

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

In the Matter of:)

Accu-Care Supply, Inc.)
109 King Phillip Road)
East Providence, R.I.)

Respondent.)

Proceedings under Section)
14(a) of the Federal Insecticide,)
Fungicide, and Rodenticide Act,)
as amended, 7 U.S.C. § 136l(a).)

Docket No. FIFRA-01-2012-0109

ANSWER

Respondent Accu-Care Supply, Inc. hereby responds to and answers the allegations in the Complaint in the above referenced matter as follows:

GENERAL ALLEGATIONS

1. Admitted.
2. This allegation is a legal conclusion to which no answer is required.
3. Admitted.
4. Admitted.
5. The first sentence of this paragraph is admitted. The second sentence of this paragraph is a legal conclusion to which no answer is required.
6. Admitted except for the last sentence in this paragraph which is a legal conclusion for which no answer is required.

7. Admitted except for the phrase “and was a ‘producer’ within the meaning of that term, as defined in 40 C.F.R. § 167.3” which is a legal conclusion to which no answer is required.

8. The first sentence of the paragraph is admitted. The second sentence is a legal conclusion to which no answer is required.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Denied.

17. Admitted.

COUNT 1

(Production in Unregistered Establishment – Pool Clear)

18. Respondent’s answers to Paragraphs 1 through 17 are incorporated by reference herein.

19. Admitted.

20. Denied.

21. Denied.

COUNT 2

(Production in Unregistered Establishment – Accu-Clor)

22. Respondent’s answers to Paragraphs 1 through 21 are incorporated by reference herein.

23. Admitted.

24. Denied.

25. Denied.

COUNT 3

(Production in Unregistered Establishment – Robelle Shock Treatment)

26. Respondent's answers to Paragraphs 1 through 25 are incorporated by reference herein.
27. Admitted.
28. Denied.
29. Denied.

COUNT 4

(Production in Unregistered Establishment – Aaron Super-Shock)

30. Respondent's answers to Paragraphs 1 through 29 are incorporated by reference herein.
31. Admitted.
32. Denied
33. Denied.

COUNT 5

(Production in Unregistered Establishment – Surfside Liquid Shock)

34. Respondent's answers to Paragraphs 1 through 33 are incorporated by reference herein.
35. Admitted.
36. Denied.
37. Denied.

COUNT 6

(Production in Unregistered Establishment – Poolman Pools Super-Shock)

38. Respondent's answers to Paragraphs 1 through 37 are incorporated by reference herein.
39. Admitted.
40. Denied.
41. Denied.

COUNT 7

(Production in Unregistered Establishment – Islander Super-Shock)

42. Respondent's answers to Paragraphs 1 through 41 are incorporated by reference herein.
43. Admitted.
44. Denied.
45. Denied.

COUNT 8

(Production in Unregistered Establishment – Target Super-Shock)

46. Respondent's answers to Paragraphs 1 through 45 are incorporated by reference herein.
47. Admitted.
48. Denied.
49. Denied.

COUNT 9

(Production in Unregistered Establishment – Super-Shock)

50. Respondent's answers to Paragraphs 1 through 49 are incorporated by reference herein.
51. Admitted.
52. Denied.
53. Denied.

PROPOSED CIVIL PENALTY

54. This paragraph is a legal conclusion to which no answer is required.
55. This paragraph does not contain allegations concerning Respondent, and thus no answer is required. To the extent an answer is required, Respondent neither admits nor denies the allegations in this paragraph and leaves EPA to its proof thereof.
56. Denied.

57. This paragraph does not contain allegations concerning Respondent, and thus no answer is required. To the extent an answer is required, Respondent neither admits nor denies the allegations in this paragraph and leaves EPA to its proof thereof.

58. This paragraph does not contain allegations concerning Respondent, and thus no answer is required. To the extent an answer is required, Respondent neither admits nor denies the allegations in this paragraph and leaves EPA to its proof thereof.

59. This paragraph does not contain allegations concerning Respondent, and thus no answer is required. To the extent an answer is required, Respondent neither admits nor denies the allegations in this paragraph and leaves EPA to its proof thereof.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

60. Pursuant to 40 C.F.R § 22.15(c) Respondent hereby request a formal administrative hearing to contest all materials issues set forth in the Complaint and to contest the imposition and appropriateness of the proposed penalty.

61. No response is required.

62. No response is required.

63. No response is required.

INFORMAL SETTLEMENT CONFERENCE

64. No response is required.

65. No response is required.

65. No response is required.

66. No response is required.

AFFIRMATIVE DEFENSES

1. The Facility has been registered as a pesticide-producing establishment since at least 1988. The Company number is 062032, and the EPA Establishment number is 062032-RI-01. Thus, there is no factual or legal basis for the Complaint.

2. Nine separate penalties in nine Counts have been assessed against Respondent in the Complaint. However, all nine substances listed in the nine Counts are all contained in only two products produced by Respondent. Therefore, only two penalties, if at all, should be imposed upon Respondent.

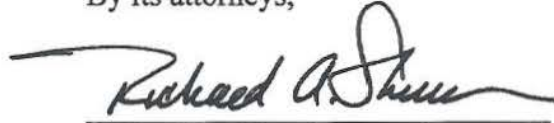
RELIEF

Based on the foregoing, Respondent hereby requests that the Complaint be dismissed with prejudice in its entirety .

Dated: October 18, 2012

Accu-Care Supply, Inc.

By its attorneys,

A handwritten signature in black ink, appearing to read "Richard A. Sherman". The signature is written in a cursive style with a long horizontal flourish extending to the left.

Richard A. Sherman, Esq.

Joseph A. Farside, Esq.

Edwards Wildman Palmer LLP

2800 Financial Plaza

Providence, R.I. 20903

Tel: 401-276-6513

Fax: 888-325-9062

rsherman@edwardswildman.com

jfarside@edwardswildman.com

CERTIFICATE OF SERVICE

I hereby certify that on the day indicated below, the foregoing Answer was delivered in the following manner to the addressees listed below:

Original and one copy by
First Class Mail Postage Prepaid to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100
(Mail Code: ORA18-1)
Boston, Mass. 02109-3912

One copy by First Class Mail,
Postage Prepaid to:

David M. Peterson
Senior Enforcement Counsel
U.S. EPA Region 1
Office of Environmental Stewardship
5 Post Office Square, Suite 100
(Mail Code: OES04-4)
Boston, Mass. 02109-3912

Date: October 18, 2012



Richard A. Sherman, Esq.
Edwards Wildman Palmer LLP
2800 Financial Plaza
Providence, R.I. 20903