



ANSWER: Admit.

**Statutory and Regulatory Background**

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

6. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release, and to the state emergency planning commission (SERC) of any state likely to be affected by a

release.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

7. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires the owner or operator of the facility to provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 § 11004(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of policy in support of the law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

9. 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 SERC, community emergency coordinator for the 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.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of policy in support of the law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

10. 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 U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

11. 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.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of policy in support of the law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

12. Federal regulations at 29 C.F.R. § 1910.1200(b)(1) require all employers to provide information to their employees about the hazardous chemicals to which they are exposed by means of a hazard communication program, including, but not limited to, MSDSs.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

13. 29 C.F.R. 1910.1200(c) defines hazardous chemicals as any chemical which is a physical or a health hazard.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

### **General Allegations**

14. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

15. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

16. At all times relevant to this Complaint, Respondent was an owner or operator of the facility located at 672 N M-52, Webberville, Michigan (fixed facility).

ANSWER: Admit.

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

ANSWER: Admit.

18. At all times relevant to this Complaint, Respondent was in charge of the truck and transport tank facility from which the anhydrous ammonia was released on May 6, 2008 (transport tank facility).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same. By way of further answer, and as was explained to US EPA on two occasions (see Exhibit A (August 1, 2008 Response to US EPA Information Request) and Exhibit B (November 11,

2008 Response to US EPA Information Request)), MBH Trucks, LLC is the owner of the trucks.

19. Respondent's fixed facility and transport tank facility consists of a building, structure, installation, equipment, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent denies the allegations contained therein. By way of further answer, Respondent denies that it owns the transport tank facility.

20. Respondent's fixed facility and transport tank facility are a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same and affirmatively states that it does not own the transport tank facility.

21. 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, including motor vehicles and rolling stock.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent denies the allegations contained therein. By way of further answer, Respondent denies that it owns the transport tank facility.

22. Respondent's fixed facility and transport tank facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

ANSWER: Respondent neither admits nor denies, as the allegation is a conclusion of law and no answer is required. To the extent that an answer may be required, Respondent denies the

allegations contained therein.

23. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

24. 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).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

26. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

27. Diesel fuel (CAS #68476-34-6) is a combustible liquid under OSHA regulations at 29

C.F.R. Part 1910, having a flash point of 125.06 degrees Fahrenheit.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

28. Diesel fuel (CAS #68476-34-6) 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).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

29. At all times relevant to this Complaint, Respondent produced, used, or stored diesel fuel at the fixed facility.

ANSWER: Admit.

30. Diesel fuel (CAS #68476-34-6) has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

31. As of January 1, 2005, diesel fuel was present at the facility at any one time in an amount equal to or greater than the minimum threshold level.

ANSWER: Admit.

32. During at least one period of time in calendar year 2005, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

ANSWER: Admit.

33. During at least one period of time in calendar year 2006, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

ANSWER: Admit.

34. During at least one period of time in calendar year 2007, diesel fuel was present at the facility in an amount equal to or greater than the minimum threshold level.

ANSWER: Admit.

35. OSHA requires Respondent to prepare, or have available, an MSDS for diesel fuel.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent admits that it provides MSDS to its employees and has MSDS for diesel fuel available on site.

36. Section 311 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility on or before March 31, 2005, an MSDS for diesel fuel or a list including diesel fuel.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

37. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2006, for calendar year 2005.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

38. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2007, for calendar year 2006.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

39. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC, and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including diesel fuel on or before March 1, 2008, for calendar year 2007.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

40. On May 6, 2008, at or about 5:30 p.m., a release occurred from Respondent's transport tank facility of approximately 920 pounds of anhydrous ammonia (the release).

ANSWER: Denied in part, admitted in part. Respondent does not own the transport tank facility and there is evidence that the receiving tank, owned and operated by Sid Hawkins, contributed or otherwise caused the release. However, Respondent admits that a release occurred on May 6, 2008. By way of further answer, Respondent denies any allegation that Respondent or MBH Trucks, LLC knew that 920 pounds was released on May 6, 2008.

41. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

ANSWER: Admit.

42. During the release, approximately 920 pounds of anhydrous ammonia, spilled, leaked,

pumped, emitted, discharged, or escaped into the land surface or subsurface strata, or ambient air and/or air or land.

ANSWER: Respondent admits that a release of anhydrous ammonia occurred, but denies any suggestion that it knew at the time of the release that 920 pounds was released.

43. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 § U.S.C. 9601(22).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

44. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

45. Respondent had knowledge of the release on May 6, 2008, at approximately 5:30 p.m.

ANSWER: Admit in part, as Respondent's employee was the driver of MBH Trucks, LLC's truck from which the release may have occurred, but denies that it knew on May 6, 2008, that the release was of a reportable quantity.

46. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

47. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

48. The release was likely to affect Michigan.

ANSWER: Respondent neither admits nor denies, as the allegation is vague and Respondent lacks sufficient information on which to formulate a response. To the extent that an answer may be required, Respondent denies the allegations.

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

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

50. The release was likely to affect Ingham County, Michigan.

ANSWER: Respondent neither admits nor denies, as the allegation is vague and Respondent lacks sufficient information on which to formulate a response. To the extent that an answer may be required, Respondent denies the allegations.

51. At all times relevant to this Complaint, the Ingham County Local Emergency Planning Committee was the LEPC for Ingham County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the

same.

52. At all times relevant to this Complaint, the Leroy Township Fire Department was the fire department with jurisdiction over the facility.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

### Count I

53. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 52 of the complaint.

54. Respondent notified the NRC of the release on May 9, 2008, at 4:00 p.m.

ANSWER: Denied. Respondent made no such notification. By way of further answer, Respondent states that, on information and belief, Matthew Brian Hitchcock of MBH Trucks, LLC made such notification.

55. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.

ANSWER: Admit in part, denied in part, as Respondent made no immediate notification and was not required to do so. By way of further answer, and based on information and belief, MBH Trucks, LLC, notified the NRC. Moreover, notification was made to emergency responders at the time of the release, some of whom were members of the LEPC, and to 911.

56. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. 9603(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required,

Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

**Count 2**

57. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 56 of the complaint.

58. Respondent notified the Michigan SERC of the release on May 12, 2008, at 12:24 p.m.

ANSWER: Denied. On information and belief, however, Respondent states that MBH Trucks, LLC made such notification.

59. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

ANSWER: Admit, as Respondent was under no obligation to do so. Respondent is not an owner or operator of the facility.

60. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that further answer may be required, Respondent denies the same, as Respondent was under no obligation to provide such notification.

**Count 3**

61. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 60 of the complaint.

62. Respondent notified the LEPC of the release on May 14, 2008, through the written

follow-up notification.

ANSWER: Denied. On information and belief, however, Respondent states that MBH Trucks, LLC made such notification. Moreover, the LEPC was notified while on site on May 6, 2008, as several members of the Ingham County LEPC, including George Gilliland and members of the Ingham County Haz-Mat Team, are, on information and belief, members of the Ingham County LEPC.

63. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

ANSWER: Denied. Immediate notice was given in person at the time of the release. Also see answer to paragraph 62.

64. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same, as Respondent was under no obligation to provide such follow-up notice to LEPC. Also see answer to paragraph 62.

#### **Count 4**

65. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 64 of the complaint.

66. Respondent provided written follow-up emergency notice of the release to the SERC on May 14, 2008.

ANSWER: Denied. On information and belief, however, Respondent states that MBH Trucks, LLC made such written follow-up.

67. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

ANSWER: Admit, as Respondent was under no obligation to do so. Also see answer to paragraph 66.

68. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same, as Respondent was under no obligation to provide such follow-up notice to SERC.

#### **Count 5**

69. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 68 of the complaint.

70. Respondent provided written follow-up emergency notice of the release to the LEPC on May 14, 2008.

ANSWER: Denied. On information and belief, however, Respondent states that MBH Trucks, LLC made such written follow-up.

71. Respondent did not provide the LEPC written follow-up emergency notice of the release as soon as practicable after the release occurred.

ANSWER: Admit, as Respondent was under no obligation to do so. Also see answer to paragraph 70. .

72. Respondent's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of

EPCRA, 42 U.S.C. § 11004(c).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same, as Respondent was under no obligation to provide such follow-up notice to LEPC.

**Count 6**

73. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 72 of the complaint.

74. Respondent submitted to the SERC an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

ANSWER: Admit.

75. Each day Respondent failed to submit to the SERC an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 7**

76. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 75 of the complaint.

77. Respondent submitted to the LEPC an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

ANSWER: Admit.

78. Each day Respondent failed to submit to the LEPC an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U.S.C. § 11021.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 8**

79. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 78 of the complaint.

80. Respondent submitted to the Leroy Township Fire Department an MSDS for diesel fuel or a list showing diesel fuel on January 9, 2009.

ANSWER: Admit. By way of further answer, Respondent states that it believes it previously submitted information about the tanks to the Leroy Township Fire Department several years ago and is requesting documentation of same from the Fire Department. Respondent will provide the same to US EPA upon receipt.

81. Each day Respondent failed to submit to the Leroy Township Fire Department an MSDS or a list for diesel fuel by March 31, 2005, constitutes a separate violation of Section 311 of EPCRA, 42 U. S. C. § 11021.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 9**

82. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in

this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 81 of the complaint.

