

September 12, 2008

*Via Facsimile and Overnight Delivery*

Tina Artemis  
Regional Hearing Clerk  
Mail Code 8RC  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

RE: ChemStation of Denver, Docket No. FIFRA-08-2008-0025

Dear Ms. Artemis:

Enclosed please find an original and one copy of the Answer and Request for Hearing of Respondent ChemStation Denver, LLC in the above-referenced matter.

Please contact me if you have any questions.

Very truly yours,



Stephen J. Axtell

Enclosures

2008 SEP 15 PM 12:54

FILED  
EPA REGION VIII  
HEARING CLERK

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8  
Docket No. FIFRA-08-2008-0025**

2008 SEP 15 PM 12:54

FILED  
EPA REGION VIII  
HEARING CLERK

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In the Matter of: )  
 )  
ChemStation of Denver )  
4800 Lima Street )  
Denver, CO 80239 )  
 )  
Respondent. )  
\_\_\_\_\_ )

**ANSWER AND REQUEST FOR  
HEARING OF RESPONDENT  
CHEMSTATION DENVER, LLC**

**ANSWER TO PENALTY COMPLAINT**

ChemStation Denver, LLC (incorrectly named as "ChemStation of Denver" in the Complaint), by its attorneys Thompson Hine LLP, for its Answer and affirmative defenses to the Penalty Complaint and Notice of Opportunity for Hearing ("Complaint") filed in this matter by Region 8 of the United States Environmental Protection Agency ("EPA" or "Complainant") hereby admits, denies and alleges as follows:

1. The allegations of Paragraph 1 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.
2. The allegations of Paragraph 2 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.
3. The allegations of Paragraph 3 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.
4. The allegations of Paragraph 4 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.
5. The allegations of Paragraph 5 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

6. The allegations of Paragraph 6 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

7. The allegations of Paragraph 7 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

8. The allegations of Paragraph 8 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

9. ChemStation Denver, LLC admits the allegations of Paragraph 9 that its facility has been located at 4800 Lima Street, Denver, Colorado 80239. The remaining allegations of Paragraph 9 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

10. ChemStation Denver, LLC admits the allegations of Paragraph 10 that Ms. Amy Hambrick visited the ChemStation Denver, LLC facility, with consent of ChemStation Denver, LLC, on May 18, 2007 and August 1, 2007. ChemStation Denver, LLC lacks knowledge sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 10 of the Complaint, and, therefore, denies them.

11. ChemStation Denver, LLC lacks information sufficient to form a belief as to the veracity of the allegations in Paragraph 11, and, therefore, denies them.

12. ChemStation Denver, LLC admits that a pesticide known as "3030" has been approved by U.S. EPA for use for sanitizing food contact surfaces, farm premises (such as barns, pens, stalls, shoots, and troughs), pulp and paper mill water processes, agricultural uses (such as post-harvest protection – leaf cutting and bee cells), food egg sanitization, porous food contact surfaces, non-porous non-food contact surfaces, porous non-food contact surfaces, laundry sanitizer, aquacultural uses (fish ponds, fish pond equipment, Maine lobster ponds, conditioning

live lobsters, and control of scavengers in fish hatchery ponds). ChemStation Denver, LLC lacks knowledge sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 12 of the Complaint, and, therefore, denies them.

13. ChemStation Denver, LLC admits the allegations set forth in Paragraph 13 to the extent they are consistent with the contents of EPA Registration Number 65072-20001.

14. ChemStation Denver, LLC admits that on or about August 1, 2007, ChemStation Denver, LLC provided the EPA Inspector with several bills of lading for materials procured from one or more of its suppliers. ChemStation Denver, LLC lacks knowledge sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 14, and, therefore, denies them.

15. ChemStation Denver, LLC admits the allegations in Paragraph 15 that on or about September 5, 2007, ChemStation Denver, LLC provided to EPA documents describing 196 deliveries of ChemStation Denver, LLC products, including the product known as "3030," to ChemStation Denver, LLC customers. ChemStation Denver, LLC denies all other allegations contained in Paragraph 15.

