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August 15, 2008

VIA FEDERAL EXPRESS

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: In the Matter of: Knouse Foods Cooperative, Inc.
EPA Docket No. CERC-03-2008-0381
EPA Docket No. EPCRA-03-2008-0381

Dear Sir/Madam:

Enclosed for filing please find an original and two (2) copies of Knouse Foods Cooperative, Inc.'s Answer to the Administrative Complaint filed to the above docket numbers.

Please date stamp the extra copy of this document and return it to the undersigned in the postage paid envelope that is enclosed.

Very truly yours,

McNEES WALLACE & NURICK LLC


B. Curtis N. Stambaugh

CNS/mrs

Enclosures

cc: Allison F. Gardner, Assistant Regional Counsel (w/enc. – via certified mail)

IN THE MATTER OF:

EPA DOCKET NO.: CERC-03-2008-0381
EPA DOCKET NO.: EPCRA-03-2008-0381

KNOUSE FOODS COOPERATIVE, INC.
800 Peach Glen-Idaville Road
Peach Glen, Pennsylvania
17375,

RESPONDENT

Answer to Administrative Complaint

KNOUSE FOODS COOPERATIVE, INC.
800 Peach Glen-Idaville Road
Peach Glen, Pennsylvania
17375,

FACILITY

Hearing Requested By Respondent

ANSWER TO ADMINISTRATIVE COMPLAINT

Respondent Knouse Foods Cooperative, Inc. ("Knouse"), by and through its counsel McNeas Wallace & Nurick LLC, submits this Answer to the Administrative Complaint in the above-captioned matter pursuant to the Consolidated Rules of Practice as set forth in Title 40, Part 22 of the Code of Federal Regulations, by stating as follows:

1. Admitted.
2. This paragraph states a legal conclusion to which no response is required.
3. This paragraph states a legal conclusion to which no response is required. By way of further answer, Knouse admits that it owns and operates the facility located at 800 Peach Glen-Idaville Road in Peach Glen, Pennsylvania ("Facility").
4. This paragraph states a legal conclusion to which no response is required. By way of further answer, Knouse admits that it owns and operates the facility located at 800 Peach Glen-Idaville Road in Peach Glen, Pennsylvania ("Facility").
5. This paragraph states a legal conclusion to which no response is required.
6. Admitted.

7. Admitted in part and denied in part. Knouse admits that EPA, through a contractor, conducted an inspection of the Facility on or about June 6, 2007. Knouse lacks the knowledge or information sufficient to form a belief as to the remaining averments and the same are, therefore, denied.

8. This paragraph states a legal conclusion to which no response is required.

9. This paragraph states a legal conclusion to which no response is required.

10. Admitted upon information and belief.

11. Admitted upon information and belief.

12. Admitted.

COUNT I – VIOLATION OF SECTION 103 OF CERCLA –
SEPTEMBER 21, 2006 AMMONIA RELEASE

13. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 12 as though fully set forth herein.

14. This paragraph states a legal conclusion to which no response is required.

15. Admitted.

16. This paragraph states a legal conclusion to which no response is required.

17. This paragraph states a legal conclusion to which no response is required.

18. This paragraph states a legal conclusion to which no response is required.

19. Denied as stated. Knouse had knowledge that an unknown quantity of ammonia had been released at approximately 9:15 a.m. Pre-existing equipment at the facility detected the presence of ammonia, which automatically activated the shutdown of the "king" valve at the receiver (the system storage tank) preventing additional flow to the system. The sensor

activation also sounded an internal alarm. At approximately 9:27 a.m., Knouse notified the LEPC that there was an anhydrous ammonia release of an unknown quantity that required Knouse Foods HAZWOPR trained response, following established Knouse procedures.

Certified HAZWOPR responders took immediate action to assess the situation, ensure that no further release was occurring and protect Knouse's employees and neighbors. No quantities of the released ammonia were known at that time.

Trained Knouse employees, properly equipped for respiratory protection, went into the room where the event occurred, isolated the leak point by shutting off the suction and discharge valves at the involved compressor, and exited the room at 10:08 a.m. A second entry team entered the room at 10:17 a.m. to take ambient air readings for ammonia levels. They exited the room at 10:24 a.m., and additional ventilation of the area was initiated. Ammonia readings were taken in neighboring rooms starting at 10:30 a.m. and continuing until 1:30 p.m. Additional fans were located in the affected area to enhance ventilation. Throughout this process, and following established Knouse procedures, updates were periodically given to the LEPC. While quantities of released ammonia could not be ascertained, the more distant reporting centers (SEPC and NRC) were notified of the event.

