

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

*
*
* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
*
*

2009 JUN 10 PM 2:03
RECEIVED
EPA REGION 4

RESPONDENT'S ANSWER TO ADMINISTRATIVE COMPLAINT

COMES NOW the Respondent, DILBAG KHERA D/B/A AM FOOD AND GAS ("Respondent"), and files this Respondent's Answer to Administrative Complaint, filed by the Environmental Protection Agency ("Complainant"), and showing the following:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Complainant's Complaint, and each count thereof attempted to be stated, fails to state a claim upon which relief can be granted against this answering Respondent.

SECOND AFFIRMATIVE DEFENSE

Respondent acted in good faith and with a reasonable belief that his actions were lawful at all times and places mentioned in Complainant's Complaint.

THIRD AFFIRMATIVE DEFENSE

The Complaint, and each count therein attempted to be stated, is barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially caused by the actions of the Federal and/ or State government, and civil penalties, if any, are inappropriate or should be reduced in proportion to the absolute or proportionate share of governmental responsibility.

FIFTH AFFIRMATIVE DEFENSE

Any alleged failure to comply with laws and regulations, or any compliance delay, was wholly or partially attributable to causes beyond the reasonable control of the Respondent herein, and civil penalties, if any, should be reduced to the absolute or relative proportions.

SIXTH AFFIRMATIVE DEFENSE

Respondent, at all times and places mentioned in Complainant's Complaint, exercised good faith efforts to comply with applicable regulatory requirements.

SEVENTH AFFIRMATIVE DEFENSE

The Complainant's Complaint, and each count therein attempted to be stated, is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The Complainant's Complaint, and each cause of action therein attempted to be stated, fails to state a claim for violation of federal laws and statutes on the ground that the RCRA statute and regulations alleged to have been violated are vague, ambiguous, and do not impart notice to persons affected as to conduct proscribed and/or prohibited.

NINTH AFFIRMATIVE DEFENSE

The court lacks jurisdiction over the matters alleged in Complainant's Complaint.

TENTH AFFIRMATIVE DEFENSE

Respondent was not served with proper notice of said Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

Respondent answers the individually numbered paragraphs in Complainant's Administrative Complaint as follows:

1.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. Respondent is without sufficient knowledge to admit or deny all other allegations of Paragraph 1 and therefore, such allegations stand denied.

2.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 2 are hereby denied.

3.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 3 are hereby denied.

4.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 4 are hereby denied.

5.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 5 are hereby denied.

6.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 6 are hereby denied.

7.

Denied as stated.

8.

Denied as stated.

9.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 9 are hereby denied.

10.

Denied as stated.

11.

Respondent states that the regulations and statutes referenced speak for themselves. Respondent further states that Respondent was not the “operator” of the facility at said time. All other allegations contained in Paragraph 11 are hereby denied.

12.

Denied as stated.

13.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent is without sufficient knowledge to admit or deny all other allegations of Paragraph 13 and therefore, such allegations stand denied.

14.

Denied as stated.

15.

Respondent denies that Respondent failed to have any records on site. Respondent further states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations, therefore, the remaining allegations within Paragraph 15 stand denied.

16.

Denied as stated.

17.

Denied as stated.

18.

Respondent states that the inspector's note/report speaks for itself. Respondent is without sufficient knowledge to admit or deny all other allegations of said paragraph and therefore, such allegations stand denied.

19.

Denied as stated.

20.

Denied as stated.

21.

Denied as stated.

22.

Denied as stated.

23.

Denied as stated.

24.

Denied as stated.

25.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 25 are hereby denied.

26.

Denied as stated.

27.

Respondent states that Respondent never received said notice. Respondent further states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 27 are hereby denied.

28.

Admitted.

29.

Admitted.

30.

Respondent is without sufficient knowledge to admit or deny that the facility operates under a new name and new ownership, and was determined by Georgia EPD to be in compliance. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 30 are hereby denied.

31.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 30 of Complainant's Administrative Complaint as though fully contained herein.

32.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 32 are hereby denied.

33.

Denied as stated.

34.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 34 are hereby denied.

35.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 34 of Complainant's Administrative Complaint as though fully contained herein.

36.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in said paragraph are hereby denied.

37.

Denied as stated.

38.

Respondent denies that Respondent failed to comply with the release detection requirements for underground piping at the facility. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 38 are hereby denied.