16. ChemStation Denver, LLC admits that Mr. Babb and Mr. Chester were interviewed by the U.S. EPA inspector. ChemStation Denver, LLC admits that Mr. Babb or Mr. Chester or both stated to the EPA Inspector that a process for producing "3030" had included receiving 10% sodium hypochlorite from DPC Industries, Inc. and re-packaging this material into "3030" without the addition of dyes, perfumes or additional active or inert ingredients. ChemStation Denver, LLC denies that Mr. Babb made the other statements alleged in Paragraph 16. ChemStation Denver, LLC lacks knowledge sufficient to form a belief as to the veracity of the remaining allegations contained in Paragraph 16, and, therefore, denies them.

17. ChemStation Denver, LLC admits the allegations set forth in Paragraph 17.

18. ChemStation Denver, LLC admits the allegations set forth in Paragraph 18 to the extent they are consistent with the contents of EPA Registration Number 65072-20001.

19. ChemStation Denver, LLC lacks knowledge sufficient to form a belief as to the veracity of what the Inspector observed during the inspections and file review. The remainder of Paragraph 19 contains no factual allegations to which a response is required. To the extent a response is required, the allegations in Paragraph 19 are denied.

20. through 215. Paragraphs 20 through 215 contain no factual allegations to which a response is required. To the extent any of the allegations in Paragraphs 20 through 215 require a response, ChemStation Denver, LLC denies the allegations set forth in Paragraphs 20 through 215 of the Complaint.

216. ChemStation Denver, LLC admits and denies the allegations of Paragraph 216 to the same extent as it admitted and denied the allegations of Paragraphs 8 through 215. The remaining allegations of Paragraph 216 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

217. The allegations of Paragraph 217 contain no factual allegation to which a response is required; to the extent a response is required, the allegations are denied.

218. ChemStation Denver, LLC denies all allegations of the Complaint that it has not expressly admitted.

#### **AFFIRMATIVE DEFENSES**

ChemStation Denver, LLC states the following affirmative defenses and expressly reserves the right to amend this Answer to raise additional defenses that may arise during the course of discovery and information exchange in this matter.

**FIRST AFFIRMATIVE DEFENSE**

ChemStation Denver, LLC at all times acted reasonably and in good faith, based upon all relevant facts and circumstances it knew at the time.

**SECOND AFFIRMATIVE DEFENSE**

Complainant has failed to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

Complainant's allegations constitute agency action that is arbitrary and capricious and an abuse of discretion under the Administrative Procedure Act, 5 U.S.C. §§ 553 and 706(2).

**FOURTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred by waiver.

**FIFTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred by estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred by ChemStation Denver, LLC's substantial compliance with governmental laws, rules, and regulations.

**SEVENTH AFFIRMATIVE DEFENSE**

Complainant's claims are barred due to the impossibility of ChemStation Denver, LLC's compliance.

**EIGHTH AFFIRMATIVE DEFENSE**

Complainant's proposed penalty assessment of \$1,019,200 is barred or limited because Complainant has improperly applied its own penalty policies and other relevant authorities in calculating the proposed penalty assessment.

### **NINTH AFFIRMATIVE DEFENSE**

Complainant's proposed penalty assessment of \$1,019,200 is barred or limited because it is grossly disproportionate to both the violations alleged in the Complaint and the relevant characteristics and conditions of ChemStation Denver, LLC.

### **TENTH AFFIRMATIVE DEFENSE**

Application of FIFRA in this case violates the Due Process Clause of the U.S. Constitution.

### **REQUEST FOR HEARING**

In accordance with 40 C.F.R. § 22.15(c), ChemStation Denver, LLC hereby requests a public hearing before an administrative law judge in order to dispute EPA's claims in this Complaint, as described above.

Respectfully submitted,



Stephen J. Axtell (Ohio Bar #0040869)

Nathan C. Hunt (Ohio Bar #0074184)

THOMPSON HINE LLP

2000 Courthouse Plaza, N.E.

P.O. Box 8801

Dayton, OH 45401-8801

Tel: (937) 443-6877

Fax: (937) 443-6805)

Trial Attorney for Respondent  
ChemStation Denver, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Answer has been served this 12th day of September 2008 as follows:

Original and one copy via facsimile and Federal Express overnight delivery upon:

Tina Artemis  
Regional Hearing Clerk  
Mail Code 8RC  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

One copy via U.S. first class mail, postage prepaid upon:

Dana Stotsky  
Senior Enforcement Attorney  
Mail Code 8ENF-L  
U.S. Environmental Protection Agency  
Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129



\_\_\_\_\_  
Stephen J. Axtell