83. As of January 20, 2009. Respondent had not submitted to the SERC, LEPC, or the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory form including diesel fuel for calendar year 2005.

ANSWER: Denied. The Chemical Inventory Form for 2005 was submitted in January of 2009, along with the submittals for subsequent years.

84. Each day Respondent failed to submit to the SERC, LEPC, and Leroy Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel, by March 1, 2006, for calendar year 2005, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

#### **Count 10**

85. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 84 of the complaint.

86. Respondent submitted to the SERC, LEPC, or the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel on January 9, 2009, for calendar year 2006.

ANSWER: Admit.

87. Each day Respondent failed to submit to the SERC, LEPC, and Leroy Township Fire Department, a completed Emergency and Hazardous Chemical Inventory Form

including diesel fuel by March 1, 2007, for calendar year 2006, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 11**

88. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 87 of the complaint.

89. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel, on January 9, 2009, for calendar year 2007.

ANSWER: Admit.

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

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 12**

91. Complainant incorporates paragraphs 1 through 52 of this Complaint as if act forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 90 of the complaint.

92. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical

inventory Form including diesel fuel on January 9, 2009, for calendar year 2007.

ANSWER: Admit.

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

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Count 13**

94. Complainant incorporates paragraphs 1 through 52 of this Complaint as if set forth in this paragraph.

ANSWER: Respondent incorporates by reference its answers to paragraphs 1 through 94 of the complaint.

95. Respondent submitted to the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel on January 9, 2009, for calendar year 2007.

ANSWER: Admit.

96. Each day Respondent failed to submit to the Leroy Township Fire Department a completed Emergency and Hazardous Chemical Inventory Form including diesel fuel by March 1, 2008, for calendar year 2007, constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

ANSWER: Respondent neither admits nor denies the allegations as the allegations are conclusions of law and no answer is required. To the extent that an answer may be required, Respondent denies the same.

**Proposed CERCLA Penalty**

97. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12 2009, and to \$37,500 per day for violations occurring after January 12, 2009.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

98. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires U.S. EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice may require, when assessing an administrative penalty under Section 109(b) of CERCLA.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

99. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that U.S. EPA assess a civil penalty against Respondent of \$21,168.71 for the CERCLA violation alleged in Count 1 of this Complaint.

ANSWER: Respondent neither admits nor denies, as the allegation is a conclusion of law. To the extent that an answer may be required, Respondent denies the allegations contained therein, as the penalty is excessive. Evidence indicates that the receiving tank may have been a factor in the

release, a tank which is not owned or operated by either MBH Trucks, LLC or MBH Trucking, LLC. Moreover, the penalty does not reflect the potential consequences of Respondent's or MBH Trucks, LLC's failure to immediately make the required notifications. Specifically, within approximately one hour, and after emergency responders were on the scene, the vapor cloud had dissipated and small puddles of the anhydrous ammonia vaporized within a few hours of the release. Also within one hour of the release, Ingham County Haz-Mat emergency responders had determined that it was safe to resume normal daily activities in the surrounding area. Providing immediate notice would not have prevented any injuries or damage to the environment, the goals contemplated by CERCLA. In fact, within approximately one hour, emergency responders had stood down. No one was evacuated from the area and no evacuation would have occurred even if NRC had been given immediate notice. The release and its effects were essentially over before the obligation to give notice was triggered.

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

ANSWER: Respondent neither admits nor denies, as the allegation is a conclusion of law and no answer is required. However, Respondent does admit that it received a copy of the Policy, but believes that Complainant has failed to accurately and properly calculate the penalties and apply the Policy and any models contained therein, as well as failed to properly evaluate the facts and circumstances.

#### **Proposed EPCRA Penalty**

101. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes U.S. EPA to assess a civil

penalty of up to \$25,000 per day of violation of EPCRA Section 304. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day for violations that occurred after January 12, 2009.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

102. Section 325(c)(2) of EPCRA, 42 U.S.C. § 11045(c)(2), authorizes U.S. 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 through January 12, 2009, and to \$16,000 per day of violation that occurred after January 12, 2009.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

103. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. 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, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to

\$37,500 per day for violations that occurred after January 12, 2009.

