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VIA FEDERAL EXPRESS

June 24, 2008

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

**Re: In the Matter of ACH Food Companies, Docket No.(s)
CERCLA-05-2008-0008; EPCRA-05-2008-0613; MM-05-2008-0003**

Dear Sir/Madam:

Enclosed please find an original and one copy of the Answer to the Administrative Complaint of ACH Food Companies, Inc., in the above-referenced matter. Please file the original with your office, and return a file-stamped copy to me in the enclosed self-addressed, postage prepaid envelope.

Thank you for your assistance in this matter. Please do not hesitate to contact me should you have any questions.

Very truly yours,



Bryan E. Keyt

BEK:tyh

cc: Thomas Kenney

2008 JUN 25 PM 4:48
RECEIVED
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
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US EPA REGION V
2008 JUN 25 PM 4:50

IN THE MATTER OF:

(**Docket No(s) CERCLA-05-2008-0008**
(**EPCRA-05-2008-0013**
(**MM-05-2008-0003**

ACH Food Companies, Inc.
710 North Mattis Avenue
Champaign, IL 61821

(**Proceeding to Assess a Civil Penalty under Section**
(**109(b) of the Comprehensive Environmental**
(**Response, Compensation, and Liability Act, and**
(**325(b)(2) and 325(c) of the Emergency Planning and**
(**Community Right-to-Know Act of 1986.**

Respondent.

ANSWER AND REQUEST FOR A HEARING

NOW COMES the Respondent, ACH FOOD COMPANIES, INC. ("ACH" or "Respondent"), by and through its attorneys, Bell, Boyd and Lloyd LLP, and in response to the Complaint and Notice of Opportunity for Hearing ("Complaint") instituted by the United States Environmental Protection Agency ("EPA" or "Complainant"), and brought pursuant to Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") as amended, 42 U.S.C. § 9609(b), and Section(s) 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045(b)(2), and in accordance with the Consolidated Rules of Practice Governing Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), hereby states its Answer and Request for an Opportunity for Hearing and Informal Settlement Conference thereto as follows:

FIRST DEFENSE

Complainant has failed to allege facts sufficient to state a claim upon which relief may be granted. Respondent answers the specific allegations of the Complaint as follows:

I. COMPLAINT

1. This is an administrative proceeding to assess a civil penalty under Section 109(b) of the comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, 42 U.S.C. § 9609(b), and Section(s) 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2).

ANSWER

Respondent asserts that the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) speaks for itself, and that therefore this paragraph requires no response. In further answering, Respondent asserts that this paragraph contains conclusions of law to which no answer is required, pursuant to the Consolidated Rules of Practice.

2. The Complainant is, by lawful delegation, the Branch Chief, Emergency Response Branch, Superfund Division, Region 5, United State Environmental Protection Agency (U.S. EPA).

ANSWER

Respondent asserts that this paragraph contains conclusions of law to which no answer is required, pursuant to the Consolidated Rules of Practice. To the extent that this paragraph may be interpreted to contain any factual allegation, Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegation.

3. The Respondent is ACH Food Companies, Inc. a corporation doing business in Illinois.

ANSWER

Respondent admits the factual allegation in paragraph 3 of the Complaint.

II. STRATEGY 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 asserts that CERCLA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 4 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. §§ 11004(a)(1), requires that the owner of operator of a facility must 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 asserts that EPCRA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 5 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

6. Section 304(a)(2) of EPCRA, 42 U.S.C. § 11004(b), requires that the owner or operator of a facility must 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 occurred in a manner which would require notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

ANSWER

Respondent asserts that EPCRA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 6 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

7. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility 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 asserts that EPCRA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 7 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

8. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous.

ANSWER

Paragraph 8 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

III. GENERAL ALLEGATIONS

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

ANSWER

Respondent admits the factual allegation in paragraph 9 of the Complaint.

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

ANSWER

Respondent admits the factual allegation in paragraph 10 of the Complaint.

11. At all times relevant to this Complaint, Respondent was an owner or operator of the Facility located at 710 North Mattis Avenue, Champaign, Illinois, 61821 (Facility).

ANSWER

Respondent admits the factual allegation in paragraph 11 of the Complaint.

12. At all time relevant to this Complaint, Respondent was in charge of the Facility.

ANSWER

Respondent admits the factual allegation in paragraph 12 of the Complaint.

