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EPA REGION 8  
HEARING CLERK

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**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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IN THE MATTER OF:

Guy Zwahlen  
45 W. Louise Avenue  
Salt Lake City, UT 84115,

Respondent.

Docket No. CAA 08-2007-0004

**ANSWER TO COMPLAINT AND  
REQUEST FOR HEARING**

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**ANSWER**

Respondent Guy Zwahlen ("*Zwahlen*"), by and through his legal counsel, Clay W. Stucki of Bennett Tueller Johnson & Deere, hereby **REQUESTS A HEARING** and responds to the numbered paragraph in the Complaint and Notice of Opportunity for Hearing (the "*Complaint*") from the United States Environmental Protection Agency (the "*EPA*") in the above captioned penalty proceeding as follows:

1. Zwahlen admits that the EPA has wrongfully named Zwahlen as the respondent in the above captioned action. However, Zwahlen affirmatively alleges that (i) he is not a properly named respondent or party to this action, (ii) he has not performed any of the actions set forth in the complaint, and (iii) the EPA has no basis in law, and has failed to plead any basis, for any count or complaint against Zwahlen individually. The

affirmative allegations in the preceding sentence are hereby incorporated into each and every numbered paragraph herein.

2. Denied. At all times relevant to this action, Total Interior Demolition was a business owned by TID, Inc., a Utah corporation ("*TID*") and was not owned by Zwahlen.

3. Zwahlen admits that Zwahlen is a person but denies that Zwahlen is subject to regulation under 42 U.S.C. section 7671g(c) (the "*Act*") because Zwahlen did not maintain, service, repair, or dispose of any appliance during the times relevant to this action. Zwahlen denies any other allegation except as specifically admitted herein.

4. Denied. Zwahlen affirmatively alleges that TID conducted two (2) separate building demolition projects at two different times as a subcontractor for two separate general contractors at the former Fred Meyer building during the Summer of 2006.

5. Denied. During the performance of the second TID subcontract relevant to this action, no more than six (6) RTUs were removed by TID. Zwahlen affirmatively alleges that any RTUs removed under the previous subcontract did not contain any substance used as a refrigerant.

6. Zwahlen admits that any RTUs that were removed by TID are "appliances" within the meaning of the Act but incorporates by this reference the denial set forth in paragraph 5 above and denies any other allegation except as specifically admitted herein.

7. Zwahlen admits that any disposal of RTUs that were removed by TID was a "disposal" within the meaning of the Act but incorporates by this reference the denial set forth in paragraph 5 above and denies any other allegation except as specifically admitted herein.

8. Admitted.
9. Admitted.
10. Admitted.
11. Denied.
12. Denied. Zwahlen affirmatively alleges that TID reasonably and in good faith believed that there was no remaining refrigerant in any appliance because (i) both subcontracts related to the old Fred Meyer building provided that the general contractor was responsible for any environmental matters and permits in the demolition, (ii) the first contractor had interpreted the subcontract in the same manner as TID and had appropriately removed all of the refrigerant from any RTU before it was removed by TID, and (iii) the Pre-Demolition Hazardous Material Survey Report proved to TID by the general contractor provided that no CFC containing materials were identified in the buildings and no containers of liquid were identified on the property.
13. Denied. Zwahlen incorporates into this paragraph the affirmative allegations from paragraph 12 above.
14. Denied.

Zwahlen hereby denies any other allegation of the Complaint except as specifically admitted herein.

For the reasons set forth above, Zwahlen hereby contends that he is entitled to a judgment as a matter of law and requests that all of the counts of the Complaint be dismissed with prejudice.

**PENALTY CALCULATION**

Zwahlen also affirmatively alleges that the penalty calculation included by the EPA in the Complaint (i) is based on false allegations and incorrect assumptions by the EPA, (ii) wrongfully includes an economic benefit component when there was absolutely no economic benefit to Zwahlen or TID, and (iii) wrongfully applies the EPA's penalty policy to the facts of this case.

**REQUEST FOR HEARING**

Zwahlen hereby requests a hearing on all counts of the Complaint as well as on the amount of the proposed penalty in this case.

**FACTS AT ISSUE**

Except as specifically admitted in this Answer above, Zwahlen intends to place at issue all of the facts set forth in the allegations of the Complaint or in the allegations of the Answer above.

DATED this 24<sup>th</sup> day of October, 2007.



Clay W. Stucki  
Attorney for Zwahlen

**Certificate of Service**

I hereby certify that on this 24<sup>th</sup> day of October, 2007, I caused to be sent by overnight Federal Express delivery the foregoing ANSWER TO COMPLAINT AND REQUEST FOR HEARING to:

Attn: Jessie Goldfarb (8ENF-L), Senior Enforcement Attorney  
Attn: Michael T. Bisner, Assistant Regional Administrator  
Office of Enforcement, Compliance and Environmental Justice  
U.S. EPA-Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Regional Hearing Clerk (8RC)  
U.S. EPA-Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

  
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Clay W. Stucki