UNITED STATES DISTRICT COURT

**FOR THE**

**DISTRICT OF MASSACHUSETTS**

Anne Anderson, et al.,

 Plaintiffs,

 **# COURT USE ONLY**

Civil Action No. 82-1672-S

v. Division 12

Cryovac, Inc., et al.,

 Defendants.

**ANSWER OF DEFENDENT BEATRICE FOODS**

Now the Defendant Beatrice Foods in response to Plaintiffs’ second amended complaint respectfully pleads the following:

I. Statement of the Case

1. Beatrice Foods denies the allegations of Par. 1 of the complaint.

II Plaintiffs

2. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Pars. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30.

III Defendants

3. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations of Pars. 31 and 32.

4. Beatrice Foods admits the allegations of Pars. 33 and 34.

5. Beatrice Foods admits that it owns an undeveloped 14.73 acres, situated northeast of the tannery in Par. 35. Beatrice Foods denies the allegations that the site has been used as a dump for chemical wastes in Par. 35. Beatrice Foods does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Par. 35.

6. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Par. 36.

7. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Par. 37.

IV Definitions

8. Beatrice Foods admits that Woburn is a city of 35,000 located about twelve miles north of Boston in Par. 38. Beatrice Foods lacks sufficient information to form a belief as to the truth of the allegations in Par. 38 that Woburn has been the locus of various manufacturing industries since the mid-nineteenth century and remains today an industrial and residential community.

9. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Pars. 39, 40, 41, and 42.

V Contaminated Water Wells

10. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Pars. 43, 44, 45, 46, 47, and 48.

VI The Activities of the Defendants W.R. Grace

11. Beatrice Foods states it does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Pars.49, 50, and 51.

VII The Activities of the Defendants Beatrice Foods

12. Beatrice Foods admits the allegations of Par. 52.

13. Beatrice Foods denies that there are some areas of distressed vegetation, indicating spills of hazardous material in Par. 53. Beatrice Foods admits the remaining allegations in Par. 53.

14. Beatrice Foods denies the allegations that there are chemical deposits on the site, that chemicals have contaminated the groundwater, and that the contamination in the private well is evidence of this contamination. Beatrice Foods does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Par. 54.

15. Beatrice Foods does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Par. 55.

VII Endangerment of and Injury to Plaintiffs

16. Beatrice Foods does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Pars. 56, 57, 58, 59, 60, 61, 62, and 63.

17. Beatrice Foods denies the allegations of Par. 64 and 65.

18. Beatrice Foods denies all other allegations not specifically admitted in this answer.

Count I (Strict Liability)

19. Beatrice Foods restates and incorporates its answers to paragraphs one through sixty-five herein. Beatrice Foods denies the allegations of Pars. A, B, C, D, E, and F.

Count II (Negligence)

20. Beatrice Foods restates and incorporates its answers to paragraphs one through sixty-five herein.

21. Beatrice Foods denies the allegations of Para. G.

22. Beatrice Foods admits the allegations of Para. H.

23. Beatrice Foods denies the allegations of Pars. I, J, K, L, and M.

Count III (Wrongful Death)

24. Beatrice Foods restates and incorporates its answers to paragraphs one through sixty-five herein.

25. Beatrice Foods denies the allegations of Pars. N, O, P, and Q.

Count IV (Conscious Pain and Suffering)

26. Beatrice Foods restates and incorporates its answers to paragraphs one through sixty-five herein.

27. Beatrice Foods denies the allegations of Pars. R and S.

Count V (Nuisance)

28. Beatrice Foods restates and incorporates its answers to paragraphs one through sixty-five herein.

. 29. Beatrice Foods denies the allegations of Pars. T, U, and V.

FIRST DEFENSE

Plaintiffs’ Amended Complaint fails to state a claim upon which relief can be granted.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs knowingly and voluntarily assumed the risk inherent in his or her action or inaction and cannot sue for negligence.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs’ claims are barred, in whole or in part, by the negligence the Plaintiffs contributed to the alleged injury.

THIRD AFFIRMATIVE DEFENSE

The Plaintiffs’ claims are barred from recovery for laches.

FOURTH AFFIRMATIVE DEFENSE

If the Plaintiffs suffered the injuries or damages alleged, such injuries or damages were caused, in whole or in part, by someone for whose conduct the Defendant was not and is not legally responsible.

FIFTH AFFIRMATIVE DEFENSE

The action is barred by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs’ claims are barred or reduced, in whole or in part, by the Plaintiffs’ decedent's failure to mitigate her damages.

SEVENTH AFFIRMATIVE DEFENSE

The plaintiffs are barred from recovery for insufficiency of service of process.

EIGHTH AFFIRMATIVE DEFENSE

The plaintiffs’ claims are barred from recovery by fraud or fraudulent claims.

NINTH AFFIRMATIVE DEFENSE

Any and all care provided to the Plaintiff was performed in accordance, with the applicable standards, Massachusetts Statutes, the Code of Massachusetts Regulations and applicable federal statutes and regulations.

Dated June 16, 2011

 Respectfully submitted,

 MACK & ASSOCIATES, LLC

 Attorneys for BEATRICE FOODS CO

 /s/Earl L. McGowen \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Earl L. McGowen

 Registration # 123456

 Wolf Law

 Boulder, CO 80309

 Earl.mcgowen@colorado.edu

 555-555-5555

AFFIDAVIT OF SERVICE

I, Earl L. McGowen, hereby certify that a true copy of the above document was served upon the plaintiffs by personally delivering to the attorney of record through the ECF system and by mail to Jan Richard Schlichtmann at Reed & Mulligan, 101 Tremont St., Boston, Massachusetts on the 16th day of June, 2011.

 /s/ Earl L. McGowen

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 Earl L. McGowen

Signed and sworn to before me on June 15, 2011.

/s/Notary public

Notary Public

My commission expires on December 31, 2013.