

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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In the Matter of:

DOCKET NO. EPCRA 05-2009-0016

SuperClean Brands, Inc.  
St. Paul, MN 55117

**ANSWER TO ADMINISTRATIVE  
COMPLAINT**

Respondent.

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For its answer to the Administrative Complaint ("Complaint") issued in the above-entitled matter, SuperClean Brands, Inc. ("SuperClean") states the following:

1. All matters in the Complaint are denied except as specifically admitted herein.
2. SuperClean admits the allegations set forth in Paragraph 1 of the Complaint.
3. SuperClean is without sufficient information to admit or deny the allegations set forth in Paragraph 2 of the Complaint and therefore denies same.
4. SuperClean admits the allegations set forth in Paragraph 3 of the Complaint.
5. SuperClean alleges that no response is required to the allegations set forth in Paragraph 4 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statute cited therein speaks for itself. As to all other allegations contained in Paragraph 4 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.
6. SuperClean alleges that no response is required to the allegations set forth in Paragraph 5 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations speak for themselves. As to all other allegations contained in Paragraph 5 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

7. SuperClean alleges that no response is required to the allegations set forth in Paragraph 6 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 6 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

8. SuperClean alleges that no response is required to the allegations set forth in Paragraph 7 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 7 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

9. SuperClean alleges that no response is required to the allegations set forth in Paragraph 8 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 8 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

10. SuperClean alleges that no response is required to the allegations set forth in Paragraph 9 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 9 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

11. SuperClean alleges that no response is required to the allegations set forth in Paragraph 10 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations

contained in Paragraph 10 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

12. SuperClean alleges that no response is required to the allegations set forth in Paragraph 11 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 11 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

13. SuperClean alleges that no response is required to the allegations set forth in Paragraph 12 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 12 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

14. SuperClean admits the allegations set forth in Paragraph 13 of the Complaint.

15. SuperClean admits the allegations set forth in Paragraph 14 of the Complaint.

16. SuperClean admits the allegations set forth in Paragraph 15 of the Complaint.

17. SuperClean admits the allegations set forth in Paragraph 16 of the Complaint.

18. SuperClean admits the allegations set forth in Paragraph 17 of the Complaint.

19. SuperClean admits the allegations set forth in Paragraph 18 of the Complaint.

20. SuperClean admits the allegation set forth in Paragraph 19 of the Complaint to the extent that a representative of the U.S. EPA inspected the SuperClean facility on October 18, 2006, but is without sufficient information to admit or deny the dates of other visits and therefore denies same.

## COUNT I

21. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-19 of the Complaint in response to Paragraph 20 of the Complaint.

22. SuperClean alleges that no response is required to the allegations set forth in Paragraph 21 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 21 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

23. SuperClean admits the allegations set forth in Paragraph 22 of the Complaint.

24. SuperClean alleges that no response is required to the allegations set forth in Paragraph 23 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 23 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

25. SuperClean alleges that no response is required to the allegations set forth in Paragraph 24 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 24 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

26. SuperClean admits the allegations set forth in Paragraph 25 of the Complaint.

27. SuperClean denies the allegations set forth in Paragraph 26 of the Complaint.

28. SuperClean alleges that no response is required to the allegations set forth in Paragraph 27 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 27 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

## COUNT II

29. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-19 of the Complaint in response to Paragraph 28 of the Complaint.

30. SuperClean alleges that no response is required to the allegations set forth in Paragraph 29 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 29 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

31. SuperClean admits the allegations set forth in Paragraph 30 of the Complaint.

32. SuperClean alleges that no response is required to the allegations set forth in Paragraph 31 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 31 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

33. SuperClean alleges that no response is required to the allegations set forth in Paragraph 32 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other

allegations contained in Paragraph 32 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

34. SuperClean admits the allegations set forth in Paragraph 33 of the Complaint.

35. SuperClean admits the allegations set forth in Paragraph 34 of the Complaint.

36. SuperClean alleges that no response is required to the allegations set forth in Paragraph 35 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 35 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

### **COUNT III**

37. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-19 of the Complaint in response to Paragraph 36 of the Complaint.

38. SuperClean alleges that no response is required to the allegations set forth in Paragraph 37 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 37 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

39. SuperClean admits the allegations set forth in Paragraph 38 of the Complaint.

40. SuperClean alleges that no response is required to the allegations set forth in Paragraph 39 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other

allegations contained in Paragraph 39 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

41. SuperClean alleges that no response is required to the allegations set forth in Paragraph 40 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 40 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

42. SuperClean admits the allegations set forth in Paragraph 41 of the Complaint.

43. SuperClean admits the allegations set forth in Paragraph 42 of the Complaint.

44. SuperClean alleges that no response is required to the allegations set forth in Paragraph 43 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 43 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

#### COUNT IV

45. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-19 of the Complaint in response to Paragraph 44 of the Complaint.

46. SuperClean alleges that no response is required to the allegations set forth in Paragraph 45 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 45 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

47. SuperClean admits the allegations set forth in Paragraph 46 of the Complaint.

48. SuperClean alleges that no response is required to the allegations set forth in Paragraph 47 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 47 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

49. SuperClean alleges that no response is required to the allegations set forth in Paragraph 48 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 48 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

50. SuperClean admits the allegations set forth in Paragraph 49 of the Complaint.

51. SuperClean admits the allegations set forth in Paragraph 50 of the Complaint.

52. SuperClean alleges that no response is required to the allegations set forth in Paragraph 51 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 51 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

#### COUNT V

53. SuperClean restates and incorporates by reference as if fully set forth all denials, responses, and defenses to Paragraphs 1-19 of the Complaint in response to Paragraph 52 of the Complaint.



