

FILED

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

2016 JUN 19 PM 2:18
REGIONAL COMPLAINTS DIVISION
EPA REGION 6

IN THE MATTER OF:

APEX TOOL GROUP, LLC.
SPRINGDALE, ARKANSAS

RESPONDENT

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DOCKET NO. EPCRA-06-2016-0500

ANSWER AND REQUEST FOR HEARING

Respondent, Apex Tool Group, LLC (“Apex”), hereby answers the United States Environmental Protection Agency’s (“EPA”) Complaint and Notice of Opportunity for Hearing (“Complaint”) as follows:

I. STATUTORY AND REGULATORY BACKGROUND

1. Apex admits the allegations in paragraphs 1 through 6 of the Complaint.

II. PRELIMINARY ALLEGATIONS

2. With the exception of paragraph 9, Apex admits the allegations in paragraphs 7 through 12 of the Complaint. With respect to paragraph 9 of the Complaint, Apex admits that it owns the property located at 1609 N. Old Missouri Road, Springdale, Arkansas, but operations at the facility were permanently closed in 2015.
3. Regarding Paragraph 13 of the Complaint, Apex admits that, to the extent the type and quantity of toxic chemicals were made available to Apex from the safety data sheets supplied by vendors, Apex knew the type and quantity of toxic chemicals manufactured, processed, or otherwise used at its facility during calendar years 2009 -2013.
4. Apex admits the allegations in the first and second sentences of paragraph 14 of the Complaint. Apex admits that chromium compounds are listed in 40 CFR 372.65(c).
5. Apex admits the allegations in the first and second sentences of paragraph 15 of the Complaint. Apex admits that copper compounds are listed in 40 CFR 372.65(c).
6. Apex admits the allegations in paragraph 16 of the Complaint.

7. Apex admits the allegations in the first and second sentences of paragraph 17 of the Complaint. Apex admits that manganese compounds are listed in 40 CFR 372.65(c).
8. Apex admits the allegations in paragraphs 18 through 22 of the Complaint.

III. VIOLATIONS

9. Apex acknowledges paragraph 23 of the Complaint.
10. Apex denies the allegations in paragraphs 24 and 25 of the Complaint.
11. The allegations in paragraph 26 of the Complaint are legal conclusions that therefore require no response.
12. Apex acknowledges paragraph 27 of the Complaint.
13. Apex denies the allegations in paragraphs 28 and 29 of the Complaint.
14. The allegations in paragraph 30 of the Complaint are legal conclusions that therefore require no response.
15. Apex acknowledges paragraph 31 of the Complaint.
16. Apex denies the allegations in paragraphs 32 and 33 of the Complaint.
17. The allegations in paragraph 34 of the Complaint are legal conclusions that therefore require no response.
18. Apex acknowledges paragraph 35 of the Complaint.
19. Apex denies the allegations in paragraphs 36 and 37 of the Complaint.
20. The allegations in paragraph 38 of the Complaint are legal conclusions that therefore require no response.
21. Apex acknowledges paragraph 39 of the Complaint.
22. Apex denies the allegations in paragraphs 40 and 41 of the Complaint.
23. The allegations in paragraph 42 of the Complaint are legal conclusions that therefore require no response.
24. Apex acknowledges paragraph 43 of the Complaint.
25. Apex denies the allegations in paragraphs 44 and 45 of the Complaint.
26. The allegations in paragraph 46 of the Complaint are legal conclusions that therefore require no response.
27. Apex acknowledges paragraph 47 of the Complaint.

28. Apex denies the allegations in paragraphs 48 and 49 of the Complaint.
29. The allegations in paragraph 50 of the Complaint are legal conclusions that therefore require no response.
30. Apex acknowledges paragraph 51 of the Complaint.
31. Apex denies the allegations in paragraphs 52 and 53 of the Complaint.
32. The allegations in paragraph 54 of the Complaint are legal conclusions that therefore require no response.
33. Apex acknowledges paragraph 55 of the Complaint.
34. Apex denies the allegations in paragraphs 56 and 57 of the Complaint.
35. The allegations in paragraph 58 of the Complaint are legal conclusions that therefore require no response.
36. Apex acknowledges paragraph 59 of the Complaint.
37. Apex denies the allegations in paragraphs 60 and 61 of the Complaint.
38. The allegations in paragraph 62 of the Complaint are legal conclusions that therefore require no response.
39. Apex acknowledges paragraph 63 of the Complaint.
40. Apex denies the allegations in paragraphs 64 and 65 of the Complaint.
41. The allegations in paragraph 66 of the Complaint are legal conclusions that therefore require no response.
42. Apex acknowledges paragraph 67 of the Complaint.
43. Apex denies the allegations in paragraphs 68 and 69 of the Complaint.
44. The allegations in paragraph 70 of the Complaint are legal conclusions that therefore require no response.
45. Apex acknowledges paragraph 71 of the Complaint.
46. Apex denies the allegations in paragraphs 72 and 73 of the Complaint.
47. The allegations in paragraph 74 of the Complaint are legal conclusions that therefore require no response.
48. Apex acknowledges paragraph 75 of the Complaint.
49. Apex denies the allegations in paragraphs 76 and 77 of the Complaint.