Knouse took immediate action to contain the released ammonia, stop any further release, and protect its employees and neighbors, all of which was done successfully. It was not until after Knouse had notified the SERC and NRC of the event that Knouse was able to ascertain that an amount in excess of the RQ for ammonia had been released.

20. Denied as stated. Knouse admits that the NRC was not notified until some time after 12:00 p.m. on September 21, 2006. Knouse incorporates its answer to Paragraph 19, above,

herein by reference. Even at the time the NRC was notified, Knouse could not have determined whether the amount of ammonia that had been released exceeded the reportable quantity ("RQ").

21. This paragraph states a legal conclusion to which no response is required. By way of further answer, Knouse denies that the identified statute and regulation require immediate notification of all releases. To the contrary, notification is required immediately when a person has "knowledge" of a "release . . . in quantities equal to or greater than" the RQ.

22. This paragraph states a legal conclusion to which no response is required. Knouse denies that it violated Section 103(a) of CERCLA. To the contrary, Knouse complied with the requirements of that section.

**COUNT II – VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC
SEPTEMBER 21, 2006 AMMONIA RELEASE**

23. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 22 as though fully set forth herein.

24. This paragraph states a legal conclusion to which no response is required.

25. This paragraph states a legal conclusion to which no response is required.

26. This paragraph states a legal conclusion to which no response is required. By way of further answer, immediate notification is not required until a person has "knowledge" of a "release . . . in quantities equal to or greater than" the RQ.

27. Denied as stated. Knouse admits that the SERC was not notified until some time after 12:00 p.m. on September 21, 2006. Knouse incorporates its answer to Paragraph 19, above, herein by reference. At the time the NRC was notified, Knouse could not have determined whether the amount of ammonia that had been released exceeded the RQ.

28. This paragraph states a legal conclusion to which no response is required. By way of further answer, Knouse denies that the identified statute and regulation require immediate notification of all releases. To the contrary, notification is required immediately when a person has "knowledge" of a "release . . . in quantities equal to or greater than" the RQ.

29. This paragraph states a legal conclusion to which no response is required. Knouse denies that it violated Section 304(a) and (b) of EPCRA. To the contrary, Knouse complied with the requirements of that section.

COUNT III – VIOLATION OF SECTION 304(c) OF EPCRA – SERC
SEPTEMBER 21, 2006 AMMONIA RELEASE

30. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 29 as though fully set forth herein.

31. This paragraph states a legal conclusion to which no response is required.

32. This paragraph states a legal conclusion to which no response is required.

33. Denied. Knouse's records indicate that the SERC was provided a copy of the written follow-up report.

34. This paragraph states a legal conclusion to which no response is required. By way of further answer, Knouse denies that it did not provide a written follow-up report to the SERC as soon as practicable after Knouse had knowledge of the release.

35. This paragraph states a legal conclusion to which no response is required. Knouse denies that it violated Section 304(c) of EPCRA. To the contrary, Knouse complied with the requirements of that section.

COUNT IV – VIOLATION OF SECTION 304(c) OF EPCRA – LERC
SEPTEMBER 21, 2006 AMMONIA RELEASE

36. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 35 as though fully set forth herein.

37. Admitted.

38. This paragraph states a legal conclusion to which no response is required. Knouse denies that it did not provide the written report to the LEPC as soon as practicable.

39. This paragraph states a legal conclusion to which no response is required. Knouse denies that it violated Section 304(a) and (b) of EPCRA. To the contrary, Knouse complied with the requirements of that section.

COUNT V – VIOLATION OF SECTION 311 OF EPCRA – SERC

40. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 39 as though fully set forth herein.

41. This paragraph states a legal conclusion to which no response is required.

42. Admitted.

43. This paragraph states a legal conclusion to which no response is required.

44. This paragraph states a legal conclusion to which no response is required.

45. This paragraph states a legal conclusion to which no response is required.

46. This paragraph states a legal conclusion to which no response is required.

47. This paragraph states a legal conclusion to which no response is required.

48. This paragraph states a legal conclusion to which no response is required.

49. Admitted.

50. This paragraph states a legal conclusion to which no response is required.

51. This paragraph states a legal conclusion to which no response is required.

52. This paragraph states a legal conclusion to which no response is required.

53. Denied as stated. Knouse admits that since at least 2004 it has had present at its Peach Glen facility lead-acid batteries of a variety of sizes totalling a weight of 158,100 pounds.

