



January 15, 2007

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SENT BY COURIER

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd. 13th Floor
Chicago, IL 60604-3511

Dear Regional Hearing Clerk:

Re: In the Matter of Lesaffre Yeast
Corporation, CAA Docket No. CAA-05-
2007-0002

On behalf of Lesaffre Yeast Corporation, enclosed is an original and two copies of Lesaffre's Answer to the Complaint filed by the U.S. EPA against Lesaffre.

Please file stamp one of the enclosed copies and return it to me in the enclosed postage pre-paid envelope.

By copy of this letter, I also serve on the U.S. EPA, through its authorized attorney, Catherine Garypie, a copy of Lesaffre's Answer.

Yours very truly,

REINHART BOERNER VAN DEUREN s.c.

BY *Michael H. Simpson*

Michael H. Simpson

MW/1388521MHS:CJH

Encs.

cc Ms. Catherine Garypie (w/encs.)
Mr. Christopher Kaltenbach (w/encs.)
Mr. Thomas McElligott (w/encs.)
Mr. Peter Tomasi (w/encs.)

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. CAA-05-2007-0002
)	
Lesaffre Yeast Corporation)	Proceeding to Assess a Civil Penalty
Milwaukee, Wisconsin,)	under Section 115(d) of the Clean
)	Air Act, 42 U.S.C. § 7413(d)
Respondent.)	
)	
)	

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REGIONAL ENVIRONMENTAL CENTER

**Lesaffre Yeast Corporation's Answer to EPA's
Administrative Complaint**

1. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre Yeast Corporation (“Lesaffre”) denies them.
2. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.
3. Admits that Lesaffre is a corporation doing business in Wisconsin. Affirmatively states that the Red Star Yeast Plant in Milwaukee ended operation on December 22, 2005.

Statutory and Regulatory Background

4. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

The National Ambient Air Quality Standards

5. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.
6. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.
7. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.
8. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

The Nonattainment New Source Review Requirements

9. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

10. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

11. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

12. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

The Wisconsin Nonattainment NSR Requirements

13. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

14. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

15. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

16. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

a. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

b. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

(1) The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

(2) The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

(3) The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

(4) The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

(5) The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

c. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

d. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

e. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

f. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

17. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

18. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

19. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Waiver

20. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

21. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

22. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

23. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

24. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

General Allegations

25. Denies the allegations of the first sentence of Paragraph 25 that Lesaffre operated a yeast manufacturing facility at 433 E. Milwaukee Street. Affirmatively states that Lesaffre operated a yeast manufacturing facility at 2702 W. Greves St, Milwaukee, Wisconsin from February 23, 2001 to December 22, 2005. Lesaffre lacks knowledge and information to form a belief as to the truth of the allegation in the second sentence of Paragraph 25 and, therefore, denies these allegations. Admits the allegation in the third sentence of Paragraph 25.

26. Denies the allegation contained in Paragraph 26. Affirmatively states that Lesaffre Yeast Corporation owned the Facility from February 23, 2001 to July 27, 2006. On this date, the property was transferred to 2612 Greves, LLC and 2702 Greaves, LLC.

27. Denies that the description of facility operations in Paragraph 27 is accurate. Affirmatively states that the facility produced cream yeast, active dry yeast, consumer fresh yeast, consumer dry yeast and nutritional yeast.

28. Admits the allegations of Paragraph 28 as of the time production ended at the Facility.

Count 1

29. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

30. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

31. Lesaffre lacks knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 31 and, therefore, denies these allegations.

32. Lesaffre lacks knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 32 and, therefore, denies these allegations.

33. Denies the allegations of Paragraph 33.

34. Denies the allegations of Paragraph 34.

35. Lesaffre lacks knowledge and information to form a belief as to the truth of the allegations contained in Paragraph 35 and, therefore, denies these allegations.

36. Denies the allegations of Paragraph 36.

37. Denies the allegations of Paragraph 37.

38. Admits that Lesaffre did not obtain a Nonattainment New Source Review permit for the Red Star Yeast Plant, located at 2702 W. Greves St, Milwaukee. Lesaffre lacks knowledge and information to form a belief as to whether any predecessor to Lesaffre obtained or was required to obtain any Nonattainment New Source Review permit for the Facility.

39. Admits that on June 30, 2005, U.S. EPA issued a Notice of Violation to Lesaffre. Denies the allegations of Paragraph 39 to the extent that they imply that any alleged violations contained in the Notice of Violation occurred or were continuing violations.

