

12707 Zierick

Practice Limited to
Labor, Employment,
Benefits,
Environmental Law, and
Related Litigation

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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT 29 PM 3:40
REGIONAL HEARING
CLERK

Melissa Layne
Paralegal

IRS ID # 06-1066056

Regional Hearing Clerk
US Environmental Protection Agency, Region II
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: Docket No. EPCRA-02-2007-4006

October 26, 2007

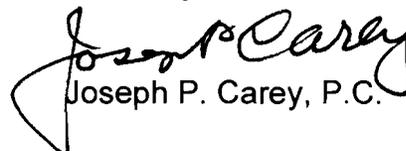
Dear Sir,

Pursuant to 40CFR §22.15(a) please find an original and one copy of Respondent's Answer to the Complaint.

This will certify that a copy of this Answer is also being served upon:

Andrew L. Praschak, Esq.
Office of Regional Counsel
US Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007-1866

Sincerely,


Joseph P. Carey, P.C.

CC
Grethen A. Zierick, President
Zierick Manufacturing Corporation
Radio Circle
Mt. Kisco, New York 10549

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
IN THE MATTER OF:

Docket No. EPCRA-02-2007-4006
CERTIFICATION OF SERVICE

Zierick Manufacturing Corp.
131 Radio Circle

Respondent.

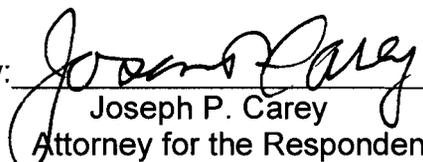
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I certify that on the date below noted, I caused to be sent, by Certified Mail Return Receipt Requested a copy of the foregoing Answer and Affirmative Defense to the following person at the address listed below.

Regional Hearing Clerk
US Environmental Protection Agency, Region II
290 Broadway, 16th Floor
New York, New York 10007-1866

October 26th 2007

Joseph P. Carey, P.C.

By: 
Joseph P. Carey
Attorney for the Respondent
1081 Main Street, Suite E
Fishkill, New York 12524
Phone: (845) 896-0600
Fax: (845) 896-0602

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 OCT 29 PM 3:40
REGIONAL HEARING
CLERK

-----x
IN THE MATTER OF:

**Docket No. EPCRA-02-2007-4006
ANSWER**

**Zierick Manufacturing Corp.
131 Radio Circle**

Respondent.

-----x

The Respondent by its attorney Joseph P. Carey, P.C., as and for its Answer shows to the Agency:

- 1) Admits the allegations contained in ¶¶1, 2 & 3 of the Complaint.
- 2) Admits the allegations contained in ¶¶4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 23, 24, 26 & 27.

AS AND FOR AN AFFIRMATIVE DEFENSE

- 3) The allegations contained in ¶¶ "1" through "27" are incorporated herein by reference.
- 4) The Respondent and the Agency in docket No. EPCRA-0222006-4202 entered into a Consent Agreement and Final Order on December 14th 2006 and December 20th 2006 respectively upon the payment of a civil penalty in the amount of \$10,000.00, in addition to sums in excess of \$100,000.00 in order to implement a Supplemental Environmental Project ("SEP"), which was completed within three months of the Final Order.
- 5) That the Respondent's Answer in docket No. EPCRA-02-2006-4202 and in the negotiations leading to the Consent Agreement, clearly referred to the sulfuric acid alleged violations which are the subject of the instant Complaint, as well as to the "Form R" lead compounds.
- 6) That Respondent had a good faith belief that the settlement in docket No. EPACRA-02-2006-4202 included the settlement of the sulfuric acid allegations. And this was

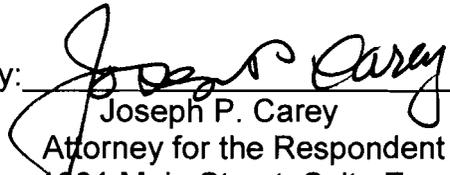
confirmed by the absolute silence by the Agency between December 14th 2006 and October 1st 2007 when Respondent was served with the Complaint in the instant case – a period of nine months and seventeen days.

- 7) That Respondent was induced to settle docket No. EPCRA-02-2006-4202 by the reasonable expectation that the sulfuric acid allegations were included in such settlement and the Respondent has been prejudiced by being lead to believe its compliance was total.
- 8) That moreover the Agency's entire inspection uncovered no harm to the environment, but rather paperwork violations, albeit serious, but that were immediately remedied.

Wherefore Respondent seeks a Hearing and an Order from an Administrative Law Judge confirming that the Respondent has settled the sulfuric acid allegations as contained in the instant Complaint, and for such other and further relief as is just.

October 25th 2007

Joseph P. Carey, P.C.

By: 
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Attorney for the Respondent
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