54. Admitted.

55. This paragraph states a legal conclusion to which no response is required.

56. Admitted.

57. This paragraph states a legal conclusion to which no response is required.

COUNT VI – VIOLATION OF SECTION 311 OF EPCRA – LEPC

58. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 57 as though fully set forth herein.

59. Admitted.

60. This paragraph states a legal conclusion to which no response is required.

**COUNT VII – VIOLATION OF SECTION 311 OF EPCRA –
LOCAL FIRE DEPARTMENT**

61. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 60 as though fully set forth herein.

62. Admitted.

63. This paragraph states a legal conclusion to which no response is required.

COUNT VIII – VIOLATION OF SECTION 312 OF EPCRA
CALENDAR YEAR 2006 – SERC

64. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 63 as though fully set forth herein.

65. This paragraph states a legal conclusion to which no response is required.

66. Denied as stated. Knouse admits that during calendar year 2006, it had present at its Peach Glen facility lead-acid batteries of a variety of sizes totalling a weight of 185,090 pounds.

67. Admitted upon information and belief.

68. Admitted.

69. Admitted.

70. This paragraph states a legal conclusion to which no response is required.

71. Admitted.

72. This paragraph states a legal conclusion to which no response is required.

73. This paragraph states a legal conclusion to which no response is required.

COUNT IX – VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2006 – LEPC

74. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 73 as though fully set forth herein.

75. Admitted.

76. This paragraph states a legal conclusion to which no response is required.

77. This paragraph states a conclusion of law to which no response is required.

**COUNT X – VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2006 – LOCAL FIRE DEPARTMENT**

78. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 77 as though fully set forth herein.

79. Admitted.

80. This paragraph states a legal conclusion to which no response is required.

81. This paragraph states a conclusion of law to which no response is required.

**COUNT XI – VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2005**

82. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 81 as though fully set forth herein.

83. Denied as stated. Knouse admits that during calendar year 2005, it had present at its Peach Glen facility lead-acid batteries of a variety of sizes totalling a weight of 164,300 pounds.

84. Admitted upon information and belief.

85. Admitted.

86. Admitted.

87. This paragraph states a conclusion of law to which no response is required.

88. Admitted.

89. This paragraph states a legal conclusion to which no response is required.

90. This paragraph states a conclusion of law to which no response is required.

**COUNT XII – VIOLATION OF SECTION 312 OF EPCRA –
CALENDAR YEAR 2004**

91. This paragraph does not contain any factual averments to which a response is required. Knouse hereby incorporates its answers to paragraphs 1 through 90 as though fully set forth herein.

92. Denied as stated. Knouse admits that during calendar year 2004, it had present at its Peach Glen facility lead-acid batteries of a variety of sizes totalling a weight of 158,100 pounds.

93. Admitted.

94. Admitted.

95. Admitted.

96. This paragraph states a conclusion of law to which no response is required.

97. Admitted.

98. This paragraph states a conclusion of law to which no response is required.

99. This paragraph states a conclusion of law to which no response is required.

PROPOSED PENALTIES

Knouse will defend against the proposed penalties as being improperly levied, or as being excessive in nature based on the penalty matrix and other equitable and legal factors.

Upon learning of the ammonia release, Knouse took immediate action to contain the released ammonia, stop any further release, and protect its employees and neighbors, all of which was done successfully. Knouse also notified the LEPC and local fire department immediately upon learning of the release. It was not until later that Knouse was able to ascertain that an amount in excess of the RQ for ammonia had been released. By that time, Knouse had also

notified both the NPC and the SERC. Knouse complied fully with the law with respect to these issues, and properly considered its first response priority the safety of its employees, the public, and notification of local emergency response personnel.

Knouse does not know whether EPA has accurately counted the amount of sulfuric acid in lead batteries present at the Facility in the years 2004 through 2006.

REQUEST FOR HEARING

Knouse requests a hearing before an EPA Administrative Law Judge on the Complaint, wherein Knouse will contest material facts as well as the appropriateness of a penalty.

McNEES WALLACE & NURICK LLC

By 

Curtis N. Stambaugh
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

Date: August 15, 2008

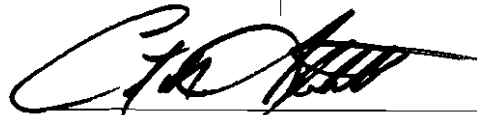
*Attorneys for Respondent Knouse Foods
Cooperative, Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Administrative Complaint was served by certified mail, return receipt requested, upon the following:

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: August 15, 2008



Curtis N. Stambaugh, Esq.

*Counsel for Respondent Knouse Foods
Cooperative, Inc.*