40. Admits that on August 16, 2005, representatives of Lesaffre attended a conference with U.S. EPA. Affirmatively states that the theory of violation raised in that conference is substantially different than the theory embodied in this Complaint.

Count II

41. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

42. Admits the allegations contained in the first three sentences of Paragraph 42 except that the date of December 19, 2003 in the chart is incorrect and the should be October 19, 2003. The allegations in the last sentence of Paragraph 42 contain legal conclusions to which no response is required. To the extent the allegations in this last sentence requires a response, Lesaffre denies them.

43. Admits that on June 24, 2004, U.S. EPA issued a Notice of Violation to Lesaffre. Denies the allegations of Paragraph 43 to the extent that they imply that any alleged violations contained in the Notice of Violation occurred or were continuing violations.

44. Admits that on September 21, 2004, U.S. EPA and Lesaffre held a conference with U.S. EPA.

Proposed Civil Penalty

45. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

46. Lacks knowledge regarding how U.S. EPA Region 5 personnel calculated the proposed penalty, and therefore denies the allegations of Paragraph 46. Affirmatively states that the proposed penalty is unreasonable, excessive, and arbitrary and capricious.

47. Lacks knowledge regarding how U.S. EPA Region 5 personnel calculated the proposed penalty, and therefore denies the allegations of Paragraph 47. Affirmatively states that bona fide defenses exist that preclude the imposition of a penalty in this matter.

Rules Governing this Proceeding

48. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Filing and Service of Documents

49. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

50. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Penalty Payment

51. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Opportunity to Request a Hearing

52. Affirmatively states that Lesaffre requests a hearing regarding all material facts alleged in the Complaint, as well as on the appropriateness of the proposed penalty.

Answer

53. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

54. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

55. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

56. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

57. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

a. Notes that affirmative defenses are set forth at paragraphs 62 to 77 of this answer. Restates and reaffirms Paragraphs 1-47, above.

b. Restates and reaffirms Paragraphs 1-47, above.

c. Lesaffre opposes the proposed penalty for all of the reasons set forth in the Affirmative Defenses, paragraphs 62 to 77 below.

d. Lesaffre affirmatively requests a hearing pursuant to 42 U.S.C. §7413(d)(2).

58. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Settlement Conference

59. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

60. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them.

Continuing Obligation to Comply

61. The allegations of this paragraph contain legal conclusions to which no response is required. To the extent that these allegations require a response, Lesaffre denies them. Affirmatively states that the Red Star Yeast Plant, located at 2702 W. Greves St, Milwaukee, closed operations on December 22, 2005.

Affirmative Defenses

62. Lesaffre denies each and every allegation of the complaint not specifically admitted

Failure to State a Claim

63. EPA's claims are barred, in whole or in part, because the Complaint fails to state a claim upon which relief can be granted.

Statute of Limitations

64. EPA's claims are barred, in whole or in part, by the applicable statute(s) of limitations.

Equitable Estoppel

65. The claims asserted and relief sought by EPA are barred, in whole or in part, by the equitable doctrine of estoppel. Lesaffre has reasonably relied upon affirmative conduct and representations by EPA, including written guidance, and long-standing acquiescence by EPA to the interpretation by state regulatory agencies of key terms and requirements of the regulatory programs to determine that neither the NNSR nor PSD requirements applied to the repair, maintenance or replacement activities alleged in the Complaint. Lesaffre has also reasonably relied upon the long-standing acquiescence by EPA to the enforcement policies of the state regulatory agency regarding the NNSR and SIP requirements as they pertain to yeast manufacturers. If the interpretation or enforcement policy and proposed penalty now espoused by EPA in its Complaint are permissible under the Act and regulations, EPA is estopped from asserting that interpretation or implementing that enforcement policy because EPA has wrongfully misled Lesaffre regarding the requirements of the PSD and NNSR programs and

enforcement policy as they apply to Lesaffre, and application of the new interpretation and enforcement policy would cause Lesaffre significant harm and injury.

Fair Notice

66. EPA's claims are barred, in whole or in part, because the CAA, implementing regulations and agency guidance did not provide and have not provided fair notice of the interpretations of law now advanced in the Complaint. Accordingly, EPA's efforts to enforce retroactively those new interpretations deprive Lesaffre of Due Process of law and Equal Protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and Section 307(d) of the CAA, 42 U.S.C. § 7607(d).

