



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

May 23, 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: Lake's Farm Service LLC  
Docket No.: CAA-05-2010-0058  
Complaint Date: August 16, 2010  
Total Proposed Penalty: \$112,000.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to United States Environmental Protection Agency's Amended Complaint for *Lake's Farm Services LLC* in New Carlisle, Indiana.

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: Michael Schmidt  
4101 Edison Lakes Parkway, Suite 100  
Mishawaka, Indiana  
46545-3441  
(574) 485-2001

Louis Gross, Esquire  
Associate Regional Counsel  
Office Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd., C-14J  
Chicago, Illinois 60604-3590  
(312) 886-6844

May 20, 2011

**Michael J. Schmidt**  
Direct Dial: (574) 485-2001  
E-mail: mschmidt@kdlegal.com

**VIA FEDERAL EXPRESS OVERNIGHT**

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

Re: *In the matter of: Lake's Farm Service LLC*  
*Docket number: CAA-05-2010-0058*  
*Response to Amended Complaint*

**RECEIVED**  
MAY 23 2011

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

Dear Sir/Madame:

Enclosed please find an original plus two (2) copies of Respondent Lake's Farm Service LLC's Answer to the Environmental Protection Agency's Amended Complaint. Please file the same at your earliest convenience and return a "filed"-stamped copy to me in the enclosed postage-paid return envelope. By copy of this correspondence, all counsel of record have been served.

Thank you for your cooperation and if you have any questions, please feel free to contact me.

Sincerely,



Michael J. Schmidt

MJS/smr  
Enc.

cc: Louise Gross, Esq., Office of Regional Counsel, U.S. EPA, Region 5 (with enclosure)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2010-0058  
)  
Lake's Farm Service LLC ) Proceeding to Assess a  
) Civil Penalty under  
New Carlisle, Indiana ) Section 113(d) of the  
) Clean Air Act,  
Respondent. ) 42 U.S.C. § 7413(d)

RECEIVED  
MAY 23 2011

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**ANSWER TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S  
AMENDED COMPLAINT**

Respondent Lake's Farm Service LLC ("Lake"), by counsel, submits its response to the amended complaint filed by the Environmental Protection Agency ("EPA") on May 13, 2011 and received by counsel on May 16, 2011 ("Complaint"):

**Response to Amended Administrative Complaint**

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d).

**ANSWER:** Paragraph 1 of the Complaint contains a statement of law to which no response is required.

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, Chicago, Illinois.

**ANSWER:** Lake is without sufficient information to assess the factual assertion contained in Paragraph 2 of the Complaint and therefore denies the same.

3. Respondent is Lake's Farm Service LLC ("Lake's Farm" or "Respondent"), a company doing business in the State of Indiana.

**ANSWER:** Lake admits the allegation in rhetorical Paragraph 3 of the Complaint.

### **Statutory and Regulatory Background**

4. In accordance with Section 112(r) of the Act, 42 U.S.C. § 7412, on June 20, 1996, U.S. EPA promulgated regulations to prevent accidental releases of regulated substances and minimize the consequences of those releases that do occur. These regulations, known as the Risk Management Program regulations, are codified at 40 C.F.R. Part 68.

**ANSWER:** Paragraph 4 of the Complaint contains a statement of law to which no response is required.

5. The Risk Management Program regulations apply to all stationary sources that have more than a threshold quantity of a regulated substance in a process. The List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention is codified at 40 C.F.R. § 68.130. Procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source are codified at 40 C.F.R. § 68.115.

**ANSWER:** Paragraph 5 of the Complaint contains a statement of law to which no response is required.

6. Anhydrous ammonia is a “regulated substance,” as that term is defined in Section 112(r)(3) of the Act and 40 C.F.R. § 68.3. 40 C.F.R. § 68.130, Table 1.

**ANSWER:** Paragraph 6 of the Complaint contains a statement of law to which no response is required.

7. The “threshold quantity” (as that term is defined in 40 C.F.R. § 68.3) for Anhydrous Ammonia is 10,000 pounds per year. 40 C.F.R. § 68.130, Table 1.

