



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

March 30, 2011

REPLY TO THE ATTENTION OF
E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: *Columbian Distribution Services, Inc.*
Docket No.: EPCRA-05-2011-0012
Complaint Date: February 24, 2011
Total Proposed Penalty: \$84,612.75

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for Columbian Distribution Services, Incorporated in Wyoming, Michigan.

Please assign an Administrative Law Judge for this case. If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in blue ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Scott D. Hubbard, Esquire
Warner Norcross & Judd LLP
Attorneys At Law
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
(616) 752-2157

Richard J. Clarizio, Esquire
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, Illinois 60604-3590
(312) 886-0559

March 29, 2011

Via Federal Express

Regional Hearing Clerk (E-19J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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PROTECTION AGENCY

Re: **In the Matter of Columbian Distribution Services, Inc., Wyoming, Michigan**
Docket No. EPCRA-05-2011-0012

Dear Clerk:

This firm represents Columbian Distribution Services, Inc. (Columbian) in the referenced administrative proceeding under the Emergency Planning and Community Right-to-Know Act of 1986. Enclosed for filing is the original and one additional copy of Columbian's Answer and Request for Hearing. Also enclosed is a Proof of Service.

The EPA's Compliant in this matter was received by Columbian and this firm on February 28, 2011. Accordingly, this submission is timely.

Thank you for your assistance. If anything further is needed, please let me know.

Very truly yours,



Scott D. Hubbard

ka
enclosures
c.enc. Mr. Richard J. Clarizio
5353081

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Docket No. EPCRA-05-2011-0012

Columbian Distribution Services, Inc.
Wyoming, Michigan

Respondent

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PROTECTION AGENCY

COLUMBIAN DISTRIBUTION SERVICES'
ANSWER AND REQUEST FOR HEARING

Respondent Columbian Distribution Services, Inc., answers the Complaint as follows:

1. Paragraph 1 of the Complaint is a statement of law to which no answer is required.
2. Paragraph 2 of the Complaint is a statement of law to which no answer is required.
3. Respondent admits the allegations in Paragraph 3 of the Complaint.
4. Paragraph 4 of the Complaint is a statement of law to which no answer is required.
5. Paragraph 5 of the Complaint is a statement of law to which no answer is required.
6. Paragraph 6 of the Complaint is a statement of law to which no answer is required. To the extent Paragraph 6 of the Complaint contains allegations of fact, the allegations are denied.
7. Paragraph 7 of the Complaint is a statement of law to which no answer is required.

8. Paragraph 8 of the Complaint is a statement of law to which no answer is required.
9. Respondent admits the allegations in Paragraph 9 of the Complaint.
10. Respondent admits the allegations in Paragraph 10 of the Complaint.
11. Respondent admits the allegations in Paragraph 11 of the Complaint.
12. Respondent admits the allegations in Paragraph 12 of the Complaint.
13. Respondent admits the allegations in Paragraph 13 of the Complaint.
14. Respondent admits that lead-acid battery contains sulfuric acid and lead. The remainder of Paragraph 14 of the Complaint is a statement of law to which no answer is required.
15. Paragraph 15 of the Complaint is a statement of law to which no answer is required.
16. Paragraph 16 of the Complaint is a statement of law to which no answer is required.
17. Paragraph 17 of the Complaint is a statement of law to which no answer is required.
18. Paragraph 18 of the Complaint is a statement of law to which no answer is required.
19. Paragraph 19 of the Complaint is a statement of law to which no answer is required.
20. Respondent admits the allegations in Paragraph 20 of the Complaint.
21. Respondent admits the allegations in Paragraph 21 of the Complaint.
22. Respondent admits the allegations in Paragraph 22 of the Complaint.
23. Respondent admits the allegations in Paragraph 23 of the Complaint.

