

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
HUNTE KENNEL SYSTEMS AND) Docket No. FIFRA-07-2009-0003
ANIMAL CARE, INC.,)
)
Respondent)

RESPONDENT'S PREHEARING EXCHANGE

Hunte Kennel Systems and Animal Care, Inc., Respondent ("Hunte") respectfully submits the following Prehearing Exchange pursuant to the May 19, 2009 Prehearing Order issued by the Presiding Officer, Chief Administrative Law Judge Susan L. Biro.

I. EXPECTED WITNESSES

1. **Andrew Hunte:** Mr. Hunte is the president of the Hunte Corporation, and its wholly owned subsidiary, Respondent Hunte. Mr. Hunte will testify as a fact witness as to the history of the Hunte Corporation, and Hunte. He will testify that the Hunte Corporation has been engaged since 1991 in the business of selling puppies at wholesale to pet stores. The vast majority of the revenue of the Hunte Corporation comes from this wholesale puppy business. He will testify that Respondent Hunte owns two retail stores, a plastic manufacturing division that makes fixtures for pet stores that house puppies, a kennel and cage division, and a ventilation products division. The business and revenues of Respondent Hunte make up a very small component (approximately 8-9% annually) of the business of the Hunte Corporation, but the Hunte Corporation files consolidated tax returns that include all of its revenues and sales,

including those of Respondent Hunte. Mr. Hunte will testify that sales of Paramite by Respondent Hunte were a very minor, incidental part of the business of Respondent Hunte.

Mr. Hunte will testify that the parent corporation, the Hunte Corporation lost \$2.7 million in 2008, that its revenues in 2008 were down 38% and that over 150 employees (more than 40% of the workforce) have been required to be laid off during the current economic downturn. He will further testify that based on the company's current financial condition, a fine in this matter of greater than \$10,000 (payable over at least 24 months) would have serious financial consequences and would be reasonably probable to require the lay off of additional employees.

2. **Paul Bartholomew:** Mr. Bartholomew is currently the manager of the two retail stores owned by Respondent Hunte, and is the purchasing manager. Mr. Bartholomew will testify as to his background, including his military service attaining the rank of Marine Lance Corporal (Honorable Discharge, 1991), and his approximately 12 years employment with the Hunte Corporation in sales prior to 2005. He will testify to the acquisition of the Goodman, Missouri retail store by Hunte from Sundowner Corporation in January 2005. Mr. Bartholomew will testify as to the subsequent opening of the Buffalo, Missouri store by Respondent Hunte in 2005. Initially, Mr. Bartholomew worked under store manager Elaine Kroll, who had been manager of the Sundowner store. He will testify that Ms. Kroll instructed him and the other employees of Hunte about the process for purchasing, repackaging and selling Prolate/Lintox-HD and its sale at the retail stores under the name "Paramite." He will testify that Respondent Hunte merely continued an established practice and procedure of Sundowner concerning the Paramite product. He will testify that in addition to the label on the 4 oz. bottles of Paramite, an 8 ½" by 11" warning sheet was copied off of the back of gallon jugs of Prolate/Lintox-HD and distributed with each sale of Paramite at the retail stores. Mr. Bartholomew will testify as to the

available records concerning the purchases of Prolate/Lintox-HD and sales of Paramite by Respondent Hunte, and as to the sales volume and revenue derived by Respondent from the sales of Paramite in 2005 and 2006.

3. **Patrick Fitzgerald:** Mr. Fitzgerald is currently the chief financial officer of the Hunte Corporation. Mr. Fitzgerald will testify as to his educational background in accounting, his licensure as a CPA in the State of Texas and his prior work experience in public accounting and business. He will testify as an expert witness regarding the financial condition of the Hunte Corporation and Respondent Hunte, and as to the effect the penalty proposed in the Complaint would have upon the business of Respondent Hunte and its employees. He will also testify as to the method of accounting used by the Hunte Corporation and its subsidiary, Respondent Hunte, and to the insignificant financial gain that the Hunte Corporation or Respondent Hunte obtained from sales of Paramite. Mr. Fitzgerald will testify as to the effect of the current economic downturn on the business of the Hunte Corporation and Respondent Hunte. He will testify as to the percentage of the revenues of the Hunte Corporation represented by Respondent Hunte's sales, and the percentage of the total revenues of Respondent Hunte represented by sales from the Goodman and Buffalo, Missouri retail stores. Finally, he will testify as to the miniscule percentage of the total revenues of Respondent Hunte represented by sales of Paramite.

