

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th Street
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
United States Department of Agriculture)
Animal Research Service/National)
Animal Disease Center)
)
2300 North Dayton Road)
Ames, Iowa 50010)
)
EPA ID# IA8123490007)
)
)
Respondent.)
)
)

Docket No. RCRA-07-2006-0153

ANSWER AND REQUEST
FOR HEARING

A. PRELIMINARY STATEMENT

1. With respect to Paragraph 1 of the Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”), Respondent clarifies that it is the United States Department of Agriculture Agricultural Research Service. The National Animal Disease Center (“NADC”) is located at 2300 Dayton Avenue, Ames, Iowa, 50010.
2. Paragraph 2 of the Complaint contains statement of fact or law to which no response is required.
3. Admitted
4. Respondent submits that the amount of the proposed penalty is disproportionate to the violations which form the basis of the Complaint.

B. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

5. NADC is owned by the United States and operated by the United States Department of Agriculture.
6. Admitted
7. Admitted
8. Paragraph 8 of the Complaint contains conclusions of law or other statements to which no response is required.
9. Admitted
10. Paragraph 10 of the Complaint contains conclusions of law to which no response is required.
11. Admitted
12. Admitted
13. Admitted
14. Respondent admits that EPA performed an inspection at the NADC on July 15 through 17, 2003, but the remainder of Paragraph 14 of the Complaint constitutes a statement of law to which no response is required. Moreover, Respondent has insufficient knowledge as to what the inspector observed.

COUNT I

OPERATION OF A HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITY WITHOUT A PERMIT

15. Respondent hereby incorporates the responses in Paragraphs 5 through 14 above as if fully set forth herein.
16. Paragraph 16 of the Complaint contains legal conclusions to which no response is required.
- 17-18. Paragraphs 17 and 18 of the Complaint contain legal conclusions to which no response is required.

19. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 19 of the Complaint. Respondent's investigation of the relevant facts is continuing.

20. Paragraph 20 of the Complaint contains legal conclusions to which no response is required.

21. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 21 of the Complaint. Respondent's investigation of the relevant facts is continuing.

22-23. Paragraphs 22 and 23 of the Complaint contain legal conclusions to which no response is required.

24. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 24 of the Complaint. Respondent's investigation of the relevant facts is continuing.

25. Paragraph 25 of the Complaint contains legal conclusions to which no response is required.

26. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 26 of the Complaint. Respondent's investigation of the relevant facts is continuing.

27. Paragraph 27 of the Complaint contains legal conclusions to which no response is required.

28. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 28 of the Complaint. Respondent's investigation of the relevant facts is continuing.

29. Paragraph 29 of the Complaint contains legal conclusions to which no response is required.

30. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 30 of the Complaint. Respondent's investigation of the relevant facts is continuing.

31. Paragraph 31 of the Complaint contains legal conclusions to which no response is required. Respondent denies that it has operated a treatment, storage or disposal facility at NADC.

32. Paragraph 32 of the Complaint contains legal conclusions to which no response is required.

33. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 33 of the Complaint. Respondent's investigation of the relevant facts is continuing.

34. Admitted

35. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 35 of the Complaint. Respondent's investigation of the relevant facts is continuing.

36. Paragraph 36 of the Complaint contains legal conclusions to which no response is required. Respondent submits that the proposed penalty is excessive, and that the penalty should either be eliminated or significantly reduced.

C. COMPLIANCE ORDER

Respondent submits that the proposed penalty is excessive, and that the penalty should either be eliminated or significantly reduced.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

38-40. Paragraphs 38-40 of the Complaint contain legal conclusions and/or other statements to which no response is required. **Respondent requests a hearing in this matter.**

41. Paragraph 41 of the Complaint contains legal conclusions and/or other statements to which no response is required. Respondent submits that the proposed penalty is excessive, and that the penalty should either be eliminated or significantly reduced. Respondent requests a hearing in this matter.

E. SETTLEMENT CONFERENCE

42-45. Paragraphs 42-45 of the Complaint contain legal conclusions and/or other statements to which no response is required.

F. SUBMITTALS

46. Paragraph 46 of the Complaint contains legal conclusions and/or other statements to which no response is required.

G. EFFECTIVE DATE

47. Paragraph 47 of the Complaint contains legal conclusions and/or other statements to which no response is required.

DEFENSES AND MITIGATING FACTORS:

Respondent hereby asserts the following as defenses and/or mitigating factors:

1. Respondent made good-faith efforts to comply with all applicable regulatory requirements.
2. The alleged violations were not sufficiently serious as to justify the proposed penalty.
3. The threat of harm to public health or the environment with respect to the alleged violations was quite low.
4. Respondent has been fully cooperative at all times.
5. The extent of deviation from applicable requirements with respect to the alleged violations was minor.
6. None of the alleged violations were willful or intentional.
7. The extent of negligence associated with the alleged violations is minor.
8. Given all relevant factors and considerations of justice, the proposed penalty is excessive and should either be eliminated or significantly reduced.
9. Respondent reserves the right to assert additional defenses and/or mitigating factors as the facts of this matter are more fully developed.

PERSON AUTHORIZED TO RECEIVE SERVICE

Pursuant to 40 C.F.R. Section 22.5(c)(4), the individual authorized to receive service related to this proceeding is:

Gary M. Fremerman
USDA/OGC

By regular mail:

3351 South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1412

By overnight delivery:

2349 South Building
1400 Independence Avenue, S.W.
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Tel: 202-720-8041
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Email: gary.fremerman@usda.gov

Respectfully submitted,

Dated: 4-20-06



Gary M. Fremerman
Attorney
USDA Office of the General Counsel


CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Answer And Request For Hearing were sent via Federal Express to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; and a true and copy was sent by Federal Express to:

Belinda L. Holmes
Senior Assistant Regional Counsel
Office of Regional Counsel
USEPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101;

and to:

Mr. Kevin Snowden
Environmental Scientist
ARTD/RESP
USEPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101.



Gary M. Fremmerman
Attorney
USDA Office of the General Counsel

4-20-06