13. Respondent's Facility consists of a building, structure, equipment, pipe or pipeline, well, pit, or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

ANSWER

Respondent admits that the Respondent's Facility "consists of buildings, structures, installations, equipment, pipes, storage container" and denies that the Facility consists of "any site or area where a hazardous substance has been deposited, stored, or placed, or otherwise come to be located."

14. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

ANSWER

Respondent admits the factual allegation in paragraph 14 of the Complaint.

15. 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.

ANSWER

Respondent admits the factual allegation in paragraph 15 of the Complaint.

16. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

ANSWER

Respondent admits the factual allegation in paragraph 16 of the Complaint.

17. 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 asserts that CERCLA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 17 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

18. 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 asserts that the Code of Federal Regulations speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 18 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

19. Ammonia is listed under OSHA regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.

ANSWER

Respondent asserts that the Code of Federal Regulations speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 19 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

20. At all times relevant to this Complaint, ammonia was produced, used or stored at the Facility.

ANSWER

Respondent admits the factual allegation in paragraph 20 of the Complaint.

21. 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 asserts that EPCRA speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 21 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

22. 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 asserts that the Code of Federal Regulations speaks for itself, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph 22 of the Complaint alleges conclusions of law for which no response is required, pursuant to the Consolidated Rules of Practice.

23. On September 28, 2005, at or about 11:30 a.m., a release occurred from Respondent's Facility of approximately 725 pounds of ammonia. (the Release).

ANSWER

Respondent admits that on or about 11:57 a.m. on September 28, 2005 ammonia began to discharge from a relief valve on the roof of a building at Respondent's facility, but denies the remaining allegations in paragraph 23 of the Complaint. Further answering, Respondents asserts that at approximately 11:57 a.m., the Facility's ammonia monitoring system ("Monitoring System") activated. After the system was triggered, employees conducted an investigation to

locate the source detected by the Monitoring System. Respondent then opened certain valves to stop the discharge of ammonia from the relief valves at approximately 12:14 p.m. The ACH team reacted swiftly and accurately to terminate the discharge.

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

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that on information and belief, the discharge of ammonia as described in paragraph 23 of this Complaint exceeded 100 pounds, within a 24 hour period.

25. During the release approximately 725 pounds of ammonia escaped into the air.

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that on information and belief, the discharge of ammonia as described in paragraph 23 of this Complaint exceeded 100 pounds, within a 24 hour period. Further answering, Respondent admits that it estimated the worst-case release of ammonia to be approximately 725 pounds on September 28, 2005, but denies the remaining the allegations in paragraph 25 of the Complaint.

26. The release is a “Release” as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that Paragraph 26 of the Complaint alleges conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

27. The release is a “release” as that term is defined under Section 329(8) of EPCRA 42 U.S.C. § 11049(8).

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that paragraph 27 of the Complaint alleges conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

28. Respondent had knowledge of the release on September 28, 2005, at approximately 11:57 a.m.

ANSWER

Respondent admits that on or about 11:57 a.m. on September 28, 2005 ammonia began to discharge from an relief valve on the roof of the building, but denies the remaining allegations in paragraph 23 of the Complaint. Further answering , Respondents asserts that it had initial knowledge that ammonia began discharging from a relief valve on at approximately 11:57 a.m. on September 28, 2005. Respondent further asserts that at approximately 11:57 a.m., the

Facility's Monitoring System activated. After the system was triggered, employees conducted an investigation to locate the source detected by the Monitoring System. Respondent then opened certain valves to stop the discharge of ammonia from the relief valves at approximately 12:14 p.m. The ACH team reacted swiftly and accurately to terminate the discharge.

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

ANSWER

Respondent states that assuming "the release" refers to "the release" as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that Paragraph 29 of the Complaint alleges conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

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

ANSWER

Respondent states that assuming "the release" refers to "the release" as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint, and further states that Paragraph 30 of the Complaint alleges conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

31. The release was likely to affect Illinois.

ANSWER

Respondent denies the allegations in paragraph 31 of the Complaint.

32. At all times relevant to this Complaint, the Illinois Emergency Management Agency was the state emergency response commission (SERC) for Illinois, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

ANSWER

Respondent admits the factual allegation in paragraph 32 of the Complaint.

33. The release was likely to affect Champaign County.

ANSWER

Respondent denies the allegations of paragraph 33 of the Complaint.

34. At all times relevant to this Complaint, the Champaign County Local Emergency Planning Committee was the local emergency planning committee (LEPC) for Champaign County, under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

ANSWER

Respondent admits the factual allegation in paragraph 34 of the Complaint.