Mr. Fitzgerald will express his opinion as to the financial impact of the penalty proposed in the Complaint upon Respondent Hunte, and to the probability that imposition of a penalty greater than \$10,000 (payable over a period of at least 24 months) would result in the lay off of additional employees.

II. DOCUMENTS AND EXHIBITS

Copies of documents and exhibits that Respondent intends to introduce into evidence at the Hearing are numbered and attached hereto as Respondent's Exhibits, and are numbered sequentially with the prefix "RX." The original of exhibits claimed to be confidential are labeled (O) and the redacted copies are labeled (R).

- RX1: Excerpts of the 2005 consolidated federal income tax return of the Hunte Corp.
(Submitted under claim of confidentiality)
- RX2: Excerpts of the 2006 consolidated federal income tax return of the Hunte Corp.
(Submitted under claim of confidentiality)
- RX3: Excerpts of the 2007 consolidated federal income tax return of the Hunte Corp.
(Submitted under claim of confidentiality)
- RX4: Draft excerpts of the 2008 consolidated federal income tax return of the Hunte Corp.
(Submitted under claim of confidentiality) **Note:** Exhibit RX4 is not being submitted at this time, as Respondent's accountants do not expect to complete it until approximately August 20, 2009. It will be submitted as soon as it is available.
- RX5: Excerpts from the audited Financial Statement of Respondent Hunte for 2006-2008
(Submitted under claim of confidentiality) **Note:** All three years are depicted on this exhibit, with 2008 on the left, 2007 in the center and 2006 on the right.
- RX6: Excerpts from the Financial Statement of Respondent Hunte for 2009 through July 31, 2009. (Submitted under claim of confidentiality)
- RX7: Printout of the ABEL model regarding Respondent Hunte's ability to pay the penalty proposed in the Complaint prepared by Patrick Fitzgerald. (Submitted under claim of confidentiality)

RX8: Resume of Patrick Fitzgerald.

III. DISCLOSURES UNDER PARAGRAPH 3 OF PREHEARING ORDER

Pursuant to Paragraph 3 (A-H) of the Prehearing Order, Respondent Hunte discloses the following matters:

A. Respondent admits that it distributed 4 oz. containers labeled as "Paramite," which were repackaged from gallon jugs of "Prolate/Lintox-HD" purchased by Respondent Hunte from Valley Pet Company in Marysville, Kansas.

B. Respondent admits that it distributed 4 oz. containers labeled as "Paramite," which were repackaged from gallon jugs of "Prolate/Lintox-HD" purchased by Respondent Hunte from Valley Pet Company in Marysville, Kansas.

C. Respondent continued the sales of "Paramite" in 4 oz. bottles using the same practices and procedures that Sundowner Corporation, its predecessor in interest of the Goodman, Missouri store, had used. Respondent's employees were instructed by the former Sundowner manager, Elaine Kroll how to purchase the product, how to repackage it, what safety precautions and protective gear were to be worn during repackaging, how the 4 oz. bottles of Paramite were to be labeled, and how a copy of the label from the back of the gallon jugs of Prolate/Lintox-HD was to be given to each customer who purchased a bottle of Paramite. The Prolate/Lintox-HD was purchased by Respondent from Valley Pet Company in Marysville, Kansas. Respondent did not receive any specific authorization from Valley Pet Company to sell or distribute the product. Respondent's employees repackaged the Paramite into 4 oz. bottles, using chemical resistant gloves, long sleeved shirts, long pants, rubber aprons and face shields or safety glasses for eye protection. Employees received regular safety training from Steve Bell of

