

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

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<b>In the Matter of:</b>	)	<b>Docket No. EPCRA-05-2008-0034</b>	<b>REGIONAL HEARING CLERK</b>
	)		<b>U.S. ENVIRONMENTAL</b>
<b>Pork King Packing, Inc.</b>	)	<b>Proceeding to Assess a Civil</b>	<b>PROTECTION AGENCY</b>
<b>Marengo, Illinois 60152</b>	)	<b>Penalty Under Sections 325 (c)(1)</b>	
	)	<b>and (c)(2) of the Emergency</b>	
<b>Respondent.</b>	)	<b>Planning and Community Right</b>	
	)	<b>-to-Know Act of 1986</b>	
	)		

**RESPONDENT'S PRETRIAL EXCHANGES PURSUANT TO 40 C.F.R. §22.19**

Now Comes the Respondent, Pork King Packing, Inc., by and through its attorneys, Sullivan Hincks & Conway, submits the following Pretrial Exchanges, pursuant to 40 C.F.R. §22.19:

- 1) Respondent's Proposed WITNESS LIST and EXHIBITS to be introduced as evidence are attached hereto and submitted herewith.
- 2) Respondent intends to take the Position that the penalty as proposed by the EPA works a serious hardship on the continuing operation of Respondent's business with supporting documentation attached, including without limitation tax returns and financial statements.
- 3) Respondent's clarification as to whether its defense admits liability but challenges the appropriateness of the EPA's proposed penalty.
  - a. The Respondent admits some of the allegations in the Complaint and to some of the liability but not all. Respondent further defends on the basis of laches and estoppel and the other asserted affirmative defenses. The Respondent further challenges the appropriateness of the EPA's proposed penalty. The EPA's proposed penalty is inappropriate as it is arbitrary and excessively punitive. Each and every day the

Respondent has on site, employees/inspectors of the United States Department of Agriculture. The Respondent operates in a heavily regulated industry and a heavily regulated plant that is scrutinized by federal investigators on a daily basis.

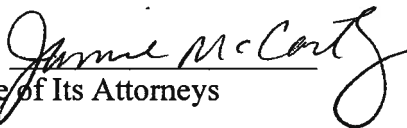
4) Respondent's Views on the Place for Hearing Pursuant to §§22.21(d) and 22.19(d) of the Rules, the availability for the hearing, and an estimate of time to submit its case.

a. The Respondent's position is that the hearing should take place in Chicago. All of Respondent's witnesses and most, if not all, of the EPA's witnesses are located in and around the Chicago area. The Respondent's plant is located a distance from Chicago that is not unreasonable to travel. Counsel is located in the Chicago area.

b. The Respondent requests the hearing commence in third week March of 2009.

c. The Respondent estimates it will take three days to present its case.

Respectfully submitted,  
Pork King Packing, Inc.

By:   
One of Its Attorneys

John J. Conway  
Jamie McCarthy  
Sullivan Hincks & Conway  
120 West 22<sup>nd</sup> Street, Suite 100  
Oak Brook, Illinois, 60523  
(630) 573-5021

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Pork King Packing, Inc. )  
Marengo, Illinois 60152 )  
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Docket No. EPCRA-05-2008-0024  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
Proceeding to Assess a Civil  
Penalty Under Sections 325 (c)(1)  
and (c)(2) of the Emergency  
Planning and Community Right  
-to-Know Act of 1986

**RESPONDENT'S WITNESS LIST**

The following witnesses may provide opinion testimony. Except where indicated the witnesses are not controlled expert witnesses and, as such, the Respondent cannot obtain professional resumes but expects that they will provide information regarding the financial condition and operations of Pork King Packing, Inc. They may also provide testimony regarding the Respondent's history of being forced into work-out procedures with prior lenders and the refinancing of mortgages on several occasions. Documents supporting the witnesses testimony is attached, including without limitation the tax and financial statements.

William Hanley, CPA, The Condon Group, The Condon Group, Ltd., 18402 West Creek Drive, Tinley Park, IL 60477, 708.614.1166. Resume is provided. Mr. Hanley is expected to provide testimony about the Respondent's inability to pay the proposed penalty.