54. SuperClean alleges that no response is required to the allegations set forth in Paragraph 53 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 53 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

55. SuperClean admits the allegations set forth in Paragraph 54 of the Complaint.

56. SuperClean alleges that no response is required to the allegations set forth in Paragraph 55 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 55 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

57. SuperClean alleges that no response is required to the allegations set forth in Paragraph 56 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 56 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

58. SuperClean admits the allegations set forth in Paragraph 57 of the Complaint.

59. SuperClean admits the allegations set forth in Paragraph 58 of the Complaint.

60. SuperClean alleges that no response is required to the allegations set forth in Paragraph 59 of the Complaint, as they contain legal conclusions, but nonetheless affirmatively alleges that the statutes and regulations cited therein speak for themselves. As to all other allegations contained in Paragraph 59 of the Complaint, SuperClean is without sufficient information to admit or deny and therefore denies same.

### **PROPOSED CIVIL PENALTY**

With respect to the imposition of the proposed civil penalties, SuperClean states that, based on all of the facts available to it, the amount of penalty proposed is unjustified under the current EPA Enforcement Response Policy, other applicable EPA policies and specifically requests that no penalty be issued under the circumstances of this matter. SuperClean maintains that the EPA has misapplied the Enforcement Response Policy to SuperClean. The EPA has improperly considered the nature, extent, gravity and circumstances of the alleged violations which have resulted in EPA's improper characterization of the alleged violations in base penalty matrices. Specifically, the EPA failed to apply statutory adjustment factors for ability to pay, degree of culpability, other matters as justice may require, size of business, attitude and voluntary disclosure.

### **RULES GOVERNING THIS PROCEEDING**

SuperClean states that the applicable rules speak for themselves.

### **TERMS OF PAYMENT**

SuperClean states that it is not resolving this proceeding at this time by paying the proposed civil penalty.

### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

In response to the opportunity to request a hearing before an Administrative Law Judge as described in the Complaint, SuperClean requests a formal hearing to contest the factual and legal bases set forth in the Complaint and to present arguments related to the applicability of the EPA Enforcement Response, Small Business Compliance and Audit Policies.

### **ANSWER**

SuperClean submits this Answer in response to Paragraphs 1-59 of the Complaint.

## **SETTLEMENT CONFERENCE**

SuperClean requests an informal settlement conference as described in the Complaint to discuss the facts alleged in the Complaint and to discuss settlement.

## **AFFIRMATIVE DEFENSES**

### **FIRST DEFENSE**

SuperClean's failure to submit reports was due to unique circumstances that are not likely to recur. Upon request, SuperClean will submit for this administrative body records to reflect the unique transitions that were taking place within this small business that surrounded its failure to timely submit completed Forms R. Further, SuperClean did, in fact, and on multiple occasions, submit its Form R for 2003, as evidenced by the affidavit it submitted affirming the same.

SuperClean does not know why the reports did not register within the TRI Data Processing Center system. As of the date of this Answer, SuperClean has in its possession, confirmation of such filing. Notwithstanding the fact that the report filings were delayed, SuperClean had pursued diligent efforts to file requisite reports with appropriate authorities, thereby ensuring that the key objective of making information on chemical presence and hazards available to the public was met.

### **SECOND DEFENSE**


The doctrines of accord and satisfaction, settlement and waiver, lack of jurisdiction, equitable estoppel and laches each bar the Complainant from imposing or enforcing any civil penalties against SuperClean. On October 18, 2006, John D. Myhre, EPCRA Compliance Inspector, audited the Facility. He was accompanied by Steve Tomlyanovich of the Minnesota SERC. As part of the audit, Mr. Myhre asked Mr. Tomlyanovich if SuperClean's reports had

been filed; Mr. Tomlyanovich confirmed that they had. He did not ask about when the filing was made or otherwise indicate that timeliness was a critical factor. With that information and other facts gathered during the audit, Mr. Myhre simply requested that SuperClean provide invoices for purchases of methanol, ethylene glycol and isopropyl alcohol, as well as Material Safety Data Sheets for the same. No comments were made to SuperClean regarding the grave importance of timely filing or the failure to file ethylene glycol reports, nor were the outcomes of such failures to timely and appropriately file raised. As such, SuperClean was led to believe that its processes were, at a minimum, acceptable. Thus, it continued its filing process in relation to business demands.

**WHEREFORE**, SuperClean prays for an initial decision of this Court in its favor as follows:

1. Dismissing all causes of action against SuperClean with prejudice and on the merits;
2. If there is a finding that a violation(s) occurred, based on the unique circumstances of this case and the application of the EPA's Enforcement Response Policy, the Small Business Policy and the Audit Policy, no civil penalty should be recommended.
3. Awarding SuperClean such other and further relief as the presiding officer deems just and equitable.

Dated: April 15, 2009.

By:   
Sherry L. Stenerson  
1380 Corporate Center Curve, Suite 200  
Eagan, Minnesota 55121  
(651) 405-7718  
General Counsel for SuperClean Brands,  
Inc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:  
SuperClean Brands, Inc.  
St. Paul, MN 55117

DOCKET NO. EPCRA 05-2009-0016

Certificate of Service

Respondent.

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APR 16 2009

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PROTECTION AGENCY

STATE OF MINNESOTA )  
)ss.  
COUNTY OF DAKOTA )


Maritza M. Hernandez, being first duly sworn on oath, deposes and states that on the 15<sup>th</sup> day of April 2009, she caused a copy of the following document to be sent postage prepaid, Federal Express:

1. Answer to Administrative Complaint


on:

Terence Stanuch (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EAP, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

by mailing a true and correct copy of same to the above-referenced individual.

  
Maritza M. Hernandez

Subscribed and sworn to before  
me this 15<sup>th</sup> day of April, 2009.

  
Notary Public

