

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2013 MAR 18 P 2:36

In the Matter of

TECHNICAL INDUSTRIAL SALES, INC.

Respondent

Proceeding under the Federal
Insecticide, Fungicide, and Rodenticide
Act, as amended.

REGIONAL HEARING
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. FIFRA-02-2013-5301

ANSWER TO COMPLAINT AND HEARING REQUEST

COMES NOW, respondent Technical Industrial Sales, Inc., through the undersigned attorney, in answering the allegations of the Complaint on file herein, affirms, denies and alleges as follows:

1. The allegations of Paragraph 1 and 2 of the Complaint herein, do not require Respondent's response.
2. Answering the allegations of Paragraph 3-9 of the Complaint herein, Respondent affirms all facts.
3. Answering the allegation of Paragraph 10 of the Complaint herein, Respondent denies that he distributes Zimek brand products. It is affirmatively alleged that Respondent distributed Zimek brand products, including Zimek Fogging Systems. Respondent stopped distribution and sales of Zimek brand on 2011.
4. Answering the allegation of Paragraph 11 of the Complaint herein, Respondent affirms that he sold pesticides Zimek QD and Zimek D&I Plus, and Zimek Fogging Systems only between 2008 and 2009.

Respondent stopped selling, marketing and/or distributing Zimek brand on 2011.

5. Answering the allegations of Paragraph 12-14 of the Complaint herein, Respondent affirms all facts.
6. Answering the allegation of Paragraph 15 of the Complaint herein, Respondent denies that the October inspection was conducted in accordance with Section 9(a)(1) of FIFRA. It is affirmatively alleged that Respondent distributed Zimek products but did not stock or held any Zimek products and/or pesticides for distribution or sale on their premises. Zimek products intended for distribution and/or sale where ordered from Zimek, Inc., received and delivered directly to Respondent's clients.
7. Answering the allegations of Paragraphs 16-17 of the Complaint herein, Respondent affirms all facts.
8. Answering the allegation of Paragraph 18 of the Complaint herein, Respondent affirms that EPA obtained Respondent's documentation on Zimek Fogging Systems and EPA registered pesticides Zimek QD and Zimek D&I pesticides. Respondent denies the rest of the allegation due to lack of knowledge of documents referred to.
9. Answering the allegation of Paragraph 19 of the Complaint herein, Respondent affirms that he recommended the application of Zimek QD and Zimek D&I Plus pesticides via Zimek Fogging Systems. It is affirmatively alleged that Respondent recommended such application

based upon the representations and bona fide information received from Zimek, Inc.

10. Answering the allegation of Paragraph 20 of the Complaint herein, Respondent affirms based on his knowledge and/or belief that Zimek, Inc. was inspected. Respondent denies when such inspection was conducted due to lack of information.
11. Answering the allegations of Paragraphs 21-24 of the Complaint herein, Respondent denies all facts due to lack of information.
12. Answering the allegation of Paragraph 25 of the Complaint herein, Respondent affirms that Section 12(a)(2)(B) of FIFRA, 7 U.S.C. Section 136j (a)(2)(G), provides "*it shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling*".

Counts 1 and 2 – Zimek QD

13. Answering allegation of Paragraph 26 of the Complaint herein, Respondent re-alleges answers to Paragraphs 1 through 25 inclusive, of the Complaint, as if fully set forth herein.
14. Answering the allegations of Paragraphs 27-28 of the Complaint herein, Respondent affirms all facts.
15. Answering the allegation of Paragraph 29 of the Complaint herein, Respondent denies, based on his knowledge and/or belief, that the basic product is the only EPA registered label for basic product and any distributor products. Respondent affirmatively alleges that, based on Zimek, Inc. information, Zimek QD label was registered. It is also affirmatively alleged that Respondent submitted and obtained

registration of distributor product Zimek QD (EPA Reg. No. 70263-6-81632) from the Commonwealth of Puerto Rico, through the Department of Agriculture (Reg. No. 08-1225-1).

16. Answering the allegation of Paragraph 30 of the Complaint herein, Respondent affirms that 40 C.F.R. Section 152.132 (d)(5) provides that the supplemental registrant of a distributor product may omit specific claims from the EPA label of the basic product.
17. Answering the allegation of Paragraph 31 of the Complaint herein, Respondent has no knowledge of the facts alleged.
18. Answering allegation of Paragraph 32 of the Complaint, Respondent denies the allegation due to lack of knowledge. It is affirmatively alleged that Respondent submitted distributor product Zimek QD and Zimek Fogging System for evaluation and investigation through the Department of Agriculture of the Commonwealth of Puerto Rico and obtained the approval and registration of Zimek QD from the agency.
19. Answering the allegation of Paragraph 33 of the Complaint herein, Respondent denies due to lack of knowledge.
20. Answering the allegation of Paragraph 34 of the Complaint herein, Respondent affirms that Zimek QD's label omits ambulances as a site of application.
21. Answering the allegation of Paragraph 35 of the Complaint herein, Respondent affirms all facts.