Count 1

36. Complainant incorporates paragraphs 1 through 34 of this Complaint as it is set forth in this paragraph.

ANSWER

Respondent's answers to EPA's allegations contained in paragraphs 1 through 34 of the Complaint are incorporated herein by reference.

37. Respondent notified the NRC of the release on September 28, 2005, at 3:05 p.m.

ANSWER

Respondent states that assuming "the release" refers to "the release" as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent admits that it notified the National Response Center ("NRC") of the incident on September 28, 2005, at approximately 3:05 p.m., and states further that notice was provided immediately after Respondent determined that the incident may have exceeded reportable quantities.

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

ANSWER

Respondent states that assuming "the release" refers to "the release" as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies the allegations stated in paragraph 38 of the Complaint.

39. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies that it was in violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The remaining allegations of paragraph 39 allege conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

Count 2

40. Complainant incorporates paragraphs 1 through 34 of this Complaint as it is set forth in this paragraph.

ANSWER

Respondent’s answers to EPA’s allegations contained in paragraphs 1 through 34 of the Complaint are incorporated herein by reference.

41. Respondent notified the SERC of the release on September 28, 2005, at 2:55 p.m.

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent admits that it notified the State Emergency Planning Commission (“SERC”) of the release on September 28, 2005, at 2:55 p.m., and states further that notice was provided immediately after it determined that the incident may have exceeded reportable quantities.

42. Respondent did not immediately notify the SERC as soon as Respondent had knowledge of the release.

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies the allegations of paragraph 42 of the Complaint.

43. Each day Respondent failed to notify immediately the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies that it was in violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). The remaining allegations of paragraph 43 allege conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

Count 3

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

ANSWER

Respondent’s answers to EPA’s allegations contained in paragraphs 1 through 34 of the Complaint are incorporated herein by reference.

45. Respondent notified the LEPC of the release on September 28, 2005, at 3:10 p.m.

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent admits that it notified the Local Emergency Planning Commission (“LEPC”) of the incident on September 28, 2005, at approximately 3:10 p.m., immediately after it determined that the incident may have exceeded reportable quantities.

46. Respondent did not immediately notify the LEPC as soon as Respondent had knowledge of the release.

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies the allegations of paragraph 45 of the Complaint.

47. Each day Respondent failed to notify immediately the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

ANSWER

Respondent states that assuming “the release” refers to “the release” as defined in paragraph 23 of this Complaint, Respondent incorporates herein its response to paragraph 23 of this Complaint. Respondent denies that it was in violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). The remaining allegations of paragraph 47 of the Complaint allege

conclusions of law for which no response is required pursuant to the Consolidated Rules of Practice.

III. PROPOSED CERCLA AND EPCRA PENALTIES

48. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may 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 these statutory maximum penalties 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.

ANSWER

Respondent responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

49. Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires the Administrator of 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 requires, when assessing an administrative penalty under Section 109(b) of CERCLA.

ANSWER

Respondent responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

50. Based upon an evaluation of the facts alleged in this Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$24,179 for the CERCLA violations alleged in Count 1 of this Complaint.

ANSWER

Respondent responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of

EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

51. 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 responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

Proposed EPCRA Penalty

52. 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 for each EPCRA Section 304 violation that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties 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.

ANSWER

Respondent responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

53. Based upon an evaluation of the facts alleged in this Complaint, and after considering the nature, circumstances, extent and gravity of the violations, degree of culpability, economic benefit or savings resulting from the violations, and any other matters that justice requires, Complainant proposes that the Administrator assess a civil penalty against Respondent

of \$48,358 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):	\$24,179
Count 3	EPCRA Section 304(a) (LEPC):	\$24,179

ANSWER

Respondent responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

54. 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 302, 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 responds collectively to the allegations in paragraphs 48-54 of the Complaint. Respondent reserves the right to contest the nature, number, and severity of the individual alleged CERCLA and EPCRA violations in a more detailed fashion after receipt of EPA's prehearing information exchange pursuant to 40 CFR § 22.19. Further, Respondent reserves the right to contest EPA's purported application of 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 in terms of the nature, extent, or seriousness of the alleged CERCLA and EPCRA violations.

Rules Governing this Proceeding

55. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

ANSWER

Respondent asserts that Consolidated Rules of Practice and the Code of Federal Regulation speaks for themselves, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph of the Complaint alleges general statements of law, legal conclusions, and descriptions of procedures, for which no response is required. To the extent this paragraph or its heading may be interpreted to contain factual

allegations, Respondent lacks sufficient knowledge or information to form a belief as to the truth of such allegation.

