

May 16, 2007

VIA FEDERAL EXPRESS

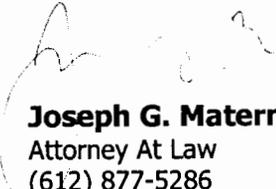
Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Re: In the Matter of SuperClean Brands, Inc.
Docket No. EPCRA 05-2007-0013

Dear Regional Hearing Clerk:

Enclosed for filing please find an original and one copy of the Answer to Administrative Complaint of SuperClean Brands, Inc.

Sincerely,



Joseph G. Maternowski
Attorney At Law
(612) 877-5286
MaternowskiJ@moss-barnett.com

JGM/cag
Enclosure
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

DOCKET NO. EPCRA 05-2007-0013

SuperClean Brands, Inc.
51 East Maryland
St. Paul, MN 55117

**ANSWER TO ADMINISTRATIVE
COMPLAINT**

Respondent.

For its answer to the Administrative Complaint ("Complaint") issued in the above-entitled matter, SuperClean Brands, Inc. ("SuperClean") states the following:

1. All matters in the Complaint are denied except as specifically admitted herein.
2. SuperClean admits the allegations set forth in Paragraph 1 of the Complaint.
3. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 2 of the Complaint and therefore denies same.
4. SuperClean admits the allegations set forth in Paragraph 3 of the Complaint to the extent that SuperClean Brands, Inc. is a corporation doing business in the State of Minnesota. SuperClean denies that it is doing business in the State of Minnesota as Fox Packaging Company.
5. SuperClean alleges that no response is required to the allegations set forth in Paragraph 4 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statute cited therein speaks for itself. As to all other allegations contained in Paragraph 4 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.
6. SuperClean alleges that no response is required to the allegations set forth in Paragraph 5 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively

alleges that the regulations speak for themselves. As to all other allegations contained in Paragraph 5 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

7. SuperClean alleges that no response is required to the allegations set forth in Paragraph 6 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 6 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

8. SuperClean admits the allegations set forth in Paragraph 7 of the Complaint.

9. SuperClean alleges that no response is required to the allegations set forth in Paragraph 8 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 8 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

10. SuperClean admits the allegations set forth in Paragraph 9 of the Complaint.

11. SuperClean admits the allegations set forth in Paragraph 10 of the Complaint.

12. SuperClean admits the allegations set forth in Paragraph 11 of the Complaint.

13. SuperClean admits the allegations set forth in Paragraph 12 of the Complaint.

14. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 13 of the Complaint and therefore denies same.

15. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 14 of the Complaint and therefore denies same.

16. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 15 of the Complaint and therefore denies same.

17. SuperClean alleges that no response is required to the allegations set forth in Paragraph 16 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 16 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

18. SuperClean alleges that no response is required to the allegations set forth in Paragraph 17 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 17 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

19. SuperClean alleges that no response is required to the allegations set forth in Paragraph 18 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 18 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

20. SuperClean admits the allegations set forth in Paragraph 19 of the Complaint.

21. SuperClean alleges that no response is required to the allegations set forth in Paragraph 20 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 20 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

22. SuperClean admits the allegations set forth in Paragraph 21 of the Complaint.

COUNT I

23. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-21 of the Complaint in response to Paragraph 22 of the Complaint.

24. SuperClean admits the allegations set forth in Paragraph 23 of the Complaint.

25. SuperClean alleges that no response is required to the allegations set forth in Paragraph 24 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 24 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

COUNT II

26. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-21 of the Complaint in response to Paragraph 25 of the Complaint.