EHS, Joplin, Missouri. Respondent Hunte's employees placed the same label on the Paramite bottles that Sundowner had used and provided each customer with a safety sheet for the product containing the same information that was on the back of the gallon jugs of Prolate/Lintox-HD. Respondent sold the 4 oz. bottles of Paramite only at its Goodman and Buffalo, Missouri stores. Respondent Hunte sold the 4 oz. bottles of Paramite from its Goodman, Missouri store from the time it purchased the store from Sundowner in January 2005 through the receipt of the Stop Order from the State of Missouri in October 2006. Respondent Hunt sold 4 oz. bottles of Paramite at its Buffalo, Missouri store from the time the store opened in 2005 until the receipt of the Stop Order from the State of Missouri in October 2006.

D. Not applicable.

E. Respondent provides the following narrative concerning allegations 19-48 of the Complaint:

19. Respondent admits the allegations of Paragraph 19.

20. The 4 oz. bottles of Paramite sold by Respondent were accompanied by an 8½" x 11" instruction sheet containing the information on the EPA approved label and registration number submitted by Wellmark, International. See CX33 and CX34.

21. The allegation of Paragraph 21 is a legal conclusion. Respondent submits that the 4 oz. bottles of Paramite were sold with the same information contained on the EPA approved label and registration number submitted by Wellmark, International, and did not require separate registration.

23. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the

information on the EPA approved label and registration number submitted by Wellmark, International

24. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunte did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubled economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

25. Respondent admits the allegations in Paragraph 25.

26. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the

information on the EPA approved label and registration number submitted by Wellmark, International

27. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

28. Respondent admits that it sold 4 oz. bottles of Paramite on at least 14 occasions from both of its retail stores during June 2006.

29. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the information on the EPA approved label and registration number submitted by Wellmark, International

30. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

31. Respondent admits that it sold 4 oz. bottles of Paramite on at least 10 occasions from both of its retail stores during June 2006.

32. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the information on the EPA approved label and registration number submitted by Wellmark, International

33. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is

reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

34. Respondent admits that it sold 4 oz. bottles of Paramite on at least 26 occasions from both of its retail stores during June 2006.

35. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the information on the EPA approved label and registration number submitted by Wellmark, International

36. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubled economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

37. Respondent admits that it sold 4 oz. bottles of Paramite on at least 11 occasions from both of its retail stores during June 2006.

38. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the information on the EPA approved label and registration number submitted by Wellmark, International

39. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte's employees were unaware that there was anything allegedly improper or unlawful in the company's

practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

40. Respondent admits that it sold 4 oz. bottles of Paramite on at least 3 occasions from both of its retail stores during June 2006.

41. Respondent denies that it violated the referenced sections of FIFRA because the 4 oz. bottles of Paramite it offered for sale were accompanied by the information on the EPA approved label and registration number submitted by Wellmark, International

42. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA's regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent's stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent's total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte’s employees were unaware that there was anything allegedly improper or unlawful in the company’s practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

43. Respondent admits that it produced a pesticide by repackaging the 4 oz. bottles of Paramite, and that it is not registered with EPA as a pesticide-producing establishment.

44. Respondent admits the allegations of Paragraph 44.

45. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA’s regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent’s stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent’s total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte’s employees were unaware that there was anything allegedly improper or unlawful in the company’s practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

46. Respondent admits that it produced a pesticide by repackaging the 4 oz. bottles of Paramite, and that it is not registered with EPA as a pesticide-producing establishment.

47. Respondent admits the allegations of Paragraph 47.

48. Respondent does not believe that the proposed penalty of \$6,500 should be assessed against Respondent because the penalty is disproportionate to any harm caused to the public or to EPA’s regulatory program, which was or could have been caused by the minor volume of sales of Paramite by Respondent. CX36 details the sales of Paramite by both of Respondent’s stores in 2006, totaling 139 bottles. Paul Bartholomew will testify that sales of Paramite for the prior year were comparable. Therefore, Respondent sold one, 4 oz. bottle of Paramite approximately every 2 ½ days, on average, annually. The total gross revenue in 2006 from Paramite sales was \$1,388.61, a miniscule portion of Respondent’s total sales in 2006 of approximately \$5 million.