Filing and Service of Documents

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

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

ANSWER

Respondent asserts that Consolidated Rules of Practice and the Code of Federal Regulation speaks for themselves, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph of the Complaint alleges general statements of law, legal conclusions, and descriptions of procedures, for which no response is required. To the extent this paragraph or its heading may be interpreted to contain factual allegations, Respondent lacks sufficient knowledge or information to form a belief as to the truth of such allegation.

57. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Thomas Kenney to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Thomas Kenney at (312) 886-0708. His address is:

Thomas Kenney (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard Chicago, IL 60604

ANSWER

Respondent asserts that Consolidated Rules of Practice and the Code of Federal Regulation speaks for themselves, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph of the Complaint alleges general statements of law, legal conclusions, and descriptions of procedures, for which no response is required. To the extent this paragraph or its heading may be interpreted to contain factual allegations, Respondent lacks sufficient knowledge or information to form a belief as to the truth of such allegation.

Terms of Payment

58. Respondent may resolve this proceeding at any time by paying the proposed penalty by sending a certified or cashier's check for the CERCLA violation payable to "EPA Hazardous Substance Superfund," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

and by sending a certified or cashier's check for the EPCRA violations payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fine and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent must simultaneously send copies of the check and transmittal letter to the Regional Hearing Clerk and Thomas Kenney at the addresses given above, and to:

Ginger Jager, (SC-6J)
Office of Chemical Emergency
Preparedness and Prevention
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

ANSWER

Respondent asserts that Consolidated Rules of Practice and the Code of Federal Regulation speaks for themselves, and that therefore, this paragraph requires no response. In further answering, Respondent asserts that this paragraph of the Complaint alleges general statements of law, legal conclusions, and descriptions of procedures, for which no response is required. To the extent this paragraph or its heading may be interpreted to contain factual allegations, Respondent lacks sufficient knowledge or information to form a belief as to the truth of such allegation.

AFFIRMATIVE DEFENSE

Even if all the facts alleged in the Complaint were true, the penalty proposed by the Complainant is unjust, inconsistent, and unreasonable when compared to the U.S. Environmental Protection Agency's historical enforcement of similar alleged violations against similar entities, including case filed in other EPA Regions, and recent cases filed in EPA Region 5. Imposition of the proposed penalty would be inequitable, and would place Respondent at a significant competitive disadvantage.

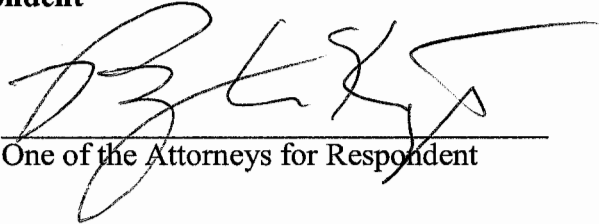
REQUEST FOR HEARING

Respondent respectfully requests a hearing on all material facts alleged in the Complaint, and as to the appropriateness of the proposed civil penalty. Respondent requests that this hearing be held in Chicago, Illinois, at a mutually agreeable time and place.

Respectfully submitted,

ACH FOOD COMPANIES, INC.
Respondent

By



One of the Attorneys for Respondent

Bryan E. Keyt
Bell, Boyd & Lloyd LLP
70 West Madison Street
Chicago, Illinois 60602
(312) 807-4328

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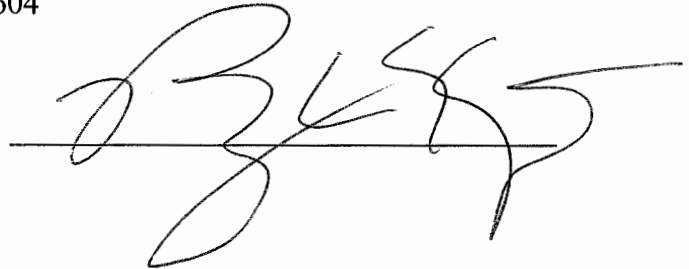
CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that the foregoing **Respondent's Answer to Complaint and Request For Hearing** was delivered by FedEx Express to the individuals listed below:

Thomas Kenney
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-13J)
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

This 24th day of June, 2008.

A handwritten signature in black ink, appearing to read 'TK', is written over a horizontal line.

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