24. Respondent admits the allegations in Paragraph 24 of the Complaint.
25. Paragraph 25 of the Complaint is a statement of law to which no answer is required.
26. Paragraph 26 of the Complaint is a statement of law to which no answer is required.
27. Paragraph 27 of the Complaint is a statement of law to which no answer is required.
28. Paragraph 28 of the Complaint is a statement of law to which no answer is required.
29. Paragraph 29 of the Complaint is a statement of law to which no answer is required.
30. Paragraph 30 of the Complaint is a statement of law to which no answer is required.
31. Paragraph 31 of the Complaint is a statement of law to which no answer is required.
32. Paragraph 32 of the Complaint is a statement of law to which no answer is required.
33. Respondent admits the allegations in Paragraph 33 of the Complaint.
34. Respondent admits the allegations in Paragraph 34 of the Complaint.
35. Respondent admits the allegations in Paragraph 35 of the Complaint.

Count 1

36. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 36 of the Complaint.

37. Respondent admits the allegations in Paragraph 37 of the Complaint.

38. Paragraph 38 of the Complaint is a statement of law to which no answer is required.

Count 2

39. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 39 of the Complaint.

40. Respondent admits the allegations in Paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint is a statement of law to which no answer is required.

Count 3

42. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 42 of the Complaint.

43. Respondent admits the allegations in Paragraph 43 of the Complaint.

44. Paragraph 44 of the Complaint is a statement of law to which no answer is required.

Count 4

45. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 45 of the Complaint.

46. Respondent admits the allegations in Paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint is a statement of law to which no answer is required.

Count 5

48. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 48 of the Complaint.

49. Respondent admits the allegations in Paragraph 49 of the Complaint.

50. Paragraph 50 of the Complaint is a statement of law to which no answer is required.

Count 6

51. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 51 of the Complaint.

52. Respondent admits the allegations in Paragraph 52 of the Complaint.

53. Paragraph 52 of the Complaint is a statement of law to which no answer is required.

Count 7

54. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 54 of the Complaint.

55. Respondent admits the allegations in Paragraph 55 of the Complaint.

56. Paragraph 56 of the Complaint is a statement of law to which no answer is required.

Count 8

57. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 57 of the Complaint.

58. Respondent admits the allegations in Paragraph 58 of the Complaint.

59. Paragraph 59 of the Complaint is a statement of law to which no answer is required.

Count 9

60. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 60 of the Complaint.

61. Respondent admits the allegations in Paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint is a statement of law to which no answer is required.

Count 10

63. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 63 of the Complaint.

64. Respondent denies the allegations in Paragraph 64 of the Complaint. Respondent timely submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including lead-acid battery on February 16, 2010 for calendar year 2009. Respondent filed a revision to that form, adding diesel fuel, on March 30, 2010.

65. Paragraph 65 of the Complaint is a statement of law to which no answer is required.

Count 11

66. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 66 of the Complaint.

67. Respondent denies the allegations in Paragraph 67 of the Complaint. Respondent timely submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form

including lead-acid battery on February 16, 2010 for calendar year 2009. Respondent filed a revision to that form, adding diesel fuel, on March 30, 2010.

68. Paragraph 68 of the Complaint is a statement of law to which no answer is required.

Count 12

69. Respondent incorporates paragraphs 1 through 35 of its Answer in response to Paragraph 69 of the Complaint.

70. Respondent denies the allegations in Paragraph 70 of the Complaint. Respondent timely submitted to the Wyoming Fire Department a completed Emergency and Hazardous Chemical Inventory Form including lead-acid battery on February 16, 2010 for calendar year 2009. Respondent filed a revision to that form, adding diesel fuel, on March 30, 2010.

71. Paragraph 71 of the Complaint is a statement of law to which no answer is required.

Proposed EPCRA Penalty

72. Paragraph 72 of the Complaint is a statement of law to which no answer is required.

73. Paragraph 73 of the Complaint is a statement of law to which no answer is required.

74. Respondent objects to the proposed penalty set out in Paragraph 74 of the Complaint.

75. Respondent objects to the proposed penalty and denies that the proposed penalty reflects an appropriate application of the EPA's penalty policy.