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

104. 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 U.S. EPA assess a civil penalty against Respondent of \$117,523.43 for the EPCRA violations alleged in this Complaint. Complainant allocated this proposed penalty to the various EPCRA counts of this Complaint as follows:

Count 2 EPCRA Section 304(a) (SERC):	\$ 21,579.76
Count 3 EPCRA Section 304(a) (LEPC):	\$ 21,990.80
Count 4 EPCRA Section 304(c) (SERC):'	\$ 6,919.51
Count 5 EPCRA Section 304(c) (LEPC);	\$ 6,919.51
Count 6 EPCRA Section 311 (SERC);	\$ 5,480.80
Count 7 EPCRA Section 311 (LEPC):	\$ 5,480.80
Count 8 EPCRA Section 311 (fire dept):	\$ 5,480.80
Count 9 EPCRA Section 312(a) (Year 2005);	\$ 1,275.00
Count 10 EPCRA Section 312(a) (Year 2006);	\$ 1,275.00
Count 11 EPCRA Section 312(a) (SERC):	\$ 13,701.15
Count 12 EPCRA Section 312(a) (LEPC):	\$ 13,701.15
Count 13 EPCRA Section 312(a) (fire dept):	\$ 13,701.15
TOTAL EPCRA SECTION 325 PENALTY	\$117,523.43
TOTAL CERCLA AND EPCRA PENALTY	\$138,692.14

ANSWER: Respondent neither admits nor denies the allegations as the allegations are statements of law and no answer is required. To the extent that further answer may be required, Respondent lacks sufficient knowledge to respond to the allegations and, therefore, denies the same.

By way of further answer and as to EPCRA Section 304 penalties for failure to immediately notify SEPC and LEPC, as well as failure to timely provide notification as soon as practicable, Respondent states that MBH Trucks, LLC, (the actual operating entity) immediately gave notice to members of the LEPC who were onsite within minutes of the release. On information and belief, MBH Trucks, LLC gave all the other required notices.

By way of further answer, as to EPCRA Section 311 penalties for the failure to provide MSDS for diesel to SERC, LEPC, and the fire department, Respondent states that there was no release of diesel fuel, thus no danger to emergency responders or others. Further, even if there was a release, emergency responders would have known that the liquid in the large tanks was diesel fuel because the tanks were clearly labeled and obviously used for fueling purposes, i.e., a dispenser is present in the immediate vicinity of the tanks. If emergency responders had been called to the site, MSDS were available on site. As a result of the Section 311 violations, there were no adverse effects. Respondent further states that it believes it submitted information about the tanks to the fire department several years ago and is in the process of obtaining proof of same.

Also by way of further answer and based on information and belief, as to EPCRA 311 and 312 penalties, MBH Trucks, LLC, made the required submissions. And, in general, Respondent and MBH Trucks, LLC, have a favorable compliance history. Also upon information and belief, MBH

Trucks, LLC, which transports the ammonia and stores the diesel, maintains records of the information required to be maintained by applicable environmental laws. MBH Trucks, LLC, had, and still has, an emergency plan in place that addresses accidental releases and has driver meetings for accidental release training. Reflective of its openness and willingness to comply with the law, MBH Trucks, LLC, agreed, without hesitation, to allow US EPA to inspect its facility, at the request of US EPA, following the release offsite.

Finally, to ensure that no further violations occur, MBH Trucking, LLC, is having the diesel fuel tanks removed from the property and no further storage of diesel fuel will occur.

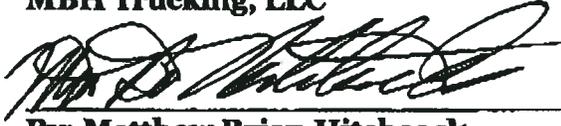
105. Complainant calculated the EPCRA penalties by evaluating the facts and circumstances of this case with specific reference to U.S. EPA's "Enforcement Response Policy for sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (dated September 30, 1999)," a copy of which is enclosed with this Complaint.

ANSWER: Respondent neither admits nor denies, as Respondent has no personal knowledge of how US EPA calculated the EPCRA penalties. However, Respondent does admit that it received a copy of the Enforcement Response Policy, but believes that Complainant has failed to accurately and properly calculate the penalties and apply the Policy and any models contained therein, as well as failed to properly evaluate the facts and circumstances. By way of further answer, Respondent questions whether US EPA actually considered other factors in calculating the penalty.

**In light of the foregoing issues of fact, discrepancy in information, defenses available to Respondent, and apparent excessiveness of the proposed penalty, Respondent requests a hearing. Moreover, to the extent permitted in an Answer, Respondent requests an informal Settlement Conference.**

**Respectfully submitted,**

**MBH Trucking, LLC**

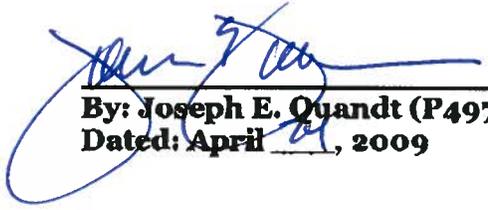


**By: Matthew Brian Hitchcock**

**Its: Member**

**Dated: April 24, 2009**

**Zimmerman, Kuhn, Darling, Boyd, Quandt and Phelps, PLC,  
Attorneys for Respondent**



**By: Joseph E. Quandt (P49739)**

**Dated: April 24, 2009**

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