The Red Star Yeast Plant had Valid Operating Permits/Privity

67. EPA's claims are barred, in whole or in part, because the Red Star Yeast plant has had continuously in force a valid operating permit, issued by the appropriate Wisconsin state agency, with EPA oversight, authorizing operation of each unit, plant, and source listed in the complaint. EPA is in privity with the State of Wisconsin in the administration of the CAA, and the State of Wisconsin has previously made determinations that some or all of the projects identified in the Complaint were not subject to new source requirements and were in compliance with the Wisconsin SIP.

Independent Factors

68. EPA's claims are barred, in whole or in part, because EPA fails to carry its burden of proving that any emissions increase alleged in the Complaint resulted from the activities cited by the Complaint and was not the result of independent factors such as an increase or growth in demand. All work at the facility as alleged in the Complaint was performed, inter alia, to meet demand and such is clearly allowed under the CAA and specifically excluded from the definition of "major modification" under the PSD regulations and "modification" under the NSPS regulations.

No Net Significant Increase in Emissions

69. EPA's claims are barred, in whole or in part, because EPA fails to carry its burden of proving that the activities cited by the Complaint resulted in a net significant increase in emissions of VOC at Lesaffre's Red Star Yeast plant.

No Hourly Emissions Rate Increase

70. EPA's claims are barred, in whole or in part, because EPA fails to carry its burden of proving that the activities cited by the Complaint resulted in an increase in the hourly rate of emissions of VOCs for Lesaffre's Red Star Yeast plant.

Routine Maintenance, Repair and Replacement

71. EPA's claims are barred, in whole or in part, because EPA fails to carry its burden of proving that the activities cited by the Complaint were physical or operational changes that did not constitute routine maintenance, repair or replacement.

Non-Emitting Equipment

72. EPA's claims are barred to the extent that the activities alleged in the Complaint to be modifications were performed on equipment that does not emit pollutants regulated by the CAA and therefore are not "emissions units" as that term is defined in the Act for PSD and NNSR purposes.

Administrative Procedure Act

73. EPA's claims are barred, in whole or in part, because the legal theories advanced in the Complaint represent changes in EPA's interpretation of the CAA and associated regulations that do not comply with the requirements of the Administrative Procedure Act, 5 U.S.C. § 551 et seq.

Notices of Violation

74. EPA's claims are barred, either in whole or in part, because EPA failed to issue adequate and reasonably intelligible Notices of Violation thirty days in advance of bringing this proceeding as required by 42 U.S.C. § 7413.

Excessive Fine

75. EPA's claims are barred, either in whole or in part, because it seeks to impose an excessive fine in violation of the Eighth Amendment to the United States Constitution.

Invalidity of Wisconsin SIP Regulation 425.05

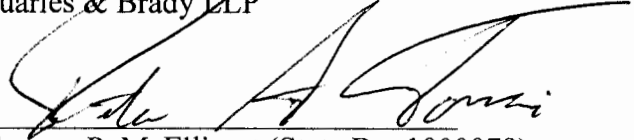
76. EPA's claims that Lesaffre violated the emission limits set forth in the prior version of Wisconsin SIP Regulation NR 424.05 are barred, in whole or in part, because these prior limits exceed the federal emission limits, despite the Wisconsin statutory requirement that the State's rules conform with federal requirements. The nonconforming emission limits in the prior version of Wisconsin SIP Regulation NR 424.05 are, therefore, void and unenforceable. The State of Wisconsin recognized the inconsistency of its SIP Regulation NR 424.05 and amended Wis. Adm. Code § NR 424.05, effective January 1, 2006, to be consistent with the national emission standards for hazardous air pollutants for yeast manufacturing, 40 CFR Part 63 Subpart CCCC, promulgated by the EPA on May 21, 2001 (the "Yeast Manufacturing NESHAP").

Compliance with US EPA MACT Standard

77. EPA's claims are barred, in whole or in part, because the VOC emissions from the Facility complied with the Yeast Manufacturing NESHAP during all times relevant to this Complaint.

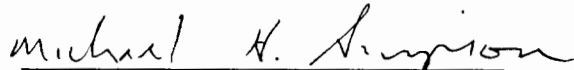
Dated this 15th day of January, 2007.

As to Paragraphs 1-40 and 45-77:
Quarles & Brady LLP



Thomas P. McElligott (State Bar 1000079)
Peter A. Tomasi (State Bar #1038412)
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As to Paragraphs 1-28 and 41-77:
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