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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:) Docket No. EPCRA-05-2008-0024
)
Pork King Packing, Inc.) Proceeding to Assess a Civil Penalty Under
Marengo, Illinois 60152) Sections 325 (c)(1) and (c)(2) of the
) Emergency Planning and Community Right-to-
Respondent.) Know Act of 1986
_____)

**RESPONDENT PORK KING'S ANSWER AND REQUEST FOR HEARING
AND NOTICE OF DEFENSES**

Now Comes the Respondent, Pork King Packing, Inc., by and through its attorneys, Sullivan Hincks & Conway, and submits the following as and for its Answer and Request for an Administrative Hearing and Notice of Defenses.

1. This is an administrative proceeding to assess a civil penalty under Sections 325(c)(1) and (c)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. §§ 11045(c)(1) and (c)(2).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

2. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 2, United States Environmental Protection Agency (EPA), Region 5.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

3. The Respondent is Pork King Packing, Inc., a corporation doing business in the State of Illinois.

RESPONSE: Respondent admits the allegations of this paragraph.

Statutory and Regulatory Background

4. Section 311 of EPCRA, 42 U.S.C. § 11021, and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community emergency coordinator for the local emergency planning committee (LEPC) and the fire department with jurisdiction over the facility an MSDS for each such hazardous chemical present at the facility at any one time in an amount equal to or greater than 10,000 pounds, and for each extremely hazardous chemical present at the facility in an amount equal to or greater than 500 pounds, or the threshold planning quantity (TPQ), whichever is lower, or to submit a list of such chemicals. The owner or operator must submit the required MSDS or list within three months after the owner or operator is first required to have the MSDS available or after the hazardous chemical requiring an MSDS first becomes present at the facility in an amount exceeding the threshold level.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

5. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the OSHA to prepare or have available an MSDS for a hazardous chemical, to prepare and submit to the SERC, community emergency coordinator for the LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R.

Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

6. Section 311 of EPCRA, 42 U.S.C. § 11021 and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assist state and local committees in planning for emergencies and make information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

7. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

8. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910.

Subpart Z are hazardous.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

General Allegations

9. Respondent is a “person” as that term is defined under Section 329(7) of EPRCA, 42 U.S.C. § 11049(7).

RESPONSE: Respondent admits the allegations in this paragraph.

10. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 8808 South Illinois Route 23, Marengo, Illinois (the facility).

RESPONSE: Respondent admits the allegations in this paragraph.

11. At all times relevant to this Complaint, Respondent was an employer at the facility.

RESPONSE: Respondent admits the allegations in this paragraph.

12. Respondent’s facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

RESPONSE: Respondent admits the allegations in this paragraph.

13. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

RESPONSE: Respondent denies the allegations in this paragraph.

14. Anhydrous ammonia (CAS #7664-41-7) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

RESPONSE: Respondent admits the allegations in this paragraph.

15. Anhydrous ammonia (CAS #7664-41-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

16. Anhydrous ammonia (CAS #7664-41-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

17. Anhydrous ammonia (CAS #7664-41-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

18. Sulfuric acid (CAS #7664-93-7) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

19. Sulfuric acid (CAS #7664-93-7) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

20. Sulfuric acid (CAS #7664-93-7) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

21. Sulfuric acid (CAS #7664-93-7) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

22. As of December 31, 2003, anhydrous ammonia and sulfuric acid were present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

RESPONSE: Respondent denies the allegations in this paragraph.

23. During at least one period of time in calendar year 2003, anhydrous ammonia and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

RESPONSE: Respondent denies the allegations in this paragraph.

24. During at least one period of time in calendar year 2004, anhydrous ammonia and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

RESPONSE: Respondent denies the allegations in this paragraph.

25. During at least one period of time in calendar year 2007, anhydrous ammonia and sulfuric acid were present at the facility in an amount equal to or greater than the minimum threshold level.

RESPONSE: Respondent denies the allegations in this paragraph.

26. OSHA requires Respondent to prepare, or have available, an MSDS for anhydrous ammonia and sulfuric acid.

RESPONSE: Respondent admits the allegations in this paragraph.

27. Respondent was required to submit to the SERC, LEPC, and fire department on or before October 17, 1987 or within 90 days after the hazardous chemical or extremely hazardous substance was present at the facility in quantities greater than the minimum threshold level, a MSDS for anhydrous ammonia and sulfuric acid or a list including anhydrous ammonia and sulfuric acid.

RESPONSE: Respondent denies the allegations in this paragraph.

28. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1, 2004, for calendar year 2003.

RESPONSE: Respondent admits the allegations in this paragraph.

29. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1, 2005, for calendar year 2004.

RESPONSE: Respondent admits the allegations in this paragraph.

30. Respondent was required to submit to the SERC, the LEPC, and fire department a completed emergency and hazardous chemical inventory form including anhydrous ammonia and sulfuric acid on or before March 1, 2008, for calendar year 2007.

RESPONSE: Respondent admits the allegations in this paragraph.