**ANSWER:** Paragraph 7 of the Complaint contains a statement of law to which no response is required.

8. "Process" means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such a substance. 40 C.F.R. § 68.3.

**ANSWER:** Paragraph 8 of the Complaint contains a statement of law to which no response is required.

9. An owner or operator of a stationary source subject to the Risk Management Program shall comply with the requirements of 40 C.F.R. Part 68 by no later than the latest of the following dates: June 21, 1999; three years after the date on which the regulated substance is first listed under 40 C.F.R. § 68.130; or the date on which a regulated substance is first present in more than a threshold quantity in a process. 40 C.F.R. §§ 68.10(a), 68.150.

**ANSWER:** Paragraph 9 of the Complaint contains a statement of law to which no response is required.

10. The Risk Management Program regulations require that the owner or operator of a facility subject to the regulations develop and implement a Risk Management Plan ("RMP") for preventing accidental releases to the air and minimizing the consequences of releases that do occur. 40 C.F.R. §§ 68.12; 68.150-68.185.

**ANSWER:** Paragraph 10 of the Complaint contains a statement of law to which no response is required.

11. Under 40 C.F.R. § 68.10, all subject processes are divided into three tiers of eligibility: Programs 1, 2, and 3.

**ANSWER:** Paragraph 11 of the Complaint contains a statement of law to which no response is required.

12. Program 2 is set forth at 40 C.F.R. § 68.10(c) and applies to all processes which do not meet the requirements of Program 1 eligibility, as set forth at 40 C.F.R. § 68.10(b), and do not meet the requirements of Program 3 eligibility, as set forth at 40 C.F.R. § 68.10(d).

**ANSWER:** Paragraph 12 of the Complaint contains a statement of law to which no response is required.

13. The owner or operator of a stationary source with a process subject to Program 2 requirements shall develop and implement a management system as set forth at 40 C.F.R. § 68.15.

**ANSWER:** Paragraph 13 of the Complaint contains a statement of law to which no response is required.

14. The owner or operator of a stationary source with a process subject to Program 2 requirements shall conduct a hazard assessment as set forth at 40 C.F.R. Part 68, Subpart B, §§ 68.20 through 68.42.

**ANSWER:** Paragraph 14 of the Complaint contains a statement of law to which no response is required.

15. The owner or operator of a stationary source with a process subject to Program 2 requirements shall implement the prevention requirements as set forth at 40 C.F.R. part 68, Subpart C, §§ 68.48 through 68.60.

**ANSWER:** Paragraph 15 of the Complaint contains a statement of law to which no response is required.

16. The owner or operator of a stationary source with a process subject to Program 2 requirements shall submit an RMP as set forth at 40 C.F.R. Part 68, Subpart G, §§ 68.150 through 68.190.

**ANSWER:** Paragraph 16 of the Complaint contains a statement of law to which no response is required.

17. The owner or operator of a stationary source with a process subject to Program 2 requirements shall implement the emergency response requirements set forth at 40 C.F.R. Part 68, Subpart E, §§ 68.90 and 68.95.

**ANSWER:** Paragraph 17 of the Complaint contains a statement of law to which no response is required.

18. According to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 68, the Administrator of U.S. EPA (“the Administrator”) may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for violations that occurred on or after January 31, 1997 and March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred on and after March 15, 2004, but before January 13, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred on and after January 13, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19, as amended at 69 Fed. Reg. 7121 (February 14, 2004).

**ANSWER:** Paragraph 18 of the Complaint contains a statement of law to which no response is required.

19. Section 113(d)(1) limits the Administrator’s authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

ANSWER: Paragraph 19 of the Complaint contains a statement of law to which no response is required.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this Complaint.

ANSWER: Lake does not have sufficient information at this time to admit or deny the allegation in rhetorical Paragraph 20 of the Complaint.

### **General Allegations**

21. Respondent is a Delaware corporation with a farm supply facility located at 54300 Walnut Road, New Carlisle, Indiana (“the Facility”).

ANSWER: Lake admits that it is located at 54300 Walnut Road, New Carlisle, Indiana, but denies all remaining allegations in rhetorical Paragraph 21.