22. Answering the allegation of Paragraph 36 of the Complaint herein, Respondent denies the allegation.
23. Answering the allegation of Paragraph 37 of the Complaint herein, Respondent affirms that he sold Zimek QD to costumers listed in paragraph 35. Respondent denies the rest of the allegation.
24. Answering the allegation of Paragraph 38 of the Complaint herein, Respondent denies violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. 136j(a)(1)(B).

Count 3 and 4 – Zimek D&I Plus

25. Answering allegation of Paragraph 39 of the Complaint herein, Respondent re-alleges answers to Paragraphs 1 through 38 inclusive, of the Complaint, as if fully set forth herein.
26. Answering allegations of Paragraphs 40-41 of the Complaint herein, Respondent affirms all facts.
27. Answering allegations of Paragraph 42 of the Complaint herein Respondent denies, based on his knowledge and/or belief, that the basic product is the only EPA registered label for basic product and any distributor products. Respondent affirmatively alleges that, based on Zimek, Inc. information, Zimek D&I Plus label was registered. It is also affirmatively alleged that Respondent submitted and obtained registration of distributor product Zimek D&I Plus (EPA Reg. No. 70263-3-81632) from the Commonwealth of Puerto Rico, through the Department of Agriculture (Reg. No. 08-1225-2).

28. Answering allegations of Paragraphs 43-44 of the Complaint herein Respondent denies due to lack of knowledge.
29. Answering allegations of Paragraph 45 of the Complaint herein Respondent affirms facts pertaining to Count 1, as listed. Respondent denies all facts pertaining to Count 2, as listed. It is affirmatively alleged that based on Respondent's knowledge and belief, no sale of Zimek D&I Plus was made to Departamento de Salud (San Juan, PR).
30. Answering allegations of Paragraph 46 of the Complaint herein Respondent denies the allegation.
31. Answering allegations of Paragraph 47 of the Complaint herein Respondent affirms having sold Zimek D&I Plus to costumer Validation and Engineering Group on 10/24/08. Respondent denies the rest of the allegation.
32. Answering the allegation of Paragraph 48 of the Complaint herein, Respondent denies violation of Section 12(a)(1)(B) of FIFRA, 7 U.S.C. 136j(a)(1)(B).
33. Respondent denies any violation, denies the proposed civil penalty and denies the methodology and assessment of such penalty.

Affirmative Defenses

34. Respondent's distribution and sale of Zimek, Inc. products was made based on representation and bona fide information of Zimek's product registration, labeling and use.

35. Respondent submitted Zimek products for evaluation and analysis by the Department of Agriculture of the Commonwealth of Puerto Rico prior to selling and distributing such products.
36. The Department of Agriculture of the Commonwealth of Puerto Rico approved Zimek products (pesticides and fogging systems) and granted registration of Zimek QD (Reg. No. 08-1225-1) and Zimek D&I Plus (Reg. No. 08-1225-2).
37. Respondent sold Zimek QD to Departamento de Salud, San Juan, Puerto Rico, once on September 2, 2009, as per Respondent's documentation.
38. Respondent sold Zimek QD and Zimek D&I Plus to Validation & Engineering Group, Inc. once on September 24, 2008, as per Respondent's documentation.
39. Respondent sold Zimek pesticides and Zimek Fogging System based upon the representations and bona fide information received from Zimek, Inc. pertaining to registration, labeling and use.
40. Respondent has not sold or distribute Zimek products since 2011.
41. Respondent operates a small to medium business which is currently financially stressed due to the deterred economy.
42. Respondent's ability to operate his business can be greatly affected be the proposed penalty is imposed.
43. Respondent reserves the right to amend the Answer to Complaint, herein.

44. Respondent hereby requests an Informal Settlement Conference and formal hearing in this proceeding.

WHEREFORE, Respondent prays that the Complainant takes notice of the Answer to Complaint herein, that no penalty be imposed and/or that the proposed penalty be considerably reduced, and such other relief this Forum may deem proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 14th day of March, 2013.



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CERTIFICATE OF SERVICE

I hereby certify that the Answer to Complaint and Hearing Request by Respondent in this matter was served on **Naomi Shapiro, Esq.**, Assistant Regional Counsel, USEPA – Region II, 290 Broadway, 16th Floor, New York, NY 10007-1866, via First Class Mail.

In San Juan, Puerto Rico this 14th day of March, 2013.



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