31. On March 29, 2005, a release occurred from Respondent's facility of an unknown amount of chlorine.

RESPONSE: Respondent admits that on the date alleged it was reported that there occurred a release of chlorine by a cleaning truck delivering cleaning supplies to the Facility. The Respondent lacks sufficient knowledge to admit or deny the remaining allegations of this paragraph and on that basis denies them.

32. At all times relevant to the Complaint, the Illinois State Emergency Response Commission was the SERC for Illinois under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

RESPONSE: Respondent admits the allegations in this paragraph.

33. At all times relevant to this complaint, the McHenry County Local Emergency Planning Committee was the LEPC for McHenry County, Illinois under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

RESPONSE: Respondent admits the allegations in this paragraph.

34. At all times relevant to this Complaint, the Marengo Fire Protection District was the fire department with jurisdiction over the facility.

RESPONSE: Respondent admits the allegations in this paragraph.

Count 1

35. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

36. Respondent submitted to the SERC an MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

RESPONSE: Respondent admits that it submitted an MSDS listing anhydrous ammonia at various dates and times and denies all other allegations of this paragraph.

37. Each day Respondent failed to submit to the SERC an MSDS or a list for anhydrous ammonia by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 2

38. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

39. Respondent submitted to the LEPC a MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

RESPONSE: Respondent admits that it submitted an MSDS listing anhydrous ammonia at various dates and times and denies all other allegations of this paragraph.

40. Each day Respondent failed to submit to the LEPC an MSDS or a list for anhydrous ammonia by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 3

41. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

42. Respondent submitted to the Marengo Fire Protection District, and MSDS for anhydrous ammonia or a list showing anhydrous ammonia on June 22, 2005.

RESPONSE: Respondent admits that it submitted an MSDS listing anhydrous ammonia at various dates and times and denies all other allegations of this paragraph.

43. Each day Respondent failed to submit to the Marengo Fire Protection District a MSDS or a list for anhydrous ammonia, by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 4

44. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

45. Respondent submitted to the SERC an MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

RESPONSE: Respondent admits that it submitted an MSDS listing anhydrous ammonia at various dates and times and denies all other allegations of this paragraph.

46. Each day Respondent failed to submit to the SERC an MSDS or a list for sulfuric acid by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 5

47. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

48. Respondent submitted to the LEPC a MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

RESPONSE: Respondent admits that it submitted an MSDS listing anhydrous ammonia at various dates and times and denies all other allegations of this paragraph.

49. Each day Respondent failed to submit to the LEPC an MSDS or a list for sulfuric acid by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 6

50. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

51. Respondent submitted to the Marengo Fire Protection District, an MSDS for sulfuric acid or a list showing sulfuric acid on June 22, 2005.

RESPONSE:

52. Each day Respondent failed to submit to the Marengo Fire Protection District a MSDS or a list for sulfuric acid, by March 31, 2004, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11022.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 7

53. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

54. Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on June 22, 2005, for calendar year 2003.

RESPONSE:

55. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical

Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2004, for calendar year 2003 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 8

56. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

57. Respondent submitted to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on June 22, 2005, for calendar year 2004.

RESPONSE:

58. Each day Respondent failed to submit to the SERC, the LEPC, and the local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2005, for calendar year 2004 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 9

59. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

60. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on April 11, 2008, for calendar year 2007.

RESPONSE:

61. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 10

62. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

63. As of July 16, 2008, Respondent had not submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid for calendar year 2007.

RESPONSE:

64. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory form including anhydrous ammonia and sulfuric acid by March

1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Count 11

65. Complainant incorporates paragraphs 1 through 34 of this Complaint as if set forth in this paragraph.

RESPONSE: Respondent realleges its answers to paragraphs 1 through 34 as and for its answer to this paragraph 35 and incorporates said answers by reference herein.

66. Respondent submitted to the Marengo Fire Protection District a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid on April 11, 2008, for calendar year 2007.

RESPONSE:

67. Each day Respondent failed to submit to the Marengo Fire Protection District a completed Emergency and Hazardous Chemical Inventory Form including anhydrous ammonia and sulfuric acid by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations.

Proposed EPCRA Penalty

68. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes EPA to assess a civil penalty of up to \$10,000 for each EPCRA Section 311 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part

19 increased the statutory maximum penalty to \$11,000 per day of violation for EPCRA 311 violations that occur on or after January 31, 1997.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

69. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

70. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, the violator's ability to pay, prior history of violations, degree of culpability, economic benefit or saving resulting from the violations, and any other matters that justice may require, Complainant proposes that the EPA assess a civil penalty against Respondent of \$152,841.00 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 1 EPCRA Section 311 (SERC, anhydrous ammonia):	\$ 11,000.00
Count 2 EPCRA Section 311 (LEPC, anhydrous ammonia):	\$ 11,000.00