Robert Farrell, CPA, Farrell & Associates CPAs, LLC. 1639 North Alpine Road Rockford, IL, 61107. (815) 229-1900.

Michael Rozovics, CPA, CFP, Rozovics & Wojcicki. 1580 N. Northwest Hwy., Suite 120, Park Ridge, IL, 60068. (847) 699-7600.

Thomas Miles, President, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Joseph Maffei, Vice President, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Frank Faso, Secretary, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Stanley Pajerski, Treasurer, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Maria Faso, Office Manager, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

The following witnesses are expected to provide testimony regarding the daily operations of Pork King Packing, Inc., including the presence of any hazardous substances on the corporate property, the use, amount and storage of any such hazardous substances and the methods of reporting concerning any such hazardous substances.

Kazek Koziol, Maintenance Manager, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253 Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Cathy Cynor, Veterinarian and Inspector In Charge, USDA, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152.

Sandra Schroeder, USDA Inspector, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152.

Bob Bradbury, Fire Chief, City of Marengo, 132 E. Prairie St., Marengo, IL, 60152.

Thomas Miles, President, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

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Maria Faso, Office Manager, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks

& Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

The following witnesses are expected to provide testimony regarding an incident in 2005 where an alleged chemical release occurred on March 29, 2005 and triggered the first correspondence from the EPA.

Wayne Edlin, Truck Driver, Ruan Transportation Corp.

Kazek Koziol, Maintenance Manager, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253 Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

Bob Bradbury, Fire Chief, City of Marengo, 132 E. Prairie St., Marengo, IL, 60152.

Thomas Miles, President, Pork King Packing Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

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Maria Faso, Office Manager, Pork King Packing, Inc. 8808 South Illinois Route 23, P.O. Box 253, Marengo, IL, 60152. Contact through Counsel: John Conway, Sullivan Hincks & Conway, 120 West 22<sup>nd</sup> Street, Suite 100, Oak Brook, IL, 60523. (630) 573-5021.

The following witnesses may provide information and testimony concerning the Respondent's affirmative defenses including the defense of laches, estoppel, and other affirmative matter. Moreover, he will provide testimony regarding the Respondent's full cooperation in the initial investigation and compliance with the reporting procedures.

Gary Prichard, Associate Regional Counsel, EPA Region 5, 77 West Jackson Blvd., Chicago, IL, 60604.

Respectfully submitted,  
Pork King Packing, Inc.

By: Jamie McCarthy  
One of Its Attorneys

John J. Conway  
Jamie McCarthy  
Sullivan Hincks & Conway  
120 West 22<sup>nd</sup> Street, Suite 100  
Oak Brook, Illinois, 60523  
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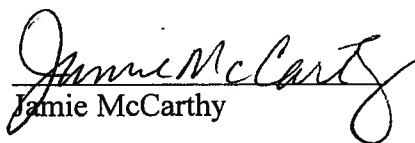
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PROTECTION AGENCY

<b>In the Matter of:</b>	)	Docket No. EPCRA-05-2008-0024
	)	
<b>Pork King Packing, Inc.</b>	)	<b>Proceeding to Assess a Civil</b>
<b>Marengo, Illinois 60152</b>	)	<b>Penalty Under Sections 325 (c)(1)</b>
	)	<b>and (c)(2) of the Emergency</b>
<b>Respondent.</b>	)	<b>Planning and Community Right</b>
	)	<b>-to-Know Act of 1986</b>
<hr/>	)	

**RESPONDENT'S EXHIBIT LIST**

Respondent, Pork King Packing, Inc., by and through its attorneys, Sullivan  
Hincks & Conway, submit the following Exhibit List for use at the administrative hearing  
in this cause.

