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STREET
AND
DEINARD

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June 4, 2007

Carolyn V. Wolski
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Regional Hearing Clerk (E-13J)
EPA -- Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Land O'Lakes, Inc., Kiel, Wisconsin
Docket No.: CERCLA-05-2007-0007
EPCRA-05-2007-0011
MM-05-2007-0003

Dear Sir/Madam:

Enclosed for filing in the above-captioned case is Respondent's Answer.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association



Carolyn V. Wolski

Enclosure

cc (w/encl.): Erik H. Olson, counsel for EPA
Mary Mills Wilson, Land O'Lakes, Inc.

UNITED STATE ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 West Jackson Boulevard
Chicago, IL 60604

RECEIVED
MAY 10 2007

IN THE MATTER OF:

Land O'Lakes, Inc.
Kiel, Wisconsin,
Respondent

Docket No.: CERCLA-05-2007-0007
EPCRA-05-2007-0011
MM-05-2007-0003

RESPONDENT'S ANSWER

Response to Factual Allegations in Complaint

Land O'Lakes, Inc. makes the following response to factual allegations contained in the Complaint filed by the U.S. Environmental Protection Agency:

1. Admits the allegations contained in Paragraph 1 of the Complaint.
2. States that it has no knowledge of the particular factual allegations contained in Paragraph 2 of the Complaint.
3. Admits the allegation contained in Paragraph 3 of the Complaint.
4. States that the statutory language referenced in Paragraph 4 of the Complaint speaks for itself, and further states that restatements of statutory language do not constitute factual allegations that require an answer.
5. States that the statutory language referenced in Paragraph 5 of the Complaint speaks for itself, and further states that restatements of statutory language do not constitute factual allegations that require an answer.

6. States that the statutory language referenced in Paragraph 6 of the Complaint speaks for itself, and further states that restatements of statutory language do not constitute factual allegations that require an answer.

7. States that the statutory language referenced in Paragraph 7 of the Complaint speaks for itself, and further states that restatements of statutory language do not constitute factual allegations that require an answer.

8. States that Paragraph 8 of the Complaint contains a legal conclusion that Respondent is not required to admit or deny.

9. States that Paragraph 9 of the Complaint contains a legal conclusion that Respondent is not required to admit or deny.

10. Admits the allegation contained in Paragraph 10 of the Complaint and further states that the Facility (as defined in Paragraph 10) is a Cheese Production Facility.

11. Admits the allegation contained in Paragraph 11 of the Complaint.

12. Admits that its Facility (defined in Paragraph 10 as the facility at 927 Eighth Street in Kiel, Wisconsin) is situated on some 26 acres, includes a building and various pieces of equipment, and that certain hazardous substances are stored there.

13. States that Paragraph 13 of the Complaint contains a legal conclusion that Respondent is not required to admit or deny.

14. Admits the allegation contained in Paragraph 14 of the Complaint.

15. States that Paragraph 15 of the Complaint contains a legal conclusion that Respondent is not required to admit or deny.

16. Admits the allegation contained in Paragraph 16 of the Complaint.

17. Admits the allegation contained in Paragraph 17 of the Complaint.

18. Admits the allegation contained in Paragraph 18 of the Complaint.

19. Admits the allegation contained in Paragraph 19 of the Complaint.

20. Denies that chlorine was or is, in the normal course of operations, produced, used or stored at the Facility.

21. Admits the allegation contained in Paragraph 21 of the Complaint.

22. Admits the allegation contained in Paragraph 22 of the Complaint.

23. As to Paragraph 23 of the Complaint, denies that a release occurred and admits that on October 8, 2004, at or about 0600 Central time, an estimated 175-181 pounds of chlorine gas was accidentally created when sodium hypochlorite was mistakenly put into a tank containing nitric acid.

24. As to Paragraph 24 of the Complaint, denies that a release occurred and admits that within a period of five minutes or less, an estimated 175-181 pounds of chlorine gas was accidentally created.

25. Denies the allegation contained in Paragraph 25 of the Complaint.

26. As to Paragraph 26 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

27. As to Paragraph 27 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

28. As to Paragraph 28 of the Complaint, denies that a release occurred and states that it had knowledge at approximately 0600 Central time that sodium hypochlorite had mistakenly been pumped into a tank containing nitric acid.

29. As to Paragraph 29 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

30. As to Paragraph 30 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

31. As to Paragraph 31 of the Complaint, denies that a release occurred and denies that the creation of chlorine gas as Respondent's facility was in any way likely to affect the State of Wisconsin.

32. Admits the allegation contained in Paragraph 32 of the Complaint.

33. As to Paragraph 33 of the Complaint, denies that a release occurred and denies that the creation of chlorine gas at Respondent's facility was in any way likely to affect Calumet County, Wisconsin.

34. Admits the allegation contained in Paragraph 34 of the Complaint.

35. As to Paragraph 35 of the Complaint, incorporates its answers to Paragraphs 1 through 34.

36. As to Paragraph 36 of the Complaint, denies that a release occurred and admits that it contacted the NRC at approximately 0832 Central time on October 8, 2004.

37. As to Paragraph 37 of the Complaint, denies that a release occurred and states that it contacted the NRC soon after determining that chlorine gas had been inadvertently produced and after calculating the amount of chlorine gas that likely escaped from the nitric acid tank.