Count 3 EPCRA Section 311 (fire dept, anhydrous ammonia):	\$ 11,000.00
Count 4 EPCRA Section 311 (SERC, sulfuric acid):	\$ 6,447.00
Count 5 EPCRA Section 311 (LEPC, sulfuric acid):	\$ 6,447.00
Count 6 EPCRA Section 311 (fire dept, sulfuric acid):	\$ 6,447.00
Count 7 EPCRA Section 312 (2003):	\$ 1,500.00
Count 8 EPCRA Section 312 (2004):	\$ 1,500.00
Count 9 EPCRA Section 312(a) (SERC, 2007):	\$ 32,500.00
Count 10 EPCRA Section 312(a) (LEPC, 2007):	\$ 32,500.00
Count 11 EPCRA Section 312(a) (fire dept, 2007):	\$ 32,500.00
TOTAL EPCRA SECTION 325 PENALTY	\$152,841.00

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the statutes cited provide the best evidence of those provisions without characterization.

71. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to 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 (dated September 30, 1999),” a copy of which is enclosed with this Complaint.

RESPONSE: The allegations of this paragraph constitute conclusions of law to which no answer is required and on that basis the Respondent denies the allegations except to admit that the Act was enclosed with the Complaint.

WHEREFORE, the Respondent, Pork King Packing, Inc., an Illinois corporation, prays that the United States Environmental Protection Agency, Region 5, (the “EPA”) dismiss the

Complaint, and assess no fines or penalties against the Respondent. Respondent further requests a hearing before an Administrative Law Judge. Respondent further requests that this tribunal enter such other relief as may be just and appropriate.

Grounds of Defense

1. At all material times of the allegations in the Complaint, the Respondent denies it was a "facility" which is required to prepare a material safety data sheet for hazardous chemicals under the Occupational Safety and Health Act of 1970 as per 29 CFR part 1910 and subparts, and therefore is not required to prepare and submit an emergency and hazardous chemical inventory form as alleged in the Complaint.

2. At all material times of the allegations in the Complaint, the Respondent has fully complied with all reporting requirements.

3. At all material times of the allegations in the Complaint, the Respondent states that the proposed penalty is excessive, arbitrary and capricious.

4. At all material times of the allegations in the Complaint, the Respondent states it had on hand at its plant amounts of the substances alleged in the Complaint in amounts that are below reporting levels for the periods indicated in the Complaint.

5. The Respondent states that the claims set forth in the Complaint are barred by the doctrine of Laches.

6. The Respondent states that the claims set forth in the Complaint are barred as the Statute(s) are unconstitutionally vague and violate the Due Process clause of the fifth amendment of the United States Constitution.

7. The Respondent states that the claims set forth in the Complaint are barred by the doctrine of estoppel.

WHEREFORE, the Respondent, Pork King Packing, Inc., an Illinois corporation, prays that the United States Environmental Protection Agency, Region 5, (the "EPA") dismiss the Complaint, and assess no fines or penalties against the Respondent. Respondent further requests a hearing before an Administrative Law Judge. Respondent further requests that this tribunal enter such other relief as may be just and appropriate.

Respectfully submitted,
Pork King Packing, Inc.

By:



One Of Its Attorneys

John J. Conway
Sullivan Hincks & Conway
Attorneys For Defendant
120 West 22nd Street, Suite 100
Oak Brook, IL 60523
(630) 573-5021
Attorney No. 24689

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

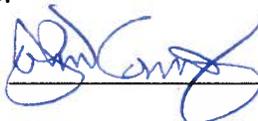
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In the Matter of:) Docket No. EPCRA-05-2008-0024
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)
Pork King Packing, Inc.) Proceeding to Assess a Civil Penalty Under
Marengo, Illinois 60152) Sections 325 (c)(1) and (c)(2) of the
) Emergency Planning and Community Right-to-
Respondent.) Know Act of 1986
_____)

NOTICE OF FILING

To: See Attached Service List

On Sept 3, 2008, I caused to be filed with the Regional Hearing Clerk of the U.S. EPA Region 5, Respondent's Answer, Request For A Hearing and Notice of Defenses, a copy of which is attached hereto.

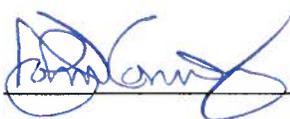


Sullivan Hincks & Conway
120 West 22nd Street Ste. 100
(630) 573-5021

Attorney For Respondent
Oak Brook, IL 60523
Atty. No.: 6217597

PROOF OF SERVICE BY MAIL

I, John Conway, an attorney, certify that I served an original and one copy of this notice and the document referenced above on the Regional Hearing Clerk, and a copy of same to the parties list on the service list, via overnight UPS mail and a copy to the addresses listed on the service list by depositing the same in the U.S. Mailbox located at 120 West 22nd Street, Oak Brook, IL 60523, before 5:00 p.m. on Sept 3, 2008.



SERVICE LIST

Regional Hearing Clerk (E-13J)
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Jeffrey Trevino
Associate Regional Counsel (C-14J)
United States Environmental Protection Agency
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77 West Jackson Boulevard
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