

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 07 JUN -4 AM 9:11  
REGION 7  
901 N. 5th Street  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
United States Department of Agriculture, )  
Grain Inspection, Packers and )  
Stockyards Administration, )  
Federal Grain Inspection Service )  
10383 North Ambassador Drive )  
Kansas City, Missouri 64153 )  
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)  
EPA ID# MOD985796762 )  
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)  
Respondent. )  
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)

**INITIAL PREHEARING  
INFORMATION EXCHANGE**

Docket No. RCRA-07-2006-0276

In accordance with Judge Moran's Prehearing Order dated April 6, 2007, and 40 C.F.R. §22.19, the Technical Services Division ("TSD") of the Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture ("Respondent") hereby makes its initial prehearing information exchange as follows.

**1. Witnesses.** Robert L. Epstein, Ph.D. may be called as an expert witness to testify concerning the relative toxicities of the various waste solutions at issue. Dr. Epstein is the Deputy Administrator, Science and Technology Programs, Agricultural Marketing Service, USDA. Dr. Epstein's resume is attached. The other witnesses that Respondent may call are as follows:

a. Ronald C. Bicsak, Health and Safety Officer, TSD. Mr. Bicsak may be called as a witness to testify concerning the nature of the laboratory's operations, the facility's hazardous waste management activities, his interactions with EPA Region 7 representatives during and after the inspection, and the type and quantity of hazardous waste accumulated at the facility.

b. Thomas A. Weber, Chemist and Trace Analysis Team Leader, TSD. Mr. Weber may be called as a witness to testify concerning his interactions with EPA Region 7 representatives during the inspection, and the type and quantity of hazardous waste generated at the facility on a monthly basis.

c. Wes Blake, pesticide database administrator, TSD. Mr. Blake may be called as a witness to testify concerning the pesticide databases utilized by the laboratory.

d. John Sharpe, Director, TSD. Mr. Sharpe may be called as a witness to testify concerning the adverse financial impacts that the proposed penalty would have on TSD.

e. Kathleen Holland, Laboratory Staff Officer, Midwestern Laboratory, Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture. Ms. Holland may be called as a witness to testify concerning Region 7's recent compliance assistance visits to the FSIS facility in St. Louis, Missouri, including RCRA regulatory interpretations provided by Region 7 representatives that are relevant to the instant proceeding.

Respondent reserves the right to call the Complainant or any witnesses listed by Complainant in its case in chief, and rebuttal witnesses as may be appropriate.

The document exhibits that Respondent intends to introduce into evidence are attached. Respondent also intends to utilize one or more demonstrative exhibits, including the computer-based pesticide database that TSD has relied on to determine the amount of commercial chemical product waste generated at the laboratory.

**2. Financial Impact of the Proposed Penalty.** Respondent TSD intends to take the position that the proposed penalty would impose a severe financial burden on it. The proposed penalty is more than one-fourth of TSD's total operating budget for the current fiscal year.

**3. Reduction or Elimination of the Proposed Penalty.** Pursuant to 40 C.F.R. § 22.19(a)(3), Respondent submits that the proposed penalty should be substantially reduced or eliminated for several reasons, including but not limited to Respondent's good-faith actions, the absence of harm to the environment, the flawed regulatory interpretations made by Complainant, and the severe financial impact of the proposed penalty on Respondent's operations. Respondent intends to supplement this response after it has had the opportunity to review the penalty calculations included in Complainant's Initial Prehearing Information Exchange.

**4. Suggested Location for Hearing, Availability and Time Needed.** Respondent submits that the most appropriate place for a hearing would be Kansas City, Missouri, which is where Respondent's laboratory facility is located. Respondent expects to be available for a hearing during the period September 4-14, 2007. Respondent believes that it will need approximately 1-2 days to present its direct case.

Respectfully submitted,



Gary Fremerman, Attorney  
United States Department of Agriculture

Dated: June 1, 2007


**CERTIFICATE OF SERVICE**

I hereby certify that the original and one true and correct copy of the foregoing Initial Prehearing Information Exchange were sent by Federal Express to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; and a true and correct copy was sent by Federal Express to:

Alex Chen, Esquire  
Office of Regional Counsel  
USEPA Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101

and to

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
1099 14<sup>th</sup> Street, N.W., Suite 350  
Washington, D.C. 20460

  
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Gary M. Fremerman  
Attorney  
USDA Office of the General Counsel

June 1, 2007