38. As to Paragraph 38 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

39. As to Paragraph 39 of the Complaint, incorporates its answers to Paragraphs 1 through 38.

40. As to Paragraph 40 of the Complaint, denies that a release occurred and admits that it contacted the SERC at approximately 0805 Central time on October 8, 2004.

41. As to Paragraph 41 of the Complaint, denies that a release occurred and states that it contacted the SERC soon after determining that chlorine gas had been inadvertently produced and after calculating the amount of chlorine gas that likely escaped from the nitric acid tank.

42. As to Paragraph 42 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

43. As to Paragraph 43 of the Complaint, incorporates its answers to Paragraphs 1 through 42.

44. As to Paragraph 44 of the Complaint, denies that a release occurred and admits that it contacted the LEPC at approximately 0810 Central time on October 8, 2004.

45. As to Paragraph 45 of the Complaint, denies that a release occurred and states that it contacted the LEPC soon after determining that chlorine gas had been inadvertently produced and after calculating the amount of chlorine gas that likely escaped from the nitric acid tank.

46. As to Paragraph 46 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

47. As to Paragraph 47 of the Complaint, incorporates its answers to Paragraphs 1 through 46.

48. As to Paragraph 48 of the Complaint, denies that a release occurred or that any written follow-up emergency notice was required.

49. As to Paragraph 49 of the Complaint, denies that a release occurred or that any written follow-up emergency notice was required.

50. As to Paragraph 50 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

51. As to Paragraph 51 of the Complaint, incorporates its answers to Paragraphs 1 through 50.

52. As to Paragraph 52 of the Complaint, denies that a release occurred or that any written follow-up emergency notice was required.

53. As to Paragraph 53 of the Complaint, denies that a release occurred or that any written follow-up emergency notice was required.

54. As to Paragraph 54 of the Complaint, denies that a release occurred and states that the remainder of the paragraph contains a legal conclusion that Respondent is not required to admit or deny.

55. States that the statutory and regulatory language referenced in Paragraph 55 of the Complaint speaks for itself.

56. States that the statutory language referenced in Paragraph 56 of the Complaint speaks for itself.

57. As to Paragraph 57 of the Complaint, denies that it violated CERCLA, objects to the amount of the proposed penalty assessment, and states that the rest of the paragraph does not contain factual allegations that require a response.

58. States that it has no knowledge of the particular factual allegations contained in Paragraph 58 of the Complaint.

59. States that the statutory and regulatory language referenced in Paragraph 59 of the Complaint speaks for itself.

60. As to Paragraph 57 of the Complaint, denies that it violated EPCRA, objects to the amounts of the proposed penalty assessments, and states that the rest of the paragraph does not contain factual allegations that require a response.

61. States that it has no knowledge of the particular factual allegations contained in Paragraph 61 of the Complaint.

62 – 68. States that Paragraphs 62 – 68 of the Complaint do not contain factual allegations that require a response.

69. Respondent acknowledges the information contained in Paragraph 69 of the Complaint and specifically requests a hearing.

70 – 79. States that Paragraphs 70 – 79 of the Complaint do not contain factual allegations that require a response.

Respondent's Defense

The facts of this incident do not support EPA's claims that CERCLA and EPCRA were violated. There is no evidence that the chlorine gas inadvertently produced at Respondent's cheese production plant on October 8, 2004 was released to the environment, as is required to support both the CERCLA and EPCRA allegations.

Respondent's investigation to date indicates that:

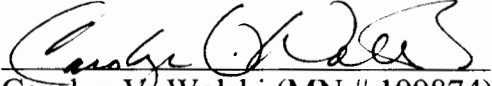
- Over 90 percent of the chlorine gas was destroyed inside the plant building within 30 minutes after it was produced, either by incineration in the plant's large whey dryer or by destabilization following chemical reactions with moisture, metals and other materials within the plant;
- None of the chlorine gas left the plant building;
- If any chlorine gas left the plant building such that there was a release to the environment, it was significantly less than the estimated 175-181 pounds of chlorine gas produced. Furthermore any released chlorine gas was immediately destabilized by rain and there was no potential for persons off Respondent's site to be exposed;
- Even assuming that there was a release to the environment, the proposed penalty assessments are inappropriate and do not reasonably consider such underlying facts as:
 - (1) Respondent's plant does not store or use chlorine gas.
 - (2) Chlorine gas does not smell like a swimming pool and is not recognizable by persons who do not have experience with it.
 - (3) Acting under the assumption that a release had occurred, Respondent's employees had to spend time determining what chemical was caused by the mixing of sodium hypochlorite with nitric acid, and then had to calculate the amount of chlorine gas that had been produced.
 - (4) Given the specific conditions that existed at the plant on October 8, 2004, only a fraction of chlorine gas produced could possibly have been released to the environment.

- (5) Even before Respondent's employees had determined that some 175-181 pounds of chlorine gas had inadvertently been produced, they contacted emergency hazmat responders to provide assistance in dealing with the incident.
- (6) The chlorine gas produced at Respondent's plant did not extend off-site and resulted in potential exposure only to persons who were at the plant.

Request for Hearing

Respondent hereby requests a hearing on the issues of fact and law raised by the Complaint and Answer.

Dated: June 4, 2007


Carolyn V. Wolski (MN # 199874)

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Land O'Lakes, Inc.**