39.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 38 of Complainant's Administrative Complaint as though fully contained herein.

40.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in said paragraph are hereby denied.

41.

Denied as stated.

42.

Respondent denies that Respondent failed to comply with the UST overfill prevention requirements at the facility. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 42 are hereby denied.

43.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 42 of Complainant's Administrative Complaint as though fully contained herein.

44.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations contained in Paragraph 44 are hereby denied.

45.

Denied as stated.

46.

Respondent denies that Respondent failed to comply with the UST recordkeeping requirements at the facility Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in paragraph 46 are hereby denied.

47.

Respondent restates and incorporates by reference all answers to Paragraphs 1 through 46 of Complainant's Administrative Complaint as though fully contained herein.

48.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 48 are denied.

49.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 49 are denied.

50.

Denied as stated.

51.

Respondent denies that Respondent failed to comply with the requirement to provide information when requested by EPA. Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent denies that Respondent violated any laws, rules or regulations. All other allegations contained in Paragraph 51 are hereby denied.

52.

Respondent states that the regulations and statutes referenced speak for themselves. All other allegations in Paragraph 52 are denied.

53.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 53 and therefore, such allegations stand denied

54.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 54 and therefore, such allegations stand denied

55.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 55 and therefore, such allegations stand denied

56.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 56 and therefore, such allegations stand denied

57.

Respondent states that the regulations and statutes referenced speak for themselves; however, Respondent states that Respondent desires a hearing be scheduled in this matter. All other allegations contained in Paragraph 57 are hereby denied.

58.

Denied as stated.

59.

Respondent states that there was no attachment to Complainant's Complaint. In this regard, Respondent is without sufficient knowledge to admit or deny the allegations of paragraph 59 and therefore, such allegations stand denied

60.

Respondent admits that, on the date hereof, the original and one copy of this Answer shall be filed with the Regional Hearing Clerk, with a copy being sent to Susan Capel.

61.

Denied as stated.

59.

Denied as stated.

60.

Denied as stated.

61.

Denied as stated.

62.

Denied as stated.

63.

Denied as stated.

64.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in Paragraph 64 are hereby denied.

65.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in Paragraph 65 are hereby denied.

66.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in Paragraph 66 are hereby denied.

67.

Respondent states that the regulations and statutes referenced speak for themselves.

All other allegations contained in Paragraph 67 are hereby denied.

68.

Respondent denies that Respondent violated any laws, rules and/or regulations

and therefore does not owe any such amount. All other allegations contained in Paragraph 68 are hereby denied.

69.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 69 are hereby denied.

70.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 70 are hereby denied.

71.

Respondent denies that Respondent violated any laws, rules and/or regulations and therefore does not owe any such amount. All other allegations contained in Paragraph 71 are hereby denied.

73.


Any other allegations contained in the Complaint that are not specifically addressed herein are denied.

WHEREFORE, Respondent respectfully request as follows:

- (a) That the Presiding Officer dismiss with prejudice all claims asserted against Respondent in this action;
- (b) That the Presiding Officer schedule a hearing date whereby Respondent may be heard;
- (b) That this Court award Respondent attorneys fees, costs of litigation and court

Respectfully submitted,

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 
Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111
(770) 513-8150

**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4

IN THE MATTER OF:

Dilbag Khera
AM Food and Gas
11670 Jones Bridge Road
Alpharetta, Georgia 30005

Respondent.

*
*
* Proceeding under Section 9006 of the
* Resource Conservation and Recovery
* Act, as amended, 42 U.S.C. §6991e
*
* Docket No. RCRA-UST-04-2009-0001
*
*

CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, I filed the Foregoing Pleading with the Regional Hearing Clerk and mailed a copy of same by First Class U.S. Mail, with sufficient postage affixed thereto, to the following attorneys of record:


Susan Capel
Associate Regional Counsel
U.S. EPA Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303-8909

This the 9th day of July, 2009.

Respectfully submitted,

MILLS & HOOPES, LLC
1550 North Brown Road
Suite 130
Lawrenceville, Georgia 30043
(770) 513-8111

MILLS & HOOPES, LLC
Attorneys for Respondent

By: 
Steven M. Mills
Georgia Bar Number 509772
Eckhart Blackert
Georgia Bar Number 060464