**Statement of Facts and Circumstances Constituting
Defense and Basis for Opposing EPA's Proposed Penalty**

Respondent owns and operates a temperature-controlled food warehousing operation. Respondent employs 62 employees and has less than \$20 million in annual sales. Respondent uses a small number of battery-powered lift trucks in its warehousing operations. It also maintains a supply of diesel fuel for fueling trucks.

Prior to the events leading up to this proceeding, Respondent had no knowledge of EPCRA or the MSDS and chemical inventory reporting requirements under EPCRA Sections 311 and 312. While Respondent acknowledges that its lack of knowledge concerning these requirements does not afford a defense for noncompliance, Respondent has extended its full cooperation to the U.S. EPA throughout this matter, and will continue to do so.

As detailed further below, Respondent has reviewed U.S. EPA's "Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act" (Sept. 30, 199) (the "ERP") provided with the Complaint. Under the circumstances presented here, the ERP affords U.S. EPA substantial discretion to reduce the amount of the penalty proposed in the Complaint. In light of Respondent's prompt action to correct the alleged (inadvertent) reporting omissions, including Respondent's prompt voluntary additional disclosures concerning diesel fuel, it is appropriate to apply the mitigating factors allowed under the ERP to reduce the proposed civil penalty.

In further support of its position, and without making any admission of fact or law:

1. Under the ERP, a "circumstance factor" is used to arrive at a base penalty from within the penalty range in a given cell on the penalty matrix. The circumstance level for the

violations alleged in the Complaint is low, and the base penalty under the ERP should be at the low range of the appropriate cell on the penalty matrix.

2. Under the ERP, the Agency should adjust a base penalty downward by as much as 10% in the interest of justice to reflect the particular circumstances in a matter. Where, as here, a respondent has responded promptly to the discovery of inadvertent, unknowing reporting omissions; responded promptly and thoroughly to an extensive information request; and otherwise has extended all possible cooperation and courtesy, reduction is warranted.

3. Under the Penalty Policy, a base penalty amount should generally be adjusted downward 15% for a first-time violator whose business employs 100 or fewer people, and whose sales are less than \$20 million.

4. Under the Penalty Policy, a base penalty amount may be adjusted downward by as much as 35% to reflect a Respondent's cooperation and willingness to settle.

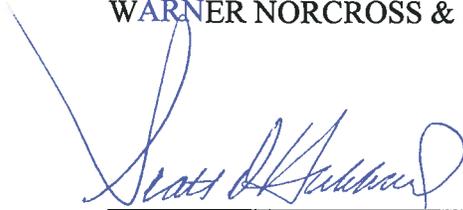
5. Respondent has been and will continue to be responsive, cooperative, and prepared in responding to requests and negotiating with the Agency. Respondent is willing to expeditiously settle this matter at a reasonable and appropriate amount. The base penalty amount under the Penalty Policy should be adjusted downward 35%.

Request for Hearing

Under 40 C.F.R. 22.15(c), Respondent requests a hearing upon the issues raised by the Complaint and Answer.

Respectfully submitted,

WARNER NORCROSS & JUDD LLP



Dated: March 29, 2011

Scott D. Hubbard (P36649)
Scott M. Watson (P70185)
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
616.752.2000

Attorneys for Columbian Distribution Services

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In the Matter of:

Docket No. EPCRA-05-2011-0012

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Wyoming, Michigan

Respondent

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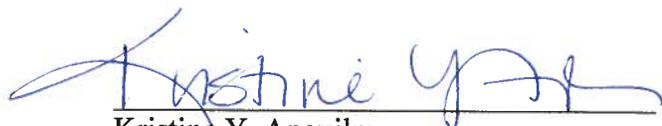
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CERTIFICATE OF SERVICE

I, Kristine Y. Anguilm, certify that I filed, via Federal Express, the original and one copy of the Answer and Request for Hearing with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency on March 29, 2011, and that I sent a copy of said Answer and Request for Hearing, via Federal Express, to:

Richard J. Clarizio (C-14J)
Office of Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dated: March 29, 2011



Kristine Y. Anguilm
Warner Norcross & Judd LLP