragraph 54.

55. APT denies the allegations contained in Paragraph 55.

56. APT denies the allegations contained in Paragraph 56.

57. APT denies the allegations contained in Paragraph 57.

Count 3

58. As and for its Answer to Paragraph 58 of Count 3 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 57 above as if more fully stated herein.

59. APT admits the allegations contained in Paragraph 59.

60. APT denies the allegations contained in Paragraph 60.

61. APT denies the allegations contained in Paragraph 61.

62. APT denies the allegations contained in Paragraph 62.

Count 4

63. As and for its Answer to Paragraph 63 of Count 4 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 62 above as if more fully stated herein.

64. APT admits the allegations contained in Paragraph 64.

65. APT denies the allegations contained in Paragraph 65.

66. APT denies the allegations contained in Paragraph 66.

67. APT denies the allegations contained in Paragraph 67.

Count 5

68. As and for its Answer to Paragraph 68 of Count 5 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 67 above as if more fully stated herein.

69. APT admits the allegations contained in Paragraph 69.

70-74. APT denies the allegations contained in Paragraphs 70 - 74.

Count 6

75. As and for its Answer to Paragraph 75 of Count 6 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 74 above as if more fully stated herein.

76. APT admits the allegations contained in Paragraph 76.

77-81. APT denies the allegations contained in Paragraphs 77 - 81.

Count 7

82. As and for its Answer to Paragraph 82 of Count 7 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 81 above as if more fully stated herein.

83. APT admits the allegations contained in Paragraph 83.

84-88. APT denies the allegations contained in Paragraphs 84 - 88.

Count 8

89. As and for its Answer to Paragraph 89 of Count 8 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 88 above as if more fully stated herein.

90. APT admits the allegations contained in Paragraph 90.

91-95. APT denies the allegations contained in Paragraphs 91 - 95.

Count 9

96. As and for its Answer to Paragraph 96 of Count 9 of EPA's First Amended Complaint, Corporate Respondent APT restates, realleges and incorporates by reference its answers to Paragraphs 14 through 95 above as if more fully stated herein.

97. APT admits the allegations contained in Paragraph 97.

98-102. APT denies the allegations contained in Paragraphs 98 - 102.

Section V

Total Proposed Penalty

103. APT believes no penalty should be assessed under the facts of this case. However, the assessment of the maximum statutory penalty for each violation is onerous and burdensome to this small family owned company.

Appropriateness of Proposed Penalty

104. As stated in Paragraph 103, APT does not believe the proposed penalty is appropriate.

105. Respondent denies \$1,000,000.00 in revenues in 2007.

By way of further defenses as to Counts 1 through 9, APT asserts that the penalty is disproportionate to the situation considering the charged party's inability to pay and the fact that no significant harm to health or environment occurred as a result of these alleged actions.

Respectfully submitted,

JENKINS & KLING, P.C.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via Federal Express upon:

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this 9th day of August, 2010.