Further, Respondent Hunt did not devise or instigate this method of selling Paramite – it inherited it from its predecessor, Sundowner Company. Hunte’s employees were unaware that there was anything allegedly improper or unlawful in the company’s practices regarding Paramite, but Hunte immediately discontinued Paramite sales after the October 2006 inspection and Stop Orders.

Finally, as detailed in Sections F and G below, Hunte lacks the ability to pay the proposed penalty due to economic conditions in the currently troubles economy, and it is reasonably probable that if the proposed penalty is assessed, Hunte will be required to lay off additional employees.

F. The only record of Paramite sales by Hunte available is CX36, a record of total sales from both the Goodman and Buffalo stores for 2006. Paul Bartholomew will testify that the prior year’s sales of Paramite for those stores were equivalent, thus the evidence will show the total sales of Paramite by Respondent were less than 300, 4 oz. bottles. CX36 establishes that the vast majority of those sales were of a single bottle. The total annual gross revenue from Paramite sales for Hunte was less than \$1,500. CX35 establishes that the cost of the product in 1-gallon containers to Hunte in 2006 was at least \$215. Respondent has not attempted to calculate the labor cost for repackaging and labeling the 4 oz. bottles of Paramite to date. However, Respondent’s evidence will be that its net revenue from Paramite sales after deducting the cost of goods sold and internal labor costs, could be no more than \$1,200 per year.

Compared to Hunte’s annual sales revenues from its two retail stores in 2006 of over \$5 million, the net revenue from sales of Paramite were a de minimis part of Hunte’s business, and the quantity of bottles of Paramite sold were not a material part of Hunte’s ordinary or customary business. The total financial gain Hunte realized from sales of Paramite is less than \$3,000.

Given that Hunte did not institute this process of repackaging and selling Paramite, and the miniscule revenues it obtained from Paramite sales, the proposed civil penalty of \$58,500 vastly outweighs any alleged culpability, harm or financial gain from Respondent's actions. See RX1-RX8.

G. Respondent takes the position that is usable to pay the proposed penalty without severe hardship to its business, and that it is reasonably probable that assessment of the proposed penalty will require the lay off of additional employees by Hunte. See RX1-RX 8.

H. Not applicable.

IV. RESERVATION OF RIGHTS

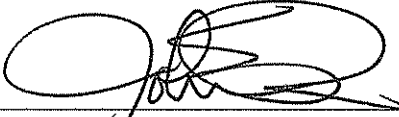
Respondent respectfully reserves the right to call all witnesses called by the Complainant, to recall any of its witnesses in rebuttal, to supplement its exhibits with more current tax returns and financial statements as they become available, and to modify or supplement the names of witnesses and exhibits prior to the adjudicatory hearing, pursuant to 40 CFR Part 22, and upon adequate notice to the Complainant and the Presiding Officer.

V. LOCATION AND LENGTH OF HEARING

Pursuant to Paragraph 1(C) of the Prehearing Order, Respondent requests the hearing in this matter be held in Goodman, Missouri, or at a location in McDonald County, Missouri. Respondent anticipates needing approximately 4 hours to present its case.

Respectfully submitted,

CARNAHAN, EVANS, CANTWELL
& BROWN, P.C.

By 

John E. Price
Missouri Bar No. 28150

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Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original and one complete copy of the foregoing document was served upon the attorneys of record for each party to the above action:

- () A. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Missouri, as set forth below:


The Hon. Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Office of the Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Regional Hearing Clerk
United States EPA – Region VII
901 North 5th Street
Kansas City, KS 66101

Chris Muehlberger
Assistant Regional Counsel
United States EPA – Region VII
901 North 5th Street
Kansas City, KS 66101

- (X) B. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, via overnight delivery;
- () C. by hand delivery to the business office of said attorneys;
- () D. by handing same to said attorneys;
- () E. via facsimile transmission to :
- () F. via electronic filing with the applicable U.S. District Court;
- () G. via e-mail transmission to:

on the 4th day of August, 2009, by the method checked above.



Attorney of Record