22. At the Facility, Respondent stores and sells anhydrous ammonia for fertilizer.

ANSWER: Lake admits the allegation in rhetorical Paragraph 22 of the Complaint.

23. Respondent is a “person,” as that term is defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

ANSWER: Lake admits the allegation in rhetorical Paragraph 23 of the Complaint.

24. The Facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

ANSWER: Lake admits the allegation in rhetorical Paragraph 24 of the Complaint.

25. For purposes of the requirements at 40 C.F.R. Part 68, Respondent is the “owner or operator” of the Facility, as that term is defined at Section 112(a)(9) of the Act.

ANSWER: Lake admits the allegation in rhetorical Paragraph 25 of the Complaint.



26. Respondent's ammonia storage process is a "process," as that term is defined at 40 C.F.R. § 68.3.

**ANSWER:** Lake admits the allegation in rhetorical Paragraph 26 of the Complaint.

27. On July 17, 1999, Respondent submitted an RMP for the process. In its RMP submission, Respondent confirmed that the Facility is subject to the Program 2 eligibility requirements. On November 29, 2005, the Respondent resubmitted an RMP. This subsequent RMP also confirmed that the Facility was subject to Program 2 requirements.

**ANSWER:** Lake admits the allegations in rhetorical Paragraph 27 of the Complaint.

28. On September 10, 2008, an authorized representative of the U.S. EPA conducted an inspection ("Inspection") of the Facility to determine Respondent's compliance with the Risk Management Program regulations.

**ANSWER:** Lake admits that an individual from the EPA visited its place of business on September 10, 2008 but denies the remaining allegations in rhetorical Paragraph 28 of the Complaint.

29. On November 25, 2009, U.S. EPA issued an Information Request to Respondent under Section 114(a) of the Act, 42 U.S.C. § 7414(a), seeking additional information regarding the Facility's compliance status.

**ANSWER:** Lake admits the allegation in rhetorical Paragraph 29 of the Complaint.

30. On January, 14, 2010, Respondent sent a response to the Information Request ("Response").

**ANSWER:** Lake admits the allegation in rhetorical Paragraph 30 of the Complaint.

31. The Response verified that Respondent had present at the Facility an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. § 68.130, as determined in accordance with 40 C.F.R. § 68.115.

**ANSWER:** Lake admits that it had present at its place of business an amount of anhydrous ammonia greater than the threshold quantity listed in 40 C.F.R. § 68.130, as determined in accordance with 40 C.F.R. § 68.115.

32. On February 17, 2010, U.S. EPA sent to Respondent a Notice of Intent to File a Civil Administrative Complaint (“Notice”). The Notice informed Respondent of U.S. EPA’s intent to file a civil administrative action for civil penalties, based upon listed allegations of violations of the Risk Management Program regulations. The letter also provided Respondent with an opportunity to present any information that it believed U.S. EPA should consider prior to filing an administrative action, including financial data bearing on Respondent’s ability to pay. To date, Respondent has not responded in writing to this letter.

**ANSWER:** Lake admits that the EPA sent a Notice of Intent to File a Civil Administrative Complaint on February 17, 2010, but denies that it did not respond to this letter.

### **Regulatory Requirements and Violations**

33. The Risk Management Program regulations, at 40 C.F.R. § 68.15(a), require the owner or operator of a stationary source with processes subject to Program 2 to develop a management system to oversee the implementation of the Risk Management Program elements.

**ANSWER:** Paragraph 33 of the Complaint contains a statement of law to which no response is required.

34. The Risk Management Program regulations, at 40 C.F.R. § 68.15(b) and (c), require the owner or operator to assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the Risk Management Program elements; and when responsibility for implementing individual requirements of this part is assigned to persons other than the person assigned overall responsibility, the names or positions of these people are to be documented and the lines of authority defined through an organization chart or similar document.

**ANSWER:** Paragraph 34 of the Complaint contains a statement of law to which no response is required.

35. The Risk Management Program regulations, at 40 C.F.R. § 68.25(a), require the owner or operator to analyze and report in the RMP on worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in appendix A of the Risk Management Program Regulations resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions as defined in 40 C.F.R. § 68.22.