  
Jamie McCarthy

John J. Conway  
Jamie McCarthy  
Sullivan Hincks & Conway  
120 West 22<sup>nd</sup> Street, Suite 100  
Oak Brook, IL 60523  
(630) 573-5021

**RESPONDENT'S EXHIBIT LIST**

Sect.	Exhibit	DESCRIPTION	ADMIT	STIPULATE	REFUSE
A	1	U.S. EPA Complaint			
B	2	Respondent Pork King Packing, Inc. Answer, Request for Hearing, and Notice of Defenses			
C	3	U.S. EPA Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act and Section 112(r) of the Clean Air Act			
	4	U.S. EPA 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			
	5	U.S. EPA Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)			
	6	Federal Register Vol. 65 No. 70 (April 11, 2000)			
	7	29 C.F.R. § 1910.111 Storage and Handling of Anhydrous Ammonia			
	8	29 C.F.R. § 1910.1200 Hazard Communication			
	9	29 C.F.R. § 1910.1200 App A			
	10	29 C.F.R. § 1910.1000 Air Contaminants			
	11	40 C.F.R. § 302.4 Designation of Hazardous Substances			
	12	40 C.F.R. §§ 312.1, 312.2 Purpose and Applicability and Standards and Practice for All Appropriate Inquiry			
	13	40 C.F.R. § 370.25 Inventory Reporting			
	14	40 C.F.R. § 370.5 Penalties			
	15	42 U.S.C. § 11002 Substances and Facilities Covered and Notification			
	16	42 U.S.C.S. § 11021 Material Safety Data Sheets			
	17	42 U.S.C.S. § 11022 Emergency and Hazardous Chemical Inventory Forms			
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	19	<i>Woodcrest Mfg., Inc., v. U.S. EPA</i> , 114 F. Supp. 2d 775 (1999).			
	20	40 C.F.R. Pt 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits			
	21	7 U.S.C.S. § 228(b) Packers and			



		Stockyard Act			
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	27	Respondent's Material Data Safety Sheet; Annhydrous Ammonia, 09/05			
	28	2002-2004 Submissions and 2005 Revised Submission of Tier II Emergency and Hazardous Chemical Inventory as submitted by Hydrite Chemical Company on behalf of Respondent			
E	29	U.S. EPA Notice of Intent to File Civil Administrative Complaint against Respondent, 12/08/05			
	30	Respondent's First Response Letter to Gary Prichard, 12/28/05, and attached financial statements			
	31	UPS Tracking Slip- Confirmation of Delivery to Gary Prichard, 12/29/05			
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	33	Gary Prichard's Response Letter to Respondent confirming receipt of tax returns, 01/24/06, and attached 2004 Tier II Reports			
	34	U.S. EPA's Letter to Respondent regarding Notice of Intent to File, 07/23/08			
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		Trevino, 07/31/08, evidencing Respondent's continued compliance and lack of correspondence from Gary Prichard			
	36	U.S. EPA's Letter containing Filed Complaint			
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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In the Matter of: ) Docket No. EPCRA-05-2008-0043  
)  
Pork King Packing, Inc. ) Proceeding to Assess a Civil Penalty Under Sections 325(a)(1)  
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Respondent. ) Planning and Community Right  
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CERTIFICATE OF SERVICE

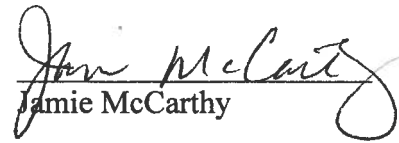
TO: Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Franklin Court Building  
1099 14<sup>th</sup> Street N.W. Suite 350  
Washington, DC 20460

Mr. Jeffrey Trevino, Esq.  
Assistant Regional Counsel  
U.S. EPA – Region 5  
77 West Jackson Blvd., 13<sup>th</sup> Floor  
Chicago, IL 60604

Ms. Tywana Greene  
Acting Regional Hearing Clerk  
U.S. EPA – Region 5  
77 West Jackson Blvd., 13<sup>th</sup> Floor  
Chicago, IL 60604

I, Jamie McCarthy, the attorney, certify that I served the following documents by mailing a copy of the parcel to the above parties at the addresses listed above and depositing the same with the United States Parcel Service before 4:00 pm, with proper postage prepaid.

- Respondent’s Pretrial Exchanges Pursuant to 40 C.F.R. §22.19 and in accordance with the Prehearing Order of 10/1/2008, including:
  - Respondent’s Exhibit List
  - Respondent’s Exhibits, appx. 1082 pages
  - Respondent’s Witness List

  
Jamie McCarthy

John J. Conway  
Jamie McCarthy  
Sullivan Hincks & Conway  
120 West 22<sup>nd</sup> Street, Suite 100  
Oak Brook, IL 60523  
(630) 573-5021