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8  
9 UNITED STATES  
10 ENVIRONMENTAL PROTECTION AGENCY  
11 REGION IX

12 In the Matter of:  
13  
14 AbTech Industries, Inc.,  
15  
16 Respondent.

Docket No. FIFRA-09-2008-0025  
**ANSWER AND REQUEST FOR  
HEARING**

17 Respondent AbTech Industries, Inc. ("AbTech"), through undersigned counsel,  
18 hereby answers the Complaint in this case. AbTech's responses to each of the numbered  
19 paragraphs of the Complaint are set forth below:

20 I. AUTHORITY AND PARTIES

- 21 1. Paragraph 1 of the Complaint requires no response.  
22 2. AbTech is without sufficient information to admit or deny the allegations in  
Paragraph 2 of the Complaint.  
3. AbTech admits the allegations of Paragraph 3 of the Complaint.

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1 II. GENERAL ALLEGATIONS

2 4. AbTech admits the allegations of Paragraph 4 of the Complaint.

3 5. In response to Paragraph 5 of the Complaint, AbTech admits only that it sold  
4 products known as "Smart Sponge Plus" in the period from April to November 2007 to  
5 persons in the United States and denies the remaining allegations of Paragraph 5.

6 6. In response to Paragraph 6 of the Complaint, AbTech alleges that to the  
7 extent any of the allegations are true, the products fell within the "treated articles"  
8 exemption contained in 40 C.F.R. § 152.25(a), or are otherwise not subject to regulation  
9 under FIFRA. AbTech denies the remaining allegations of Paragraph 6. AbTech  
10 affirmatively alleges that it consulted with employees at EPA who are knowledgeable  
11 regarding FIFRA, registration requirements under FIFRA, and the treated articles  
12 exemption. Those employees informed AbTech that its products would qualify for the  
13 treated articles exemption when sold, distributed and/or used for the purposes alleged in  
14 the Complaint.  
15

16 7. AbTech is without sufficient information to respond to the allegations of  
17 Paragraph 7.

18 8. AbTech admits that the quoted definition of "pesticide" in Paragraph 8 is  
19 accurate.  
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DATED this 21st day of January, 2009.

GALLAGHER & KENNEDY, P.A.

By:   
Jerald C. Thompson  
Dalva L. Moellenberg  
2575 East Camelback Road  
Phoenix, Arizona 85016-9225  
Attorneys for Respondent

1 CERTIFICATE OF SERVICE

2 I certify that on January 21, 2009, the original and one copy of the foregoing  
3 Answer and Request for Hearing was sent via overnight mail, fax, and via electronic mail  
4 to:

5 Danielle Carr  
6 Regional Hearing Clerk  
7 U.S. Environmental Protection Agency, Region IX  
8 75 Hawthorne Street  
9 San Francisco, California 94105

10 and that a true and correct copy of the foregoing Answer and Request for Hearing was sent  
11 via overnight mail, fax, and via electronic mail to:

12 Edgar P. Coral  
13 Assistant Regional Counsel  
14 U.S. Environmental Protection Agency  
15 Region IX  
16 75 Hawthorne Street  
17 San Francisco, California 94105

18 Dated: 1/21/09

19 By: Carolyn M. Hedrick

20 2007966