**ANSWER:** Paragraph 35 of the Complaint contains a statement of law to which no response is required.

36. The Risk Management Program regulations, at 40 C.F.R. § 68.25(b) and (c), require the owner or operator to calculate the worst-case scenario for anhydrous ammonia using “the greatest amount held in a single vessel, taking into account administrative controls that

limit the maximum quantity” and to assume that the quantity in the vessel is released as a gas over 10 minutes.

**ANSWER:** Paragraph 36 of the Complaint contains a statement of law to which no response is required.

37. The Risk Management Program Regulations, at 40 C.F.R. § 68.39, require the owner or operator to maintain the documentation used to calculate worst-case and alternate release scenarios.

**ANSWER:** Paragraph 37 of the Complaint contains a statement of law to which no response is required.

38. The Risk Management Program regulations, at 40 C.F.R. § 68.48(a), require the owner or operator to compile and maintain up-to-date safety information regarding: maximum intended inventory of equipment in which the regulated substances are stored or processed; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; and codes and standards used to design, build, and operate the process.

**ANSWER:** Paragraph 38 of the Complaint contains a statement of law to which no response is required.

39. The Risk Management Program Regulations, at 40 C.F.R. § 68.50(a), require the owner or operator to conduct a hazard review of its regulated process.

**ANSWER:** Paragraph 39 of the Complaint contains a statement of law to which no response is required.

40. The Risk Management Program Regulations, at 40 C.F.R. § 68.50(b), require the owner or operator conducting the hazard review, by inspecting all equipment, to determine

whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

**ANSWER:** Paragraph 40 of the Complaint contains a statement of law to which no response is required.

41. The Risk Management Program Regulations, at 40 C.F.R. § 68.52, require the owner or operator to prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process.

**ANSWER:** Paragraph 41 of the Complaint contains a statement of law to which no response is required.

42. The Risk Management Program Regulations, at 40 C.F.R. § 68.56(a), require the owner or operator to prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment.

**ANSWER:** Paragraph 42 of the Complaint contains a statement of law to which no response is required.

43. The Risk Management Program Regulations, at 40 C.F.R. § 68.56(d), require the owner or operator to perform inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

**ANSWER:** Paragraph 43 of the Complaint contains a statement of law to which no response is required.

44. The Risk Management Program Regulations, at 40 C.F.R. § 68.58, require the owner or operator to certify that they have conducted a compliance audit with the prevention

program at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

**ANSWER:** Paragraph 44 of the Complaint contains a statement of law to which no response is required.

45. In its November 29, 2005 RMP submission to U.S. EPA, Respondent identified Kristin Boklund as the person with overall responsibility for the development, implementation, and integration of the Risk Management Program. At the time of the Inspection, Ms. Boklund was also identified as the person responsible for the Risk Management Program. Ms. Boklund's title was identified as the "Bookkeeper." In Respondent's January 14, 2010 response to the information request, Respondent identified Ms. Boklund as the person who prepares Respondent's annual reports "in keeping with the laws."

**ANSWER:** Lake admits the allegations contained in the first and third sentence of rhetorical Paragraph 45 of the Complaint, but denies the allegation in the second sentence.

46. On January 25, 2010, U.S. EPA representatives conversed with Ms. Boklund by telephone. Ms. Boklund was asked her qualifications with regard to the Risk Management Program regulations. She responded that she has no training or experience in mechanical integrity issues, hazard identification, accident prevention, or emergency response. Thus, Respondent failed to assign a qualified person to be responsible for the development, implementation, and integration of the Risk Management Program, in violation of 40 C.F.R. § 68.15.

**ANSWER:** Lake admits that conversation occurred on January 25, 2010, but denies the remaining allegations contained in rhetorical Paragraph 46 of the Complaint.

