

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VII  
901 NORTH 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. FIFRA-07-2005-0235
	)	
Yates Center Elevator, Inc.	)	COMPLAINT AND NOTICE OF
109 N. Pratt	)	OPPORTUNITY FOR HEARING
Yates Center, Kansas 66783	)	
	)	
	)	
	)	
Respondent	)	

ANSWER TO COMPLAINT

Comes now TOM DAVIS, Manager of Yates Center Elevator, Inc. and makes answer to Complaint filed herein as follows:

1. Respondent admits Sections I and II.
2. Respondent denies generally Section III and generally denies the allegations of the Complaint due to lack of knowledge or mitigating circumstances.
3. Respondent generally denies paragraph 23 of Count 1.
4. Respondent admits paragraph 24 through 29 of Count 1 but affirmatively states that purchaser, David Jones, had previously had a license and Respondent believed him to be licensed. Further that the sales were made at a time when Respondent's principal employee had terminated and or part-time helper was on duty.
5. Respondent denies that the proposed civil penalty as set out in paragraph 30 of Count 1 is appropriate under the circumstances.
6. Respondent denies generally paragraph 31 of Count 2.
7. Respondent generally admits paragraphs 32 through 36 of Count 2 but affirmatively states that the sales were made at a time when Respondent's principal employee had terminated and a part-time helper was on duty.
8. Respondent denies that the proposed civil penalty as set out in paragraph 38 is appropriate under the circumstances.

9. Respondent generally denies paragraph 39 of Count 3.
10. Respondent admits paragraphs 40 through 44 but affirmatively states that Respondent employee, Tom Davis, a certified applicator was available as a supervisor.
11. Except as above stated, Respondent admits paragraph 45 of Count 3.
12. Respondent denies that the proposed civil penalty as set out in paragraph 46 of Count 3 is appropriate under the circumstances.
13. Respondent generally denies paragraph 47 of Count 4.
14. Respondent admits paragraphs 48 and 51 of Count 4.
15. Respondent neither admits nor denies paragraph 49 of Count 4 as referring to matters outside his knowledge.
16. Respondent admits paragraph 50 of Count 4.
17. Respondent generally denies paragraph 52 of Count 4 as referring to matters outside his knowledge.
18. Except as above stated Respondent admits paragraph 53 of Count 4.
19. Respondent denies that the proposed civil penalty as set out in paragraph 54 of Count 4 is appropriate under the circumstances.
20. Respondent generally denies paragraph 55 of Count 5.
21. Respondent admits paragraphs 56 and 57 of Count 5.
22. Respondent denies paragraph 58.
23. Respondent admits paragraph 59.
24. Respondent denies paragraph 60.
25. Respondent denies paragraph 61.
26. Respondent denies that the proposed civil penalty as set out in paragraph 62 of Count 5 is appropriate under the circumstances.
27. Respondent generally denies paragraph 63 of Count 6.

28. Respondent admits paragraphs 64 through 67 of Count 6 but affirmatively states that said sale was made at a time when Respondent's principal employee had terminated and part-time helper was on duty.
29. Except as above stated Respondent admits paragraph 68.
30. Respondent denies that the proposed civil penalty as set out in paragraph 69 of Count 6 is appropriate under the circumstances.
31. Respondent generally denies paragraph 70 of Count 7.
32. Respondent generally denies paragraphs 71 through 74. Respondent states that the product referred to was received and placed for sale as furnished by the wholesaler and Respondent had no knowledge of any rule violation.
33. Respondent denies that the proposed civil penalty as set out in paragraph 75 of Count 7 is appropriate under the circumstances.
34. Respondent generally denies paragraph 76 of Count 8.
35. Respondent generally denies paragraphs 77 through 79. Respondent states that the product referred to was received and placed for sale as furnished by the wholesaler and Respondent had no knowledge of any rule violation.
36. Respondent denies that the proposed civil penalty as set out in paragraph 80 of Count 8 is appropriate under the circumstances.
37. Respondent generally denies paragraph 81 of Count 9.
38. Respondent generally admits paragraphs 82 and 83 of Count 9 but affirmatively states that he had no knowledge that a label was missing from one of many bottles on the shelf.
39. Respondent denies that the proposed civil penalty as set out in paragraph 84 of Count 9 is appropriate under the circumstances.
40. Respondent generally denies paragraph 85 of Count 10.
41. Respondent generally denies the allegations of paragraphs 86 through 91 for the reason that the product referenced to therein was not for sale.
42. Respondent admits paragraph 92 of Section IV.
43. Respondent denies the appropriateness of the proposed penalty.

44. Respondent reserves the right to determine the correct financial information referred to at paragraphs 94 and 95 of Section IV.
45. Respondent intends to submit further information relating to issues raised as well as appropriateness of the proposed penalty and the ability to pay same.



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TOM DAVIS  
Manager of Yates Center Elevator, Inc.

REQUEST FOR HEARING

Respondent hereby requests a hearing on the above mentioned matter as relates to material facts alleged therein and also to determine the appropriateness of any penalty to be assessed herein.



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TOM DAVIS  
Manager of Yates Center Elevator, Inc.

CERTIFICATE OF MAILING

This is to certify that the undersigned on the 2 day of June, 2005, caused to be mailed, by depositing in the U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing to:

Regional Hearing Clerk  
EPA – Region 7  
901 N. 5<sup>th</sup>  
Kansas City, KS 66101

Chris R. Dudding  
Assistant Regional Counsel  
EPA – Region 7  
901 N. 5<sup>th</sup>  
Kansas City, KS 66101



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TOM DAVIS  
Manager of Yates Center Elevator, Inc.