27. SuperClean admits the allegations set forth in Paragraph 26 of the Complaint.

28. SuperClean alleges that no response is required to the allegations set forth in Paragraph 27 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 27 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

PROPOSED EPCRA PENALTY

29. SuperClean alleges that no response is required to the allegations set forth in Paragraph 28 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 28 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

30. With respect to the imposition of the proposed civil penalties set forth in Paragraph 29 of the Complaint, SuperClean states that, based on all of the facts available to it, the amount of penalty proposed is unjustified under the current EPA Enforcement Response Policy, other applicable EPA policies and specifically requests that no penalty be issued under the circumstances of this matter. SuperClean maintains that the EPA has misapplied the Enforcement Response Policy to SuperClean. The EPA has improperly considered the nature, extent, gravity and circumstances of the alleged violations which have resulted in EPA's improper characterization of the alleged violations in base penalty matrices. Specifically, the EPA failed to apply statutory adjustment factors for ability to pay, degree of culpability, other matters as justice may require, size of business, attitude and voluntary disclosure.

31. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 30 of the Complaint and therefore denies same.

RULES GOVERNING THIS PROCEEDING

32. SuperClean alleges that no response is required to the allegations regarding the rules governing this proceeding set forth in Paragraph 31 of the Complaint, as the applicable rules speak for themselves.

TERMS OF PAYMENT

33. SuperClean alleges that no response is required to the allegations regarding the terms of payment set forth in Paragraphs 32-36 of the Complaint, as this seems to be a structured settlement offer.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

34. In response to Paragraph 37 of the Complaint, SuperClean requests a formal hearing to contest the factual and legal bases set forth in the Complaint and to present arguments related to the applicability of the EPA Enforcement Response, Small Business Compliance and Audit Policies.

ANSWER

35. SuperClean submits this Answer in response to Paragraphs 1-37 and Paragraphs 38-45 of the Complaint.

SETTLEMENT CONFERENCE

36. SuperClean requests an informal settlement conference as described in Paragraphs 46-48 of the Complaint to discuss the facts alleged in the Complaint and to discuss settlement.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

37. SuperClean' failure to submit reports was due to unique circumstances that are not likely to recur. Upon request, SuperClean will submit for this administrative body records to reflect the unique transitions that were taking place within this small business that surrounded its failure to timely submit completed Hazardous Chemical Inventory Forms (Tier I or Tier II as described in 40 C.F.R. Part 370) for calendar year 2005 to the Minnesota State Energy Response Commission (SERC) and the local fire department. Notwithstanding the fact that the report

filings were delayed, SuperClean had consistently filed all reports in prior years, thereby ensuring that the SERC and local fire departments had appropriate information for emergency response situations.

SECOND DEFENSE

38. The doctrines of accord and satisfaction, settlement and waiver, lack of jurisdiction, equitable estoppel and laches each bar the Complainant from imposing or enforcing any civil penalties against SuperClean. On October 18, 2006, John D. Myhre, EPCRA Compliance Inspector, audited the Facility. He was accompanied by Steve Tomlyanovich of the Minnesota SERC. As part of the audit, Mr. Myhre asked Mr. Tomlyanovich if SuperClean's reports had been filed; Mr. Tomlyanovich confirmed that they had. He did not ask about when the filing was made or otherwise indicate that timeliness was a critical factor. With that information and other facts gathered during the audit, Mr. Myhre submitted his audit outcomes to SuperClean, requesting only that SuperClean provide invoices for purchases of methanol, ethylene glycol and isopropyl alcohol, as well as Material Safety Data Sheets for the same. No other audit outcomes were delivered, nor were outcomes of failure to timely file raised. As such, SuperClean was led to believe that it was in compliance with environmental filing and permitting requirements.

WHEREFORE, SuperClean prays for an initial decision of this Court in its favor as follows:

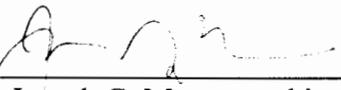
1. Dismissing all causes of action against SuperClean with prejudice and on the merits;

2. If there is a finding that a violation(s) occurred, based on the unique circumstances of this case and the application of the EPA's Enforcement Response Policy, no civil penalty should be recommended.

3. Awarding SuperClean such other and further relief as the presiding officer deems just and equitable.

Dated: May 16, 2007.

MOSS & BARNETT

By: 

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