47. The largest vessel at the Facility containing anhydrous ammonia holds 120,000 pounds, taking into consideration the 80% administrative ceiling on tank capacity. When Respondent submitted its RMP in 2005, it reported a worse-case quantity of 71,500 pounds. The distance to toxic endpoint reported in the 2005 RMP is consistent with the amount 71,500 pounds. Thus, Respondent failed to properly determine its worst-case release quantity and conduct its worst-case release scenario, in violation of 40 C.F.R. § 68.25(b) and (c), respectively.

**ANSWER:** Lake denies the allegations contained in rhetorical Paragraph 47 of the Complaint.

48. At the time of the Inspection, Respondent failed to provide the documentation used to calculate the worst-case scenario or the alternate release scenarios. On January 14, 2010, Respondent produced inadequate worst-case and alternate release scenario documentation dated December 31, 2009. These failures constitute violations of C.F.R. § 68.39.

**ANSWER:** Lake denies the allegations contained in rhetorical Paragraph 48 of the Complaint.

49. At the time of the Inspection, Respondent had not complied the process safety information required by the regulations, specifically: maximum intended inventory of equipment in which the anhydrous ammonia is stored; safe upper and lower temperatures, pressures, flows, and compositions; equipment specifications; or codes and standards used to design, build, and operate the process, in violation of 40 C.F.R. § 68.48(a)(2) – (a)(5).

**ANSWER:** Lake denies the allegations contained in rhetorical Paragraph 49 of the Complaint.

50. At the time of the Inspection, Respondent failed to provide documentation that it had performed a hazard review, as required by 40 C.F.R. § 68.50(a). In addition, Respondent failed to provide a copy of a hazard review in response to U.S. EPA's Information Request. These failures constitute violations of 40 C.F.R. § 68.50(a). These failures constitute violations of 40 C.F.R. § 68.50(a).

**ANSWER:** Lake denies the allegations contained in rhetorical Paragraph 50 of the Complaint.

51. At the time of the Inspection, Respondent failed to document that all its equipment met industry standards or State design standards, in violation of 40 C.F.R. § 68.50(b).

**ANSWER:** Lake denies the allegation contained in rhetorical Paragraph 51 of the Complaint.

52. At the time of Inspection, Respondent had no written operating procedures for safely conducting activities associated with handling anhydrous ammonia, in violation of 40 C.F.R. § 68.52.

**ANSWER:** Lake denies the allegation contained in rhetorical Paragraph 52 of the Complaint.

53. At the time of the Inspection, Respondent did not have procedures to maintain the on-going mechanical integrity of the process equipment, in violation of 40 C.F.R. § 68.56(a).

**ANSWER:** Lake denies the allegation contained in rhetorical Paragraph 53 of the Complaint.

54. At the time of the Inspection, Respondent had not performed inspections and tests on process equipment, in violation of 40 C.F.R. § 68.56(d).



**ANSWER:** Lake denies the allegation contained in rhetorical Paragraph 54 of the Complaint.

55. At the time of the Inspection, Respondent had not conducted an audit of the prevention program, in violation of 40 C.F.R. § 68.58.

**ANSWER:** Lake denies the allegation contained in rhetorical Paragraph 55 of the Complaint.

#### **Proposed Civil Penalty**

56. The Administrator must consider the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), when assessing an administrative penalty under Section 113(d), 42 U.S.C. §7413(d).

**ANSWER:** Paragraph 56 of the Complaint contains a statement of law to which no response is required.

57. Based upon an evaluation of the facts alleged in this Complaint and the factors in section 113(e) of the Act, 42 U.S.C. § 7413(e), Complainant proposes that the Administrator assess a civil penalty of \$76,000.00 against the Respondent. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Combined Enforcement Policy for § 112(r) of the Clean Air Act, dated August 15, 2001.

**ANSWER:** Paragraph 57 of the Complaint contains a statement to which no response is required.

58. Complainant developed the proposed penalty based on the best information available to Complainant at the time of the issuance of this Complaint. Complainant may adjust the

proposed penalty if Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the proposed penalty.

**ANSWER:** Lake denies the allegations contained in rhetorical Paragraph 58 of the Complaint.

### **Rules Governing This Proceeding**

59. The “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“the Consolidated Rules”), codified at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with this Complaint is a copy of the Consolidated Rules.