50. The allegations in paragraph 78 of the Complaint are legal conclusions that therefore require no response.
51. Apex acknowledges paragraph 79 of the Complaint.
52. Apex denies the allegations in paragraphs 80 and 81 of the Complaint.
53. The allegations in paragraph 82 of the Complaint are legal conclusions that therefore require no response.
54. Apex acknowledges paragraph 83 of the Complaint.
55. Apex denies the allegations in paragraphs 84 and 85 of the Complaint.
56. The allegations in paragraph 86 of the Complaint are legal conclusions that therefore require no response.
57. Apex acknowledges paragraph 87 of the Complaint.
58. Apex denies the allegations in paragraphs 88 and 89 of the Complaint.
59. The allegations in paragraph 90 of the Complaint are legal conclusions that therefore require no response.
60. Apex acknowledges paragraph 91 of the Complaint.
61. Apex denies the allegations in paragraphs 92 and 93 of the Complaint.
62. The allegations in paragraph 94 of the Complaint are legal conclusions that therefore require no response.
63. Apex acknowledges paragraph 95 of the Complaint.
64. Apex denies the allegations in paragraphs 96 and 97 of the Complaint.
65. The allegations in paragraph 98 of the Complaint are legal conclusions that therefore require no response.
66. Apex acknowledges paragraph 99 of the Complaint.
67. Apex denies the allegations in paragraphs 100 and 101 of the Complaint.
68. The allegations in paragraph 102 of the Complaint are legal conclusions that therefore require no response.
69. Apex acknowledges paragraph 103 of the Complaint.
70. Apex denies the allegations in paragraph 104 of the Complaint.
71. Apex denies the allegations in paragraph 105 of the Complaint.

72. The allegations in paragraph 106 of the Complaint are legal conclusions that therefore require no response.
73. Apex acknowledges paragraph 107 of the Complaint.
74. Apex denies the allegations in paragraph 108 of the Complaint.
75. Apex denies the allegations in paragraph 109 of the Complaint.
76. The allegations in paragraph 110 of the Complaint are legal conclusions that therefore require no response.
77. Apex acknowledges paragraph 111 of the Complaint.
78. Apex denies the allegations in paragraph 112 of the Complaint.
79. Apex denies the allegations in paragraph 113 of the Complaint.
80. The allegations in paragraph 114 of the Complaint are legal conclusions that therefore require no response.
81. Apex acknowledges paragraph 115 of the Complaint.
82. Apex denies the allegations in paragraph 116 of the Complaint.
83. Apex denies the allegations in paragraph 117 of the Complaint.
84. The allegations in paragraph 118 of the Complaint are legal conclusions that therefore require no response.
85. Apex acknowledges paragraph 119 of the Complaint.
86. Apex denies the allegations in paragraph 120 of the Complaint.
87. Apex denies the allegations in paragraph 121 of the Complaint.
88. The allegations in paragraph 122 of the Complaint are legal conclusions that therefore require no response.
89. Apex acknowledges paragraph 123 of the Complaint.
90. Apex denies the allegations in paragraph 124 of the Complaint.
91. Apex denies the allegations in paragraph 125 of the Complaint.
92. The allegations in paragraph 126 of the Complaint are legal conclusions that therefore require no response.
93. Apex acknowledges paragraph 127 of the Complaint.
94. Apex denies the allegations in paragraph 128 of the Complaint.

95. Apex denies the allegations in paragraph 129 of the Complaint.
96. The allegations in paragraph 130 of the Complaint are legal conclusions that therefore require no response.
97. Apex acknowledges paragraph 131 of the Complaint.
98. Apex denies the allegations in paragraph 132 of the Complaint.
99. Apex denies the allegations in paragraph 133 of the Complaint.
100. The allegations in paragraph 134 of the Complaint are legal conclusions that therefore require no response.
101. Apex acknowledges paragraph 135 of the Complaint.
102. Apex denies the allegations in paragraph 136 of the Complaint.
103. Apex denies the allegations in paragraph 137 of the Complaint.
104. The allegations in paragraph 138 of the Complaint are legal conclusions that therefore require no response.

IV. PROPOSED CIVIL PENALTY

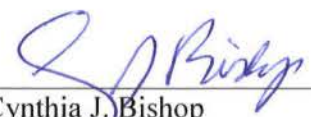
105. The civil penalty proposed by EPA is unreasonably high, given the facts in this matter. In addition, the penalty does not follow the guidelines set forth in the April 12, 2001 EPCRA Penalty Policy cited in the Complaint. Further, the penalty is inconsistent with other penalties for violations of EPCRA Section 313 issued by EPA for similar alleged violations.
106. Apex made a good faith effort to comply with EPCRA Section 313 and the corresponding regulations in 40 CFR Part 372. During the 2009 through 2014 time frame at issue in this matter, Apex reviewed purchasing records, determined whether toxic chemicals triggered threshold reporting requirements, and calculated releases using the information available to it at the time.

REQUEST FOR HEARING

Apex requests a hearing on this matter.

Respectfully Submitted,

Date: 1/14/16



Cynthia J. Bishop
C Bishop Law PC
521 Wales Ct
Coppell, TX 75019
214-893-5646
cbishop@cbishoplaw.com

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2016, the original and one copy of the foregoing unopposed motion was mailed to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733 and also faxed to the clerk at 214-665-2182. A true and correct copy of the motion was sent via email (PDF) to Jay Przyborski and James Murdock with EPA Region 6.



Cynthia J. Bishop
C Bishop Law PC

COUNSEL FOR RESPONDENT