

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC**

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In re: )  
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)  
Ram, Inc. )  
DKT. No. SWDA-06-2005-5301 )  
)  
Respondent )  
)

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**COMPLAINANT'S BRIEF IN OPPOSITION TO RESPONDENT'S APPEAL**

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## **I. INTRODUCTION**

Now comes, Complainant, the Director of the Multimedia Planning & Permitting Division, United States Environmental Protection Agency ("EPA"), Region 6, by and through its attorney, and files this Brief in Opposition to Respondent's Appeal in accordance with Section 22.30 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22 (July 23, 1999).

This matter arises under Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA), 42 U.S.C. § 6991e.

## **II. GENERAL RESPONSE**

Respondent certified that on August 15, 2008, it filed a Notice of Appeal and Brief in Support of Appeal ("Respondent's Appeal Brief"). Complainant received Respondent's Appeal Brief on August 18, 2008. As Respondent's Appeal Brief substantially failed to comport with the requirements of Section 22.30 of the Consolidated Rules, including lack of "a statement of the issues presented for review" and "the precise relief sought," it is difficult for Complainant to respond in an organized fashion to said Brief. Respondent's Appeal Brief presents as stream-of-consciousness rambling full of unsupported arguments and unfounded accusations and is organized rather haphazardly. It appears that Respondent completely disregarded Part 22 of the Consolidated Rules in preparation of its Appeal Brief and jumps from one argument to the next within the same paragraph. Despite the disjointed and chaotic nature of Respondent's arguments, Complainant responds as follows.

**Respondent's liability arguments should be disregarded.**

To the extent that any of Respondent's arguments speak to liability, such arguments should be disregarded. As discussed in the Initial Decision and in Complainant's Appellate Brief and supporting documents, Respondent stipulated to liability at Hearing. Moreover, in his opening statement, Respondent's Counsel stated that Respondent was not "trying to avoid the penalties" (Tr.-1 at 23) and further stated unequivocally, "[W]e are not here to avoid responsibility or liability" ... "[W]e are liable." Tr.-1 at 56.

**Respondent provides misleading and false information.**

Respondent's Appeal Brief mischaracterizes the alleged violations as "paperwork errors or omissions." The record in this matter speaks for itself that none of the violations at issue were for paperwork (recordkeeping) errors or omissions. In fact, additional counts could have been added for such recordkeeping violations but were intentionally foregone in the interest of penalty leniency. *See* Tr.-2 at 389-392. The alleged violations were for the failure to perform the underlying UST requirements. *Id.* at 389.

Regarding the specific counts in the Complaint that were dropped before the Hearing commenced, Respondent provided documentation after the Complaint was filed that demonstrated compliance with the respective requirements at issue in the dropped counts. Accordingly, Complainant determined to drop the specified counts, and communicated its intent to do so to Respondent and the Presiding Officer, in advance of the Hearing. *See* Complainant's Prehearing Exchange at 7-9 (¶¶ 7, 8, 12, 15, 20, 21). At no time did Complainant state, or otherwise intimate, that the Complaint or proposed penalties were overreaching as falsely asserted in Respondent's Appeal Brief.

Complainant categorically refutes and denies Respondent's arguments and accusations regarding the alleged "targeting of Ram," the Oklahoma Corporation Commission's penalty policy, and Native Americans. Complainant hereby incorporates its discussion of these issues in its post-hearing briefing (Post Hearing Brief at 33-60) and defers to the Presiding Officer's treatment of said issues in the Initial Decision on this matter. Initial Decision at 26-29.

**Respondent failed to meet its burden of proof on appeal.**

Respondent's claims on appeal, if any can be discerned, amount to mere disagreement with the conclusions of the Presiding Officer. Respondent's Appeal Brief offers no evidence of, or support for, abuse of discretion or clear error by the Presiding Officer in Respondent's favor. Thus Respondent has failed to meet its burden of proof on appeal.

### III. CONCLUSION

To the extent that any relief sought can be inferred from Respondent's Appeal Brief, any such relief should be denied. Complainant reiterates its prayer for relief as stated in its Appellate Brief. The Presiding Officer's Initial Decision concerning the amount of the penalty should be set aside for Counts 3, 14, 15 and 16, and the Region's proposed penalty of \$43,847 for those four counts should be assessed. Therefore, the total penalty assessed for all standing counts in this matter should be not less than \$86,012.

RESPECTFULLY SUBMITTED this 4th day of September, 2008.

  
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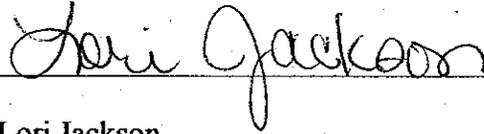
  
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CERTIFICATE OF SERVICE

I certify that a true copy of the Complainant's Brief In Opposition to Respondent's Appeal, dated September 4, 2008, was sent this day in the following manner to the addressed below.



Lori Jackson  
Paralegal

Dated: September 4, 2008

Original by Federal Express and by Electronic Submission to:

Clerk of the Board, Environmental Appeals Board  
<http://www.epa.gov/eab>. and

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