**ANSWER:** Paragraph 59 of the Complaint contains a statement to which no response is required.

### **Filing and Service of Documents**

60. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends to submit as part of the record in this proceeding. The Regional Hearing Clerk’s address is:

Regional Hearing Clerk (R-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**ANSWER:** Paragraph 60 of the Complaint contains a statement to which no response is required.

61. Respondent must also serve a copy of each document filed in this proceeding on each party pursuant to 40 C.F.R. § 22.5. Complainant has authorized Louise Gross, Associate Counsel, to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Gross at (312)886-6844 or contact her by email at gross.louise@epa.gov. Ms. Gross' address is:

Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**ANSWER:** Paragraph 61 of the Complaint contains a statement to which no response is required.

**Opportunity to Request a Hearing**

62. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the Complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed below.

**ANSWER:** Paragraph 62 of the Complaint contains a statement to which no response is required.

**Answer**

63. Respondent must file a written Answer to this Complaint if it contests any material fact of the Complaint, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law. To file an Answer, Respondent must file the

original written Answer and one copy with the Regional Hearing Clerk at the address specified above and must serve copies of the written Answer on the other parties to this Complaint.

**ANSWER:** Paragraph 63 of the Complaint contains a statement to which no response is required.

64. If Respondent chooses to file a written Answer to the Complaint, it must do so within thirty (30) calendar days after receiving the Complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturday, Sunday, and federal legal holidays are counted. If the 30-day time period expires on Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

**ANSWER:** Paragraph 64 of the Complaint contains a statement to which no response is required.

65. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint, or must state clearly that Respondent has no knowledge of a particular factual allegation. When Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

**ANSWER:** Paragraph 65 of the Complaint contains a statement to which no response is required.

66. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

**ANSWER:** Paragraph 66 of the Complaint contains a statement to which no response is required.

67. Respondent's Answer must also state:

1. the circumstances or arguments which Respondent alleges constitute grounds of defense;
2. the facts which Respondent disputes;
3. the basis for opposing the proposed penalty; and
4. whether Respondent requests a hearing, as discussed above.

**ANSWER:** Paragraph 67 of the Complaint contains a statement to which no response is required.

68. If Respondent does not file a written Answer within thirty (30) calendar days of receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules, 40 C.F.R. § 22.17(c). Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. As provided by 40 C.F.R. § 22.17(d), Respondent must pay any penalty assessed in a default order without further proceedings thirty (30) days after the default order becomes the final order of the Administrator of U.S. EPA pursuant to 40 C.F.R. § 22.27(c).

**ANSWER:** Paragraph 68 of the Complaint contains a statement to which no response is required.

#### **Settlement Conference**

69. Whether or not Respondent requests a hearing, it may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Louise Gross at the address or phone number specified above.

**ANSWER:** Paragraph 69 of the Complaint contains a statement to which no response is required.

70. Respondent's request for an informal settlement conference does not extend the thirty (30) calendar day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**ANSWER:** Paragraph 70 of the Complaint contains a statement to which no response is required.

#### **Continuing Obligations to Comply**

71. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligations to comply with the Act and any other applicable federal, state, or local law.

**ANSWER:** Paragraph 71 of the Complaint contains a statement to which no response is required.

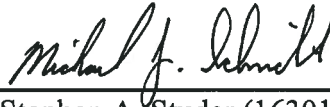
#### **SETTLEMENT CONFERENCE**

1. Lake requests an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement pursuant to Paragraph 69 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Lake asserts and reserves the right to amend these Affirmative Defenses to assert additional defenses as they become known to Lake.

Respectfully submitted,



Stephen A. Studer (16301-71)  
John H. Lloyd (16784-71)  
Michael J. Schmidt (28857-71)

Krieg DeVault LLP  
4101 Edison Lakes Parkway, Suite 100  
Mishawaka, Indiana 46545  
Telephone: (574) 277-1200  
Fax: (574) 277-1201

Attorneys for Respondent  
Lake Farm Service, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of May, 2011, a copy of this Answer was sent via overnight Federal Express, with adequate postage prepaid to the following:

Regional Hearing Clerk (R-91)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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